



Office of Regulations and Interpretations  
Office of Exemption Determinations  
Employee Benefits Security Administration  
US Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

Re: RIN 1210-AB32 Proposed Best Interest Contract Exemption

Ladies and Gentlemen:

We are a small firm. Most of our clients have all of their investments with us and most own an IRA. We pride ourselves on the work we do with and for our clients. We get to know our clients so that we have a clear understanding of their short and long term goals. We engage in ongoing study of the markets and various products so that when we meet with our clients we are well educated. This enables us to clearly explain how events and trends impact their investments and to make appropriate ongoing recommendations. We agree with the notion of protecting the public interest and believe that the most valuable tools to investors are knowledge and resources.

It is our concern that if this proposal succeeds, it will ultimately fail the average investor.

The proposed changes are significant. If passed, they would require massive industry wide changes to compliance programs, legal structures, and technical systems. The cost of implementation in man hours and actual dollars is staggering. Some broker dealers will simply not conduct ERISA business any longer, while others will find ways to pass the costs on to the brokers they supervise. Brokers will act similarly; they will either choose to drop ERISA business or find ways to pass on the costs. Ultimately the investor will bear the brunt in the form of limited resources and increased expenses.

Interestingly, the financial services industry is the only industry where efforts are under way to regulate compensation. The proposal does not outright prohibit commissions and 12b-1 fees, but the Best Interest Contract Exemption (BICE) is clearly an effort to curtail these types of compensation.

Many of the BICE requirements are simply redundant. Acknowledgment of fiduciary status, agreement to adhere to best interest requirements, a warranty that the broker will comply with the law, a warranty that the broker will avoid and mitigate conflicts of interests – these would all be requirements under the law and to re-state them in a contractual agreement is superfluous.

BICE requires both the broker and the firm (presumably the broker dealer) to enter into a contract with the investor prior to providing any advice – prior to becoming a client. The time involved for the broker is obvious, but consider the investor; the amount of pre-advice time involved is significant: review and sign the contract without

any discussion about their investment, then the broker signs the contract and submits it to the broker dealer for review and signature. The pre-advice contract process is potentially lengthy and confusing.

Of particular concern are the investment limitations under BICE. The DOL seeks to protect investors by forcing brokers and broker dealers into a fiduciary relationship as a method of guaranteeing that the clients' best interests are served, but simultaneously limits the scope of products that the investor can choose from and that the broker can recommend.

Putting any inconvenience to the broker aside, the biggest impact to disallowing commissions and 12b-1 fees will be on the investor. BICE is clearly designed to push variable forms of compensation out of the ERISA arena, ultimately encouraging anyone who uses commissionable products to drop their ERISA business. This leaves the investor, particularly the small to average investor, with even fewer professional resources.

We feel strongly that though the intentions behind the Conflict of Interest Proposal are good, the proposal fails to consider any unintended consequences to the average investor – the very people it seeks to protect. In effect, this rule will drive honest, experienced professionals and firms to drop ERISA business leaving investors confused and wondering what to do next. Advisors and firms who choose to continue conducting ERISA business will be forced to increase their fees to clients due simply to the increased cost of system maintenance and regulatory compliance.

In the end, investors will pay more for fewer resources and limited options.

New and more complex regulation is not the answer. Instead we should focus on streamlining, clarifying and enforcing the existing regulation.

Thank you for the opportunity to comment on this important proposal. We appreciate the DOL's consideration.

Sincerely,



April Johnson  
Financial Advisor, Partner