

Relationship between Beneficiaries, Trustees and Managers in the Trusts Arrangements

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In Japan, Securities Investment Trust is mainly managed by settlor after the rights of beneficiaries are transferred to investors, and Directory Trust is advised by the agent of settlor. The behavior of both managers and advisers is governed by codified duties of care and loyalty under Securities Investment Trust Law and Investment Advisers Law. However, they are generally not considered as fiduciaries. In the common law world, managers are considered as fiduciaries and have same obligation as trustees. On the other hand, here in Japan, scope of the obligation of the three parties, i. e. beneficiaries, trustees, and managers (advisers), involved in these investment arrangements is neither clear nor fully analyzed.

I analyzed the trusts arrangements to find the implied agreement of the three parties arranging the scope of obligations one another. My conclusion is that managers of the funds have the best information about any risk associated with the investment so they are obligated to disclose the risk to the other parties. Therefore, beneficiaries and trustees should not be liable as far as they are not informed.

