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March 15, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflicts of Interest Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1210-AB79

Ladies and Gentlemen:

"I have a very nuanced view of the DOL fiduciary duty rule. I think it is a terrible, horrible, no good, very bad rule. For me that rule was never ever about investor protection. To me, that rule, it was about one thing and it was about enabling trial lawyers to increase profits."

While in wholehearted agreement with these words, they are not mine. They are the words of Acting SEC Chairman Michael Piwowar, delivered to an audience of compliance professionals in an address at the Investment Adviser Association Compliance Conference on March 2nd.

Given the Acting Chair's public denunciation of the fiduciary rule, it's hard to imagine that the DOL would consider forging ahead with its implementation without giving serious pause to Mr. Piwowar's stated objections. After all, the SEC is the federal agency charged with enforcing federal securities laws, proposing new rules and regulating the securities industry -- not the DOL.

While the importance of my response to President Trump's March 3rd memorandum directing the Department of Labor to examine and review its Fiduciary Duty Rule may well pale in comparison to Acting Secretary Piwowar's remarks, they are, nonetheless, set forth below, with each of the three issues raised in the President's directive addressed seriatim.

Harm or potential harm to investors

The very nature of the Fiduciary Rule, with its emphasis on level fees and its bias against variable compensation, will militate against millions of Americans receiving access to the quality products, services and advice they need and deserve. With the DOL's misguided belief that cost is the sole measure of value for all retirement products, individual savers and small businesses will be negatively affected by the DOL's move to "strait-jacket" the industry and force investment professionals into a one-size-fits-all approach.

Dislocations or disruptions

The thousand-page rule is extremely complex, needlessly convoluted and not well understood by the financial industry in general and more particularly by the hundreds of small firms and thousands of dedicated investment professionals who lack the support of large legal staffs to help them interpret, understand and ultimately comply with this arcane piece of legal-ese. I'm reminded of then House Speaker Nancy Pelosi's famous response to the Affordable Care Act – we need to pass this bill in order to find out what's in it. The DOL's own FAQ releases are ample testimony to the Rule's ridiculous and unnecessary complexity and the distinct likelihood of misinterpretation and misapplication of the Rule by industry participants. The second and third FAQs were released on January 13th, shortly before President Trump took office. Moreover, the third FAQ, designed for investor-consumers, has been taken down from the DOL's website.

Implementation of this Rule, within its currently contemplated time frame, will have disastrous consequences for both investment product purveyors and industry participants, who are suffering from mass confusion and lack of readiness, and for the investing public who will be the ultimate "beneficiaries" of this ill-conceived rule and the current chaos surrounding it.

Increase in litigation and price increases for investors and retirees

Not if, but when we suffer our next market break, plaintiffs' bar will come out of woodwork like never before claiming that investors' losses were the direct result of a breach of fiduciary duty. Thus, this rule will serve as an insurance policy against investor loss and will result in a predictable avalanche of litigation. Put simply, the DOL Fiduciary Duty Rule has created an easy-to-follow roadmap for the legions of lawyers who are more than willing to capitalize on the general sentiment in this country that individuals needn't be responsible for their actions, i.e., investing no longer entails risk.

Preparing for this rule has already cost the industry staggering amounts of money. Implementation will only compound these astronomical costs ranging from the additional burdens of ongoing regulatory compliance, development of internal procedures and forms, training, alteration and updating of systems, development and maintenance of web presence, determination of product suitability, legal costs associated with continued compliance with the rule and higher insurance costs. As a result, many businesses have already made far-reaching determinations about their commitment to retirement clients: some have simply closed their doors; some have decided to no longer service retirement accounts; some will continue with a variable compensation model at their own peril due to magnified legal risk; some have embraced the fee-only model and have abandoned their well-served commission-based accounts. Obviously, for these latter firms, account sizes in a post-DOL world will need to increase to justify continued servicing. Smaller investors, those with perhaps the greatest need for investment advice and products, will be left by the wayside.

With margins already under great pressure in the securities industry, the obvious outcome of these added costs and burdens will be to increase fees to customers in order to cover them. Make no mistake, under this rule, many retirement investors will be precluded from receiving advice and access to investment products going forward and those who do will undoubtedly pay a higher price – no matter how it is disguised. In this regard, I firmly believe the cost analysis that the Department of Labor relied upon as the basis for promulgating this rule was seriously flawed, outdated and based on incorrect assumptions. I think the Department of Labor needs to revisit this analysis and be transparent and forthcoming with all affected constituencies.

In summary, we strongly support an initial 60-day delay of the applicability date for the Fiduciary Duty Rule from April 10 to June 9, 2017. Moreover, to ensure a thorough review of the true economic impact of this far-reaching rule, we strongly support a second 180-day delay. We urge you to grant the delay as soon as possible – and it should apply to all parts of the rule and exemptions.

Sincerely,

American Investors Company

Nicholas C. Cochran
Vice President