

PUBLIC SUBMISSION

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Definition of the Term Fiduciary; Conflict of Interest Rule - Retirement Investment Advice; Best Interest Contract Exemption; etc.

Comment On: EBSA-2010-0050-3491

Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

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Submitter Information

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General Comment

Employee Benefits Security Administration
Fiduciary Rule Examination under Executive Memorandum
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I am writing in support of the fiduciary rule and in response to the Executive Memorandum directing the DOL to evaluate the rule.

During my 30+ years in the financial industry, I have witnessed firsthand the evolution of various "investment products" being sold to investors and the continued erosion of regulations to protect the majority of investors who are simply trying to save enough money to retire at a reasonable age and to be able to support themselves and if they're lucky enough maybe even leave a little something to their kids or grandkids.

Enter the explosion of "Alternative Investments" and the promise of big returns. While some are publicly traded and fall under the regulatory house of mainstream

investments, others are not publicly traded and operate under a completely separate and less regulated industry. As long as the investor's advisor or broker dealer reads the 100-200+ page subscription document laden with conflicts of interest they recommend their accredited investor (who regulators have lowered the asset threshold from \$1 million to \$250,000) to invest. The broker dealer or advisor collects a hefty upfront fee from their client for the investment and the Alternative Investment collects a nice chunk of cash they don't have to pay back for at least 10 years.

In the last few years I've seen numerous of these investment entities go belly up, wiping out not only the investor's investment, but often the entire advisory firm's investment as well, in what often amounts to what appears to be nothing more than a Ponzi scheme. Another disturbing trend in recent years is broker dealers or advisors recommending their clients purchase these Alternative Investments with their IRA or other retirement accounts. All too often without the knowledge or understanding of the potential impacts of holding an illiquid asset in a retirement account; using to fund the investor's business which if not done correctly will subject the retirement account to prohibited transactions (resulting in the entire account balance losing its tax deferred status), subjecting the retirement account to estimated tax payments due to unrelated business income tax (defeating the purpose of a tax deferred account). The craftiest of attorneys have created the Rollover for Business Start-up (ROBS) with teams of attorneys ready to help you use your retirement account to start a business, as long as you can afford the upfront fee and monthly charges to avoid a prohibited transaction.

Enter 2017 and the rapidly approaching applicability date of the Fiduciary rule. While most in the industry support the rule and were ready for April 10, many opponents have made claims that the rule "creates too many regulations", "it's going to limit investment options", and "we already act in our customer's best interest" - - I disagree. The recent trend of broker dealers resigning from client accounts who hold these Alternative Investments in their retirement account and instead of acting in the best interest of their client by finding a new custodian to hold the asset, are resigning and delivering the security out of the retirement account and into an account that is not tax deferred. All because they don't want to be the fiduciary on April 10 (now June 9). Does that sound like someone acting in the best interest of their client?

The days of excessive fees charged inside and outside the investment world need to end and all investors need to know that their broker dealer is putting their client's best interest ahead of their own.

Anonymous