From: Robert Schmansky <rob@clearfinancial.net>
Sent: Friday, June 30, 2017 1:12 PM
To: FiduciaryRuleExamination - EBSA
Subject: Comment for RIN 1210-AB82

Thank you for the opportunity to provide comments on the implementation of the fiduciary rule. As a financial advisor I have been deeply concerned over the impact this rule will have on my ability to serve clients.

My objective in writing is not to provide a case against the rule from a legal standpoint, but to share some of the concerns that I have as an advisor and suggest alternative paths that may provide the intended outcome of more successful investor outcomes and an expansion of fiduciary services.

- Under the DOL Rule advisors not only face increased risk when agreeing to work with a client who voluntarily chooses their services, they immediately assume a risk that their decision today will be judged at a point in the future by someone applying future standards to past decisions. The result of the above is that advisors will be held not only to unclear standards today, but their past activities that are called into question will be judged by unknown future standards.

- The above is driving many market participants to make ‘safe’ recommendations rather than advice that they believe is truthfully in a client’s best interests. This push towards homogeneity in financial markets will have untold harm, but it will stifle future innovation and will lead to less access for those with smaller account balances. The financial industry has changed far more rapidly in the last several years than in the decades prior to the benefits of American investors and savers, and the rule threatens to stifle that innovation and growth by not allowing firms and investors the ability to move into currently unavailable products and services.

- Online ‘robo-advisors’ that stand to win many of the smaller accounts that will be dumped by traditional advisors have not been held to the same standards as financial advisors, and there is no reason to think that they will be able to implement a service that meets the spirit of this rule. This ‘tiered’ level of fiduciary services will only add to public confusion and the unequal application will result in unfair advantages to parts of the advice marketplace.

- DOL is picking winners and changing the market by providing exemptions. From my experience and the comments of colleagues, some of the most industry’s worst offenders are found in the Equity-Indexed Annuity firms that regularly overstate the benefits of their product, while locking investors into low-growth, high-cost annuity frequently with penalties lasting for periods of 10-15 years.

I would like to suggest three better policy paths that would protect investors in the spirit of the Fiduciary Rule but far more effectively.

1. DOL could develop rules that reduce the market for products with long surrender penalty schedules or large 'front load' costs in retirement accounts. A major concern that supporters of the rule have is the inability of investors to leave products where advisors have given harmful advice. By reducing the quantity of policies that have extended penalty periods in the market, more investors will be able to move to advisors and firms that better fit their needs without continued harm.

2. Industry credentialing organizations such as CFP Board have consistently – and in response to a changing market – increased fiduciary standards of their members and these groups may be the only ones who can respond to changing markets, judge advisor actions in the past against fiduciary norms at that time, and apply a consistent standard across the diverse and changing market of financial advice. Individuals want to work with advisors who have these credentials. While some suggest that these groups have no enforcement authority, that could not be further from fact. CFP Board and other credentialing organizations have methods for the public to request an inquiry into advisors who use their marks, have codes of professional conduct including disciplinary rules and procedures, and if found to have broken rules then advisors can be publicly admonished, suspended, or have their right to use credentials revoked. CFP Board's recent proposal to update practice standards goes beyond DOL's rulemaking ability to include assumptions that investors working with CFP® professionals not only need fiduciary advice, but may need financial planning assistance. The expansion of planning advice will lead to improved financial outcomes.

3. DOL should also pursue pro-market policies that remove the link between employment and retirement safety. Today's 401(k) system provides one firm a monopoly over a given employer's retirement savings, and meanwhile holds employers unnecessarily at risk for the benefit plan they provide, which increases employment costs, reducing jobs. Employees are made to use a provider who does not have an incentive to provide additional services, and can not meet the individual needs and preferences of each employee. Tax deductions are not provided equally to all Americans, but rather are based upon plan choice and plan documents, and there are many loopholes that companies use to deny savers access to retirement accounts.

The Health Savings Account (HSA) model has provided an example of how tax-advantaged savings can be implemented. I believe HSA savings will be the preferred method of young savers since they can save or move their accounts to the custodian of their choosing, use funds for multiple purposes, and pay for financial planning advice from a tax-preferenced account that is managed in line with an investor's goals and preferences. Taxpayers can save to a plan outside of those their employer offers, which, as balances climb, will create competition for these accounts and better outcomes for participants. None of which exists in the 401(k) system today.

If the market for retirement accounts looked more like the HSA model, financial advisors would compete for the massive amounts held in 401(k) accounts by increasing their service levels,

reducing investor costs and improving outcomes. I believe the market will eventually lead to this outcome on its own over the coming decades, but in the meantime employers, advisors, and investors have higher unnecessary costs and reduced outcomes. This is how fiduciary advice should be implemented, not through vague laws that hold threats over advisors choices long after the fact.

Since this rule has harmed investors and will continue to remove choice and innovation from the marketplace, it is clear that the rule was never about 'protecting investors' as much as it is about 'protecting favored firms' against competition. I hope DOL moves swiftly to bring clarity to the market and ultimately sees the flaws and confusion created in the current version of this rule.

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