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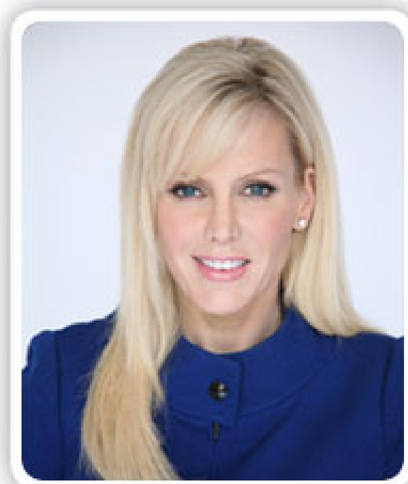
- **What's To Become of the Fiduciary Rule?**

Last week, the U.S. House passed legislation to prevent the Department of Labor (DOL) from approving a regulation that would apply new investment advice standards to retirement accounts. The DOL's rule would require those who provide investment advice to retirement plans and IRA accountholders under the Employee Retirement Income Security Act to act in their clients' best interests. That is, all providers of retirement advice would have to adhere to a fiduciary standard and put their clients' best interests ahead of their own profits when making investment recommendations. Proponents of the House bill believe the DOL's proposed fiduciary rule would increase regulatory costs for financial firms and discourage advisors from working with lower-income clients. Instead of allowing the DOL to establish regulations for providers of retirement advice, the House wants to wait for the Securities and Exchange Commission (SEC) to issue a final rule that would apply to all retail investment advice, not just advice on retirement plans.



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In my view, it is difficult to understand how anyone could disagree with the DOL's proposed fiduciary rule. Both the Obama administration and opponents of the House's current bill have pointed out that the DOL's fiduciary rule would help to ensure that consumers receive conflict-free financial advice. They view the House's bill, which would force the SEC to act first, as nothing more than a stall tactic. Interestingly, the House passed similar legislation in 2013, but the Senate chose not to move the bill forward.

But why did the DOL step into the fiduciary fray to begin with? It might surprise you to learn that we've been waiting for more than five years for the SEC to pass a fiduciary rule. In the summer of 2010, Congress' passage of the Dodd-Frank Act gave the SEC power to enact new regulatory standards for investment advice, but so far the agency has not set any new regulations. And over these last five years, debate has raged on. This August, hearings in Washington, D.C. extended over four days. In "Three Takeaways from the DOL Fiduciary Rule Hearings," Bill Cass reports that 75 participants provided testimony in a series of 25 panel discussions. Participants included broker-dealer firms, asset managers, insurance companies, retirement providers, consumer groups such as the AARP, academic institutions, and industry organizations such as the Investment Company Institute and the Securities Industry and Financial Markets Association. And, prior to the hearings, more than 2,500 comments were submitted for consideration during an extensive comment period.

Linda Rittenhouse, director of capital markets policy at the CFA Institute, commented after the hearings wrapped up, "It's hard to remember a regulatory proposal that has generated such polarization among factions within and outside of the industry. Broker-dealers, consumer groups, trade associations, public interest bodies, and members of Congress have firmly camped out in their corners, exchanging often vitriolic assessments of the proposal's worth."

Today, brokerage firms continue to pull out all the stops to thwart any meaningful reform. Their somewhat disingenuous message remains that new regulations will increase compliance and record-keeping requirements. This will result in small accounts being dropped as firms deem that the extra costs involved to service those clients would cut too far into their profits. Of course, I would point out that the UK's Financial Conduct Authority has concluded that the 2012 implementation of its Retail Distribution Review, which actually goes as far as to ban commission fee models altogether, has not resulted in consumers being abandoned by their financial advisors.

I'd further argue that these vocal U.S. brokerage firms are primarily concerned with protecting their own profits rather than worrying about the fate of small investors. Remember, the brokerage industry must currently adhere only to a "suitability standard," which gives consumers of financial advice much less protection than the fiduciary stand that governs registered investment advisors like me. Brokers are bound only to recommend investments that are "suitable," but not necessarily in their clients' best interests.

Rittenhouse has wisely summarized the brokerage industry's unspoken bottom line as "conflicted advice is better than no advice at all." Seeing no end to the battle, she concludes that, depending on who you ask, the DOL's proposed rule is either a "welcomed and much-needed change to protect investors in the retirement arena from conflicted advice or is sounding the death knell for smaller investors to receive *any* advice at all in the future because brokers with commission-based models will remove themselves from that market."

I'd summarize my belief in the necessity for a universal fiduciary standard this way: Like the oath doctors take to do no harm, the foundation for all investment advice should be that all financial advisors are required by law to put clients' interests first. Nothing is more fundamental to a trusting relationship. While details of the DOL proposal will likely be finessed, its adoption would be an important step in protecting investors. It's my hope that one day soon the SEC will put an end to all the industry's sound and fury and enact fiduciary regulations that clearly and always put investors first.

Stay Diversified, Stay the Course!

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