



## **“Laws are sand; customs are rock.” Mark Twain**

Since I entered in the financial industry in the 1970s I have worked with clients in the spirit of their best interest, driven by prudence, loyalty and fair fees. My observation is that the vast majority of small firm owners like me operate this way; our clients demand it, and we endeavor to provide it. Enduring prosperity demands fair treatment of customers in any industry; look around at the businesses that thrive through generations. A “best interest” client-advisor working agreement will be honored, or the relationship will be short-lived.

But to impose this DOL fiduciary rule as proposed will diminish the options for smaller investors. I envision casualties from this new rule. Many traditional brokerage clients, long content to pay reasonable commissions in low-turnover portfolios, will now pay more for a fee-based arrangement each year than they had under transaction-based accounts. I foresee the new rule squeezing out small investors from the advice they need, and steering them toward “robo-advice” that may lack the specifics they need to make strong investment decisions.

I have read on many occasions in the DOL’s discussions that “the lowest-fee option is not always the best option.” However, an underlying force here screams over the whispers of the DOL’s text. Indeed, investors, and in turn the entire industry, are speeding toward a lower-fee, passive-investment trend, and the DOL fiduciary now appears to endorse such a philosophy.

Some institutional money managers are including index funds in their clients’ portfolios not because they believe the indexes will achieve the best results, but because they fear liability and potential lawsuits by failing to offer low-cost, passive options. Active managers like me and many other successful investment professionals seek out the best securities rather than being satisfied with the usual suspects of giant companies or all participants in an industry via a passive investment vehicle. Now the government’s DOL is seeking to tell the public how to invest.

The proposed DOL rules appear to me to encourage law suites because of the vague and unclear language that results in the list of Frequently Asked Questions (FAQ) to over 20 pages. It appears to be the consensus among regulators, watchdog groups and financial professionals that the new law will be enforced not by financial regulators but by class-action law firms. I endorse essential industry rules. The SEC originally set the fiduciary rule and it seems logical to have the SEC enhance that standard to all investors and not just Individual Retirement Accounts.

We need to delay the implementation of the DOL rule and look at having a clearer standard set for all investors. I think such rulemaking should be done by the SEC.

A handwritten signature in blue ink that reads "Kevin Hart Kornfield". Below the signature, the word "President" is written in a smaller, less legible hand.