



Missouri Bankers Association

July 12, 2017

United States Department of Labor
Office of Exemption Determinations
200 Constitution Avenue, NW, Suite 400
Washington DC 20210

RE: RIN 1210-AB82

SENT VIA EBSA.FiduciaryRuleExamination@dol.gov

Dear Ladies and Gentlemen:

The Missouri Bankers Association and our member banks (MBA) are pleased that the Department of Labor has opened this Request for Information to obtain input to consider new exemptions or make changes and revisions to the fiduciary rule and to the prohibited transaction exceptions.

While the fiduciary rule is intended to benefit consumers, the rule actually imposes significant costs and burdens on consumers because the costs for banks of implementation, compliance, and legal and regulatory risk ultimately fall on consumers. Under a complex regulation such as the fiduciary rule, consumers pay higher fees and suffer reduced access to financial services and face increased paperwork burdens.

The MBA recommendations below will assure that low cost, low risk and easy to understand banking products and services are exempt from the rule so that consumers do not lose access to core products and services available in most community banks.

Expressly State Exemption for Deposit IRAs

We request that the Department act to *clarify* fiduciary rule exemptions by *expressly stating the exemption* for bank deposit products offered by regulated depository institutions for IRAs and HSAs. The exemption should extend to the assistance that a depository bank provides to process a customer's request for a rollover from an employer plan to a bank deposit IRA.

IRA owners do not require investment advice in evaluating and selecting a deposit IRA. The Truth in Savings Act and implementing Regulation DD allow any consumer, including an IRA owner, to easily compare interest rates, fees and terms associated with bank deposit accounts.

Banks may also offer basic deposit account sweeps to a retail money market fund for an individual consumer. Because retail money market funds are strictly regulated to assure liquidity and stable value, a bank deposit sweep agreement in a deposit IRA should also be exempted.

Deposit sweeps to money market funds are not considered a complex investment and banks are exempted from treatment as a broker when effecting a deposit sweep to a money market fund under 15 USC 78c(a)(4)(B)(v).

If a deposit IRA account owner subsequently seeks to reinvest their deposit IRA in an investment IRA the IRA (or the IRA funds) would be transferred (rolled over directly) from the custody of a bank to the custody of an investment fiduciary (broker, registered investment adviser, trust department or trust bank) and the fiduciary rule would apply.

Expressly Exempt Network Referrals

We request that the Department act to *clarify* the fiduciary rule by *expressly stating the exemption* for banks that refer a customer to an investment fiduciary under a networking or third party brokerage arrangement. Banks have historically served their banking customers as an intermediary and facilitator of financial transactions. Brokers and registered investment advisors, likewise, have historically entered third party brokerage arrangements to promote the availability of their services.

A bank may establish an internal networking referral system with its trust division, or an affiliated registered investment advisor or broker. Alternatively, a bank may enter a third party brokerage arrangement with a licensed investment advisor or broker. In either circumstance, a finder fee may be paid to the bank, as well as to a bank employee to promote consumer access to valuable financial services.

Congress has acted to preserve this critical public banking resource by enactment of the “bank exception” to broker licensing requirements for third party brokerage arrangements under 15 USC 78c(a)(4)(B). The law and implementing regulations establish appropriate disclosures, requirements and limits to assure that customers are informed regarding the relationship, to clearly identify and distinguish the provider of investment services, and to provide parameters for fair and reasonable compensation.

Networking and “finder” relationships are common in the financial services industry and so long as the broker or registered investment advisor is subject to the fiduciary rule or acting under the best interest contract exemption consumers will have the benefit of a valuable referral as well as the opportunity to obtain the services of a financial professional under the applicable standards for retirement investment and rollover advice.

Summary and Draft Exceptions

Attorneys who have reviewed the fiduciary rule and underlying statutes have opined that a bank does not provide investment advice when the bank offers a deposit product, or processes a retirement plan rollover to a deposit IRA, or provides a network referral to a customer seeking retirement plan investment services. The MBA and our members simply request that these exceptions be expressly stated to prudently curtail regulatory and litigation risks.

Specifically, the MBA requests that two express exemptions be added to 29 CFR section 2510.3-21(c) as additional paragraphs (c)(4) and (c)(5). Section 2510.3-21(c) would be revised to referenced additional paragraph numbers (4) and (5). The new paragraphs could read as follows:

(4) Bank deposits. The provision of any advice that is limited to IRA or HSA bank deposits and fund rollovers to an IRA or HSA bank deposit provided by a bank as defined in section 202 of the Investment Advisers Act or similar institution that is regulated and supervised and subject to periodic examination by a State or Federal agency: or

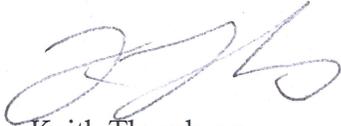
(5) Bank referrals. The provision of a referral including referrals under a third party brokerage arrangement by a bank as defined in section 202 of the Investment Advisers Act of 1940 or similar institution that is regulated and supervised and subject to periodic examination by a State or Federal agency.

The MBA thanks you for this opportunity to reduce regulatory burden and costs to our customers and to preserve traditional banking services and relationships.

Sincerely,



Max Cook
President and CEO
Missouri Bankers Association



Keith Thornburg
General Counsel
Missouri Bankers Association