

July 21, 2015

Office of Regulations and Interpretations  
Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Re: Conflict of Interest Rule, RIN 1210-AB32  
Proposed Best Interest Contract Exemption, ZRIN: 1210-ZA25

Ladies and Gentlemen:

I would like to address a number of the issues that have come up during the discussion of the Department of Labor's proposed Conflict of Interest Rule.

### **Importance of "Best Interest"**

The "broker" paradigm is a sales-oriented business model. Brokers are salespeople who are incented to recommend those financial products that make the most money for them and their firm. Often, they work from a "grid" specifying different amounts they are paid for selling different products. This necessarily results in conflicted advice and suboptimal investment strategies.

The "advisory" paradigm is an advice-oriented business model. Because true advisors are paid on a fee-only basis, they are incented to provide the best and unbiased advice – they are not paid different compensation for putting their customers in different investment products. In the vast majority of cases, true advisors do not accept hidden or backend compensation from the purveyors of investment products. (In the few instances in which they do, they are required to disclose these arrangements in public filings and to provide those filings to their customers both before and after the customer engages them.)

It is essential that consumers receive unbiased financial advice when setting up their long-term investment plans – particularly those investments designed to meet their needs in retirement such as invested in 401k, 403b and IRA accounts. Advice that is not in the customer's best interest is not really advice at all...it's sales.

### **Inadequacy of Alternative Approaches**

Current regulatory structures do not adequately protect consumers. Despite broad access to true advisors and consistent growth in the percentage of consumers adopting this approach, the majority of consumers still get their investment guidance from traditional or online brokers who are not working under a fiduciary or "best interest" standard.

Alternative definitions of the best interest standard proposed by industry groups are not sufficiently comprehensive to ensure that consumers consistently receive service that is truly in their best interest.

And the well-established Registered Investment Advisor regulatory framework administered by the Securities and Exchange Commission is not likely to be applied consistently to brokers or to 401k accounts in the near future. Industry groups have been opposed to such expansion for years.

### **Impact on Consumers**

Financial advice from unconflicted advisors is key to creating a secure retirement. For most families, sufficient savings, safe diversified investments and low-cost services are the three important drivers of long-term financial success.

The good news is that three powerful trends in the investment industry are converging to dramatically improve the solutions available to all consumers. The first is the evolution of the industry from the brokerage model to the advisory model. The second is the transition from high-cost active investing to low-cost index investing. And the third is the increased use of electronic delivery of financial advice and investment management.

The acceleration of these trends – and particularly the fiduciary standard – to retirement accounts as envisioned in DOL’s proposed rules, will provide a very significant improvement to the retirement prospects of millions of Americans. This is vital not just for individual families, but also for the country as a whole. The problem of underfunded retirement needs is the largest looming financial crisis that we face.

### **Impact on Current Providers**

Can current providers deliver advice that is in the best interest of their customers?  
Unequivocally yes.

Traditional brokers have very profitable business models that can be adopted to and enhanced by a commitment to the needs of their customers. I do not believe any major financial institutions will withdraw from this large and lucrative market.

Existing RIAs already offer their services under a fiduciary standard, and will continue to do so. Indeed, the fact that their competitors have not operated under such a requirement has created an unfair competitive disadvantage that can be resolved when all participants compete on a level playing field.

And new entrants who utilize computers and connectivity to offer better service with wider access at a lower cost will benefit from a uniform fiduciary standard for retirement accounts. This will also spur the adoption of easy-to-use consumer technology by large traditional participants as well.

## **Solutions from Emerging Providers**

A number of new providers using consumer technology and online connectivity to deliver financial advice and/or investment management have emerged in recent years. Among them is my firm, Personal Capital.

These providers are all true advisors, rather than brokers, who operate under a fiduciary standard today. And they offer greater access to and often lower costs than traditional providers, making unconflicted retirement advice more broadly available than it ever has been.

Personal Capital, for example, offers electronic gathering of the data from all of a consumer's financial accounts, one-click analytics, and powerful advice-generating tools – all for free to everyone. Our Retirement Planner provides sophisticated long-term forecasts using Monte Carlo simulations and easy customization to each family's situation and needs. This feature is far more comprehensive than the financial advice that consumers are typically receiving today, and it is completely free.

## **Access for Various Consumer Segments**

As one would expect, electronically-driven solutions are highly valued by the younger generation of people who have grown up with online tools. However, we find the highest usage among people between 30-60 years of age, who typically have more accounts (our average customer has 15 accounts), lead more complex financial lives, and are more focused on their retirement goals.

In addition, we see significant usage among families in which the head of household is already retired. Most retirees who have been in the workforce within the past decade are conversant with email and electronic tools and use the Internet extensively in their daily lives. In addition, if an individual is not comfortable using online tools themselves, our financial planning feature can be used along with assistance from someone else – a family member, a friend, or our own financial advisors. One way or another, comprehensive financial advice is now available to just about everyone, for free.

## **Summary Comments**

For too long, Americans who are saving for retirement have been losing money because of the brokerage model. These savers need the protections that this rule will provide. I urge the Department of Labor to finalize and implement this rule as soon as possible.

Respectfully submitted,

Bill Harris, Founder and CEO of Personal Capital