4/3/17

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210
Attn: Fiduciary Rule Examination

Re: RIN 1210-AB79

I understand that the DOL is soliciting feedback on the DOL Fiduciary Rule. I am a financial advisor with many clients who depend on me for advice about investing for retirement. I am also a small business owner. The negative effects from the Fiduciary Rule may force me out of business—a business I have been in for 30 years.

Why?

The Fiduciary Rule will limit my ability to recommend many financial products such as mutual funds and variable annuities without also exposing myself to an unacceptable level of risk of litigation. This will hinder my ability to provide comprehensive advice to my clients. It is also a bad deal for the investor.

The DOL resists understanding that commission-based brokered investment products are usually a *better* deal to the client than DOL favored fee-based products. The reason is simply cost. Compare an investor who pays 4.75% up-front (they usually actually pay less than half of that per the Investment Company Institute) in commission for a mutual fund, and then 25 basis points in 12-(b)1 fees, with a 1% per year advisory fee. It is not hard to add up the total savings that the commissioned-based broker brings over the long term. Yet, we are the focus of your attack. I have $millions under management that I earn only 25 basis points from, and have for years, and gladly give my clients great service and advice. Why should my clients be forced to pay 1% per year for the same thing? I am not protecting me by this viewpoint—I would make more money by following your lead--I am protecting my clients.

Additionally, I am a researcher and published author. And I have read carefully

THE EFFECTS OF CONFLICTED INVESTMENT ADVICE ON RETIREMENT SAVINGS, published by the CEA, February, 2015. It is riddled with errors. Despite this, it is a driving force for this pending Fiduciary Rule. Here is a summary of its inaccuracies:

- The frequent use of the word *conflicted*, which appears a startling 147 times in the short 31-page document speaks to an extreme prejudicial view against Registered Representatives (RR), and assumes from the derogatory term that RR's are duplicitous.
- The thesis of the study is that RR's are skimming 1% of the returns off $1.7 trillion per year in IRA assets for a staggering total of $17 billion. The problem with this analysis is that it depends on the faulty definition that commissions are always *conflicted payments* (see next item), does not disclose where the 1% number came from, and assumes that even if it were correct that the investor did not know about it (the 1%), did not approve it, and feels like the paid for advice is not worth it. These assumptions are speculative at best.
- The term "conflicted payments" i.e. in the CEA's words "differential commissions and revenue sharing payments" insinuates that charging differing amounts is *ipso facto* a conflict. Almost every product and service in the market place in every industry has a different price. Outside of the CEA and the DOL we call it competition. Differing prices are only a net negative if you do not believe in the benefits of competition.
- Page 5 describes those who oversee pension funds as "professional managers" whereas those who oversee IRA's are called "conflicted advisers." This despite that "unfunded liabilities of the various federal employee pensions systems, covering civilian and military employee benefits, amount to about $3.5 trillion, or 20% of US GDP" according to Moody's. That's "professional managers?" Again, this speaks to the bias hard-coded into the report from which the DOL is acting.
- Page 26 which highlights the myriad fines, penalties, and restrictions in eight countries outside of the US is a tilt to globalism—the belief that goings on outside the U.S. are the better path for us. Despite this bias, the innovations in product development, index funds, ETFs, and other cost saving products, were developed *inside* the US. We do not need a model from India or Italy to form our laws here, especially since we already have the highest regulated investment industry anywhere in the world.
- Page 6 shows an incorrect comparison between investment advisers and RRs. The "Legal Standard" of RIAs per CEA is "Fiduciary duty to client, including a duty of loyalty and a duty of care. Must serve the best interest of the client." Whereas, the standard for RR's, per the CEA, is merely "suitability." False. FINRA requires RRs to act in client best interest. A careful reading of FINRA (Suitability) Rule 2111 and FINRA Regulatory Notice 11-02 proves this. "In the same vein, it is well-settled that a broker's recommendations must be consistent with his customer's best interests and are not suitable merely because the customer acquiesces in [them]." From FINRA Regulatory Notice 11-02.

