From:	Gary Braden
To:	FiduciaryRuleExamination - EBSA
Subject:	comments on the rule
Date:	Tuesday, July 11, 2017 12:54:54 PM
Attachments:	sales charge versus C share comparison 2015 update.xls

The discussion below is what I submitted to the Security Exchange Commission concerning their future involvement in the rule. Retirement accounts are extremely long term investments so a process that continues to charge a 1% fee on all assets under management versus a front end sales charge on new invested amounts ends up costing significantly more in a short period of time. I have attached an excel worksheet that I used to discuss class A sales charges versus class C shares and give examples of Class A breakpoints they will become eligible for over time with new clients. A short explanation on the entries on the worksheet:

- Illustrates a husband and wife both 35 years old each doing separate $5000 Roth IRA contributions each year from age 35 to age 50 and assumes 12% performance.
- In the case of the Class C share 12B1 costs it only applies the additional 0.75% 12B1 fee higher than a class A share. So the first row Class C share costs are the math for the 0.75% applied to the current value for each year during the 15 years the couple is contributing to their Roth IRAs**. The 0.75% total for the 15 years of investment as illustrated would be $16,530.47.**
- The next series of entries concerning the 0.75% Class C 12bB1 assessment are on those account values that continue to grow at 12% for the next 10 years until they reach age 60. **The total for the 10 years after all investing are stopped is an additional $54,953.82 with the grand total to age 60 $68,426.**
    - Since the client will start "skimming off the top" of their Roth IRA at age 60 versus liquidating the entire account those higher fees would continue for the remainder of their lives. At this point in the client education discussion I actually say to the new client that if they feel sorry for me financially we could set up their accounts using Class C shares. It is amazing that not one client has chosen to do class C shares.
- The next segment of the worksheet shows the total front end sales charges considering break points on account values **so front end sales charges could total $5,850**.. Yes, the registered representative receives a portion of the 0.25% 12B-1 fee to continue to service the client.
- As long as the client remains with one mutual fund company that offers the required diversification into other categories of mutual funds over time they do not pay any additional sales charges as assets are reallocated between fund accounts. Many mutual funds also offer the ability to cross level between the different accounts in the IRA portfolio and will do this on a scheduled basis as a client service for no additional cost.

When I discussed this with clients I called it liars figure and figures lie. If you read the professional magazines associated with fee planning they discuss where after the transition to fee management the income flow not only becomes much more stable but also grows substantially as indicated by the Class C 12B1 fee dollar amounts shown above. If the regulatory environment is stuck on using a sort of fee system then the class C share provides a benefit to the client since the 12B1 fee is an operating expense so is not taxable to the client like when a fee manager takes their fee out of the client's portfolio causing a taxable event………………… BUT EITHER WAY THE CLIENT LOSES BECAUSE OF THE SIGNIFICANTLY HIGHER COSTS. Retirement accounts are long term and simple math shows that the break even between front end load and a 1% fee under normal circumstances is less than 5 years when returns on the accounts are considered.

MY COMMENTS TO THE SEC

As someone that submitted comments from the beginning of the DOL Fiduciary Rule process it was almost like they had selective hearing infection as they disregarded comments that did not fit their goals/agenda. Of course the fee management side originally supported the concept totally until they read between the lines that just because they use fee management doesn't mean they would not incur "unquantifiable" liability under the class action and civil law suit processes of the Fiduciary Rule.

For registered persons the BIC or the BIC waiver offers little "protection" from the lawyers looking to litigate anything for a quick settlement regardless of how much the advisor puts their clients' interests above everything else. The rule was written by lawyers for lawyers. I have had many of my clients for over 20 years and having looked at all the angles can't see how I will be able to serve them once the DOL fiduciary Rule AS WRITTEN is fully implemented and it makes me ill to basically tell them I will no longer be able to serve them and the problem is that I can't recommend a replacement for me as we are all in the same boat. My having this opinion concerning the DOL rule has prevented me from taking any new clients in the last 18 months as I have told perspective clients that it would not be right for me to take them as clients and then have to tell them I can no longer serve them because of the DOL rule. I am not worried about a client complaint about my long standing service to them but how do you protect yourself from frivol ace law suits and the legal fees that you will incur. Even if you win the legal fees will consume your business.

