



SunTrust Bank  
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April 17, 2017

Attn: Fiduciary Rule Examination (RIN 1210-AB79)  
Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Washington, DC 20210

Re: Investment Advice Regulation Examination (RIN 1210-AB79)

Dear Sir or Madam:

SunTrust Bank appreciates the opportunity to comment on the specific policy questions raised by President Donald Trump's February 3, 2017 Fiduciary Duty Rule Memorandum ("Presidential Memorandum"). SunTrust Bank supports the Fiduciary Duty Rule's goal of having advice provided by investment fiduciaries to retirement plan and IRA investors be free of material undisclosed conflicts of interest and in the best interests of the retirement plan or IRA investor. In fact, SunTrust Bank has been serving as an investment fiduciary longer than the Department of Labor has been in existence, so we believe we are knowledgeable and experienced regarding the provision of fiduciary investment advice and have a deep understanding of the fiduciary business.

SunTrust Bank defined our Purpose a little over four years ago, and since then we have developed a number of programs to support communities, teammates and clients. This also includes doing a huge amount of research on how people manage their money and how life circumstances put them under stress...and more importantly what kind of help can make the greatest impact. Our Purpose is "Lighting the Way to Financial Well-Being". In furtherance of our Purpose, we have introduced our national "onUp Movement" that helps people move from financial stress to financial confidence by providing no or low cost education and tools, including tools about planning for retirement. Thus, our Purpose closely aligns with the well-intentioned Investment Advice Regulation, but we do not agree with all of the Rule's requirements, and believe that some of those requirement will actually prevent

retirement investors from attaining their retirement goals.

We are very concerned that the Investment Advice Regulation (“Rule”), in its current form, will inhibit, or in some cases, prevent the very people it is intended to protect, retirement plan and IRA investors, from gaining access to quality financial advice and retirement information. In addition, we believe that the current Rule will increase costs to retirement investors and limit investment choices made available to retirement investors, thus rendering the Department’s estimates of potential savings to investors illusory. The Presidential Memorandum asked that the Department review the Investment Advice Rule for three specific concerns:

- (i) Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;
- (ii) Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and
- (iii) Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

SunTrust Bank has a viewpoint for each of these crucial topics and asks the Department to seriously consider SunTrust’s views as it undertakes the review of the Fiduciary Duty Rule as directed by the Presidential Memorandum.

### Potential Harm to Investors

In its current form, the Rule will clearly harm the ability of small retirement investors to obtain fiduciary investment advice. It does so by causing financial institutions and broker-dealers to shift accounts of small retirement investors to generic call centers or web-based “robo-advice” providers rather than retain the personal one-on-one relationship many small retirement investors currently enjoy with their personal financial advisers.

Even worse, the Rule will also force many financial institutions and broker-dealers to shift small retirement plan investors to “self-directed” retirement plan accounts because the cost burdens of regulatory compliance, such as supervisory activities and disclosure requirements, as well as the desire to avoid communications with retirement plan investors that could inadvertently fall within the definition of

fiduciary investment advice under the Rule, dictate that the costs of serving these small retirement investors far outweighs the ability to be adequately compensated for the services and advice currently being provided. At a time when the United States is in the midst of a retirement crisis, it appears to be counterproductive for the Department to enact burdensome rules and regulations that discourage retirement plan and IRA providers from fully serving retirement investors.

#### Dislocations or Disruptions within the Retirement Services Industry

Much of the upheaval and disruption for small retirement investors is the direct result of the requirement of a written best interest contract between the fiduciary and the retirement investor. The required content of the written contract represents a dramatic departure from traditional brokerage and/or investment advisory arrangements that have long well-served investors of all sizes. The current structure and requirements of the BIC exemption is causing advice providers and service providers to curtail and limit the products and services made available to retirement investors in order to avoid fiduciary status. This consequence is most clearly seen in the reduction and/or elimination of commission-based compensation models out of a fear that no matter how reasonable the variable compensation model, it could be misconstrued as failing to satisfy the conditions of the BICE. The unfortunate consequence is that retirement plan investors, rather than being able to pay a transaction-based commission, will be forced into fee-based advice services that charge investors a percentage of assets on an ongoing basis. The result of the forced shift as a result of the BIC is that many retirement investors will end up paying far more for their investments and investment advice.

