438 DIVISION STREET
SEWICKLEY, PA 15143
866. 390. 5080
412. 741. 8142 FAX

fi360.com

To whom it may concern,

On behalf of Fiduciary360 (fi360), I submit these comments on why the final investment advice rules published on January 21, 2009 should be rescinded.

About fi360
Fi360 promotes a culture of fiduciary responsibility and improves the decision making processes of investment fiduciaries through Training, Tools and Resources based on defined Practices. Fi360 provides investment education and training programs and awards the Accredited Investment Fiduciary® (AIF®) and Accredited Investment Fiduciary Analyst™ (AIFA®) professional designations. It develops sophisticated Web-based toolkits and reporting, including the innovative Fiduciary Score™ and the Fund Family Fiduciary Rankings™ for trustees and investment professionals and provides information for the collective knowledge and ongoing support for the investment community through resources such as the fi360 blog, an articles database and its national conference. For more information, visit www.fi360.com.

Comments
The class exemption portion of the new investment advice rule raises substantial policy questions.

First, we are in the midst of an unprecedented financial crisis that was induced in large part by mismanagement and misconduct in the financial services sector. While conflicts of interest have been at the heart of many financial scandals, retirement accounts have been better-protected thanks to the prohibition against conflicts of interest that is part of ERISA.

The new rules would shift emphasis from avoiding conflicts to managing and disclosing them. The class exemption is bad policy introduced at the worst possible time.
It contributes to a perception that regulators favor the interests of financial services companies over those of investors.

Second, the class exemption assumes that brokers, who have heretofore operated under a suitability standard of care, will abruptly adapt to detailed procedures designed to nudge them toward fiduciary-like (or fiduciary-lite) conduct. To believe that fiduciary principles will be absorbed through osmosis if non-fiduciaries are immersed in quasi-fiduciary rules is not realistic.

A number of forward-thinking brokerage firms are working to align their business model to a fiduciary standard of care and train their advice-oriented representatives to apply fiduciary practices properly, but this is the exception, not the rule.

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Third, the procedures required under the new rules are a Rube Goldberg-like construction: perhaps effective but hopelessly inefficient. They are designed to allow conflicted advisers to access the retirement market by layering on new disclosures, record-keeping obligations and an annual-audit requirement.

The investor protection procedures required to deal with the advisers' conflicts carry high compliance costs for the service provider or, more likely, for the client when the costs are passed through. Moreover, the highly prescriptive rules-based approach of the exemption would be prone to technical infractions, and the path for litigation would be quite clear when specific requirements were violated. Promoting more relationships based on trust should be preferred to more opportunities for litigation.

Service providers who implement level-compensation arrangements and adopt a principles-driven business model firmly grounded in fiduciary responsibility will be favored in the marketplace because investors are better-served in a conflict-free environment. The sample fiduciary-adviser disclosure form provided as an appendix to the rules amply demonstrates how unappealing conflicted advice is when transparency is required.

Finally, there is no coherent regulatory structure in place to monitor or enforce the new rules. When the Labor Department proposed these rules, it acknowledged that oversight responsibilities would be scattered across multiple regulators: the Securities and Exchange Commission for advisers, the Financial Industry Regulatory Authority Inc. of New York and Washington for brokers, the Internal Revenue Service for individual retirement accounts and the Labor Department for retirement plans.

Given the heat taken by federal regulators over lax oversight recently, it is difficult to understand how a prohibited-transaction exemption could be codified without clear and coordinated regulatory roles and responsibilities.

Regulatory policies should be adopted that promote full acceptance of fiduciary principles, not rules that dance around them.

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We appreciate this opportunity to submit comments on this rule and we would welcome the opportunity to participate in the discussion on how non-conflicted investment advice can be made clearly accessible to all investors.

Sincerely,

Blaine F. Aikin, AIFA™, CFA, CFP®
CEO, Fiduciary360