From: Peter Chepucavage [mailto:pchepucavage@plexusconsulting.com]
Sent: Thursday, May 14, 2015 11:35 AM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB32-DEPARTMENT OF LABOR DEFINITION OF THE TERM FIDUCIARY

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I write as an experienced securities lawyer, regulator and investor to suggest that the proposal is not clear with respect to the added costs to the investor. DOL'S proposal needs to be very clear that there are costs associated with extending the fiduciary duty requirement to those who prefer to pay only commissions because they both trust their broker or realize that the transactions cost for a few mutual funds are considerably less then the adviser's fees. The DOL'S cost analysis for the customer seems to be as follows:

1) Commissions are still allowed so no cost increase:
2) If you switch to an advisor fee you get more advice.

Respectfully this is a simplistic stance as commissions and fees will surely rise as the industry has noted and indeed promised. Furthermore getting more advice for an extra fee is fine but only if you want or need it.

Anyone who has purchased stocks or funds recently would realize that Fiduciary duty is not the real issue for most Americans. The real issue is finding a personal advisor when you have less then $100,000 to invest. Go into any large bank or broker today and be prepared for an immediate referral to the call center cemetery if you don't have at least that much and even more. Surely it is not being suggested that these investors are required to pay an advisory fee when they just need 3-5 good mutual funds? Surely when a bank has a superior performing fund they should be allowed to recommend it to their small customers? A customer with $100,000 who pays a 1% annual fee over 10 years can actually lose money beyond the $10,000 in fees. The call center discussion on costs really begs the question as to whether call centers are the best the industry can do and the best for older retirees who desperately need personal attention.

Call centers have a role in non-retirement funds where they can provide economical non-personal advice. But to suggest that older retirees can rely on call centers where they get a different employee on each call is impractical and dangerous. Yet when such an investor enters a big bank they are immediately referred to the call center, when many commission brokers would sit with them even though they realize conflicts are possible.

If DOL is trying to protect customers who need the protection why not require the Fiduciary duty only when they are less then accredited or sophisticated and make clear the transaction costs involved.The White House memo on billions lost must include those with much more then $200,000 in their accounts. But those with $200,000 are considered sophisticated for private placements and can easily afford advisory fees. Do they need more then a straight forward document that says you can pay for an IA or you can pay commissions but there may be conflicts and probably will be, as recommended by N.Y. City Comptroller Scott Stringer. The proposal from Stringer is exactly correct for sophisticated investors. That client can then say please explain those conflicts to me and review them with an attorney and/or accountant.

This distinction would focus attention on what the real issue is here helping those who cannot afford IA advice and only need a few good mutual funds. As SIFMA noted, if they do not want to use the call center and do not wish to pay the advisory fee, they are left helpless? Those advocating the duty seem not to believe or at least not discuss the added transaction costs for a small investor. You can keep your broker if you like him? As previously noted if you pay an advisory fee on $100,000 over 10 years you have paid 10% EVEN IF YOU LOSE MONEY. If you buy 3-5 mutual funds or index funds and hold them your transaction costs are less. Buying one share of Berkshire Hathaway allows you to invest that $10,000 rather then pay it in fees.

Thus the real issue is providing good personal advice to the unsophisticated investor without increasing their costs. The government could do this by offering a tax credit for retirement investment advice up to a maximum of $2000 per year for those with limited retirement funds. This credit would offset any added costs the duty might add. A credit for the unsophisticated investor and required disclosure for the accredited investor would be an ideal compromise if the goal is to help those who need it and cannot afford it.If the goal is to help retirees, then their costs ought to be limited instead of increased. At the very least the rule ought to require disclosure of increased commission costs so that a fair assessment can be made. The issue here is insuring that retirement funds get the best personal advice at the best cost. Fiduciary duty is only one element of this challenge

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