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HUTCHISON INVESTMENT ADVISORS  
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April 12, 2017

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20210  
Attn: Fiduciary Rule Examination

Re: RIN 1210-AB79

### Summary

Having over 30 years in the business coming from a CPA background I **oppose** the Fiduciary Rule, especially the Best Interest Contract (BIC) because 1) It implies fee only is more favorable when in reality it is often the most expensive way to get investment advice. 2) RIA's have far less regulatory oversight compared to FINRA via commissions. 3) The rule would mostly benefit lawyers and hurt those it claims to help.

At industry conferences, I often hear fee-based planners suggesting younger advisors adopt a fee-based compensation structure showing them how much more in fees they would earn (and cost the investor) if they went from commissions to fees. Unless the client is an active trader, a 1% annual advisory fee is equivalent to a 9.1% front-end load on a mutual fund if held 10 years with no market value increase. If the market value increases the fee is even higher.

I provide advice as a RIA but implement as a commission broker via Cetera, since this is in the best interest of my clients. I take advantage of reduced A share load breakpoints, use families with many good options for no cost exchanges if desired in the future. I select investment managers based on an analytical evaluation of Beta (risk) vs. Alpha (outperformance for the risk taken.) I do not recommend "dumb" index funds with no selection of best securities based on research vs. just being in an index. The DOL rule seems to encourage "brainless" index investing based solely on low fees instead of historical return vs. risk of managers.

RIA's should disclose what their fee-based advice would cost over 10-years based on a market increase of 5% or 10%. They might be amazed how high the fees would be vs. commissioned A shares with breakpoints.

I appreciate your listening to my concerns and those of tens of thousands of small business owners, who like myself, work with average Americans every day to help them reach retirement with some confidence. It is a privilege I do not take lightly, and I urge you to consider the many unintended consequences of the Fiduciary Rule for both small business owners and their clients.

**Below is a more detailed explanation to clients.**

### Hutchison Investment Advisors (HIA) – Nothing will change in giving advice.

Since 1988 HIA has been a Registered Investment Advisory (RIA) already operating under the Fiduciary standard of the Investment Advisers Act of 1940. Larger RIA's are regulated by the SEC while HIA is regulated by the Arizona Securities Division. It has been pointed out that SEC-regulated RIA's on average are audited by the SEC about every 10-years. (In FY 2015, the Commission examined 10 percent

of investment advisers, and either the Commission or FINRA (or another self-regulatory organization) examined 50 percent of the broker-dealers)

In the fall of 2015 in our latest Arizona routine audit, two examiners spend two days going through HIA asking questions, looking for any paperwork errors examining client files, recommendations, correspondence, and implementation. On January 13, 2016, HIA was sent a "closing letter" with no deficiencies – which I understand is unusual since audits often find at least minor paperwork errors. Our previous audit was in 2008 with similar results. We meet all the disclosure requirements by our "Firm Brochure (Part 2A of Form ADV)" at <http://davecfp.com/NarrativeADV.pdf>

**Why we implement Investment Decisions via Cetera Advisors as a broker-dealer**  
RIA's can only charge a "fee" - usually an asset management fee such as 1%-2%/year based on asset value. Often minimums are \$500,000 or \$1million in assets. This fee structure can be less expensive for an active investor saving commissions on frequent trades, but not for clients not actively trading.

David W. Pitelli, former head of the Mutual Fund Association pointed out in an article that a 1% annual fee over 10-years is an equivalent of a one-time front-end load of 9.5%. This assumes a flat market. If over 10 years your assets increased the equivalent would be higher. This is similar to "no-load" B shares of managers with 1% annual fees. I called them the "killer B's" and I never recommended them

For long-term investor that are not active traders, I have always recommended "A" share managed accounts with managers having a long-term track record of excess return vs. risk taken (Alpha vs. Beta in investment terms), with a one-time front-end commission load (like the bid/ask spread of stocks), breakpoints and no cost exchanges within the management family. The load is split between the management company, the broker-dealer and the selling representative. I have tested various combinations of holding periods, market returns and costs. In my analysis about the only time a fee-based structure is beneficial is for short holding periods with declining or very small market gains.

FINRA rules for brokers-dealers are already extensive unlike just the legal fiduciary status for RIA's. Every e-mail incoming and outgoing, all correspondence is archived and monitored by Cetera compliance. All my reports that go to more than 24 clients or prospects are pre-approved by compliance (I never have any issues since I know what is required). We are subject to massive paperwork requirements; each investment is monitored by compliance. Since I am an FINRA Registered Principal and "Office of Supervisory Jurisdiction" I weekly review trade reports for myself and other associates. A Cetera "Business Review Principal" further reviews my transactions. In our trade review tool, we have to compare each investment to client objectives and suitability as shown on your "Account Information Form" required to open an account and is sent to you to confirm every three years if no changes have been made. We have annual office compliance audits by Cetera. We have all sorts of monthly and quarterly reports to submit and extensive required education. FINRA looks for the smallest paperwork errors for fines and other actions most related to the FINRA "suitability" requirements, but not the legal ramifications of being a fiduciary for investment purchases. FINRA supervision is far more comprehensive than RIA compliance.

### **Overall Summary by "IFGTWS" comment in Investment News 2/13/2017:**

"As an advisor who has been a fiduciary for 27 years, I resent the characterization of the fiduciary rule as requiring me to "act in the best interests of my clients" by not allowing commission based products in IRA's and pensions. Sometimes commission products are the best thing for the client, and only a government bureaucrat could miss that. Even the reporting in InvestmentNews goes right along with the dishonesty and misses the point that a fee-based account can cost a client much more than a commission-based product. Why not just call it what it is, rather than enforcing the rules that already exist to get rid of the bad actors, a whole industry is prevented from using products that have benefitted millions of investors, especially lower net worth folks. Those people will now go unserved because none of us can afford to work with them. How is that protecting the small investor Senator Warren?"

