



July 20th, 2015

U.S. Department of Labor
Office of Regulations and Interpretations
Employee Benefits Security Administration
200 Constitution Avenue, NW
Washington, DC 20210

Re: Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice (RIN 1210-AB32)

Ladies and Gentlemen:

Thank you for the opportunity to provide comments regarding the Department of Labor’s (“Department”) Proposed Conflict of Interest Rule (“Proposed Rule”) and Best Interest Contract Exemption (“BIC Exemption”) under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). I am concerned that the Proposed Rule and BIC Exemption will unnecessarily increase barriers for Middle-Income Americans to the valuable retirement savings education and assistance that I and many thousands of other registered representatives provide. It is my hope that my comments are helpful to the Department.

I have been a registered representative with PFS Investments Inc. since 1992. My office is in Brooklyn, New York. My clients come from the community in which I live and work. They are hard-working, very busy people, and, quite typically, before they meet me, no one has ever taken the time to sit down with them to assess their financial picture and discuss basic financial concepts with them, such as the power of saving for retirement through systematic investing and what investment options are available to them. They, like so many people in Middle America, do what they do daily very well, but the reality of life is that there is no time left in the day after their work day and evening family commitments end for them to proactively seek out education and advice on saving and investing. What some view as basic saving and investing concepts that everyone already knows, is typically not information they know. They are starting from a different baseline, and it takes a substantial time commitment to understand these concepts well enough to make actual investment decisions independently.

While it may appear that they *have access* to this information if they have computers or other mobile devices from which they can search the internet, they do not, in my experience, *access* this information on their own. It is time-consuming and overwhelming. They are much more comfortable working with a live person, and more successful when they do so, both of which

studies have demonstrated.¹ And with retirement savings and retirement plan participation at such low levels, it is imperative that we help Middle-Income Americans in every way possible get on track toward ensuring better futures for themselves and their families.

Working with Middle-Income Americans to achieve their financial goals is what I have done my entire career in the financial services industry. A story about a particular client of mine comes to mind.

Ten years after attending college together in 1991 a classmate of mine asked me to sit down with his wife and him to discuss their finances. They both earned a decent salary with no children or house. Although he was a college graduate and a genius with computers, he did not understand how money works. I discovered their finances were a disaster. They spent money like crazy and had no retirement savings. The education I provided gave them an understanding about basic financial concepts and investing they did not have. They chose to fund two IRA accounts on a monthly basis. They started with small contributions, and I have been able to encourage them to increase their contributions as they go. As the years have passed, they are grateful for the time I spent to get them on, and to keep them on, the right retirement track. They told me that having someone sit down with them helped make a positive financial difference in their lives. My experience has taught me that regardless of how educated a person may be, retirement and investment vehicles are intimidating to most people. It certainly was for this couple, yet over a decade later they are happy clients, homeowners, parents, and on their way to a brighter retirement.

It is my belief that the Proposed Rule and the BIC Exemption as drafted will eliminate or substantially reduce people like this couple's access to education and advice, at the exact time and for the exact purpose they need it most – saving for retirement. I fear that the translation of education into advice, the imposition of the new BIC contract, the uncertainties created by the Impartial Conduct Standards which substantially increase liability costs and effectively disqualify the commission model, and the costs of complying with all of the many disclosure requirements will cause firms such as PFS Investments Inc. to conclude that it simply is not feasible to open smaller accounts. If a decision like this is made, my clients will lose access to the education and advice they so badly need, and their futures will be severely negatively impacted as a result.

It is my hope that the Department will take this into consideration and withdraw the Proposed Rule. Thank you again for the opportunity to comment.

Sincerely,

¹ Oliver Wyman: The role of financial advisors in the US retirement market (July 6, 2015). Oliver Wyman states that it “. . . was engaged to perform a rigorous investigation of the role of financial advisors in the US retirement market, and quantify differences in investing behavior and outcomes between advised and non-advised individuals.”

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