

From: Robert White
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Cc: Denis Walsh
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I am a fiduciary, and I have been for a long time. I take that charge seriously. While working with Mass Mutual, I testified to the affirmative, with a company representative present, that I was a fiduciary in Missouri District Court in Clay County, where I became the investment manager for a special needs trust for an indigent adult who at the age of 21 could neither walk nor talk, and I do recognize that there needs to be some reform and enforcement in the financial world. The judge in Clay County actually stated that he wished there was a representative from the existing trust holder, so he could demonstrate the fine accommodations Clay County had to offer. I can also tell you about Third Party Administrators, who, over the phone, have told me that they do not have to be fiduciaries, employers who have never addressed their own retirees, and others who have forgotten what it means to be a fiduciary. None of these cases would have been corrected by a change in the rules, and they represent some very large financial corporations. They were already supposed to be fiduciaries, but weren't.

While working for H&R Block Financial Advisors, the tax preparers were given the ability to issue money market IRAs without the input of financial advisors, and those IRAs carried fees that outstripped the ability of the accounts to grow. Eliot Spitzer sued them in New York over the program, but there was little Federal involvement in the decisions. So, changes are probably overdue in the industry, but the changes need to be in the right areas. Already, just the hint of the DOL rules has sparked many companies to get out of the business altogether, and there are rumors that at least one company will be churning their financial products to accommodate a non-securities licensed posture, a violation of insurance laws, something not directly covered by the Department of Labor.

By focusing on cost, rather than all factors, it will increase the cost to investors, creating the same situation that H&R Block faced, and whether it is risk or any other analysis, the absence of risk being guaranteed by the certainty of loss is not a viable alternative either for the investment professional or the investor. The term fiduciary means making sure the client comes first. It does not, however, guarantee a profit. It should mean that the bottom line has been considered, that long term capital gains and qualified dividends which are almost always the highest tax rate have been considered as much as costs and returns. Those are some of the requirements of being a fiduciary.

Much of the damage has already been done, with many firms leaving the industry before the rule implementation, and with consolidation, there have already been some terrible consequences. In at least one case, the third party administrator on a purchased retirement plan had no idea who the corporate contact was 90 days after the transfer was accomplished. These failures, caused by the threat of action, not just the implementation are becoming the rule.

I applaud the delay in implementing the DOL Fiduciary rule, and I hope the delay can be used effectively, gaining input from the industry, all parts of the industry, and it is my hope that ways can be found to deliver advice and product without sacrificing cost and trust.

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