ADVISORS EXCEL

Office of Exemption Determinations
Employee Benefits Security Administration, (Attention: D-11850)
U.S. Department of Labor
200 Constitution Avenue N.W. Suite 400
Washington, DC 20210

Re: ZRIN: 1210-ZA25; PTE 84-24

To whom it may concern:

Advisors Excel, LLC ("Advisors Excel") thanks you for the opportunity to comment on the Department of Labor's ("DOL") proposed Conflict of Interest Rule ("Fiduciary Rule") and the proposed modified Prohibited Transaction Exemption (PTE) 84-24. We appreciate the DOL's willingness to engage industry stakeholders in an effort to develop a workable regulation that protects the interests of consumers while maintaining the vital role that financial advisors serve in helping clients achieve their retirement and financial goals.

Background

Advisors Excel is an independent marketing organization ("IMO") based in Topeka, Kansas, and was established in 2004 on simple founding principles that culminate with the guiding doctrine of always doing the right thing. Advisors Excel partners with approximately 700 core independent financial advisors nationwide. As an independent organization, Advisors Excel works with a large number of carriers offering numerous products, which allows Advisors Excel to be carrier/product neutral. This in turn allows our advisors to develop financial plans utilizing the appropriate product for their clients while offering choices across a wide spectrum of products and carriers. Accordingly, we believe this independence and the ability of our advisors to seek out the best solution for each client, regardless of product or carrier, meshes well with the DOL's intention of providing conflict-free advice to clients. Below are points we would ask the DOL to take into account when promulgating the final rule.

The advisors we work with are small business owners who work every day to help their clients achieve and maintain financial safety and security. While we applaud the intent behind the Department's current proposal, we have concern that additional requirements placed on the independent agents and advisors we work with will place an unreasonable burden on them and, consequently, their ability to serve their clients. We sincerely hope the Department takes the legitimate concerns of these small business owners into consideration as it formulates balanced disclosure requirements that properly inform consumers of the material issues concerning their investments without overburdening those who work to assist them.

Please note, we concur with many of the concerns outlined in the Indexed Annuity Leadership Council's ("IALC") July 20, 2015, comment letter and, in the interest of brevity, will not revisit each of the points laid out in the IALC comments. In general, we believe it is important that a final rule address many of the technical issues the comment letter raises and believe the recommendations offered would make the final rule more feasible in application. In particular we urge the Department to: (1) adopt a workable definition of "commission"; (2) develop a viable method in how compensation is disclosed; (3) offer clearer guidance on what is meant by "reasonable compensation"; and (4) provide a realistic timeframe for implementation before the new rules become effective. Our concern with not addressing the above issues is that the unintended consequences of the rule could create confusion and inhibit the valuable service that financial advisors play in helping their clients make the best decisions around their investments.

Fixed Annuity Product Benefits

Employers are moving away from defined benefit plans, and the reality that Social Security alone is not a long-term retirement solution for most Americans is becoming readily apparent. Consequently, consumers need a product available to provide financial security throughout retirement. Utilized properly as part of an overall financial plan, fixed annuity products (including fixed indexed annuities) provide consumers with a tool to manage longevity concerns while providing income guarantees for life and protecting principal (which cannot decrease) critical to their ongoing financial stability. Further, due to their structure, the downside risk associated with other financial products, which may hamper consumers' ability to recover if market losses are suffered, is not present with a fixed annuity product. The risk of market losses with fixed products are borne by the insurance carrier, not the consumer. Accordingly, fixed annuities provide the benefits of steady income that cannot be outlived, principal protection and insulation from market volatility — factors that are not present with other financial products. Thus, fixed annuities further the DOL goal of providing financial security for life for retirees without the risk of loss.

Compensation Basis

As an insurance product, compensation for fixed annuity products is usually paid as a one-time commission paid directly by the carrier; not the consumer, although some carriers pay a similar amount of commission, but spread it over a multi-year period (usually three years). Conversely, fees on other investment products are charged on an annual basis and paid directly by the consumer, regardless of the performance of the investment. In addition, such fees are normally directly charged to the consumer. Accordingly, we believe a commission paid upfront by an insurance company on a guaranteed product, as opposed to a perpetual annual fee charged to the consumer, usually will be more beneficial to the client.

We also believe the standard upfront insurance commission is substantially less than the annual charge on a fee-based investment when looking at just the first 10 years. Given the amount of work a producer devotes to working with a client, explaining options and product features, undertaking the state-required suitability analysis and working on his or her client's behalf to help make the best financial decisions possible, the standard commission is, in fact, reasonable compensation.

Current Regulatory System

The current National Association of Insurance Commissioners ("NAIC") regulatory system under which fixed products are governed works well, and efforts to minimize disruption to this system should be a high priority in this rule-making process. A recent NAIC report[1] indicates as of Aug. 24, 2015, states have reported a total of 3,994 life insurance and annuity complaints nationwide out of a total of 68,592 total complaints reported to insurance departments across all lines of insurance. Of those complaints reported for 2015, 318 were attributed to annuities, with 52 of those complaints specifically tied to "equity indexed" annuities -- less than 0.08 percent of all complaints. Similarly, of the 6,927 complaints filed in relation to life insurance and annuity sales in 2014 out of a total of 97,546 complaints across all lines of insurance that year, 546 were attributed to annuities, with only 98 being specific to "equity indexed" annuities -- approximately 0.1 percent of all complaints. Further, industry data estimates, in 2011, there was one complaint filed for every 10,000 fixed indexed annuities sold.[2]

This data clearly indicates consumers as a whole are not dissatisfied with the purchase and performance of their fixed annuity products. While we agree that the protection of consumers in their retirement planning is paramount, we would caution the DOL to ensure this proposed rule does not place barriers to access in front of consumers simply for the purpose of alleviating a problem that does not exist.

Conclusion

We would strongly urge the DOL to take caution in developing the final rule to account for unintended consequences. Numerous comment letters and panelists during the public hearing indicated this rule, if not properly modified, will have a detrimental effect on middle-class Americans and may result in the loss of their access to investment advice, and our concern is that loss of advice can cost the consumer far more in the value of their assets than whatever market compensation they pay. We would hope the DOL would rely

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[1] National Association of Insurance Commissioners. August 24, 2015. "Closed Confirmed Consumer Complaints by Coverage Type As of August 24, 2015." https://eapps.naic.org/documents/cis_aggregate_complaints_by_coverage_types.pdf. Accessed Sept. 9, 2015.

[2] Advantage Compendium. April 2012. 'NAFA E-PENDIUM.' Volume 1, Number 9. http://nafa.com/wp/wp-content/uploads/2012/04/20120413-ePendium.pdf. Accessed Sept. 9, 2015.

heavily upon the opinions of the individuals who work every day in the industry as opposed to developing rules in a vacuum and placing the burden of dealing with the consequences on the middle-class Americans the DOL has purported to protect. We appreciate the hard work the Department has put into developing the proposed rule and related PTEs. We would be happy to provide any additional information or answer any questions you have.

With Best Regards,

David Callanan
Founder

Derek Thompson
Founder

Cody Foster
Founder