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Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Investment

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General Comment

I work as a Compliance Officer at a firm that would be profoundly affected by the Department of Labors Fiduciary Rule (the Rule). Having had sufficient time to truly digest and understand the Rule (which was no small task), my main takeaways from the Rule have led me to conclude the following:

Despite the oft-repeated claims by the Rules boosters, the Rule does not actually require financial firms and their representatives to act in their clients best interests. If the Rule actually did this, it would have been written far more clearly and in such a way that would make it easy to comply, without using vague and esoteric terminology. Instead, the Rule places on firms and their representatives certain duties to behave in a certain manner, yet has been tight-lipped and unhelpful in sharing details as to what compliance with the Rule actually looks like or how one might go about complying with the Rule. As a result, firms and their representatives are left blind and in the dark with nothing but their own guesswork to guide them in hopes of getting everything right and avoid the Rules enforcement mechanism, which, combined with the aforementioned virtual impossibility of compliance, is highly

problematic. Not a good way to ensure compliance.

Enforcement and interpretation of the Rule occurs through litigation. The implication of this is nobody can or will know for sure that they are compliant with the Rule unless somebody is sued and the courts hand down said interpretation. This dynamic represents a massive source of legal liability that cannot be mitigated because, as previously mentioned, nobody actually knows what compliance with the Rule looks like and are forced to guess at it. When viewed through this lens, the clear message to the industry is that its being set up for a pillaging on an unprecedented scale, that the fix is in.

In the end, a rule that nobody knows how to and thus cannot comply with, paired with an enforcement mechanism against which defense is limited, is a poorly-written and ill-conceived one. The Rule does not appear to be primarily focused on protecting client interests so much as it is with generating lawsuits. Hope, as in hoping to avoid a lawsuit, is not a strategy and certainly not a blueprint for long-term sustainability. The Rule should not only be delayed, but abandoned and scuttled in its entirety.