

Department of Labor

12/21/2010

RE: Definition of Fiduciary Proposal Rule

The proposal by the DOL to expand fiduciary status as stated would in effect mean that every investment broker and RIA presenting investment recommendations to current or prospective IRA clients would become fiduciaries.

The first problem with the proposed rule change is the term “fiduciary” (or prudent man rule) is a very broad term that is poorly defined legally. According to comments from legal counsel, the interpretations of the fiduciary or prudent man rule are broad enough “to drive a truck through”. That in no way is an improvement upon the current responsibility that brokers/RIA’s follow the client objectives and suitability rules already in place through FINRA and the SEC.

This is a far reaching rule change that in essence takes investment choice away from brokers responding to stated client objectives in asset recommendations. Instead brokers/RIA’s must look first to generic “prudent man” considerations without a clear definition of what it means. “Prudent” investing could mean not only being too aggressive, but could also imply not being aggressive enough.

Clients often have a number of retirement accounts and those accounts are not necessarily intended to accomplish the same objective. One might be highly conservative and another very aggressive. According to the “prudent man” rule, an investor who might by age or other consideration, generally fit into the conservative class but wanted to have a small portion of assets in a more aggressive position, not be able to do so. A broker would have to refuse to do the kind of business being requested because of concern for litigation either by the client or a beneficiary if the aggressive position was not successful.

This rule would be a litigation nightmare for all concerned. Because the term fiduciary is so poorly defined, it would open the door to litigation by any IRA investor who lost money. Consider the potential litigation, whether rightful or not, that might have come out of the markets of 2008.

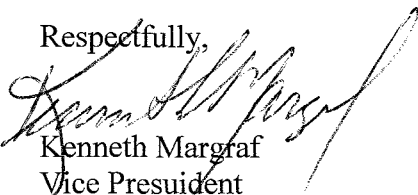
A second piece of the litigation nightmare comes from the fact that beneficiaries as well as IRA owners can sue for damages. In other words, the broker/RIA must not only consider the client’s “prudent man” issues, but must also be concerned about whether a beneficiary might view the account performance differently.

If brokers/RIAs are to be held to a higher standard, then it rests upon FINRA to both define and educate the investment community as to the specifics of the Fiduciary

standard we are to play and how to implement it effectively. Also, if brokers and RIAs are to be held to a higher standard, it implies that they should be able to charge clients for that increased responsibility. Having the new role as Fiduciary would also imply that there would be a whole new tier of regulation and review needed to be implemented.

For all of the reasons above, it is my sincere hope that neither the SEC or FINRA support the adoption of broker/RIA as a Fiduciary on retirement accounts. The term Fiduciary adds nothing positive to the protection of clients but it does add the need for a boondoggle of interpretive rules and regulations that will never be clear.

Respectfully,



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