**Details: The DOL Rule Changes for IRA's & 401K's**

The DOL Rule makes commissions a prohibited transaction making it very difficult to offer this lower long-term cost option. It replaces the "suitability" standard of broker-dealers with the fiduciary standard that RIA's and HIA have always been under.

This is good, except for the requirements of the DOL to do so. Cetera has been working on a new platform to comply with the rules, which are very complex. The heads of Cetera and their lawyers have been on numerous conference calls with reps keeping us current on how Cetera will comply. Basically, it will require a "best interest contract" (BIC). There is a private right of action for lawsuits which would include expensive class-action lawsuits which would substantially raise the cost of the required E&O insurance that Cetera and all brokerage firms require. It will require more complex, data gathering and documentation of each client's broad financial situation. As discussed on the Cetera conference call of 2/8/2017 part of the enhanced tools will include U.S. Immigration type questions that ask the same questions in different ways to be sure the client knows their objectives and financial details. It will be good for those that like lots of forms to complete and provide lots of documentation vs. just discussing with me in an hour or so meeting and developing investment strategies without the long "interrogation" type documentation to protect from legal risks under the DOL Fiduciary Rule.

The DOL requires not more than "reasonable compensation," with no guidance on what is "reasonable." Maybe reasonable should be what the client believes is reasonable and willing to pay for investment advice and product recommendations. Some suggest being safe, just low-cost index funds with no concern for individual investments, other than being in a broad index which takes almost no management and ignores the outlook for individual stocks, that are in an index.

It seems no broker-dealers have produced a draft BIC since the law is so confusing and the guidance from the DOL has been less than helpful. "No one wants to go first" was pointed out on a recent Cetera conference call. Insurance companies have an even more complex task since the BIC would have to come from each insurance company vs. one broker-dealer for securities. For example, I use many different insurance companies, depending on which is the best for a specific product to match client objectives with the many different policies of many different companies.

The brokerage industry in court filings has estimated the cost of new systems, compliance, legal costs, etc., to will be over \$20 billion (A.K. Kearney consultant reported in the Wall Street Journal).

Ironically while the DOL is pushing for asset-based fees vs. commissions, FINRA is going after broker-dealers where asset based fee-only accounts are NOT suitable unless active trading to justify the annual fees.

An example of commissions better than fees was the New York Attorney General's lawsuit against UBS Brokerage. In its press release, it said, "UBS charged its brokerage customers an asset-based fee instead of per-transaction commissions. But asset-based fee (or "wrap") accounts are inappropriate for investors who rarely trade securities. As a result of UBS's fraudulent conduct customers paid tens of millions of dollars more in fees than they would have paid in traditional brokerage account commissions." It then lists five examples of the high asset-based fees paid vs. if had been on a commission basis.

At a national conference, I heard a long-time rep talking to someone new in the business trying to convince her how much more money she could earn (and customers pay) by switching to an asset-based fee structure.

The DOL Rule encourages this fee-based structure, will eliminate choice for investors unless brokerages draft complex BIC documents and take on the high legal risks. Some brokerages such as Merrill Lynch with more than \$2 trillion in client assets have said it will eliminate the brokerage option regardless of the DOL rule and only offer asset-based fee accounts. The result for most clients will be much higher fees over the long-term and less choice. It is reported many older advisors are choosing to retire instead of trying to follow the costly, complex DOL rule.

The outspoken proponent of the rule Elizabeth Warren, and others say the rule "is crucial to protecting workers and retirees from inappropriate high-fee investments that erode savings."

There are questionable "high-fee" products as Warren and others have pointed out, insurance products sold to win exotic trips and other buried fees in some products. Insurance wholesalers/FMO's also receive undisclosed fees. FINRA banned "sales contests" for brokers long ago, but insurance

companies still promote them for some products. FINRA requires extensive disclosure, a prospectus, etc. for all investment products.

Many of us are for the fiduciary rule and ending some of these practices but not with the current complex, vague on guidance, costly DOL rule, and BIC requirements. RIA's like HIA follow the current full disclosure requirements of the SEC and have the fiduciary duty without all the massive complications of the new DOL Rule.

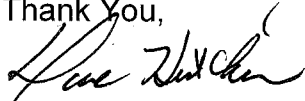
If an insurance company wants to reward with sales trip, this should be disclosed to the client as a potential conflict of interest. When probably 90% of brokers act in the best interest of clients, a more reasonable approach would be not to screw up the good advisors with 1000 pages of regs, making it harder to service clients and be motivated to have to charge asset management or wrap fees for their advice, which is usually far more costly long-term for the investor vs. the current brokerage options.

In Feb. 3 memo, President Trump instructed the DOL to review the investment advice rule to determine, among other things, whether it prevents some retirement savers from obtaining advice, or threatens to disrupt the industry with a flurry of lawsuits against firms.

In my view, the DOL rule is not needed, creates higher fees for many investors, will be a huge disruption in the industry with the risk of nuisance lawsuits and will prevent many investors from getting the investment advice they seek.

FINRA has far more intense compliance requirements and aggressively goes after violations of the suitability standard. Moving towards a fiduciary model should be more up to the SEC and could be written without the massive complex issues of the current DOL rule with the BIC contract hardly any clients would even read and having to change our model which I believe best serves my current and future clients.

Thank You,

A handwritten signature in cursive script, appearing to read "Dave Hutchison".

Dave Hutchison