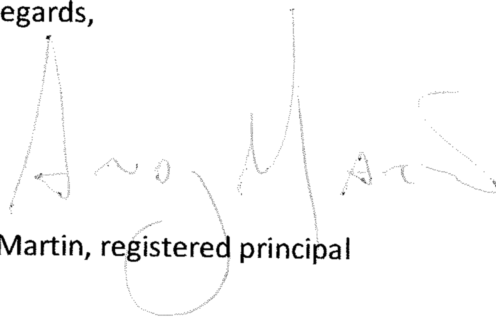
- Pages 10 and 11 and elsewhere attempts to show that direct sold funds returned 1.15% more than funds sold through intermediaries, in another attempt to undermine RRs. My research which I published in a 2016, Career Press, Inc. book called *Dollarlogic* contradicts this.* For the 15-year period ended 2014 I found no statistical difference between returns of Load and No-load funds. Further, when I compared returns from the five largest load fund mutual fund families I found that load-funds outperformed, overall, no load funds, even after the up-front sales charge. Have indexed funds outperformed actively managed funds? Yes, but broker sold funds have not underperformed direct funds, which was the presumption in the CEA study.
- Page 17 is absurd, but, is again a building block for the DOL's Fiduciary Rule. It states that leaving retirement dollars in a 401(k) plan rather than rolling to an IRA is always cheaper. Indeed, it would be if the numbers assumed were accurate. The *Washington Affairs for the Plan Sponsor Council of* America said that 401(k) plan costs range from 20 basis points to 109 basis points, yet the CEA uses a fixed 25 basis points for its calculation of plan costs. The CEA study also assumes that trading costs for the IRA owner will be 4 times higher for an inexplicable reason, and that the fund expenses will be 110 basis points lower in a 401(k) plan, than an IRA, even though 401(k) fund fees are almost always higher in costs than an IRA because of revenue sharing, sub-TA fees, admin fees, record keeping, etc. This may have been the most egregious example in the report of simply manufacturing numbers to try to support a pre-ordained conclusion.
- A negative effect of this report, and your pending Fiduciary Rule is that the industry is trending towards levelized fees, which is the insane position that all firms have the same costs, and all product offerings and services cost the same too. Watch 100,000 mutual fund employees lose their jobs if this happens while Vanguard, Fidelity, and Blackrock become the last three money managers in the US. By the way, in any other industry "levelized fees" is called collusion and price fixing.

There are many other problems with the CEA study, but those are the highlights. Again, I bring this up because the last administration quoted freely from it, and treated it as authoritative, when at worst it is a fabrication, and at best it is merely controversial.

I urge you to re-consider the many consequences of the Fiduciary Rule for both small business owners and their clients. I would have called them "unintended" consequences, but from the scorn that the previous administration showed to my industry, I do not think the negative consequences to us are unintended. Therefore, I hope, with the new administration, that you will not just delay, but kill this rule

Thank you for your efforts in stopping this industry and investor destroying regulation.

Best regards,



Andy Martin, registered principal

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What you will quickly see when you view the numbers is that there is little difference between load and no-load funds. Figure 3-11 shows the returns of all load funds and no-load funds that have at least a 15-year track record.

There Is Little Difference Between Load Funds and No-Load Funds[26]

Load Funds	Total	No-Load Funds	Total
Mutual Fund Universe	30,178	Mutual Fund Universe	30,178
Tot Ret Annlzd 15 Yr.	10,012	Tot Ret Annlzd 15 Yr.	7,559
Average returns		Average returns	
Returns 15 yrs.	5.75%	Returns 15 yrs	5.79%
Returns 10 yrs.	6.64%	Returns 10 yrs.	6.66%
Returns 5 yrs.	10.18%	Returns 5 yrs.	10.06%
Returns 3 yrs	10.44%	Returns 3 yrs.	10.72%
Returns 1 yr.	14.60%	Returns 1 yr.	14.27%

Figure 3-11

Many Load Funds Beat No-Load Funds Even After Load[27]

Load Funds Fund Company	# of Distinct Funds	NER	Turnover	Tot Ret % 15-Yr. Annual	Value of $50,000 15 Yrs.
A	45	0.58	52.4	6.4	$113,206
B	116	0.97	70.1	6.2	$111,138
C	382	0.60	63.6	5.7	$104,171
D	125	0.89	34.3	6.3	$112,168
E	73	1.21	53.1	5.8	$104,589

No-Load Funds Fund Company	# of Distinct Funds	NER	Turnover	Tot Ret % 15-Yr. Annual	Value of $50,000 15 Yrs.
All	4869	0.80	88.3	5.5	$105,805

Figure 3-12

27. Morningstar, Inc. through August 31, 2014, and author's computations. Load of either 4.50% or 4.75% up-front assumed for load funds. All data estimated and not guaranteed. NER = net expense ratio. Past performance is no guarantee of future returns.

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