



M Financial Group™

August 5, 2020

The Office of Exemption Determinations
Employee Benefits Security Administration
Attention: Application No. D-12011
Suite 400
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Submitted Electronically via Federal eRulemaking Portal: www.regulations.gov

Re: Application No. D-12011, ZRIN 1210-ZA29 – Improving Investment Advice for Workers and Retirees

Ladies and Gentlemen,

Thank you for the opportunity to submit our comments. As you are aware, in addition to our commitment to offering high quality qualified retirement planning solutions M Financial offers an array of non-qualified solutions for retirement investors looking for options or flexibility superior to what is offered in their employer-sponsored plan. These may include retirement annuities offering guaranteed cash flows or death benefits beyond those offered within the employer-sponsored plan.

M Financial applauds the DOL's efforts to reconcile its earlier Impartial Conduct Standards with the SEC's Best Interest rules. Our challenge is that while the DOL's efforts are laudable, it hasn't taken the simpler approach of recognizing that any financial professional conforming to the SEC's Best Interest Standards in recommending a rollover and retirement solution, already offers sufficient protection to the retirement investor.

We express concern that instead the DOL is in effect opting to create a parallel standard to deal with retirement investors. This will create additional investor confusion and organizational complexity. Since investors ultimately bear the costs of this additional complexity, we strongly encourage the DOL to instead champion the investor and formally recognize the enhanced protections now afforded to all investors as a result of the SEC's efforts.

We also express concern over the reversal of the DOL's 2005 guidance about when an investment professional is considered an Investment Fiduciary. The rule making and comment process, along with adoption periods are created to allow companies and the public to provide feedback and adapt to proposed changes. The DOL's use of an immediate reversal of prior guidance, without opportunity to comment or time to adapt, imposes unnecessary costs on firms and is inconsistent with the rulemaking framework.



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When comparing the SEC's Best Interest rule against the DOL's proposed exemption, we note the following:

- 1) Under the DOL's proposal, it appears likely that representatives seeking to support the retiree by offering ongoing service would need to declare himself/herself a fiduciary. To comply with the SEC rule, we already declare that we act in the investor's best interest. This will confuse clients and add complexity to firm operations. We encourage the DOL to eliminate the necessity of this declaration.
- 2) In complying with the SEC's Best Interest Rules, many combined broker/dealers and RIAs memorialized for clients that absent an agreement with the firm for ongoing advisory service, that accounts would not be monitored. Similarly, as many annuities could be framed as "complex" under the DOL guidance, the DOL suggests that ongoing monitoring may be required. It will be difficult to reconcile these two standards when working with retirement investors and commission-based products. To that end, we encourage eliminating the "complex" standard, or at minimum carving out of the "complex" standard commercially available annuity and life insurance products.
- 3) The SEC with its Best Interest rule balanced conflict mitigation by requiring the elimination of certain conflicts and the disclosure or mitigation of others. The DOL with its proposed exemption would require firms to revisit those decisions and potentially approach conflict mitigation differently for dealing with rollovers. This is both redundant to the framework created by the SEC and the DOL has not identified any reason why the existing conflict disclosure/mitigation framework is inadequate to protect the public. The bifurcated conflict mitigation strategy that would result from trying to meet both the SEC Best Interest rule and the DOL's proposed exemption would add additional costs, confuse investors, and isn't necessary given the additional protections already in place at firms as a result of the existing SEC rule. We encourage the DOL to harmonize its conflict recognition and mitigation strategies with the SEC Regulation Best Interest verbiage, or to recognize a safe harbor for firms that have eliminated or mitigated conflicts consistent with the SEC Regulation Best Interest.
- 4) Within the DOL's preamble, it speaks to creating the flexibility for firms to use proprietary products and meet the exemption. However, M Financial believes that the DOL should issue explicit guidance around use of proprietary solutions that are designed specifically to be in the best interest of a class of persons.

Respectfully,

M Financial