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General Comment

The Department of Labor ("DOL") fiduciary rule Regulation (the "Reg.") was adopted to vitiate the arbitration clauses insisted on by most securities brokers and thereby legalize extortion by trial lawyers. It is a tax on IRAs and other small retirement plans for the benefit of the trial bar. The Reg. does not pass the smell test. The Reg. is inconsistent with the Federal Arbitration Act (9 U.S.C. Sec. 2 et seq.) which favors arbitration of commercial disputes and generally prohibits Federal agencies from restricting the use of arbitration.
Historically, "qualified" employee benefit plans were regulated by the IRS, with their investment practices regulated by the SEC and the common law applicable to plan fiduciaries. The DOL was given jurisdiction over employee benefit plans in 1974 because a significant number are collectively bargained and bargaining can include negotiating over specific language. Until the Obama Administration, no one ever thought the DOL had jurisdiction over IRAs.
So two immediate actions the DOL should take are (1) to exempt from the Reg. any employee benefit plan not collectively bargained and (2) to exempt from it any employee benefit plan having fewer than 5 active participants.
Brokers are salesmen ("Customers' men"), not fiduciaries. Holding a stockbroker or insurance broker to the same standard as a professional trustee or professional investment advisor is inconsistent with the statutory framework of ERISA which specifically defines a plan's fiduciaries as those named in the plan, 29 U.S.C. Sec. 1102, or a person to whom fiduciary

duties are delegated in writing by a named fiduciary. Regulations imposing an inappropriate standard on salesmen will raise the administrative costs for those self-directed plans which neither want nor need the investment advice of a fiduciary; those costs under the Reg. will be wasted or redirected into the pockets of trial lawyers.

ERISA also mandates an appeals process for claims arising under employee benefit plans. That process must b exhausted before a lawsuit can be filed. But the Reg. deliberately eviscerates this requirement by enabling class actions.

The basic scheme of ERISA has worked well for more than 40 years. It ain't broke, so it don't need fixin'.

Besides granting the temporary relief described above, the DOL should ultimately revoke the Reg. as being inconsistent with the law it purports to interpret and because increasing the cost of administering small retirement plans to enrich the trial bar is atrocious public policy.