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Definition of an Investment Advice Fiduciary

Comment On: EBSA-2023-0014-0001
Retirement Security Rule: Definition of an Investment Advice Fiduciary

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Submitter Information

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General Comment

Changing the Definition has implications beyond the simple change and I do not believe you have fully considered them..

Because of my comments to SEC Reg. S7-25-19, my public servants are aware that they have failed in their fiduciary duty regarding updating Social Security's funeral payments and that this failure can be partially and maybe fully corrected using variable life insurance which contains stock market investments.
Further benefits are: a national debt solution, starting retirement at birth, reducing Medicare and Medicaid entitlement costs, increased medical research funding, increased investment participation for all Americans, increased Social Security retirement payments, provide economic stimulus to the States/municipalities during pandemic(s), increased financial services diversity and compliance, and satisfy the Black Lives matter situation. Tacit Congressional approval exists.
Additionally, Social Security is potentially biased against females (50% of our population) and variable life insurance could simultaneously rectify this bias. The bias occurs because the average person works for 45 years (20 to 65). Social Security computes their benefits based on an individual’s best 35-year work history.
The average female has 2.3 children, and she is under societal, familial, and personal pressure/desires to raise children. As she does this; childcare duties risk impacting her 35-year work history by adding multiple zero(s) into her Social Security work benefit

average. Hence, her retirement amount could be reduced for doing what all parties want her to do. This reduction is further potentially expanded and compounded as the "caregiver role" for aging parents historically falls to females.

Since our population is 50% female, how can we remediate this disparity for our population's majority? Original Social Security has a provision ($255) to pay for funerals and funerals are paid using life insurance. Since females live longer, her life insurance premiums are cheaper. Further, cash value life insurance is convertible to an annuity which could supplement her Social Security benefit shortfall.

Life insurance funding already exists because Social Security taxes are a percentage of wages. When the minimum wage increased, the tax revenue increased even though the rate remained constant. Like college savings plans, life insurance premiums can contain stock market investments. Additionally, fifty-nine percent (59%) of Americans want this investment to happen because they realize the stock market is the world's largest wealth generator. It is noteworthy our enemies (Russians, Chinese, etc.) invest for their retirement, but Social Security cannot.

From the above, it is evident that there are implications well beyond the the simple Definition of An Investment Advice Fiduciary. Implications that DOL has not demonstrated it has considered, allowed for or had the authority/ability to control implementation.. However, several other authorities including but not limited to members of the Administration's own Congressional party, regulators, lobbyists have asked for further time to properly examine these aspects before they are foisted upon the American people without due and thorough consideration.

In my 40+ years of dealing with DOL, I have had occasion to point out where DOL was ill considered in employing its authority including: 1. breaking ERISA preemption twice (Medicaid paid before union benefits and Medical Child Support orders did not apply to plans) and 2. More recently, Secretary Perez's regulation which, as proposed, could have resulted in up to 1/3 of an individual's entire retirement account going to taxes BEFORE they started retirement.

In part, this occurred because DOL did not listen and careers of rising stars were truncated. Considering the public history, there is guilt by association for bad ideas. Having found this regulation similarly situated. I recommend it be withdrawn for further review/consideration.

Respectfully,

Ted Earl

Attachments

SEC Comment

Perez

P.O. Box 0036
Middle Haddam, CT 06456
February 3, 2020

Chairman Jay Clayton
Securities Exchange Commission
SEC Headquarters
100 F Street, NE
Washington, DC 20549

Re: Personal Public Comment Accessing Private Securities for Small Individual Investors
S7-25-19

Dear Chairman Clayton,

As a licensed financial fiduciary who would assume accredited investor responsibility under this proposal, I find it only partially achieves its universal intent and overlooks significant client benefits - forcing me to personally comment in my clients' best interest even though it may be detrimental for me.

The Commission agrees that access to these investments is beneficial but some Commissioners are concerned – not without justification – that unsophisticated investors may be harmed. The challenge is to implement a system that satisfies both aims for all Americans. To achieve this, one must evaluate seeming unrelated events, rationales and methodologies that when combined provide a solution.

Implementation - Ask ourselves what program includes all Americans? Social Security. Before anyone says "bankruptcy", examine the program. Social Security has two components: a monthly annuity check and group life insurance. The 1930's cash life insurance ($255) was added by Frances Perkin's (FDR's female Secretary of Labor) to close the wealth gap and has never been updated by Congress.

