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Sent: Friday, July 10, 2015 4:03 PM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB32

KMS FINANCIAL SERVICES, INC. *

Mark Hamby, Chairman & CEO

TO: Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
U.S. Department of Labor
Washington, DC

RE: **Dept. of Labor's Proposed Retirement Investment Advice Conflict of Interest Rule**

Our firm has followed with interest the Department's efforts to bring additional regulatory guidance to the business of advising Americans on the investment of their retirement savings. We support the broad objective of enhancing the delivery and effectiveness of such services at all levels and for all retirement savers, which has been central to our business for decades. However, we believe that the sweep and complexity of the Department's proposal would actually tend to work *against* those larger interests and objectives.

This perspective draws from a time when Individual Retirement Accounts and participant-directed 401(k) plans were newly legislated novelties. Carrying the story of these vehicles and new opportunities to working Americans involved a lot of education and service for the possibility of modest compensation on inherently small investments. There were no large rollovers to contemplate and no sophisticated, highly automated 401(k) platforms to efficiently leverage professional expertise and guidance across hundreds or even thousands of employees.

But there was a growing opportunity in effectively encouraging Americans at all levels to save and invest, and in expanding and enhancing the facilities and choices by which they might do that. Financial services providers were incentivized to pursue that opportunity, which always carries the potential for conflict of interest. But it also represented, and continues to represent, a *confluence* of interests.

In recent years we have seen a considerable expansion of compliance and regulatory requirements, complexity, and cost. Meanwhile, competitive market forces have significantly reshaped service delivery and compensation models in favor of greater incentives to provide high levels of *ongoing* service and advice rather than transaction-driven salesmanship. The digital revolution and constructive regulatory engagement have accelerated these trends, enhancing cost transparency and service quality.

Still, we serve a very wide range of investors who display a wide range of preferences and relative sophistication in how they engage with financial service providers – brokers, asset managers, financial planners, insurance agents, etc. There is a legitimate need and demonstrated consumer desire for flexibility and choice within their primary retirement savings vehicles – especially IRAs. We believe the Department's proposals would ultimately constrict the range of those competing choices as well as the investment opportunities they can deliver. **The primary effects seem quite predictable:**

- Complicated and largely redundant disclosure and documentation requirements piled on top of that which is already provided (required), with investors becoming increasingly *unlikely* to read and absorb *any* of that information;
- A substantial increase in costs to serve investors with IRA rollovers, which would likely translate into higher costs and/or fewer choices for those who seek personalized, professional assistance with the critical rollover decision and process.
- Given the size of the IRA segment, a more generalized curtailing of choice in investment services and advice in favor of a few prescribed approaches designed *primarily* to insulate service providers against technical missteps or misinterpretations that could bring enforcement actions or litigation.

As others have noted, **the Department's proposal is overly prescriptive in effect.** From the current broad landscape of service models, it will drive services toward a levelized, ongoing wrap-fee format. Much of our business has migrated in that general direction over the past 30 years, but financial professionals still encounter many investors whose interests or preferences are not especially well-served – and certainly not cost-effectively served – by that approach. Another likely winner may be the do-it-yourself or robo-advised platforms that are designed to minimize or even preclude the interposition of personalized, professional advice and assistance.

If the Department's proposal is implemented, financial service providers will ultimately adjust to the higher compliance and regulatory costs, restrictions on compensation flexibility, and increased vulnerability to technical enforcement actions and class-action litigation. But it is hard to see how that adjustment will enhance access to personalized, professional advice and service, especially for middle-income retirement savers.

Respectfully,

Mark Hamby, Chairman & CEO
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