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A Dozen Securities Law Professors Stake Absolutist Position On Adviser Duties

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I teach securities regulation at the University of California, Irvine and so have a toe hold in academia. In my view, law schools are placed on the "isthmus of a middle state". As such, they must continually wrestle with the question of whether they are a mere trade school or a scholarly institution. If you lean too heavily towards the former, you lack prestige and if you lean too heavily on the latter, you lack practicality.

Yesterday, a dozen eminent securities law professors issued a [statement](#) expressing concern about the Securities and Exchange Commission's [Interpretation Regarding Standard of Conduct for Investment Adviser](#). In their statement, these professors assert without qualification "In short, the investment adviser must seek to avoid conflicts of interest, not merely disclose them".

It is easy to wax eloquent when speaking of fiduciary duties, as Benjamin Cardozo did in *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928) ("Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."). The reality for investment advisers is much more difficult. Some conflicts, or potential conflicts, may be unavoidable or may result in transactions that are in the client's best interest. Further, taking an absolutist position deprives adviser and client of the ability to tailor their relationship.

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Allen Matkins
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Article By
[Keith Paul Bishop](#)
[Allen Matkins Leck Gamble Mallory & Natsis LLP](#)
[California Corporate and Securities Law](#)
[Securities & SEC](#)
[All Federal](#)