Because the $255 group life insurance does not reduce the current wealth gap, it needs to be updated and the updates must be dynamic to account for inflation. Since group life insurance requires updating and inflation protection, variable universal life insurance offers the update's needed features. Its stock market investments' historical trend – before your proposed, long-term private securities inclusion - is to increase at an average three times the rate of inflation. Its investment strategy could replicate the bi-partisan (twice approved) 529 investment plans. Further, unlike 529 plans whose investment compounding is for 20 years, this update could compound investments for 60-70 or more years.

Why? Any regulation must conform with the client's Best Interest. So, when is the best time to buy Social Security's group life insurance that protects the client's best interest? The best and cheapest time to obtain coverage is to buy life insurance at birth and include a disability waiver of premium rider. The policy's face value must balance the child's best interest and still increase to accommodate future needs. Therefore, Social Security's group child policy could start at $10,000 and automatically increase to $50,000 at age of majority.

Since the government (Social Security) cannot treat individuals' opportunities differently, the adult's group policy face value is tentatively established at $50,000. However, the $50,000 can be significantly increased by selecting prudent investments and compounding (e.g. your private securities).

How? The IRS requires that as the cash value approaches the face value of the policy, the policy's payout must increase without a premium increase. Therefore, when compounded over decades, prudent investment could cause the policy's value to attain hundreds of thousands or millions of dollars.

Since life insurance companies and Social Security are accredited investors, Commissioners' concern that unsophisticated investors could be harmed is mitigated because investments would be scrutinized before making an offering by two accredited investors.

The use of group life insurance is supported by Congress. In 2008, Congress examined group life insurance and concluded *all parties benefited*. Therefore, Congress has tacitly sanctioned this update. Private conversations indicate insurers' interest but inability for one company to assume the entire group's risk. Economists have also shown interest.

Ancillary Supportive Rationales and Benefits – Besides enriching *all* Americans through compounded market investments from birth (currently about 54% are invested), updating one Social Security component has positive societal benefits and ramifications well beyond private securities access.

According to the IRS, life insurance creates instant wealth for Americans' estates. Further, our Federal Reserve allows banks to own cash value life insurance (BOLI) as an asset. Therefore, $50,000 times 300 million people converts to a $15 Trillion government asset – before any investment growth.

Since some Commissioners are concerned about small investor protections, life insurance is required to be fully funded. Therefore, borrowing from these funds must be done at market rates to ensure the group life insurance's financial integrity.

Medicare costs would be reduced and medical research funds increased: With private life insurers incurring potentially large payouts, life insurers have a compelling profit incentive to reduce their losses by investing in research, medications and procedures enabling Americans to live longer healthier lives. Our entire society lives longer and healthier when health research is funded by a financially at-risk party who has incentive to also increase their profits by reducing internal life insurance policy costs.

Medicaid reductions: In addition to aforementioned health care costs' reductions, Medicaid's eligibility is reduced because Social Security's updated life insurance produces assets, income and/or proceeds making people ineligible. Further, existing life insurance policies can apportion their assets to pay for long term care insurance - a significant Medicaid savings.

Social Security's retirement income increased: When one reaches retirement, their life insurance is converted (tax free) to a market-based annuity supplementing Social Security's income. So, for couples when a spouse dies, the survivor has three sources of Social Security income (the higher of the couples' Social Security, and their two compounding, market-based life insurance annuities.)

Increasing Diversity and Compliance – While the industry desires to increase minority and female representation, inexperienced agents - no matter how smart - are not selected by experienced wealthier clients to manage their money. Additionally, I have observed that new agents starve for the lack of meaningful, interested, and well-funded leads. When agents cannot make money to pay their bills, individuals leave. (Only about 5% are left after 5 years.) Recruitment/training is costly. Also, starving agents create a potential breeding ground for shady sales practices that hurt our industry's reputation.

Under this proposal, young agents would tap about 2.7 million leads per year of individuals approximately their own age funded by taxes. Younger individuals receive professional management and agents survive while they develop their practices.

Politics: By recognizing life insurance, albeit a 1930's version, already exists in Social Security and needs to be "updated", Democrats' objection that one is "changing" Social Security evaporates. Further, Democrats characterize themselves as Social Security's' defenders but the life insurance's history belies their claim.

