From: Deborah Castiglioni
Sent: Monday, April 17, 2017 2:14 PM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB79

Thank you for the opportunity to send my comments on the Department of Labor Fiduciary Rul. The current 60 day delay to the rule will provide more time to review this well intentioned, but flawed rule. Based on the magnitude of the impact this rule would have on investors and the financial industry, I can only suspect that the current 60 day extension will not likely be enough time to thoroughly vet the responses to the questions the President has asked us to comment on in relation to the impact of the rule.

As a way of introduction, I am a co-owner of a dually registered broker-dealer and SEC registered investment adviser firm. We have owned our business since 1988 and started it from scratch with just the two owners. We currently have approximately 55 registered persons/financial advisors and another 6 non-registered staff. We are a small firm in the truest sense. However, we do have clients in nearly all 50 states – we work with main street America and offer very little in the way of institutional services. About 60% of our business is already conducted on an advisory fee-basis – so I want to be clear that we are not unwilling to embrace a fee-based model – just unwilling to profess that paying an advisory fee is always the best approach for every client situation. The exemptive provisions made to accommodate those in the industry that wish to continue to charge commissions are not workable and not well thought out.

When you understand that even a small firm like ours has over 7,000 clients, all who own assets at many differing custodians, it may help you envision the nearly impossible prospect of obtaining a written contract with Best Interest Contract Exemption language from all of them. Additionally, it is not likely we will choose to act as an ERISA fiduciary for some of these clients on a going forward basis – yet, we have little to no control over whether new money is deposited into their existing commission-based accounts, nor whether the client contacts their financial representative and asks what might appear to be a simple question "Should I just add to the current investment allocation I have now?". If the representative does respond, and doesn't **decline to help**, they will have provided an ERISA fiduciary investment recommendation. If the firm has decided the client was not one we wish to work with as a fiduciary and we do not have a BIC agreement with the client, we are now involved in a prohibited transaction subject to 15% excise tax. There are many reasons some clients will not be invited into the ERISA fiduciary relationship – but most often it will be due to the smaller size of these accounts not being worth the expense of employing the necessary steps to take advantage of the BIC exemption, the ongoing disclosure requirements and last but certainly not least, opening ourselves up to legal action by class action lawyers. We've always prided ourselves on working with clients of any size. For the most part, most of these clients that are just starting their ROTH IRA, or are new to saving, don't even pay for the cost of the time to help them with our services – but we were glad to do so. That will not be the case when this rule goes into effect unless substantial changes are made.

The website disclosure requirement is outlined by the DOL, even in one of the FAQ's to the industry, to indicate the most appropriate way to comply is to make individual client disclosures available on our website. We work with our clients on a customized basis, as many in the industry do. There is no feasible way for us to provide individualized client disclosures. A general overview of what commission ranges exist for the purchase of an annuity or a loaded mutual fund would not be a significant hurdle –

but putting individual client data on a website is not only a bad idea from a cyber security perspective, but not a task that can be easily managed by a firm our size.

The question has been asked as to whether fewer clients would be served, and / or if fewer products / services may be offered as a result of the rule. I can report that our firm had already communicated with our representatives that we made the determination that we will not offer commission based accounts to new IRA clients going forward if the rule remains as it is written today. We also had preliminarily decided to scale back the number of venders (and subsequently number of product choices) that we work with in order to attempt to come up with a level commission option for each product, which is not what we have in place today. There are many client choices, which provide for many commission options – this process is ongoing as the venders themselves are still in the process of developing and rolling out new products that will work better in an ERISA fiduciary world. Our industry has operated for over 75 years using some of these products, it is not fair or reasonable to think the changes needed to allow the best options for clients and still meet the intent of the rule will be able to occur in less than one year's time. I encourage the Department of Labor to consider lengthening the implementation timeframe to allow these new products to evolve. Once they are available, there will be hundreds of platforms that will need to sign agreements and set up their systems to allow them to work within them. Again, these changes don't happen on a dime. It takes time.

A rule that covers the investing public should be issued by the regulator that has authority over ALL investors – the SEC. The Departments rule is fragmented, unnecessarily complicated and frankly, just unworkable to be able to operate in full compliance as a firm.
I can't begin to explain the amount of money we have expended as a firm consulting with ERISA attorneys, consulting with industry, entertaining the thought of many new technology initiatives to help us validate our performance is benchmarking to others in that category, paperwork, mailings, etc. It is likely half of my staff will spend a significant portion of their time implementing/monitoring/supervising these new requirements, while those efforts are now no longer available to help us improve our client service levels, update our product and service offerings and spend more time with our clients enhancing our relationship. There is no doubt these costs will be passed on to the consumer in one way, shape or form.

Please be diligent in your review. I'm not sure how the DOL can finalize the 60 day delay, and imply there is not likely to be any further delay, prior to receipt or review of the comments you are soliciting. It almost makes me feel like the time spent sending you my list of concerns outlined above is a waste of time. I hope that is not the case and the DOL will consider the thousands of financial firms that will be unduly burdened and hundreds of thousands of investors that may end up working with a robot instead of a human being of their choosing to navigate their financial future.

Thanks again for taking the time to review my comments and concerns.

Deborah Castiglioni
CEO
Cutter & Company, Inc.
(636) 537-8770

Attachments sent with the email subject "secure" are sent via TLS and only require the recipient to log in to an encrypted secure site if the recipient email is not enabled for TLS. If you receive an attachment with secure in the subject line, and were not required to log in to the secure site, rest assured that the file is encrypted and TLS was used from both the sending party to the recipient.