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Definition of the Term ‘‘Fiduciary’’; Conflict of Interest Rule—Retirement Investment Advice

Comment On: EBSA-2010-0050-3491
Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

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General Comment

As someone working at a "wirehouse firm" which is very significantly impacted by the DoL's Fiduciary rule I find it very frustrating that so many of the submitted comments are directed at the lack of time to understand and implement the rule as well as the products that may not be able to be sold in their current form. It doesn't take much to see that the primary concern is that some individuals will have to change their approach to their business and how they are compensated than what is genuinely in the best interests of the clients. My thoughts are as follows:

1) Brokers/Advisors are not prevented from doing commission-based business under the rule. If they receive variable compensation based on the product they sell, that must be made clear to the client and the justification documented. If you are doing what's in the best interest of the client, why is this such a problem?

2) Clients with concentrated positions, long-term holdings and the like do not have to

be forced into a fee-based advisory account. Clients at my firm can maintain such holdings in so-called legacy accounts that are not charged an advisory fee. I have to assume other firms have the ability to do the same thing.

3) This rule has been coming down the pike for several years. If you have not begun to prepare your business and clients for its implementation it seems to me you have willfully ignored the coming reality. I can understand if you didn't like the rule, thought it was overreach, or hoped it would be rescinded but that doesn't absolve you from being prepared on its implementation.

4)Many companies have invested millions (in some cases, many millions) of dollars to prepare for the implementation of the rule. Should those investments, made in good faith to comply with a government regulation and do what is in the client's best interest see their investments squandered because they tried to abide by a legitimate government rule?

5)The DoL spent years developing this rule, soliciting input from a vast array of parties. Multiple court decisions have upheld its legitimacy. Suddenly, now there must be more study to see what the rule's impact will be? Let's be honest, the intent of those who support delay is death through delay, i.e. kill the rule.

6) I agree that it would be a good thing for the SEC, in coordination with FINRA, to develop a universal fiduciary rule. That said, it seems disingenuous to argue that applying a fiduciary or best interest standard to retirement accounts should be put off until the SEC or FINRA move on a standard for all types of accounts. Seems like arguing, I believe in the best interest standard but until all types of accounts are subject to it let's stick with a lower standard of care for all accounts.

The Fiduciary rule is far from perfect and there will be some investors disadvantaged by it. That said, it's the best we have right now and far more investors will benefit than not. Advisors will have to work harder to service their clients and prove the value of their service/advice. Is that really such a terrible outcome?