



## **Fiduciary Counselors**

### **Independent Fiduciary for Company Securities in 401(k) Plans**

Independent fiduciary assignments related to employer securities for which Fiduciary Counselors has been responsible have included:

- Managing employer stock held by 401(k) plans, ESOPs and defined benefit plans;
- Prohibited transaction exemptions involving employer securities;
- Liquidation of holdings of company stock and stock received as a result of spin-offs; and
- Voting of annual proxies and proxies involving mergers.

We are currently independent fiduciary with respect to approximately \$17 billion in company stock in defined contribution plans. Engagements for which Fiduciary Counselors acts as independent fiduciary with respect to employer securities in defined contribution plans include plans of Altria, BNY Mellon, Granite Construction, and DTE Energy.

#### **Scope of Services**

As independent fiduciary of a company stock fund in a 401(k) plan, Fiduciary Counselors is typically appointed as a named fiduciary and investment manager with respect to the stock fund. Fiduciary Counselors' responsibilities may include:

- Determining whether continuing to allow participants to make new investments in company stock is no longer consistent with ERISA;
- Determining whether holding company stock in the plan is no longer consistent with ERISA and, if so, determining how to liquidate the plan's holdings in company stock; and
- Proxy voting for unallocated shares and shares for which no participant direction is received.

In performing our services as an independent fiduciary, we would act in accordance with the terms of the plan, including the plan's provisions relating to investment in company stock, unless doing so would be inconsistent with Title I of ERISA.

We view 401(k) plans as long-term investment vehicles and believe that plan provisions requiring employer stock as an investment option should be followed, absent special circumstances that would make following the provisions inconsistent with ERISA. We monitor the financial position of the company by reviewing company filings with the SEC, reviewing credit rating reports from Moody's and S&P, reviewing key analyst reports on the company, participating in company calls with analysts, and monitoring significant business developments and litigation. When credit ratings for unsecured debt are not available, we develop objective metrics to determine creditworthiness based on publicly reported financial information. We do not have access to any non-public information regarding the company.

Our Investment Committee meets weekly to review developments with respect to each company whose stock we monitor. In the weekly Investment Committee meeting, each portfolio manager provides the Committee with a briefing as to what transpired with the subject company over the past week. This includes a review of changes in debt ratings, significant news stories, buy/sell analyst recommendations, regulatory developments, and financial reporting. Ad hoc meetings are arranged as necessary during the week to review situations that require closer attention.

Factors used in determining whether to continue to maintain or sell company stock are:

- Terms of the plan regarding company stock;
- Financial condition of the company;
- Credit ratings or credit metrics;
- Whether the stock is traded on a major market, trading volume and analyst coverage;
- Indications that because of special circumstances the market is not accurately valuing the stock;
- Availability of timely, reliable company financial information; and
- Likelihood of bankruptcy.

We evaluate these factors in light of the Supreme Court's decision in *Fifth Third Bancorp v. Dudenhoeffer*, which overturned case law establishing a presumption of prudence for holding company stock, but also held that allegations that a fiduciary acting based solely on public information should have closed a company stock fund to new investment or liquidated the fund because the market is overvaluing a stock generally are implausible absent special circumstances, and left open the question of when, if ever, such special circumstances may exist. We continually monitor evolving case law governing employer stock funds.

### **Investment Committee**

All investment decisions or recommendations regarding the company stock fund are made by the members of Fiduciary Counselors' Investment Committee:

- **Thomas O'Connor**, President and Chief Executive Officer, joined the firm in 2007. In addition to serving on the Investment Committee, he is a member of the firm's Litigation Committee and the Pension Risk Transfer Committee. He is active in all aspects of the firm's engagements, including its annuity placements, settlement reviews, company stock and real estate assignments. As a lawyer and a certified public account, Mr. O'Connor's primary academic background is in taxation with an emphasis in employee benefits law. Prior to joining Fiduciary Counselors, Mr. O'Connor was the Controller at Trusted Edge, Inc., a private software development company specializing in document retention and e-discovery products. He was responsible for all aspects of the company's financial reporting and day to day operations. He has taught both ERISA Law and Accounting for Lawyers as an adjunct professor at George Mason's School of Law.
- **Stephen Cafilich** is Fiduciary Counselors' Senior Vice President and General Counsel. He has more than twenty-five years of experience in employee benefits law. Mr. Cafilich advises Fiduciary Counselors on all aspects of its work, including the legal standards

governing company stock funds. He is a member of the company's Investment Committee, Litigation Committee and the Pension Risk Transfer Committee and has taken a leading role in engagements involving annuity placements, company stock liquidations, stable value funds, and review of settlements for compliance with Department of Labor Prohibited Transaction Exemption 2003-39. Before joining Fiduciary Counselors, Mr. Caflisch was an employee benefits consultant at Price Waterhouse, specializing in qualified and non-qualified plans with an emphasis on qualified retirement plans.

