

# PUBLIC SUBMISSION

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**Docket:** EBSA-2010-0050

Definition of the Term ‘‘Fiduciary’’; Conflict of Interest Rule—Retirement Investment Advice; Notice of proposed rulemaking and withdrawal of previous proposed rule.

**Comment On:** EBSA-2010-0050-0204

Definition of the Term Fiduciary; Conflict of Interest Rule- Retirement Investment Advice

**Document:** EBSA-2010-0050-DRAFT-5293

Comment on FR Doc # 2015-08831

## Submitter Information

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## General Comment

I believe it is important for the DOL to close the loopholes some actors in this industry are planning to use to circumvent the DOL's intentions and effectively neutralize the BICE.

From recent meetings with Primerica management, Suntrust's analyst concludes:

"Management remains confident in their ability to side-step the fiduciary rule. We understand the

company has received no real pushback regarding its discussion of the so-called 408(g) exemption

that it and its lawyers believe will allow it to avoid the necessity of using the Best Interest Contract

Exemption. Under this provision, so long as Primerica offers a uniform fee structure on all of its products,

it would be in presumptive compliance with DoL rules, which are intended to reduce the motivation for investment advisors to shift client funds into more expensive products."

Additionally, for American Equity Life, their management has looked to use the vagaries of PTE 84-24 to skirt the intent of the DOL. From recent meetings with the company, Raymond James concludes:

"As the proposal currently stands, indexed annuities will continue to be sold under Prohibited Transaction Exemption 84-24, which is a much better place to be than under the Best Interest

### Contract Exemption (BICE). Disclosure

requirements will be significantly less onerous than under BICE and there is no private right of action against an agent selling an indexed or traditional fixed annuity. This said, under the "Impartial Conduct Standard" of PTE 84-24, agents would still have to act in the best interests of their customers and compensation must be reasonable. As under the BICE, reasonable compensation is undefined and vague. In addition, it is not 100% clear whether the agent could satisfy the best interest requirement of the impartial conduct standard, despite offering only a small number of products, by disclosing that he/she is contractually limited in the number of products they may sell."

In fact, American Equity Life said on their public conference call on 6/30/15:

Question - Steven Schwartz: Ron, even though you are going to be under the PTE 84-24, do you know, will you be a fiduciary under the new rule?

Answer - Ron Grensteiner: We don't believe so.

Question - Steven Schwartz: Okay, that's interesting. The NMOs would be, though, undoubtedly?

Answer - Ron Grensteiner: We don't think the NMOs would be either.

The thrust of the DOL's regulation is to protect the small savers from high-commission, low advice investment options like those Primerica and American Equity Life offer. The fact that Primerica does this in a multi-level marketing scheme structure creates perverse incentives by its very nature. The fact that American Equity "independent agents" masquerade as advisors but most can only sell one product (a FIA paying an 8% commission) is also a conflict due to lack of breadth and appropriateness for all investors.

Please insure that major loopholes in this regulation which would allow continued abuses of small savers are firmly closed.

Thank you.

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## Attachments

Suntrust document

Raymond James document