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To: EBSA, E-ORI - EBSA
Subject: 2010 investment advice proposed rule

What investment theories are generally accepted, and what investment practices are consistent or inconsistent with such theories?

There are two primary theories: active and passive. Within active, there are many sub-theories. There are hundreds if not thousands of investment practices consistent with these theories. Professional money managers should be allowed to implement whatever theories they wish and plan sponsors, participants and the plans' advisors must be allowed to choose from a variety of actively and passively managed solutions. There should be little or no restriction on which vehicles the plan sponsor, participant and advisor choose. Because markets are constantly changing, the freedom to choose from the widest variety of funds is of critical importance to the investor.

Should the regulation specify such theories and require their application?

No.

Should the model specify a minimum number of years in performance data used in the models?

No.

Is a fund's past performance relative to the average for its asset class an appropriate criterion?

No.

Under what, if any, conditions would it be consistent with generally accepted investment theories and with consideration of fees to recommend a fund with superior past performance over an alternative fund in the same asset class with average performance but lower fees?

In my professional experience, funds with superior past performance tend to outperform funds with average performance. Granted, this is not always true, but it does tend to hold true.

In my view, the DOL is overly concerned about fees. In fact, the nation seems to be overly concerned with fees. In the end, what matters is the dollar value in the investor's account. Fees are only one factor. There are many other (more important) factors, such as performance and drawdown (losses along the way). For example, an investor might be willing to pay a higher fee for a lower performing fund, if he can sleep better at night! In this scenario, he is paying for risk management, not performance. This is just one of many nuanced issues when it comes to investing. Generally speaking, I think the government should stay away from these nuanced questions.

Should the regulation specify such conditions?

No.

On what, if any, bases can a fund's superior past performance be demonstrated to derive not from chance but from factors that are likely to persist and continue to affect performance in the future?

There ARE successful active money managers. We are one of them!

Thank you,
Brian

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