To illustrate this crucial problem, consider the following example. A broker-dealer wishes to avoid fiduciary status as an IRA provider as a result of the written contract requirement of the BICE, so as some of our competitors have announced, it eliminates commission-based accounts and migrates its IRAs to a level fee advisory model. Under a commission-based account, the IRA investor could have paid a single transaction commission of \$4.95 to make a one-time purchase of \$100,000 value of a given security for his/her IRA. The IRA investor could continue to hold this security position in his/her account with no further cost to the IRA investor. Instead, as a direct result of the Fiduciary Duty Rule, that same IRA investor will be moved to a level-fee advisory account that likely charges an annual fee of 1% of the asset value per year, or in this example, \$1,000.00 per year. If the security is held by the IRA investor for five years, the IRA investor will pay \$5,000.00 to own the exact security position he/she could have acquired for \$4.95 before the Fiduciary Duty Rule imposed this over 1,000% cost increase on the IRA investor. When the example of a single IRA investor is extrapolated to the entire population of IRA investors who will, post BIC implementation, find their choices limited to higher-priced advisory accounts instead of low cost transaction accounts, it becomes clear that the supposed savings

projections for retirement investors associated with the Fiduciary Advice Rule will not in fact materialize.

Another illustrative example of how the BICE unnecessarily raises costs and limits choices to retirement investors is the interplay between the impartial conduct standard and its “best interest advice” component and the fiduciary duties to engage in due diligence and monitor. If a fiduciary is truly providing best interest advice to a retirement investor regarding an investment, the duty to perform due diligence before making an investment recommendation means that the fiduciary must perform research on securities being recommended as being in the best interest of the retirement investor. Most retirement fiduciaries cannot engage in proper due diligence on every available security, so the BICE results in investment options for retirement investors necessarily being limited to those the fiduciary decides to conduct due diligence on. Limited investment choices may result in poorer retirement outcomes for retirement investors. In addition, retirement investors will ultimately be required to pay for the enhanced due diligence required to support the BICE best interest standard. How can it ever be in the best interest of retirement investors to impose such punitive cost increases on them as the direct result of the current structure of the BICE?

#### Likely Increase in Litigation Costs

The BICE will substantially increase litigation costs by requiring each Financial Institution to enter into a contract with each IRA owner receiving advice. The BICE’s prohibition on class action waivers and various warranty requirements will without a doubt, drag financial institutions, insurance companies and broker-dealers into disruptive and expensive litigation by creating a new cause of action that does not presently exist under the law. The cost of this litigation is ultimately passed on to plans and retirement investors and enriches the plaintiffs’ bar while gaining little, if any, benefit for retirement plan investors.

The increased litigation cost will result because the BICE dramatically expands the number of persons considered to be a fiduciary, and because fiduciary status is based on a facts and circumstances test for fiduciary status. Companies targeted by unnecessary litigation will have great difficulty in getting such frivolous suits dismissed at early stages in the litigation process through a motion to dismiss, which will result in expensive discovery. Litigation costs will also substantially increase because the BICE has various warranties. It is much easier to prove a breach of contract than to prove a breach of fiduciary duty. Further compounding the concerns over costly litigation resulting from the BICE is the fact that fiduciary advice providers are not permitted to include class actions waivers in the BIC nor include any exculpatory language. For these reasons, the massive litigation risk and expected costs make the BICE is simply unworkable if the goal is to provide affordable, conflict-

free investment advice to retirement investors.

The Rule has forced an entire industry to attempt to transform and reorganize its services, products, business and compliance models in a very short period of time. The Department has grossly underestimated the efforts required by organizations' technology, compliance, legal, sales, products, and operations teams to completely revise product line-ups and market strategies, compliance and supervisory processes to arrive at a basic level of preparation for full implementation of the BICE. If the Rule comes into effect in its current form, an undue amount of resources will represent a large ongoing cost for organizations to maintain compliance with the rule, with very little benefit to retirement investors it's intended to help.

SunTrust asks the Department to revise the BICE in order to address its most serious problems. Specifically, there should be no written contract requirement as a condition of the BICE. Secondly, if a written contract requirement is retained following the Department's review, the BICE should permit firms to include mandatory arbitration clauses to resolve disputes between investors and fiduciaries and should recognize that proper disclosure can mitigate most conflicts of interest. And most importantly, the class action lawsuit provision must be eliminated from the BICE. Finally, the applicability date must be moved to January 1, 2019 in order to permit financial organizations and their technology vendors sufficient time to develop and test the tools necessary to efficiently implement all aspects of the Rule. Correction of these flawed provisions will further the Department's goal of having the Rule serve all retirement investors.

Respectfully submitted,



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