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Office of the Secretary of Labor
Hon. Alexander Acosta
200 Constitution Ave NW
Washington DC, 20210

I am writing in the response to the proposed DOL Rule or "Fiduciary Rule" or "Best Interest Rule". From experience I consider this to be a gross violation of authority and a biased over reach by the Department of Labor. First it appears they have no actual statutory authority to make securities law, and second the rule is faulted from its stated intent. By attempting to make the licensed representative responsible for the outcome of an investment and calling that a fiduciary responsibility. This is not workable in the real world, and more importantly it is wrong and unfair. The only real benefactors of this will be the trail lawyers association and their henchman. They have created a new employment law out of thin air and set new dangerous precedents.

Think about it, can you sue your lawyer if he loses your case, of course not. What about their judgment? Are lawyers responsible for client decisions even if these decisions are damaging to themselves? You can already hold representatives and their employers liable for miss-representation, fraud, inaccurate information etc. But simply for outcome, this will destroy the securities business. In addition the rule relies heavily on the cost of an investment to determine the "best interest". This should not be the only overriding factor.

Another assumption with good sounding intentions but totally false in practice is that one size fits all. Should all lawyers all have to charge the same fee for their services? (I like the idea, cheap too!). Sounds illegal doesn't it, breaks every employment law on the books. Restricts freedom of choice, again! Is this what the DOL Rule attempts to do to licensed representatives? Yes!

In conclusion this rule is poorly thought out, with special interest payoffs to slip and fall lawyers and the only large advisory firms. The same firms that stifle innovation pay large legal fees and compete strictly on cost. The new rule further limits freedom, and hurts the smaller investor, smaller advisory firms, independent broker dealer and their representatives. And of course limits availability of investment opportunities to retirees, small businesses, and families. Further monopolizing the industry to only benefit the very wealthy. We have had enough of that the prior eight years; we elected this administration to save us from these outrageous regulations. Some investments have risks and must be sold, that does not make it wrong. That is what built our country and out great economy. Instead of inappropriate restrictions the regulators at the DOL need to make sure representatives are properly educated and properly licensed, that is within the statutory authority of the Department of Labor. We are being over run competively by non-licensed representatives and Investment Advisors who do not have these burdensome over bearing restrictions. What the DOL rule has done is to encourage salesmen to get less education less oversight and put the most regulated, most educated, and properly licensed individuals out of business. Oops!!

One last item I must bring to your attention. FINRA, again with out statutory authority is advising its members they must supervise the ongoing sale and administration of Fixed Insurance Products and Registered Investment Advisory accounts there by subjecting them to FINRA arbitration without any actual supervisory authority. FINRA claims this is because of the DOL rule change. This is another abusive grab: Fixed Income Insurance Products are under the authority of the states, not FINRA by law. Advisory accounts are the supervisory responsibility of the SEC. You see how it works, grab it raise the cost of doing business, limit availability, competition, drive the small firms out of business, all the while claiming you did it to protect the public. We have all seen this picture before. Please help!!!!

Thanks for your attention.

Sincerely,

James M Poindexter, CFP®
Certified Financial Planner

by Jim Poindexter, *The Financial Coach™*

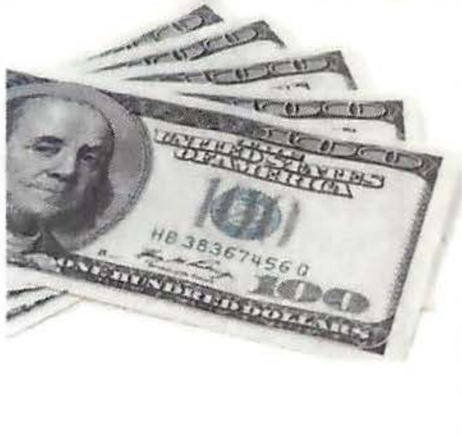
Copy of an article I wrote 1 year ago

INVESTING YOUR RETIREMENT NEST EGG FOR RETURN AND RESULTS.