Separately, Congressman Larson has proposed additional taxes to make Social Security's annuity solvent for 75 years and trumpets that his proposal received actuarial approval. Strangely, he discusses the monthly annuity's impact but ignores updating Social Security's life insurance which he publicly acknowledged exists. Both particularly curious and damning is Mr. Larson used to run an insurance agency. Therefore, he should fully understand all the above benefits for Americans and that these benefits are achievable with less funding because life insurance leverages money. Unfortunately, Mr. Larson is a politician who has no fiduciary responsibility so this glaring omission by a public servant is left for me to cite. Separately, several of Mr. Larson's' Democratic colleagues (e.g. Mr. Kennedy et. al.) bemoan the demise of the "middle class" which could be substantially fortified by Social Security's updated life insurance. Perhaps a potential explanation is a Democrats' survey, conducted by Rosa DeLauro's husband, that finds as people get richer; they do not vote Democratic. Hence, their party would lose political power – especially in the contentious 2020 election by approving Social Security's life insurance update. Additionally, when I wrote Senator Warren about this idea (FOIA the letter), she ceased talking about the "wealth gap" and Mr. Obama wanted to tax 529 plans.

Republicans fare little better. Wall Street Journal has cited how President Trump has used financial services expertise as his "weapon of choice" to obtain foreign policy concessions. However, he has refused/failed to use this identical expertise on Social Security life insurance for the benefit of all Americans. Since each party wants the political power – especially with minority and women voters, who will work in Americans' best interest?

This proposed update has received actuarial evaluation. In 1996, I asked Austin Rinella who was Chief of the New York State Insurance Department's Life and Health Division to review this concept because of both he and his Department had experience with my solving seemingly insurmountable problems. Their review confirmed this was actuarially sound. Further, even though their review was 25 years ago, the Nation's population increase would, under the Law of Large Numbers, only serve to reaffirm this finding.

As the above could be market moving, I am publishing this comment on your website so no one gains an advantage.

Finally, I realize this is beyond your intent. Yet, Americans' "best interest" is.

Respectfully,

Ted Earl

A political/public administration perspective reveals a potentially less flattering picture of the motives/actions leading to DOL's modifications.

DOL assumption was the our industry was not acting in the best interest of investors – especially smaller ones - and DOL knew "best" how to protect the American people.

Hence, as the article states, after years of study, they marshalled the President and Secretary Perez to announce and politically support their efforts. Their heralded implementing vehicle for accomplishing this was the "best interest contract (BIC)".

BIC's design had a fatal design flaw. As proposed, their BIC could strip the smaller and less wealthy client of the transfer advice they currently received for "free" AND expose a client's *entire* retirement to 20-25% Federal income tax as <u>they began retirement</u>! How was the client's best interest – much less the American public's – protected and served by DOL's regulation?

Since less wealthy clients are potential voters who most likely vote Democratic, any individual/constituent potentially losing 20-25% of their entire retirement through DOL's rule was political suicide for Congress' reelection chances. Seeing this plausible scenario, Congress – including Democrats - rebelled against Secretary Perez. Fidelity's' Jim Johnson reported 250 letters went to the Secretary from Congress. Further, Congressman John Larson, formerly the 4th ranking Democrat under Pelosi and who ran his own insurance agency, proposed repealing legislation until he saw the final version.

The potential political fallout had Democrats fighting Democrats over a heralded regulatory solution that was now radioactive. Further, in public administration, you can delegate authority but you cannot delegate responsibility. Therefore, the President's responsibility for this failure brings the blame to directly him unless someone else assumes it; enter Secretary Perez. As the article points out, Secretary Perez suddenly became more reasonable and accommodating. He has even stated for other articles that the industry should be happy with the changes he made and not continue to sue because they have no legal standing.

Why state this? Secretary Perez created a potential election year disaster for Democrats. As lawsuits serve to remind people, he would like people to forget his role as soon as possible. (Separately, he was reportedly mentioned as a VP candidate for Ms. Clinton and this cannot reflect positively.)

The President's DOL regulation demands we act in a client's retirement best interest at all times and Social Security is part of the client's retirement. Therefore, how can we legally support the government's Social Security program that threatens to use current income to pay claims (Ponzi scheme)? Since this requirement has been imposed on us, we can act in our clients' best interest by exposing these shortcomings during this election year.

Experience teaches that all Ponzi schemes have one characteristic; they go belly up with disastrous results for our clients.