

July 17, 2017

EBSA.FiduciaryRuleExamination@dol.gov

U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Reference : RIN 1210-AB82

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Department of Labor's ("DOL's") request for additional comment on whether a further delay is needed related to its investment advice fiduciary rule.

As an owner of both a FINRA registered broker-dealer and SEC registered investment advisory firm (dual registrant), I am directly impacted by the significant disruption that has been created by the partial implementation of the new rule. As a very small firm, we have thousands of retirement accounts that we work with. Even the staggered effective date of January 1, 2018 for some of the most onerous provisions, leaves an insufficient time for firms to communicate with existing clients and obtain signed Best Interest Contract Exemptions ("BICE") so that we may rely on this exemption for our existing commission based customers by January 1st, 2018. I also do not believe the DOL will have had sufficient time to review the additional comments that were recently submitted following the President's request to review the rule for potential negative impact. Nor do I believe there is sufficient time for the DOL to work with the SEC (the regulator that, in my view, should be responsible for this rulemaking) to evaluate potential improvements that can be made to the DOL's complex rule requirements.

If my experience with previous customer mailings that require client signature is any guide, it is likely many of these clients will fail to respond to initial mailings. Our clients receive voluminous amounts of information from firms like mine in an effort to fulfill the myriad other regulatory rules we are obligated to comply with. I don't believe clients will clearly understand the urgency of this mailing. Obtaining a signed agreement from each retirement account client we wish to continue to serve, relying on the BICE, is a daunting project.

The continuing debate about changes to the rule, legal challenges to the rule, and frankly, just the ambiguity of certain aspects of the rule language itself have made the notification process to clients very difficult. I think it is fair to say that there are few, if any, firms that wish to acknowledge their fiduciary status using the BICE exemption, along with the significant legal remedies it provides to those clients that execute it, unless the questions surrounding the rule are fully eliminated.

The enforcement remedy of allowing class action lawsuits created nothing more than a lawyers dream – I don't believe client's themselves will benefit from this provision. The cost to comply with BICE, along with the increased liability, will negatively impact the clients we choose to work with. The cost and legal liability versus the economics received by small client accounts just cannot be reconciled. We anticipate notifying these clients in the next 90 days that they can no longer receive advice from us and will provide them with instruction on who they can call for administrative services.

I think it is important to highlight that firms that offer broker-dealer commission based services are already required to comply with SEC, FINRA and state securities broker-dealer laws, rules and regulations. As a dually registered firm, we are additionally required to comply with SEC regulations pursuant to the Investment Advisor's Act of 1940. We have existing policies and procedures our representatives must comply with. We have continuing education requirements, annual compliance meetings, we routinely audit our branch offices, we are the subject of audits performed by the various regulators, etc. In fact, to highlight how extensive this regulatory oversight is, I will share with you a brief historical glimpse of recent oversight of our firm:

- Firm was audited by the SEC in March 2015 for the Investment Advisory area
- Firm was audited 3 months later in June, 2015 by the SEC for the broker-dealer division
- Firm received multiple SEC and state inquiries during the period of 2016, in some instances requesting voluminous data covering a period of 5 years
- FINRA examined us in April 2017
- We have an annual financial audit, an annual surprise custody audit and an annual AML audit.
 - **I'd like to highlight that our firm has only 55 registered persons and approximately 8 non-registered staff.** It is hard for me to imagine I need yet another oversight mechanism to verify we act in the client's best interest.

The Impartial Conduct Standards portion of the rule is currently in effect, requiring us to provide advice in the retirement investor's best interest, charge no more than reasonable compensation, and avoid misleading statements. We have already made changes to incorporate these requirements within the firm. These changes include the restriction on certain products that charge commissions that may be deemed to be too high (no one seems to know for sure where this line is drawn). Unfortunately, there are currently few alternatives available across specific product classes, particularly mutual funds and annuities. There are certainly "no load" mutual fund options, and just recently more and more fee-based annuity options are becoming available. Even with these choices, however, certain clients prefer to pay for their services by way of commission – and there

is no uniformity today in the compensation schedules of these two asset classes across providers.

The industry needs additional time to create and introduce new product that eliminates conflicts, without completely eliminating the availability of “commission-based products”. Again, clients often prefer to pay for their service without writing a physical check. In addition, we feel that the fee based annuity options are largely unworkable. The insurance companies that have rolled out options have largely removed the mortality and expense fee, and with the additional external management fee, we are just moving around how the compensation gets paid, really at no additional benefit to the client. There is also very little recourse on billing the fee for services from the annuity product itself, as it may cause a taxable consequence if treated as a distribution (as most companies treat them), could expose the client to penalties if they are not yet 59 ½ years old, and could impact lifetime guarantee riders if too much money is withdrawn from the contract. Currently, we would be required to directly bill the client for this advice, which is not convenient, and sometimes not an option based on a client’s cash flow. We believe this will create a significant deterrent in offering annuity products, which our older generation need in order to access lifetime income options, until some other acceptable billing method is developed. Once there are new products available, there will still be additional time needed to submit them for product approval at the state level, review them at the firm level, sign selling agreements, put technology in place to make them available on custodial platforms, notify and train our representatives, etc.

Our firm is currently determining whether we want to implement a minimum account size, and if we will even offer commission-based options to new clients (as of right now, we have determined we will not). We are evaluating mutual fund and annuity products to include choices that only pay “similar compensation” and add some fee-based alternatives.

Sadly, we are looking at the mutual funds we will continue to offer not from the perspective of the “best in class” anymore, but rather from the perspective of which funds can we offer that all pay the exact same payout schedule to avoid any conflict (hopefully when and if “clean shares” come out, this issue can be resolved). This is not what is “best” for clients – rather, what works “best” within the confines of the rule, a rule that almost directly dictates the types of products we offer and how we get compensated. The DOL should not be in charge of making the final decision for the entire industry of how we get paid and which specific types of products are available to retail clients.

For all of the reasons outlined above, I would request the DOL delay the January 1, 2018 effective date until at least January 1, 2019, with the ability to delay it even further if progress is being made on a more effective, less complex version of the rule. If it takes longer than that for product to be made available that would help the industry comply with the objectives of the rule, the extension until full implementation should be extended accordingly.

Thank you again for the opportunity to voice my comments.

Sincerely,

Deborah Castiglioni
CEO