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Submitter Information

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General Comment

I have read the proposal and my 40 years of securities regulation and compliance experience indicates that a 60-day extension of the effective date will be beneficial if EBSA conducts an examination of the following:

1. That the regulatory impact analysis estimating potential gains for IRA investors ($33 - $36 billion over the first 10 years) appears to be flawed in that (a) only investment in front-end-load mutual funds are the basis used in the analysis to project such gains, and (b) under performance due to poor fund selection would be negated. If this is the basis for the rule to be retained, it should include an analysis of all products which IRA investors and other retirement plan investors actually invest in. Further, there are so many mutual funds to select from, it is difficult to believe that the additional obligations of the definition and its exemption would lead to a sudden switch from poor fund selections.

2. That the regulatory impact analysis uses the Small Business Administration's definition of small businesses to be those with up to $38.5 million in annual receipts. A better analysis would have shown that few of the 2,438 BDs and16,521 RIAs have

far less than $38.5 million in annual receipts. These businesses will be substantially harmed by the compliance costs that are projected for the first year ($5 billion), much less their ability to carry the additional $11 billion of compliance costs for the remaining 9 years.

3. That the potential to harm investors is likely due to a reduction of access to financial advice caused by the costs of compliance. This could result in financial advice being offered by large firms since small firms' compliance costs will cause either consolidation of small firms or an exodus from the industry. Choices for investors may not be available and in all likelihood adversely affect investors and retirees.

4. That there is a likelihood of increased litigation simply because most investor complaints are now handled appropriately by various avenues of dispute resolution. A splendid example is that of FINRA Dispute Resolution. Without tort reform to dampen the appetite for class action lawsuits, financial industry participants will need to offset the threat of litigation.

For several years, there has been a contingent in the financial service industry who believes that without a fiduciary standard, those who earn commissions are taking advantage of investors. They belittle the suitability standards that commissioned-based brokers are required to follow. I believe that an analysis of the suitability standards would result in a clearer understanding of those who understand commissions versus fees. The elimination of commissions may harm those investors, particularly IRA investors, who do not care to pay ongoing management fees but are perfectly satisfied with paying an up-front commission.

These brief comments should reveal that a more informed analysis is needed. A 60-day extension if properly used by EBSA should result in an elimination of the new definition and its rules or at the very least, more reasonable revisions.