LIGHTHOUSE
FINANCIAL STRATEGIES
LTD.

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To whom it may concern,

I am a small, "one- man shop", independent advisor. I have been in business for over 20 years and have been giving prudent advice to my clients the entire time. I am in full Support for a Delay and an ultimate Repeal of the DOL Fiduciary Rule as it currently stands.

This onerous rule will cause major disruption, and harm, to both retirement savers and advisors by producing additional and unnecessary costs to both.

This rule will definitely cause an increase in litigation and costs for malpractice insurance (E&O), and thus an increase in the prices that investors of all kind, including modest savers and small business employees, must pay to gain access to retirement services and advice.

This misguided rule seems to be an effort by the DOL to drive savers away from financial advisors and toward government-sponsored plans. You're definitely limiting the options for retirement investors with this particular rule's requirements.

The biggest argument against the fiduciary rule is that it will unfairly impact smaller and independent retirement advisors, like me, who might not have the ability to afford the costs of complying with the new regulations. The U.K. passed similar rules in 2011, and the number of financial advisors has since dropped by 22.5%. The same thing will happen here in America.

The fiduciary rule regulation is too complex. It requires an enormous amount of paperwork and makes recordkeeping more expensive. It's a burdensome regulation costing an exorbitant amount of money just to implement and be in compliance with. These extra compliance costs will have a detrimental effect on small financial service businesses like mine.

The amount of paperwork generated currently seems burdensome to most consumers. Is more paperwork going to be even better for them? I think not.

My understanding is that absent any statutory authority from the DOL, the BIC exemption will have to be enforced through private legal action. Is that the best way to determine when advisors are in breach of the rule? Shouldn't the outcomes be predetermined as to what is deemed proper or improper conduct regarding treatment of financial clients? Litigation to set the exact standards and rules is not the way the government should be regulating anything.

The rule seems to have been crafted way too broadly by design. It has too many unknowns that only trial lawyers, judges and juries will ultimately define. Only then, after litigations, will advisors know whether or not they are in breach of the BIC exemption.

This 'private right of action' mechanism creates unwarranted litigation risk for financial advisors, who will face the threat of meritless class action lawsuits challenging their every move. The rule doesn't seem to really be about investor protection. It seems to be more about enabling trial lawyers to increase profits.

The DOL fiduciary rule will let Lawyers and lawsuits make up whatever definitions they want for "fiduciary". Most financial services people will only find out these definitions after the lawsuit is won or lost and on an ongoing basis. Was or is this the intention of the rule?

'The more laws and rules the better—let the lawyers figure it out", is NOT the answer.

Are we setting the table for other federal regulatory agencies to turn salespeople into fiduciaries, such as auto sales, realtors or even retailers? How would it be if you went to your job or small business and had to act as a fiduciary for every customer you interacted with? You and your company could be sued out of existence (more so than now) for advice second-guessed by trial lawyers.

This is a vague regulation to the point of compliance impossibility in a retail marketplace. The many requirements of the rule are impractical in application and will be very confusing to retirement savers. The unintended consequences of the rule, and the resulting increase in expenses, will cause many independent advisors, like myself, to go out of business. The results will create an environment where clients will have a limited choice of advisors, investments and retirement education and advice. These detrimental outcomes will be magnified for both the smaller investors and the smaller independent advisors.

There are two types of regulation. One is very specific, it inhibits innovation and growth by being too prescriptive, but at least it is clear how to comply. Some regulation is general, it encourages innovation and free enterprise by being principles-based, yet you are never fully sure of complying, though there are often safe harbors for compliance to avoid improper interpretations.

The DOL has chosen the most onerous of both worlds. It is specific in consumer website design requirements, specific disclosure requirements, and designation of committee make-ups. But it is also unduly general, and ultimately vague, with respect to meeting critical rule requirements, such as "best interests," "reasonable compensation," and "material conflicts of interest." No one knows what these mean for sure. DOL has provided no safe harbor, and instead of the typical remediation for non-compliance, a collaborative regulatory relationship and explicit statutory fines, they mandate creative (ironically, profit-driven) trial lawyers as the ultimate arbiters.

This is bad regulation regardless of the other issues. My industry (financial services) has and always will want consumers to get well-disclosed, fair and transparent information and recommendations from financial professionals. I advocate good state and federal insurance laws and regulations, from state suitability laws to FINRA and SEC sales requirements. The DOL fiduciary rule is definitely not one of those. It should be "delayed and repealed" immediately. Replacement with "good" regulation can only be justified after addressing its critical flaws and using the appropriate regulatory agency. The president, Congress and regulators should pay heed for the benefit of the financial industry, the American economy and the American consumer.

My argument against this rule includes:

1. *Procedural*
    a) *Failure to adequately consider costs and benefits.*
2. *Exceeding authority is arbitrary and capricious, including redefining terms and relationships without authority.*
    a) *The plain language and structure of ERISA and the tax code confirm that "fiduciary" status exists in special circumstances that ordinarily do not include brokers and other sales agents.*
    b) *The Department's overbroad interpretation of "fiduciary" flouts that term's plain meaning and is unreasonable and entitled to no deference (including misused, limited exempted authority, created*

private right of action, violation of federal arbitration act, flawed cost assessment, lack of FIA change notice, first Amendment violation).

c) Placement of FIAs in BICE rather than 84-24 is arbitrary, capricious and contrary to law.

d) The Department exceeded its statutory authority and acted in an arbitrary and capricious manner (including redefining of investment advice and fiduciary, contrary to congressional intent for IRAs, creates private right of action, treats FIAs as securities.

3. Harm to Business

a) The Department failed to consider the detrimental, perhaps debilitating, effect of its actions on independent insurance agent distribution channels.

b) The Department's determination that FIAs are covered by the BICE is irrational and unworkable, leading to devastating industry effects (including, carriers can't comply with BIC with respect to independent agents, carriers can't comply with the BICE without filing BICs with state insurance departments for approval, agents can't comply with BICE without acquiring securities registration).

c) Failure to adequately consider impacts and costs on small business.

d) Failure to adequately consider impacts of costs of compliance.

4. Bad Regulation

a) The BICE is fatally flawed based on void for vagueness grounds.

b) The Department failed to provide a meaningful explanation for how the BICE can work with respect to FIAs, until the "last minute".

c) Carriers can't comply with BIC with respect to independent agents.

d) Carriers can't comply with the BICE without filing BICs with state insurance departments for approval.

e) Insurance Agents can't comply with BICE without acquiring securities registration.

5. Bad Regulation Enforcement

a) The DOL does not have sufficient enforcement capability to implement this rule.

b) The 'private right of action' mechanism creates unwarranted litigation risk for financial advisors, who will face the threat of meritless class action lawsuits challenging their every move.

c) The DOL should not just rely on litigation to set the standards of this rule.

Sincerely,

Mike Moss

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