CFA Institute

915 East High Street
Charlottesville, VA
22902-4868 USA

+1 (434) 951 5499 tel
+1 (434) 951 5262 fax
info@cfainstitute.org
www.cfainstitute.org

24 September 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Definition of the Term "Fiduciary;" Conflict of Interest Rule—Retirement Investment Advice (RIN 1210-AB32)

Dear Sir or Madam:

CFA Institute[1] appreciates the opportunity to provide additional comments to the Department of Labor (DOL) on its proposed rulemaking to define "fiduciary" (the "Rule") for purposes of the Employee Retirement Income Security Act ("ERISA") and the Internal Revenue Code ("IRC"). These comments are supplemental to those in our comment letter submitted on 20 July 2015. CFA Institute represents the views of those investment professionals who are its members before standard setters, regulatory authorities, and legislative bodies worldwide on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and on issues that affect the efficiency, integrity and accountability of global financial markets.

The purpose of these supplemental comments is to offer additional views on the likelihood that, if implemented, the DOL Rule would deprive investors of needed investment advice. As discussed in our previous letter and testimony, we believe that the advisory industry, with the benefit of advances in technology, will be able to meet the needs of investors and fill whatever temporary void is created in the provision of advice for clients with small amounts of assets under management ("AUM), should certain current providers discontinue their services.

Many respondents to the Rule have based their objections on assertions that there was an "exodus" of advisers in the U.K. after implementation of the Financial Conduct Authority's Retail Distribution Review (RDR) in late 2012. This has been cited as proof that the DOL's Rule would create a similar response from U.S. advisers, thus depriving smaller investors of access to retirement advice, as well. The departure of advice providers with commission-based business models in the U.K. is seen as an indication that high compliance costs stemming from the Rule

[1] CFA Institute is a global, not-for-profit professional association of more than 138,000 investment analysts, advisers, portfolio managers, and other investment professionals in 148 countries, of more than 131,000 hold the Chartered Financial Analyst® (CFA®) designation. The CFA Institute membership also includes 146 member societies in 71 countries and territories.

would leave smaller investors unable to afford the higher thresholds for investments required by fee-based providers.

We do not agree with this interpretation of what happened in the U.K. and, therefore, see the two circumstances as sufficiently different to prevent drawing conclusions from one to the other. The primary provisions of RDR were to eliminate commission-based transactions altogether, and impose enhanced transparency requirements on all advice providers. The elimination of commission-based transactions was not a part of the DOL proposal.

A report commissioned by the FCA (the "Report") in December 2014 – two years after implementation – suggests further that the effect of RDR on advice in the U.K. is not consistent with what has been stated by others. The Report considered investors in three groups: (1) those not looking for investment advice; (2) those making "value for money" decisions in light of the fact that they now know the "true cost of advice" and were reevaluating their needs; and (2) those who are affected by "firms moving to target higher wealth, higher margin consumers."

The first, unengaged group was found irrelevant to assessing any advice gap. With regard to the second group, the report concludes that "whether this group is a 'gap' is arguable" because its magnitude may have increased due to these investors' unwillingness to pay for the actual cost of advice,

The analysis found that even in the third group—those investors most affected by the fact that "some firms are segmenting their client books and focusing on wealthier customers"—"the number of consumers affected is generally small and likely to have been picked up by other adviser firms." Perhaps most importantly, the Report states with respect to this group:

> Advisers have capacity and have been taking on new clients. There is little evidence that consumers perceive themselves to have been abandoned by advisers. As this gap is likely to be small, to the extent there are firms willing to provide advice to lower wealth consumers, the market should be able to resolve this in time.

Over all, the report notes that "there is little evidence that the availability of advice has reduced significantly, with the majority of advisers still willing and able to take on more clients." To the degree that banks left the advice market, the Report questions a correlation with implementation of RDR and instead notes that banks' exits appear "driven by a combination of factors, including wider strategic considerations," including "declining profitability and regulatory failings."

Conclusion

We reiterate our support here for the DOL's efforts to ensure that clients' interests are put first and that they receive impartial investment advice. We also encourage the DOL, as it prepares to issue a final version of the Rule, to reduce the overall complexity of the Rule, and most importantly, of the Best Interest Contract Exemption in an effort to reduce compliance costs; to clarify the parameters of that Exemption (including when and how duties to comply first arise); to address in greater detail when legal liability will attach under the Exemption; and to address how to reduce investor confusion that will result from situations when advice providers under the

Rule (and thus operating under a best interest standard) also provide advice under a different standard to non-retirement accounts.

We support the raising of standards in the industry and increasing investor protection. As consumers and the investing public question the integrity of our financial markets, we believe that constructive efforts to advance measures to enhance the fairness and integrity of financial services are critical. To that end, we strongly encourage the DOL and SEC to convene a summit of stakeholders in Washington sometime in the next six month to either advance this proposal in a cooperative and forthright fashion, or to otherwise structure an alternate resolution.

Should you have any questions about our positions, please do not hesitate to contact Kurt N. Schacht, CFA at kurt.schacht@cfainstitute.org or 212.756.7728; or Linda Rittenhouse at linda.rittenhouse@cfainstitute.org or 434.951.5333.

Sincerely,

/s/ Kurt N. Schacht

Kurt N. Schacht, CFA
Managing Director, Standards and
Financial Market Integrity
CFA Institute

/s/ Linda Rittenhouse

Linda L. Rittenhouse
Director, Capital Markets Policy
CFA Institute