Received: April 11, 2017
Status: Pending_Post
Tracking No. 1k1-8vrw-2c8d
Comments Due: April 17, 2017
Submission Type: Web

PUBLIC SUBMISSION

Docket: EBSA-2010-0050
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

Document: EBSA-2010-0050-DRAFT-18009
Comment on FR Doc # 2017-04096

Submitter Information

Name: Chris Harvey
Address: 10105 Daventry Drive
Cockeysville, MD, 21030
Email: chris.harvey@db.com

General Comment

I am an individual retirement investor, and while I appreciate the current delay to June 9, I still wholeheartedly believe that any eventual implementation of the Fiduciary Rule will do more harm than good. My accounts will be migrated to a self-directed platform because the size of my accounts don't warrant hiring a broker to manage the account. Even if I did go that route, having the account managed by someone else means that I will no longer have any input to the account. The whole premise behind this rule does not help me.
The fact that the delay was only for 60 days, and not 180, was disappointing. The study of the rule won't be completed for quite some time, and while the DOL has indicated that there will be no penalty imposed during the interim, it still expects broker/dealers to comply with a rule that has not been finalized yet. This makes even less sense. This appears to be some power play by the DOL, where they wish to mettle in the financial industry that is already heavily regulated by the SEC and FINRA. How many government agencies is the industry being expected to answer to?

Grandfathering some accounts, setting new standards for new accounts, and having a rule that applies to retirement accounts only, but leaves out the whole client relationship with a broker, makes this so much more difficult. The fact that I could get non-investment advisory advice from my broker on my individual retail account and the UTMA accounts for my children, and turn around and apply any of that advice to my self-directed retirement account could result in the broker potentially being fined for my action is nonsensical. To the extent that the financial institutions holding retirement accounts have decided to require small brokerage IRAs to either use the internet or a call center, and forego any conversations with financial professionals, are causing these retirement savers to lose all contact with an investment professional. In 2011, the DOL estimated that consumers who invest without professional advice make investment errors that collectively cost them $114 billion per year. Applying the DOL's own logic to the present proposal, combined with the likelihood that a large number of investors will lose access to advice, we think that the resulting aggregate costs may exceed the DOL's own estimates of the benefits of the proposal.
For managed accounts the rule does not require the service provider and the retirement investor to have the same understanding. Current law requires a mutual understanding or agreement between the parties regarding fiduciary advice. The new rule drops the word "mutual". So it is hard to imagine that litigation will not ensue, when the arrangement's terms need not be mutually agreed to.
My broker is watching the market, no doubt reading the Wall Street Journal and other industry publications, attending meetings that outline investment ideas, can get quotes, and enter orders. I on the other hand do none of the above which is why I rely on my broker to help me. If he happens to earn a commission or a 12(b)-1 rebate, I'm okay with that. I'm paying for him to be the expert. He knows my risk profile and investment style and tailors his recommendations based on that for all of my accounts. I don't want to lose principal in my retirement account balance as a result of a management fee being charged where little to no other activity will occur. Yet the DOL's expectation is, that is in my best interest, to basically take the time to recreate the exact function my broker is currently doing, and do all my own study and analysis to arrive at a recommendation for myself.
The only winner as a result of this rule is the government, as I suspect they will eventually find a way to assess large fines against firms the first chance they get. As though the SEC, the IRS and FINRA weren't enough, now firms can throw DOL into the mix as well. Clients will also have the ability to basically cry foul over every investment that goes south.
The industry needs Secretary Acosta and President Trump to step up and see this regulation for the government overreach that it represents, and kill it altogether. For the DOL to believe that this requirement will not create confusion, fear and more distrust of the government, and to expect institutions to implement the spirit of the rule while it has not been finalized, is delusional.

There are already issues with retirement accountholders withdrawing funds to fund rising health costs. Increasingly, workers are sacrificing their retirement security to meet financial obligations resulting from higher health care costs delaying, or not making contributions. It appears even suggesting that a client do a contribution, a rollover or a transfer would make the advisor a fiduciary. Yet to somehow to fund healthcare costs, that may be just what is needed. Yet the advisor must remain silent or be subject to regulatory scrutiny.
Thank you for considering my comments.