

7 August 2017

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

**Re: Request for Information Regarding the Fiduciary Rule and Prohibited Transactions  
(RIN 1210-AB82)**

Dear Sir or Madam:

CFA Institute<sup>1</sup> appreciates the opportunity to provide comments to the Department of Labor (DOL) in response to its request for information on the fiduciary rule and prohibited transactions (RFI). CFA Institute represents the views of those investment professionals who are its members before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

**Executive Summary**

We do not support DOL creating additional exemptions under its fiduciary duty rule. Instead, we believe the continuation of the current Best Interest Contract Exemption is the most effective way of providing an enforceable standard of care aimed at putting the best interest of investors first.

We encourage the DOL to work with the SEC to fashion a standard of conduct applicable to both retirement and non-retirement accounts. A uniform standard would go far to reduce confusion for investors and provide consistency for investment providers.

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<sup>1</sup> CFA Institute is a global, not-for-profit professional association of more than 151,000 investment analysts, advisers, portfolio managers, and other investment professionals in 163 countries, of more than 145,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 148 member societies in 73 countries and territories.

## Discussion

CFA Institute continues to support the overall objective of the DOL's fiduciary rule (Rule) to create a best interest standard for all investment advice providers to retirement plans and IRA account holders. While we have recognized that aspects of the Rule are overly complicated and difficult to apply, we believe it vital that the Rule maintain mechanisms for supporting its best interest standard of conduct.

We agree with the DOL that since proposal and adoption of the Rule, market participants have responded with creative ways to comply with a best interest standard. "Clean" and "T" shares are but two innovative responses that hold promise. We encourage industry's development of other approaches along these lines that will comply with the Best Interest Contract Exemption (BICE) requirements and encourage the DOL to provide public guidance on the adequacy of the approaches.

But we do not support consideration of these or other innovations as *alternatives* to the BICE.

First, we believe that the innovations we are seeing since adoption of the Rule are *in response to* the Rule, but are not in and of themselves adequate substitutes for the BICE. Instead, we believe that the BICE has prompted the industry to move beyond "business as usual" and develop new platforms that will move the industry forward, while providing clear benefits to investors. Unlike the dire predictions that BICE would dismantle business practices, these innovations by the industry are testament to the fact that the Rule can, in fact, work.

Second, while we understand resistance to the contract requirements of the BICE, we believe that it provides a necessary enforcement mechanism, which is particularly important in the IRA rollover context. Even other streamlined exemptions that may mitigate conflicts and increase transparency will not be effective unless they have "enforcement teeth" to ensure compliance and offer investors ways to seek redress for infractions. Otherwise, standards become only aspirations, but not enforceable. To date, we know of no innovations that would offer an enforcement mechanism that parallels that of the BICE.

In response to a question raised in the RFI, we do believe that should the SEC create an updated standard for all investment advice providers, the DOL could effectively develop an exemption or change for advisers that are subject to that standard. SEC Chairman Clayton has recently expressed interest in considering the effects of the Rule on those regulated by the SEC and in working with the DOL on a coordinated approach.

We strongly encourage the DOL to collaborate with the SEC to address standards for advice providers in both retirement and non-retirement arenas. We have long been concerned about the development of two and potentially conflicting standards for the provision of retirement and non-retirement advice. In the case of a service provider managing both types of accounts, an investor receiving advice under one standard of care would understandably think the same standard would apply to both. Not only does this increase confusion on the part of the investor, but also complicates the provider's compliance approach and needs.

But we believe that it is critically important not to lose sight of the continued conflicts of interest that different service providers may present and to continue to require not only the disclosure of, but also the mitigation of those conflicts. While disclosure is an important component, we recognize that it alone is often ineffective in educating investors on issues they should be

considering in their investment decision-making process and the applicable standard of care under which they are receiving investment advice. Thus, we would encourage the collaboration on and development of any such standard in this context to focus not on disclosure alone, but what ensures adherence to a standard that puts the investor's interest first. This standard must, of necessity, also provide for an effective enforcement mechanism. We hope the DOL will explore this approach in its work with the SEC toward that goal.

As we have stated previously, we support the SEC requiring investment advice providers to use titles that are linked to recognizable and enforceable standards of conduct.<sup>2</sup> We continue to believe that this approach would go far to reduce investor confusion and provide a new level of transparency in the marketplace.

### **Conclusion**

We encourage the DOL to retain the current Rule exemptions. While we welcome the industry's innovations in response to the DOL's Rule, we do not believe they should be considered as alternative exemptions. Instead, the current Rule, with its incentives for complying, is best positioned to achieve its fundamental objective—to put the interest of clients first. Investors deserve to expect this from their advisers and market integrity requires it.

Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at [kurt.schacht@cfainstitute.org](mailto:kurt.schacht@cfainstitute.org) or 212.756.7728; or Linda Rittenhouse at [linda.rittenhouse@cfainstitute.org](mailto:linda.rittenhouse@cfainstitute.org) or 434.951.5333.

Sincerely,

*/s/ Kurt N. Schacht*

Kurt N. Schacht, CFA  
Managing Director,  
Standards & Advocacy  
CFA Institute

*/s/ Linda Rittenhouse*

Linda L. Rittenhouse  
Director, Capital Markets Policy  
Standards & Advocacy  
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<sup>2</sup> See 17 April 2017 letter from Kurt N. Schacht, CFA and Linda Rittenhouse to the DOL on "Definition of the Term 'Fiduciary'; Conflict of Interest Rule-Retirement Investment Advice."