- **Scott Gould**, Senior Vice President, has over twenty years of experience working at Fortune 500 corporations in corporate finance, institutional retirement, and investment management. He has specific expertise in private equity, pension risk transfer, and merger & acquisition transactions. Mr. Gould joined Fiduciary Counselors as a Senior Vice President in 2018. Prior to joining Fiduciary Counselors, Mr. Gould spent 18 years at MetLife. As part of the institutional retirement area, he was Vice President of Structuring, Strategy and Distribution for the U.S. Pensions business. Mr. Gould also established a \$50M strategic venture capital fund where he was responsible for all aspects of fund management, including investment origination, due diligence, valuation, negotiations, approval process, strategic value creation, and portfolio performance tracking. Prior to joining MetLife, Mr. Gould was a Vice President at GE Capital Private Equity where he made private equity and debt investments totaling over \$80M. Mr. Gould also held several accounting management positions at Kraft Foods and was a consultant in KPMG's Valuation Practice.

The Investment Committee is advised and supported by Kathryn Ricard, Senior Vice President (an attorney and a CPA), Will Ardinger, Financial Analyst (a Chartered Financial Analyst), and Anne Kilcoyne, Financial Analyst.

**Thomas E. O'Connor**  
**President & Chief Executive Officer**

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Mr. O'Connor is President and Chief Executive Officer (CEO) of Fiduciary Counselors Inc. He has over 20 years of experience, with 18 at Fiduciary Counselors, addressing complex accounting, financial and legal issues. Mr. O'Connor is a member of the company's Investment Committee, which is responsible for company stock monitoring assignments, the Litigation Committee, which is responsible for reviewing settlements under Prohibited Transaction Exemption 2003-39 and the Pension Risk Transfer Committee, which is responsible for the company's annuity placements. He has extensive knowledge and expertise in ERISA fiduciary matters.

Prior to becoming President of Fiduciary Counselors, Mr. O'Connor was the company's Controller, responsible for overseeing the company's accounting procedures, budgeting, and both internal and external financial reporting. He has also served as the company's Chief Compliance Officer, responsible for internal compliance and interaction with regulatory authorities.

Prior to joining Fiduciary Counselors in 2007, Mr. O'Connor was the Controller at Trusted Edge, Inc., a private software development company specializing in document retention and e-discovery products. He was responsible for all aspects of the company's financial reporting and day to day operations. He has also worked as one of the primary accountants for a private family office associated with a high net worth individual and as a financial consultant and legal counsel to a full service creative marketing agency. Mr. O'Connor has taught ERISA Law and Accounting for Lawyers as an adjunct professor at the George Mason University School of Law.

Mr. O'Connor received his B.S.B.A. magna cum laude in Accounting from Georgetown University, his J.D. from George Mason University School of Law, and his LL.M. in Taxation (with distinction) with a Certificate in Employee Benefits Law from Georgetown University Law Center. He is a member of the Virginia State Bar, American Institute of Certified Public Accountants (AICPA), the Virginia Society of Certified Public Accountants (VSCPA), and the American Bar Association (ABA).

**Will Ardinger**  
**Financial Analyst**

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Mr. Ardinger, who joined Fiduciary Counselors Inc. in 2015, has worked on company stock assignments, proxies and other projects. He has substantial experience with investments, as well as with potential legislation and regulations and their impact on businesses.

Mr. Ardinger worked for two years as a capital markets reporter with CQ Roll Call, covering daily activity and broader trends in debt and equity capital markets. He wrote the CQ Roll Call Washington Capital Markets Briefing in which he investigated new developments and legal risks facing firms preparing to raise public and private capital.

