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Definition of the Term ‘‘Fiduciary’’; Conflict of Interest Rule—Retirement Investment Advice; Notice of proposed rulemaking and withdrawal of previous proposed rule.

Comment On: EBSA-2010-0050-0204
Definition of the Term Fiduciary; Conflict of Interest Rule- Retirement Investment Advice

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Submitter Information

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General Comment

To: EBSA, ORI-EBSA
Subject: RIN 1210-AB32, Zrin 1210-ZA25 BIC Exemption Proposal

In the Fiduciary Proposal, the Department issued a new proposed regulation that significantly expands the types of conduct that will cause a person or entity to be considered a "fiduciary" for purposes of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the prohibited transaction provisions of the Internal Revenue Code of 1986, as amended. In the BIC Exemption Proposal, the Department issued a new proposed prohibited transaction class exemption entitled the "Best Interest Contract Exemption" that is intended to permit certain transactions between a fiduciary and an ERISA plan or individual retirement account (an "IRA"). The BIC Exemption Proposal would permit certain "Advisers," "Financial Institutions," and their affiliates and related entities to receive compensation for services provided to "Retirement Investors" in connection with a purchase, sale or holding of an "Asset" by a Plan, participant or beneficiary account, or IRA, as a result of the Adviser's and Financial Institution's advice. For this purpose, "Asset" is defined as bank deposits, CDs, shares or interests in registered investment companies (mutual funds), bank collective funds, insurance company separate accounts, exchange-traded REITs, exchange-traded funds, corporate bonds offered pursuant to a registration statement under the Securities Act of 1933, agency debt securities, U.S. Treasury securities, insurance and annuity contracts (both securities and non-securities), guaranteed investment contracts, and exchange-traded equity securities.
The definition of "Asset" specifically excludes any equity security that is a put, call, straddle or other option to buy an equity security from or sell an equity security to another without being bound to do so.
Recommendation:
The definition of "Asset" should be revised in the final version of the BCI Exemption Proposal to include include exchange traded options.

Any investor that takes the time to learn the proper use of options uses them to reduce risk and grow their retirement account. I have invested for thirty years and have been a self directed investor for the last fifteen years. Exchange traded options are the most consistently profitable lowest risk investment vehicle I have found. Do not take away the retirement investors right to use every investment tool at our disposal to grow our retirement savings.

Thank you,
Concerned Investor