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From: Ernie Franz [mailto:efranz@plannedequity.com]

Sent: Monday, December 18, 2017 2:44 PM

To: Talk to DOL

Subject: Delay the Rule and Fix the BIC

Dear Secretary of Labor Acosta,

I talk to annuity consumers every day and they tell me they are concerned about having less product choice and more expensive advice if you do not delay the Rule beyond January 1, 2018. I wholeheartedly support a best interest standard of care for financial and insurance professionals putting clients' interests first. But there are many corrections that need to be made and research to be completed before we can be sure Americans will not be harmed when the Rule's full provisions take effect next year.

First, I support a standard that is uniform across fund type (qualified versus nonqualified and enforced by the authorized regulating entity. My clients are confused when I explain that the disclosures I am required to provide are different for their qualified assets than they are for their nonqualified assets.

Therefore, I support Secretary Acosta's acknowledgement that additional regulatory expertise, such as that possessed by the SEC in regulating the securities industry, will need to be used to achieve uniform standard across all fund types recommended by security professionals.

However, fixed annuities and insurance professionals have been and continue to be successfully supervised by state insurance departments. Annuities enjoy an unprecedented 98.8% satisfaction rate because of the robust and effective enforcement of insurance laws by state insurance departments. The NAIC is currently working on amending their existing Suitability Model Law to incorporate a best interest standard. I urge the Secretary to consider calling upon the NAIC to tap their expertise in regulating the insurance industry including product manufacturers, the products and the professionals, like me, who sell them.

Utilizing the specialized expertise of the SEC for security products and professionals as well as the NAIC for insurance products and professionals will best leverage the Department of Labor's work on this issue. Further, it will be helpful to both advisers and most importantly consumers to promulgate a new higher standard of care for all financial products and services. Therefore, I would strongly urge the Secretary to coordinate with SEC and NAIC to constructively engage with them to ensure the regulations are uniform and workable, but enforced by the government agency who is the most appropriate, successful and knowledgeable about the industry they regulate.

Second, I know my clients will be even more confused when I am required to provide different disclosures for fixed rate annuities versus fixed indexed annuities, as the existing Rule requires. Fixed Indexed Annuities that meet the consumer protections outlined in the Harkin Amendment under the Dodd-Frank legislation are not securities.

Moving them arbitrarily and without merit from the 84-24 Exemption and into the Best Interest Contract Exemption (BICE) defies the rule of law. Since a recommendation often includes both a so-called fixed rate annuity and a fixed indexed annuity to provide an insurance solution for their retirement savings, my clients will be burdened with two conflicting disclosures when considering one or both of my recommendations. Third, I am also very concerned about my own professional liability caused by the increased legal exposure the Rule creates with its new private right of action under the BICE. The litigation risk is real and creates an uneven playing field between insurance professionals like me and level-fee investment advisors. The Department should eliminate the contract requirement of the BICE, therefore eliminating the private right of action.

I respectfully request that Secretary Acosta act quickly and delay the entire rule, eliminate the private right of action provision of the rule, and coordinate its work on the rule with the work that the SEC and other regulatory agencies to establish a harmonized best interest standard.

Thank you for taking the time to read this letter. This issue is incredibly important to me, my business and the customers I help every day to ensure an insured and satisfying retirement.

Sincerely,

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