Prior to joining CQ Roll Call, Mr. Ardinger served for three years as a legislative staffer for a U.S. Senator. In that role, he focused on tax, budget and financial services issues, including analysis of the Jumpstart our Business Startups Act of 2012 and other legislation relating to the Dodd-Frank Act.

He began his career in Washington with a boutique consulting firm, assisting clients in the food service and energy industries to navigate changes in government policies and comply with regulations.

Mr. Ardinger received his B.A. in Politics from Bates College in 2009. He is a CFA charterholder and a member of the CFA Society Washington, DC.

**Stephen Caflisch**  
**Senior Vice President & General Counsel**

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Mr. Caflisch is Senior Vice President and General Counsel of Fiduciary Counselors Inc. He has more than 25 years of experience in employee benefits, including 19 at Fiduciary Counselors.

Mr. Caflisch advises Fiduciary Counselors on all aspects of its work. He is a member of the company's Pension Risk Transfer Committee, Investment Committee, and Litigation Committee. He takes a leading role in engagements involving annuity purchases, company stock liquidations, stable value funds, and review of settlements for compliance with Department of Labor Prohibited Transaction Exemption 2003-39.

Before joining Fiduciary Counselors in 2005, Mr. Caflisch was an employee benefits consultant at Price Waterhouse, specializing in qualified and non-qualified plans with an emphasis on qualified retirement plans. He handled matters for clients in a wide range of industries, including steel and transportation, that involved complex issues such as compliance, deductions, due diligence in corporate transactions, taxation of distributions, potential liabilities for employee benefits in bankruptcy, funding obligations, PBGC claims, plan termination and restoration, and withdrawal liability.

Prior to his work at Price Waterhouse, Mr. Caflisch was a Special Counsel at the Pension Benefit Guaranty Corporation. He reviewed significant PBGC filings in bankruptcy proceedings and represented the PBGC in complex litigation and claims. He was on the team that successfully defended the withdrawal liability provisions of the Multiemployer Pension Plan Amendments Act of 1980 in nationwide litigation, including before the United States Supreme Court.

Mr. Caflisch also has experience in the fiduciary and tax aspects of employee pension plans as a Senior Associate with the law firm of Reed Smith Shaw & McClay in Washington, DC.

Mr. Caflisch received his B.A. cum laude from Harvard University and his J.D. from Georgetown University Law Center, where he was a member of the Georgetown Law Journal. He is admitted to practice law in Maryland and in the District of Columbia.

**Scott Gould**  
**Senior Vice President**

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Mr. Gould has over 20 years of experience working at Fortune 500 corporations in corporate finance, institutional retirement, and investment management. He has specific expertise in private equity, pension risk transfer, and merger & acquisition transactions. Mr. Gould joined Fiduciary Counselors as a Senior Vice President in 2018. He is a member of the company's Investment Committee.

Prior to joining Fiduciary Counselors, Mr. Gould spent 18 years at MetLife. As part of the institutional retirement area, he was Vice President of Structuring, Strategy and Distribution for the U.S. Pensions business. Mr. Gould also established a \$50M strategic venture capital fund where he was responsible for all aspects of fund management, including investment origination, due diligence, valuation, negotiations, approval process, strategic value creation, and portfolio performance tracking. As Vice President in the Mergers & Acquisitions Group, he executed 16 transactions totaling over \$10B, and led due diligence, negotiations, and integration.

Prior to joining MetLife, Mr. Gould was a Vice President at GE Capital Private Equity where he made private equity direct and fund investments totaling over \$80M. Mr. Gould also held several accounting management positions at Kraft Foods and was a consultant in KPMG's Valuation Practice.

Mr. Gould holds a B.S. degree in Computer Engineering from the University of Michigan and an M.B.A. in Finance from the University of Chicago Booth School of Business.

**Anne Kilcoyne**  
**Financial Analyst**

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Ms. Kilcoyne joined Fiduciary Counselors Inc. in 2019 and serves as a Financial Analyst assisting with company stock assignments and special projects. She has over 20 years of experience in institutional investments and finance. She has been active in the institutional arena as an investment manager, banker and independent consultant. She also worked for Fidelity Investments as a Financial Advisor to high net worth individuals by guiding them to select appropriate investments.

