From: Wagner, Reid
Sent: Thursday, March 16, 2017 1:47 PM
To: EBSA.FiduciaryRuleExamination
Subject: RIN 1210-AB79

Comment on the DOL Fiduciary Rule
By Industry Compliance Employee

The brokerage and advisory services industry is regulated by FINRA who enforces the regulations and laws developed by the SEC and other securities industry rulemaking bodies. FINRA is the regulatory body that has the power to oversee, inspect, and regulate the businesses within the securities industry. The DOL currently only covers the ERISA Plan portion of the overall retirement services industry. In the past, the DOL has only regulated the plans subject to ERISA and EBSA enforces ERISA's rules. Will EBSA have to significantly expand to enforce this rule for the thousands of brokerage and advisory firms that offer IRA accounts but don't service ERISA plans? Should FINRA now be required to enforce this DOL rule? The proper government agency to develop a fiduciary standard of impartial conduct is the SEC. The SEC's rules are enforced by FINRA, and FINRA already oversees Broker/Dealer and Registered Investment Advisory (RIA) firms. The SEC also has the ability, if it deems appropriate and necessary, to expand this concept beyond just the retirement services industry.

The intended positive implications of this rule are undeniably good: higher industry standards of conduct and care, increases in transparency and disclosure of both fees and conflicts of interest, and lowering the costs and fees that retirement investors will pay. However, the rule in its current state, will and already has led to many significant unintended negative consequences: a reduction in retirement product offerings, no or less advice or recommendations being made, increased litigation and costs of E&O insurance, and increased compliance costs which no doubt will be passed along to the investors.

Some firms have already announced their intent to move away from brokerage IRA accounts completely; therefore, they are steering clients into fee-based accounts. The companies are claiming that this is due to the increase in compliance costs and potential liability of litigation. Many advisers have touted the benefits of fee-based accounts as a great option because it puts "both the client and the advisor on the same side of the table" by charging a flat fee of 1%-2%. Frankly, if it's pitched that way it sounds really great. A very savvy person must look deeper and ask more questions about the actual numbers because they will likely be paying significantly more in a fee-based account, as opposed to, a buy and hold strategy in a brokerage account.

It's a win-win for the companies that will be pushing their clients into fee-based accounts AKA "reverse churning". They win because they are subject to the less onerous "Stream-Lined" Best Interest Contract (BIC) or BIC Lite which isn't an enforceable contract at all, instead, it just requires companies to provide disclosures that they will act in the best interest of the clients, with impartial conduct standards, and disclose conflicts of interest (we all know it is unlikely that client's will read through the fine print of their disclosures). They also win because they are typically making significantly more off that 1%-2% asset under management (AUM) fee regardless of whether the account goes up or down (in a million dollar account, the fees could be upwards of $9,000 to $10,000 more per year than in a brokerage account with a buy and hold approach). It could be justifiable, if the performance or level of service in a fee-based account warrants the increase in fees, and it can be proven that it's in the best interest of the client. However, it seems that some companies are just attempting to get out ahead of the rule to prevent

reverse churning litigation after the rule takes effect. Those companies have decided not to enter into enforceable contracts with their clients.

There are a lot of options available to customers right now. There are "traditional" brokerage companies which still charge high rates for trades and push high priced mutual funds, but there are also brokerage companies that offer their client's unlimited free trading. There are fee-based advisors that usually charge somewhere between 1-2% of AUM, but there are also robo-advisers and other lower cost options that charge as low as .25% of AUM. Companies have already announced prior to the April 10th effective date, they will be reducing the options available or steering their client's into other products.

I know firsthand that there will be less advice, recommendations, or investment information being given due to the increased fear of litigation. Even if brokers decide to provide a BIC to their client's, they are going to be extremely reluctant to mark a sale as "solicited" or overtly making either specific or general recommendations. In order to lower their liability, many brokers will only offer general investment education, and then they'll force the investors to make the ultimate investment decisions. This will inevitably have a negative impact on the client's accounts and returns.

There is going to be a significant increase in both lawsuits and complaints. I was reading through recent client's comments and many don't seem to understand the rule or the unintended consequences. They simply want to know that their Advisor is acting in their best interest. Right now, there's no enforceability because there's been no indication of who will actually enforce it. The rule is also unclear in a many areas. Most of the proposed policies and guidelines are subjective and interpretive at best. Therefore, it can be expected that there will be an increase in lawsuits, some frivolous and some not, yet the costs to firms for legal fees and E&O insurance will be huge. I'm sure that there are plenty of law firms chomping at the bit to start filing lawsuits once this rule takes effect. I have yet to see any company's version of a BIC, and the regulation is very general on what should be included in the BIC.

The increase in compliance costs is already taking place as firms are still scrambling to try to be ready. Many firms are still betting on a delay and hoping for a complete repeal. The ongoing costs of compliance, once the rule takes effect, will also be very high. The compliance costs may drive some companies to shut their doors. Although, complying with a higher standard of care should force many firms to adopt a more standardized approach to servicing their clients.

This is a sales industry and many firms have long standing sales cultures. The more product you push, the more you make. It's very hard to move away from practices that have been in place for decades. However, there are already some positive changes happening. Some companies are already examining and proposing changes to their compensation structures for their sales people. These firms are beginning to structure their payout grids to reduce the incentives to push clients into investment products that have higher payouts. Mutual fund companies are also supposed to be offering new lower cost share classes that are level which should also benefit investors; however, many of them still appear unprepared to role these out before the April 10th deadline.

This proposed rule has already created a huge wave across the industry and the overall intent is virtuous. As it stands right now, there will be many detrimental consequences that could hurt both investors and respectable brokers and advisors. Without much enforceability besides litigation, it should seriously be examined whether this was the right format and government agency to institute the rule. In the long-run, whether this rule goes through or the SEC establishes its own rule, the benefits of adopting higher standards of care and a lowering of fees should benefit the investors. There are a lot of great firms that are realizing that it's time to change

regardless of this rule. In the meantime, there will be a lot of people harmed, if this rule is not rolled out properly.

Securities are offered through, and advisors are registered with Cetera Investment Services LLC, member FINRA/SIPC. Advisory Services are offered through Northwest Advisors, Inc. Cetera Investment Services LLC is independent of Northwest Advisors, Inc. and Northwest Bank.
Investment products are: * Not FDIC insured * May go down in value * Not Financial Institution guaranteed * Not a deposit * Not insured by any federal government agency.

This e-mail is intended solely for the use of the individual to whom it is addressed. If you are not the intended recipient or are not responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please delete the message, any attachments and notify our email administrator at Email.Administrator@Northwest.com