

## Good Intentions, Lousy Execution

The Department of Labor's projected fiduciary policy has the intention to help smaller investors save and get professional help. But the DOL's staff didn't do their homework.

Everyone in the financial industry believes we need to put the needs of our clients ahead of our own interests. Besides the ethical reasons, we know that when you treat clients well, they make referrals and stay with you.

For those that violate this ethic, we have are monitored and regulated by FINRA, the SEC and the states.

Recently I went to Washington DC to speak with my US Senator and two members of Congress-a liberal black Democratic and a conservative Republican. Both did their homework. Their conclusion was that the DOL policy was wrong headed.

I asked the Senator I met with to request answers from the DOL to questions which follows this essay.

DOL's approach will harm small investors who most need professional help. It will make it legally risky to deal with small accounts unless they pay a fee, rather than commissions. Clients will pay more and get less.

The "fiduciary standard" would mean that firms could no longer sell bonds from their own inventory or preferred stock as IPO's. For bonds, this will likely increase spreads by several points since the volume for fixed income volume will shrink. This will happen in the preferred stock IPO market where the issuer, not the client, pays the fees. Fiduciary standards forbid IPO's.

My point of view is from 40 years in the industry. My partner- an 18 year veteran- and I manage some \$600 million in assets. Barron's named me as one of the 1200 top US brokers in 2014 and 2015.

Do we only work with the rich? No, we have over 183 clients who have less than \$25,000 in IRA's; 109 of those folks have not paid us commissions in the last 12 months. Before taking an order for a new client with young children, we insure they have a will or guardianship letter and term life insurance.

The DOL's rules for "allowing" commissions requires a yearly contract, written justification(s) on buys & sells, and piles of unneeded paperwork. This leaves advisors open to law suits and reduces our ability to serve large numbers of clients. Frankly, some of my best sell calls were instinctive.

The DOL takes away a client's freedom of choice, limits what can be invested, and how a trade will be paid for. If a client holds long term, why is a yearly fee suitable? If a client wants concentrated positions or cash, the "fiduciary standard" does not allow it.

Our commissions often are far less than fee based accounts. Why must the client pay more and be limited on what he or she can do!

Many investors do not have the inclination, skills or time to make investment decisions. They need guidance, not only for investments, but for budgets, how to help an ailing parent, a child's education, the buying of a home, and the protection of their children. We charge only for investments but our other advice is valuable.

To make it perfectly clear, this poorly thought out DOL policy will make me more money. Lots of it! We should thank the DOL. But the policy is plain wrong. It harms the rich and the poor. My opposition to this explains why I traveled to DC on my own dime to speak to my representatives.

I am not an opponent of President Obama. I supported him with donations, and door to door campaigning. But the DOL's policy on fiduciary standards illustrates how good intentions without an understanding of how an industry operates will lead to unintentional consequences.

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1. Fixed Income, especially corporate bonds and preferred stock, but including mortgage backed bonds and pass-through securities, government securities and taxable muni bonds have markets created by individual market makers. Under the "fiduciary" rules, clients cannot buy from the inventory created by the firm they are using.

What will be the incentive for firms to risk their capital to make markets in fixed income? Will spreads on bonds of 3 to 4 points occur (as they did in the 2008 crash when market makers went out of business or had less capital to risk?) There is already much discussion about the lack of liquidity in the fixed income markets due to some of the Dodd Frank rules being implemented.

2. Clients ask advice from their brokers but often keep large amounts of capital liquid. The Fiduciary standards require that clients be "fully invested", that is with only 10 to 12% in cash. Will this standard be changed?
3. Other clients want to use passive investments strategies such as laddered bonds. Should they be charged a yearly fee that presents no value to them?
4. Many clients are not paying a yearly fee (or any commissions) because their investment is good or because they can exchange at no cost within their family of mutual funds. Why should they pay a yearly fee?
5. Many large accounts pay very low commissions. How will the DOL handle those accounts being shifted into fee based accounts where their fees might four fold?
6. How does the DOL plan to monitor exempt accounts where some trades are solicited and others are not?
7. Exchange Traded Funds (ETF)'s and index funds increase volatility by matching massive buys and sells. We saw what this can do with volatility when the Dow Jones Industrial plummeted 1000 points. If the DOL forces investors into these types of funds, will volatility be increased?
8. Some investors believe that individual stock choices with small companies are excellent investments, yet these companies are not usually found in indexes or most mutual funds. Why should clients be excluded from investing with these companies?
9. How is the question of freedom to choose by client investors being addressed? Will the government be regulating fees, commissions, what investments can be bought or sold?
10. Some investors use annuities in their retirement accounts. How will the DOL address the use of these vehicles? (Note: many variable annuities guarantee a return on investments if annuitized.)

11. Has the DOL calculated the increase of cost to the public with the use of fee, rather than commission business?
12. With fee business, an investment professional needs to make or change investments to justify the fee. Has the DOL considered that this will lead to unnecessary transactions instead of long term investing?

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