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Office of Exemption Determinations
Employee Benefit Security Administration (Attention: D-11933)
U.S. Department of Labor
200 Constitution Avenue, NW, Suite 400
Washington DC 20210

Re: RIN 1210-AB82 (Request for Information Regarding Fiduciary Rule and Prohibited Transactions)

Ladies and Gentlemen:

Thank you for the opportunity to respond to your Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (“RFI”). Specifically, I would like to respond to Question 13.

Background

I have been involved in the securities industry for over 23 years, including being a registered representative, investment advisor, and consultant in securities litigations. For the past 13 years, I have worked in a consulting capacity for plaintiffs, defendants, and regulators as part of my securities litigation business. I have also been trained by FINRA in its Certified Regulatory and Compliance Professional program.¹

I feel that my industry and consulting experience gives me unique insight into the current regulatory environment and the broad issues before the Department of Labor regarding the fiduciary rule.

Question 13 – Disclosure Requirements

In the RFI, Question 13 asks:²

Are there ways to simplify the BIC Exemption disclosures or to focus the investor’s attention on a few key issues, subject to more complete disclosure upon request? For example, would it be helpful for the Department to develop a simple up-front model disclosure that alerts the retirement investor to the fiduciary

¹ For more information about myself and my firm, please visit: www.accelerant.biz.

² Federal Register; Vol. 82, No. 128; July 6, 2017; Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions; 31280.



Page 2 of 2

nature of the relationship, compensation structure, and potential sources of conflicts of interest, and invites the investor to obtain additional information from a designated source at the firm? The Department would welcome the submission of any model disclosures that could serve this purpose.

My answer to this is “No”. The reason is that while disclosure is necessary, it is not sufficient to protect investors.

Investments have become exponentially more complex over the past 40 years, however, investors understanding of them has remained relatively unmoved.

I have written a white paper on the phenomenon of investment complexity and the lack of investor understanding (attached).³ In this paper, I have undertaken empirical analyses of investment disclosure documents in order to measure their complexity. Because of the typical disclosure document’s length, number of defined terms, tortured syntax, and bad layout, they are virtually unreadable and incomprehensible to the lay investor.

While I approve of disclosure and believe simplifying parts of disclosure is beneficial, the entire framework puts the burden of understanding investments on the party with (in most cases) no understanding of them.

Thus, I believe the Department would be wrong to attempt “to focus the investor’s attention on a few key issues” regarding investment-related disclosures. The current BIC Exemption requirements of an affirmative representation that the advisor is acting as a fiduciary and that the recommended investment is in the client’s best interest is sufficient.

It puts the burden of understanding investments where it should be, with the expert.

Please feel free to contact me if you have any questions.

Sincerely yours,

John J. Duval, Jr.
Managing Member

³ Complexity Risk – A new risk category; Jack Duval; June 9, 2014. Available at: <http://blog.accelerant.biz/complexity-risk-white-paper>.