From: Doug Baxley [mailto:Doug.Baxley@ssnetwork.com]
Sent: Tuesday, July 21, 2015 9:52 AM
To: EBSA, E-ORI - EBSA
Subject: RIN 1210-AB32

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

RE: Department of Labor Definition of the Term Fiduciary and Retirement Investment Advice Conflict of Interest Rule Proposal

On April 20, 2015, the Department of Labor (DOL) published its proposed rule regarding retirement investment advice conflict of interest and the definition of the term fiduciary with regards to the Employee Retirement Income Security Act of 1974 (ERISA). The proposed rule would institute a broad new definition of the term "fiduciary" for the purposes of ERISA. Under this new proposed definition, an individual who provides investment advice or recommendations to an employee benefit plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner (collectively referred to as "Plans and IRAs") would be treated as a fiduciary in a wider array of advice relationships than under current requirements. This is a much more expansive definition and it will mean that more advisors will be considered fiduciaries when providing services to Plans and IRAs.

Securities Service Network, Inc. (SSN) appreciates the opportunity to comment on this important proposal. **SSN supports a carefully-crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients.** This standard of care should make it easier for investors to receive high-quality, individualized investment advice from a trusted advisor. Finally, new regulation should provide retail investors with a clear and easy to understand standard of care that is applicable to the entirety of the client's relationship with a trusted advisor.

About SSN

SSN is a fully disclosed independent contract model broker dealer (BD), and a wholly-owned subsidiary of Ladenburg Thalmann Financial Services, Inc. SSN is also the owner of an SEC registered investment adviser (RIA), SSN Advisory, Inc. (SSNAI). We do not manufacture any products, and our registered representatives are independent contractors. SSN has approximately 450 advisors who provide retail clients with products and services as registered representatives of the BD. In addition, approximately 80% of our advisors also provide advisory services through either SSNAI or a State or SEC registered RIA not otherwise affiliated with SSN or SSNAI. The ability to offer products and services through both the BD and an RIA provides our advisors with the flexibility to offer clients a broad array of options that can best meet their individual clients' needs.

Support for a Carefully-Crafted, Universal Fiduciary Standard of Care

We believe that there should be a uniform fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients. Additionally, a uniform fiduciary standard of care should be applicable to all financial advice provided to retail clients, not just advice regarding Plans and IRAs. Professionals should be required to do the following:

- Act in the best interest of the client;
- Provide advice with skill, care, and diligence based upon the individual needs of the client; and
- Disclose material conflicts of interest, avoid them when possible, and obtain informed client consent to act when conflicts cannot be reasonably avoided

General Concerns

The proposed rule will make it harder and more costly for clients to receive high-quality, individualized investment advice from a trusted advisor.

- Compliance with the rule, as proposed, will cause SSN to bear considerable initial and ongoing expense to comply with the disclosure requirements of the Best Interest Contract Exemption (BICE). This increased cost will likely be passed on to advisors through reduced payouts, which will in turn result in advisors reducing or eliminating services to clients with small account balances. Additionally, advisors will likely increase asset management fees for clients with larger account balances; thereby, increasing clients overall cost of receiving high-quality advice.

- As proposed, the grandfathering provision requires an advisor to meet the BICE requirement prior to providing additional advice to an existing Plan and IRA client. This may cause harm to existing clients. For example, in recent weeks the market experienced unusual volatility due to issues in Greece. Many of our advisors were contacted by phone by existing Plan and IRA clients with questions regarding allocations and holdings in their portfolios. Our advisors were able to provide their clients with timely recommendations during those phone calls. As proposed under the grandfathering provision of the BICE, an advisor will not be able to provide this same timely advice to a client. Rather, the advisor will have to wait to provide the advice until such time as a contract has been delivered to the client and executed. During periods of higher volatility, this delay will cause clients to bear losses to which they would not have otherwise been exposed.

- By not including certain products, such as Real Estate Investment Trusts and Business Development Companies in the definition of "Asset," the proposed rule will limit client access to products that provide for greater portfolio diversification. This limitation will expose clients to increased portfolio volatility. These products may be in the best interest of the client; however, an advisor may not be able to recommend them because they are not included as defined "Assets" in the proposed rule.

The proposed rule will create confusion for retail investors and make it harder for them to understand the standard of care applicable to their relationship with a trusted advisor.

- Under our current regulatory structure, retail investors have to understand two standards of care; (1) the suitability standard under FINRA rules governing BDs, and (2) the fiduciary standard under rules governing RIAs. Under the proposed rule, retail investors will have to understand multiple standards of care which will vary, not only by service, but by the account type as well. In the example below, a client has five different accounts, each subject to different, sometimes multiple, standards of care. Additionally, the fact that certain accounts are subject to BICE, whereas other accounts are not will create confusion for the client as to why a best interest standard is applicable to certain accounts and not applicable to others. A uniform fiduciary standard of care applicable to all accounts will not create this level of complexity and confusion.

<u>Single Client with Multiple Accounts Example</u>

1. Commission based IRA account - subject to ERISA fiduciary, BICE, and FINRA suitability
2. A commission based individual account - subject to FINRA suitability
3. A discretionary advisory IRA account - subject to ERISA fiduciary, PTE 86-128, and RIA fiduciary
4. Non-discretionary advisory IRA – subject to ERISA fiduciary, BICE, and RIA fiduciary
5. Discretionary advisory individual account – subject to RIA fiduciary

Should the Department continue to move forward with a proposal that is applicable only to Plans and IRAs, BICE should not be limited only to non-discretionary advice arrangements. If firms are able to meet the requirements of BICE for non-discretionary advice, those same disclosures, policies and procedures, compensation models, etc. should be able to be applied equally to discretionary advice. This step alone will decrease the complexity and confusion for retail investors, and will reduce compliance costs for firms, and ultimately, cost to clients for personalized investment advice.

<u>Support for Alternative Uniform Fiduciary Standard Proposed by Financial Services Institute</u>

As a member of the Financial Services Institute (FSI), SSN fully supports the alternative uniform fiduciary standard proposed in FSIs comment letter on this matter. We believe that this alternative uniform fiduciary standard, which will be applicable to all investment professionals and all types of accounts, makes it easier for investors to receive high-quality, individualized investment advice from a trusted advisor, and provides retail investors with a clear and easy to understand standard of care.

Thank you for considering SSN's comments. Should you have any questions, please contact me at (800)-264-5499.

Respectfully,

Doug Baxley | Assistant Vice President, Compliance
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