

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

July 27, 2016

By email

Re: RIN 1210-AB32 Comment on Proposed Conflict of Interest Rule

To whomsoever it may concern:

Watson Wilkins & Brown, LLC, is a registered investment advisor serving high net worth individuals, businesses, and trusts.

We believe your concern with the matter at hand is appropriate, important, and much overdue. We have reviewed various comments submitted on your web site (<http://www.dol.gov/ebsa/regs/cmt-1210-AB32-2.html>) and our comments follow.

Broker-dealers provide valuable services generally pertaining to the execution of sales & trading of securities, market making, and otherwise providing liquidity and financial intermediation. Registered Investment Advisors, meaning those registered with the SEC or appropriate state authorities as 'registered investment advisors', provide investment advice & related services to clients typically in the form of financial planning, portfolio design or investment management.

The distinction in essence is reflected in the difference between the two questions:

"Will you sell (or buy) this security to (from) me and at what price?"

"Is it in my best interest to sell (or buy) this security?"

Our experience confirms the broad confusion of the investing public over the distinctions between

- the suitability standard that attaches to broker-dealers
- the fiduciary duties that attach to a registered investment advisors and
- the vast no man's land in between

Much of this confusion has been generated by overly complex regulation which allows for significant overlaps, ambiguity, and a reliance on excessively complex, hyper-technical rules that are generally not accessible to the investing public. We believe much of it manufactured by parties with vested interests in regulatory capture.

Most clients understand the general notion of fiduciary duty. Most clients of broker dealers or insurance companies **do not understand when fiduciary duties do not attach** to various activities and products often of similar form, intent, and content.

Reference is made to the [comments of MarketCounsel](#) of July 21, 2015, which is excerpted below. It accurately describes the phenomena, and they are to be commended for their efforts.

the shift of retirement assets from defined benefit plans to participant-directed plans and self-directed IRAs has resulted in an increased number of retail investors seeking expert assistance to manage their assets. At the same time, an increasing number of institutions, including brokers and insurance agents, have entered into the marketplace to offer a wide range of investment advisory services, often holding themselves out to the public as "**wealth managers,**" "**financial advisors**" or "**financial planners,**" regardless of their actual legal status. **Yet, under the Department's current regulations and practices, many such institutions are not being regulated as fiduciaries and therefore are not being held to ERISA's fiduciary standards of prudence and loyalty despite entering into a relationship of trust with clients by rendering investment advice. Such circumstances have also created confusion among investors as to what they should expect from their financial service providers...**

Yet, for years, brokers who have rendered investment advice that is not solely incidental to the conduct of their brokerage business have been allowed to hold themselves out as investment advisers and to operate in the adviser arena despite not registering as investment advisers and becoming subject to the Advisers Act's regulations. This practice has contributed significantly to investor confusion...

Consumers are confused because a review of the activities provided by advisers and brokers are often identical. In furtherance of this confusion, the Department is proposing extending the definition of "fiduciary" to include many brokers. The proposal is years in the making and countless hours have been spent by the Department and all sides of the securities industry in debating the topic. MarketCounsel respectfully submits

that more rules will lead to more confusion. Quite simply, if the SEC would limit the “solely incidental” exemption from adviser registration to those broker-dealers that were truly only providing incidental advice, most confusion would come to a sudden end. Those providing investment advice would be fiduciaries, and those merely selling securities would not.

Here is a simple question. Why do none of the major financial institutions present themselves as broker-dealers? Instead we see the brand jargon of ‘financial advisors’, ‘private bankers’, ‘financial planners’, or ‘wealth managers’. The answer is that they prefer to perpetuate the confusion, and monetize the illusion that they are operating with the fiduciary obligations of a registered investment advisor when in fact they are not. How better to monetize the opportunity of a large client base than to have them erroneously believe a fiduciary standard is at work when in fact a suitability standard attaches?

So, how does Watson Wilkins & Brown, LLC, manage this problem? Our model is simple & clear. We thought we’d share it because our clients are not confused. We want them to understand the difference. We insist on it.

- we have no economic interest in the execution of any trade, transaction, commission, or sale of any particular financial product or brand: we want no part of that model.
- we do not pay referral fees. We do not compromise the integrity of our relationships with our clients
- we do not offer or recommend investment products with loads, 12b-1 fees, or termination fees.
- we do not offer or recommend ‘wrap’ accounts, hedge funds, or private equity
- we do not provide legal or tax advice and nothing in the course of our activities shall be so construed. We encourage our clients to seek advice from competent professionals, and we are happy to work with them. We rely on guidance from tax & legal advisors to address issues that may arise.
- we do not provide advice or transactional services for insurance policies or annuities. We do provide general guidance on broad matters of risk management; however, we do not sell or facilitate the sale of insurance policies or annuities, nor do we review policy documents or compare specific provisions of different policies.
- we do not purport to provide perfect solutions because there are none. We do try to provide sensible solutions that reflect our best judgment as to the right balance of risk and return as constrained by scarcity.

The problem is that existing regulation and practice has not produced clarity, higher quality service, or more competent or diligent service for investors, it has created confusion.

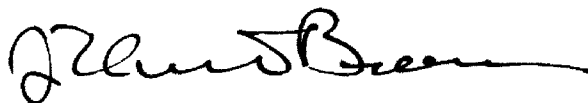
Our recommendations:

1. We agree with Department of Labor’s functional approach to eliminating the coverage gap by conferring fiduciary status based on the type of advisory services offered by a

- person or institution, as opposed to the legal status of such person or institution, which has nothing to do with investor protection.
2. We agree that brokers and other institutions that solely engage in exempt activities, such as order taking and execution, market making, etc. need not be subject to ERISA's fiduciary standards because they are not rendering investment advice to customers.
 3. The Department of Labor cannot solve this problem without SEC co-ordination and sensible enforcement of the Investment Advisors Act. As MarketCounsel points out, "Section 206 of the Advisers Act subjects all investment advisers, whether registered or not, to statutory fiduciary duties requiring them to seek their clients' best interests and to manage and disclose material conflicts of interest. Such fiduciary duties also apply to brokers engaging in the business of providing investment advice for compensation unless such investment advice is provided "solely incidental to" their brokerage business. ***Yet, for years, brokers who have rendered investment advice that is not solely incidental to the conduct of their brokerage business have been allowed to hold themselves out as investment advisers and to operate in the adviser arena despite not registering as investment advisers and becoming subject to the Advisers Act's regulations.***"
 4. Keep it simple: disclosure needs dramatic improvement and simplification. It's hard to have an informed consumer making informed decisions when the actual disclosure is written in unfathomable jargon, 8 point fonts, and provisos everywhere. Insist on plain English and short disclosure.
 5. Lastly, we agree again with MarketCounsel in that, "Quite simply, if the SEC would limit the "solely incidental" exemption from adviser registration to those broker-dealers that were truly only providing incidental advice, most confusion would come to a sudden end. Those providing investment advice would be fiduciaries, and those merely selling securities would not."

The industry is going to change and it should. The question is whether the customers will have a clue as to the actual meaning of the surviving regulation. You cannot legislate or regulate greed or ignorance out of existence, nor should you try, but you can and should make the terms of the deal very clear.

Sincerely,



J Hunter Brown
Founder, Managing Member, and CCO