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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

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Comment on FR Doc # 2015-08831

Submitter Information

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General Comment

Dear Secretary Perez and Assistant Secretary Borzi:

I've worked in the ERISA qualified plans industry for almost 20 years, and I hold the Qualified Pension Administrator (QPA) designation from ASPPA. I have written numerous white papers and articles; and am considered by many to be an authority concerning the design, administration and governance of ERISA-qualified plans. I am not a Registered Investment Advisor; and I am not a Registered Representative of a broker-dealer. For my own protection, and for the protection of my employer, I have chosen to make this comment anonymously.

When one understands a particular situation and needs to conduct a transaction, one works with a broker. When one needs advice that is in one's best interest, one works with an advisor. Brokers earn a commission for their efforts at conducting transactions. Advisors earn a fee for their advice. In the financial industry, brokers are required to follow a suitability standard, are allowed to act in their own interests as well as their customers' interests, and are very specifically not fiduciaries. Investment advisors are required to follow a fiduciary standard and act only in their clients' interests. Brokers have customers. Advisors have clients. Being a good, honest broker is an honorable profession. Every business needs competent people who can sell well. Being a good, honest advisor is also an honorable profession. Both individuals and corporations need competent advisors.

These are immutable business concepts that are well founded in law and practice. Yet beginning in the late 80s, as the broker-dealer industry sought relevance by masquerading product knowledge as objective advice and by adopting fictitious titles such as "financial advisor", the regulatory agencies (DOL, IRS, FINRA/NASD, SEC...) did NOTHING! And here we are today: the broker-dealer segment has cornered the asset-gathering market and has amassed so much money and power while the average consumer has no idea whatin the financial services industrythe difference is between a broker and an advisor.

If you really want to protect the investing public, as opposed to the broker-dealer community, your proposed regulation could have been written in less than 10 pages. It's so simple. Simply impose that brokers cannot act as fiduciaries. Simply require brokers to disclose that they are not fiduciaries, and that plan sponsors who choose to work with brokers must understand that brokers are allowed to consider their own interests in addition to and even OVER the interest of the plan, plan sponsor and participants. Plans sponsors have the fiduciary responsibility to determine if working with a broker is in the best interest of the plan and participants. Competition in a market where the plan sponsor and participants are equally as well-informed as the broker-dealer industry will drive down fees. Plan sponsors will need to seriously ask themselves whether they should work with a broker or an advisor, and then document why and regularly evaluate whether the choice is best for their plans and participants.

Yet, instead of helping plan sponsors and the investing public to understand the difference between a broker and an advisor, you two would perpetuate the obfuscation of a broker's true role by proposing hundreds of pages of convoluted regulation and procedures that will inevitably serve to make matters far worsea convolution so clearly borne of efforts to primarily protect and preserve the practices of a broker-dealer industry that has hoodwinked participants and plan sponsors for the last 30 years, as opposed to truly and exclusively protecting the interests of participants. If you really want to protect the investing public, then simply educate the investing public on this very basic first principle. To do anything other than this obvious correction is just the latest iteration of mindless bureaucracy that does this country such disservice. Moving ahead with this regulation as proposed is a fool's errand. The regulation as proposed will not solve the problems you're trying to solve; and both of you know it.