Rather than a lengthy email let me see if I can discuss in brief bullets:

- Simple math points out that the break even between the client paying a onetime 5% commission on mutual fund purchase (normal or IRA accounts) versus paying a 1% fee (or higher) on all assets under management breaks even in less than 5 years but the 1% fee never goes away.
    - Commissionable mutual funds have break points where typically a customer pays a 2% commission on $500,000 and no commission on investments over 1 million dollars. Most fee managers won't even take a client will less than a million dollars in investable assets. A customer buying a million dollars of mutual fund shares from one fund company does not pay any sales charge in most cases. The representative may get paid 1% out of mutual fund company assets on a million dollar sale and then a portion of the .25% 12B1 fee to provide future service to the client.
        - If you wanted to make the broker/dealer side of the equation similar to the fee side simply restrict retirement accounts sales to Class C shares. No front end sales charge and unless the client liquidates shares in less than 12 months there is no redemption charge. Less than 12 months and the fund company charges a 1% fee typically**. DO THIS AND ALL THE REGULATORS WILL FEEL FINE BUT THE CLIENT LOSES** since around the 5th year or less the 1% 12B1 fee results in the costs starting to exceed the sales charge to the client over the long term holding period the total costs to the client are significantly higher as LIKE FEE MANAGEMENT the 1% 12B1 fee never stops versus a onetime commission paid up front. In fact, my brokerage firm has policies in place not allowing representatives to use class C shares for larger invested amounts that qualify for break points on the sale without the client signing a statement acknowledging the additional costs they could incur.
- The fee management side will gladly take the larger clients with sufficient assets but smaller clients will no longer be supported by a human advisor. Look at what the larger brokerages are doing. Either they are cutting the smaller clients loose or developing some sort of computer ROBO system and having smaller clients sign some sort of waiver to not hold the brokerage liable for future investments and no longer provide any sort of personal advice to those clients. Since retirement accounts represent less than 5% of the business at some large brokerages they have simply cut that part of their business.
- I have over 20 years in the business and have never had a client disappointed with my service let alone some sort of complaint and would not be worried about one of my clients initiating a legal action but the Fiduciary Rule moves the process from Arbitration to Civil and Class action law suits. Ask the people that provide E&O insurance if they have figured out what that liability is for a registered person and how much it is going to cost.
- DOL is not responsible for IRAs. The Internal Revenue Service is. The SEC and FINRA and all the state insurance regulators are responsible for regulating the various products in question so where does the DOL get off regulating beyond their prevue under ERISA ?? I have to ask. How is DOL going to regulate the Rule they have made??? Let the lawyers do it!
- We have all read President Trump's memorandum concerning the DOL Fiduciary Rule and it states that if the rule affects a short list of issues then it needs to either be modified or eliminated and as it now stands it violates every issue raised by the president.

Obviously the list could be much longer but these points should be enough to stop moving down this path resulting in many Americans losing any source of advice other than a book or computer program.

Gary Braden

Registered Principal

Sales charge versus Class C share comparison

year 1	year 2	year 3	year 4	year 5	year 6	year 7	year 8	year 9	year 10	year 11	year 12	year 13	year 14	year 15	
10000	11200	12544	14049.3	15735	17623	19738	22106.8	24759.6	27730.79	31058.48	34785.5	38959.8	43634.93	48871.12	
	10000	11200	12544	14049	15735	17623	19738.2	22106.8	24759.63	27730.79	31058.5	34785.5	38959.76	43634.93	
		10000	11200	12544	14049	15735	17623.4	19738.2	22106.81	24759.63	27730.8	31058.5	34785.5	38959.76	
			10000	11200	12544	14049	15735.2	17623.4	19738.23	22106.81	24759.6	27730.8	31058.48	34785.5	
				10000	11200	12544	14049.3	15735.2	17623.42	19738.23	22106.8	24759.6	27730.79	31058.48	
					10000	11200	12544	14049.3	15735.19	17623.42	19738.2	22106.8	24759.63	27730.79	
						10000	11200	12544	14049.28	15735.19	17623.4	19738.2	22106.81	24759.63	
							10000	11200	12544	14049.28	15735.2	17623.4	19738.23	22106.81	
								10000	11200	12544	14049.3	15735.2	17623.42	19738.23	
									10000	11200	12544	14049.3	15735.19	17623.42	
										10000	11200	12544	14049.28	15735.19	
											10000	11200	12544	14049.28	
												10000	11200	12544	
				lower %				lower %					10000	11200	
														10000	
10000	21200	33744	47793.3	63528	81152	100890	122997	147757	175487.4	165237	241331	280291	323926	**372797.1**	
Class C charges															
75	159	253.08	477.933	476.46	608.64	756.68	922.477	1108.17	1316.155	1239.278	1809.98	2102.18	2429.445	2795.979	**16530.47**

Under $50,000 sales charge **5.25%**/to 100K **4.5%**/to250k **3.5%**/to 500k **2.5%/**to 1mil **2%** over 1 mil no sales charge

year 16	year 17	year 18	year 19	year 20	year 21	year 22	year 23	year 24	year 25				
417533	467637	523753	586604	656996	735836	824136	923032	1033796	1157852				
Class C charges													
3131.5	3507.3	3928.2	4399.53	4927.5	5518.8	6181	6922.74	7753.47	8683.889	**54953.82**	**+**	**13472**	**$68,426**

Assumes 12% return

Class C share has an additional 0.75% operating expense (12b1)

Sales Charges for the 15 years of investing

4 years @ 5.25%= $2,100

2 years @ 4.5%= $900

6 years @ 3.5%=$2,100

3 years @ 2.5%=<u>$750</u>

total **$5,850**