From: Dan Pisenti <dpisenti@whitehall-parker.com>
Sent: Friday, May 26, 2017 12:01 PM
To: Talk to DOL
Subject: Fiduciary Rule

Dear Mr. Acosta:

With the Trump Administration I thought we would finally have competent people who understand basic math at the DOL. I am no longer convinced of that. Sadly, our government imposes itself in the lives of humans without a proper understanding of the relevant circumstances. The Fiduciary Rule is a perfect example. This rule will not accomplish what you think, and it will have some really bad unintended consequences. And somehow the DOL is making the illogical case that this rule must be in place for retirement accounts but not non-retirement accounts.

I have worked in the securities industry for 30 years. I was president of my current firm for 15 of those years. I have watched one regulation after another, attempting to fix problems that do not exist. The DOL needs to be educated about one basic fact: Our industry is the most regulated industry on the planet, and it may be the most litigated. If a customer feels that he or she has been cheated or abused in any fashion, the odds are high that the broker or financial advisor will lose, often regardless of the merits. These controls(heavy regulation and potential litigation) on our industry ensure that the general investing public gets fair and appropriate treatment, whether they employ an advisor operating under a fiduciary standard or a broker employing a suitability measure.

At some point in the history or our industry, the large securities firms learned that they can turn commission-based brokerage accounts into fee-based advisory accounts and earn higher and steadier income from their customers. That income keeps coming in good markets and bad markets, whether the client is being helped or harmed, whether the client receives advice or not. The commission-based broker, on the other hand, is paid for actual advice about an investment and most likely will not be paid on future investments, if the original advice turns out to be poor. The commission-based broker makes little or nothing when he or she is not giving advice, which makes good sense. The fee-based advisor is paid at all times.

I'll give you a simple example. I invested customers in mutual funds 30 years ago. I earned a commission(1% to 5% depending on investment size) for that advice at the time of sale. Those customers are still with me, and I help them as they need assistance. Over the term of their investment, they have paid a quarterly 12b-1 fee of 0.25% per year. If those clients had used a fee-based advisor, they would have paid nothing upon receipt of the initial advice but 1%-1.5% per year as an ongoing advisory fee. My 11-year old son, even with a Common Core math education, could tell you immediately that the latter arrangement is much more expensive for the customer. Assume the customer invested $100,000 at an average commission of 3% with a 12b-1 fee of 0.25%/year and that investment did not grow at all. After 30 years that customer would have paid the commission-based broker $10,500($3,000 commission plus $7500 in 12b-1 fees) over the entire term. A fee-based advisor serving that same customer would have been paid $30,000(1%) to $45,000(1.5%) over the same period. If the customer invested more money or the customer's portfolio increased in value over time(which is typically the case), the gap between what the commission-based broker would earn and what the fee-based advisor would be paid grows dramatically. Somehow the advisory people have convinced our government that the perpetual fees they charge should not be considered when determining whether they are acting in the customer's best interest(the fiduciary standard).

I am licensed to offer a fee-based advisory arrangement(fiduciary standard) or a commission-based broker arrangement(suitability standard). In the vast number of cases I recommend the broker arrangement, as it is in the true best interest of the client, even though I make far less income on that arrangement. The Fiduciary Rule now makes our government complicit in helping my industry take more money from customers to provide the same service. That is just

plain ridiculous. Clearly, the DOL has acted out of severe ignorance. The Fiduciary Rule will cause many small accounts to have fewer options for being served and will greatly increase their costs. You, Mr. Acosta, could have stopped this damage with a mature handling of this issue, yet you did not. I ask that you minimize the problems you have created and seek the end of this silly rule immediately.

Finally, I would like to let you in on a small bit of information that speaks of other unintended consequences of your Fiduciary Rule. Today our most productive broker/advisor resigned from our firm, citing fear of litigation around the DOL's Fiduciary Rule. We are a small firm, and he left our firm for a much larger firm that he believes can protect him better legally from any fall-out that may come from the implementation of the Fiduciary Rule. We just suffered a significant and highly threatening financial loss thanks to your actions. This type of situation will happen all over our industry. Small firms like ours will die in the process. And the small firms are the typical home for small investors who do not meet the minimums of the larger firms. The unintended negative consequences will grow.

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