Fee Based Investment Management vs Commission based financial products.

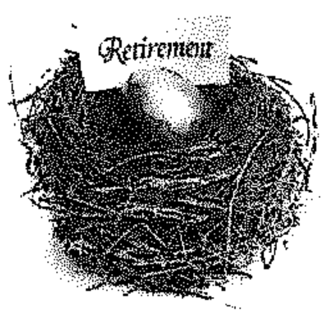
Should you be concerned about the way your advisor or representative receives compensation when investing on your behalf? Most clients have heard these two terms, fee-based vs commissions. How is your advisor receiving compensation and does it make a big difference to retirement plans and results? The trend in investment management has been toward fee-based as a better overall way to manage accounts. Regulators have indicated recently that they feel this is a proper way to meet their fiduciary standards of care. In most cases, particularly accounts set up purely for growth this seems to be the case. But is it ever necessary to also use commission based products? It can all be very confusing at times to the retiree, as many times the thought process of what to use is determined by the particular bias of the way that advisor gets compensated. Lets look at some examples of each.

FEE-BASED MANAGEMENT: A negotiated fee is charged by your advisor to set up and service (which in many cases is strictly reporting the performance results) your investment accounts. Fees vary, as do the underlying investments used. Your advisor may or may not structure and manage the strategy itself. In the strategy chosen your advisor may be using a "third party advisor", or the strategy chosen may be set up, chosen and managed directly by the advisor you are working with. This can be important to the overall cost of the management. Typically your investment plan should not be considered a retirement or financial plan but an important part of it. Unfortunately it is this author's opinion some fee-based only strategies and advisors inadvertently can leave the impression that an investment plan is a comprehensive retirement and estate plan. Therefore you need to make sure that your team includes someone who has knowledge of all possible financial ideas to capitalize on.



COMMISSION BASED INVESTMENTS: Typically Mutual Funds, Variable, and Fixed Annuities, Life Insurance Products, REITS, Private Securities offerings can be commissioned based. In addition Fixed Indexed Annuities are normally commissioned based. A large part of this space is taken by Indexed Annuities and although they are offered by licensed representatives a securities license is not required to market them. This has made this a very popular product. One of the primary objectives of insurance backed products is to provide a guarantee of some type, such as a guaranteed income or death benefit, but not unlike the fee-based only solution when working with a non securities licensed advisor you may not be getting all the advise you really need to take advantage of the best options and costs to meet your objectives and your financial plan.

SOME CONCLUSIONS: So which method should you want used for your retirement portfolio? My answer, it depends on your goals and the trusted advisor you choose to work with. What are your income needs? Do you need guarantees, liquidity, survivor's needs, and do you have important estate planning goals? Is your only goal to maximize growth or provide income or minimize taxes? In many cases when you open a fee-based account directly with an on line brokerage firm the choices you have may be limited and that may not be in line with your desired result. As you can see the answers can be complex and very often unique and personal to you and your family or business.



As I mentioned earlier in this article the trend in the securities industry has been to encourage fee-based as the preferred method particularly for traditional investments such as equities, bonds and commodities. I believe this has been positive but I also believe there has been an unintended result. This tends to benefit large accounts over smaller ones and larger firms over smaller firms, this is because the cost of operations, account setup, marketing, client preparation can be absorbed through economies of scale much easier by large firms more than small firms.

To get the right answers work with a trusted professional. Preferably those advisors who have demonstrated their knowledge through designations, standardized testing, and experience an ability to understand all financial instruments. They can assist you to find the right balance of costs and value. Working with the right professional can make the difference in your outcome. Cost should always be considered as the lower the fees the better the overall performance may be. The true measure of your return may be the value after the fees and the reward of meeting your goals, and your expectations. This should determine your ultimate choice.

Live well, Leave a Legacy!!

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