As an independent consultant, she managed various investment-related consulting projects on behalf of clients such as Greenwich Associates, a former U.S. senator, and an investment research firm. These projects included due diligence on companies, investment manager research and working closely with pension consulting firms.

She was previously a Vice President at Bankers Trust/Deutsche Bank both in the Institutional Investment Management Group and in Corporate Banking. She developed deep credit analysis skills in these roles. She also managed structured equity funds for different types of retirement plans.

Ms. Kilcoyne received an MBA in Finance from Penn State University and a BA in Economics and English from Rutgers University. She holds Series 7 and 63 Registered Securities Broker licenses.



**Kathryn Ricard**  
**Senior Vice President**

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Ms. Ricard has over twenty-five years of experience working with employee benefit plans as a lawyer, CPA and public policy expert. Ms. Ricard joined Fiduciary Counselors as Senior Vice President in 2016. She is also a member of the company's Litigation Committee and Pension Risk Transfer Committee.

Prior to joining Fiduciary Counselors, Ms. Ricard was Senior Vice President, Retirement Policy at The ERISA Industry Committee (ERIC) and had overall responsibility for developing retirement policy on behalf of ERIC's members – America's major employers. At ERIC, Ms. Ricard focused on retirement policy issues as they impacted large employers in policy areas including regulatory, legislative and judicial.

Prior to joining ERIC, Ms. Ricard operated a consulting firm focusing on retirement security and compliance issues. Ms. Ricard served as the Vice President – Retirement Security for the American Council of Life Insurers where she developed retirement policy issues on behalf of the life insurance industry. In addition, Ms. Ricard also served as Assistant Council for the Investment Company Institute working on retirement policy issues for the mutual fund industry. While at the Investment Company Institute, Ms. Ricard represented the mutual fund industry on IRPAC, a private sector advisory group to the Internal Revenue Service on tax reporting issues.

Prior to her work at various trade associations focusing on retirement policy issues, Ms. Ricard also worked at the Groom Law Group, a boutique law firm focused on benefits issues as well as at the Department of Labor's Employee Benefits Security Administration (EBSA). After graduation from college with a degree in accounting, Ms. Ricard became a CPA and worked as an auditor at Pricewaterhouse.

Ms. Ricard is a graduate of the George Washington University Law School, and received her undergraduate degree in accounting from the University of Virginia. Ms. Ricard is a lawyer and a CPA.

**Wendy Williamson**  
**Director of Administration**

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Ms. Williamson serves as Director of Administration for Fiduciary Counselors Inc. Prior to joining Fiduciary Counselors in 2005, she worked in both the Government and Private Sector.

Ms. Williamson started her career while in college at the International Trade Administration in the US Commerce Department; and after graduation at the Economic and Business Affairs Bureau at the US State Department. Moving on to the private sector, Ms. Williamson served as a Research and Administrative Assistant for International Business-Government Counselors [IBC] and then later as Research and Administrative Assistant for the Mergers and Acquisitions Practice Area of NERA Economic Consulting. Ms. Williamson joined PixelChix Multimedia in 2001 as an intern and later advanced to Vice President of Design and Development with responsibilities including client relations and streamlining site maintenance and continuity.

Ms. Williamson received her B.A. from George Washington University in International Affairs with a focus on Eastern Europe and the Former Soviet Union in 1993. In 2000, she received a Professional Certificate from the Multimedia Website Design Comprehensive Institute at George Washington University.

**Ivan Strasfeld**  
**Senior Advisor**

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Currently, Mr. Strasfeld serves as an ERISA Regulatory Consultant and a Senior Advisor to Fiduciary Counselors Inc. He was the Former Director, Office of Exemption Determinations, Employee Benefits Security Administration.

Mr. Strasfeld assumed the position of Director of the Office of Exemption Determinations in June 1989. He retired from that position on February 3, 2012. From 1984 to 1989, he held several positions including Chief of ORI's Division of Fiduciary Interpretations and Regulations and Chief of ORI's Division of Regulatory Coordination. Mr. Strasfeld was an Employee Benefit Plan Specialist in the Division of Fiduciary Interpretations and Regulations from 1979 to 1984, and a Tax Law Specialist with the Internal Revenue Service from 1976 to 1979.

Mr. Strasfeld received a B.S. degree in 1972 from the State University of New York at Buffalo and a J.D. in 1975 from UCLA School of Law, Los Angeles, CA.