

DOL RULE BANNING CONFLICTED-ADVICE EMBRACED BY ATTORNEYS WHO HAVE REPRESENTED TENS OF THOUSANDS OF INVESTORS

Fiduciary Rule Seen as Vital to Protect Investors Bound for Retirement Years; Industry Promoted Investor Confusion Cited, Fidelity “Compromise” Opposed.

WASHINGTON, D.C. – September 25, 2015 – Should the U.S. Department of Labor (DOL) fail to move ahead with a strong fiduciary rule “investors will continue to be harmed by this conflicted advice,” according to a comment letter filed today by New Orleans attorney Joseph Peiffer, the president of the Public Investors Arbitration Bar Association (PIABA). The PIABA comment letter is available online at <https://piaba.org/piaba-newsroom/piaba-comment-letter-definition-term-fiduciary>.

In his comments, Peiffer notes: “Members of PIABA represent investors who have received flawed investment advice from brokers and investment advisers, frequently in connection with their retirement savings. Our members have represented tens of thousands of investors who have been harmed by conflicted investment advice, which is often subject to FINRA’s suitability standard.”

Peiffer has represented more than 500 investors who have been victims of conflicted advice from brokers.

Dismissing suggestions that the DOL rule curbing conflicted advice may create confusion, Peiffer writes: “In fact, the industry’s conduct feeds into the confusion. Individuals with whom customers are interacting are calling themselves, ‘Financial Advisor,’ ‘Wealth Management Specialist,’ and ‘Vice-President of Investments,’ furthering investor confusion. Brokers do not call themselves ‘brokers’ or ‘salespersons.’”

The PIABA comment letter continues: “More than three out of four investors don’t understand that the current laws and rules may impose different duties on brokers and investment advisers, according to a 2010 survey conducted for the Consumer Federation of America (CFA), AARP, the Investment Adviser Association, the Financial Planning Association, the CFP Board, the North American Securities Administrators Association (NASAA), and the National Association of Personal Financial Advisors. A 2015 study confirmed that most retail investors think their financial advisor – regardless of which type of advisor it is – is a fiduciary. The industry is well-aware of the confusion. In a survey open to all brokers, investment advisers, and insurance consultants and producers, 97 percent of them said ‘investors don’t understand the differences between brokers and investment advisers.’ This confusion will be addressed to some degree by requiring financial advisors to conform to the standard to which investors believe they are already held. The Department’s rule proposal is the first step in that direction.”

In the comments, PIABA opposes a “compromise” put forward by Fidelity: “Several commenters suggested that investors should just receive greater disclosure. For example, Fidelity suggested replacing the Best Interest Contract with a three point disclosure that provides information about the scope of an advisor’s services, the compensation payable to the advisor for the types of investment options the advisor might recommend, as well as any other material conflicts of interest, and a link to a website where an investor may obtain more detailed information about the cost of and compensation to related to any recommended investments. Fidelity’s suggestion ignores the fundamental nature of a client’s relationship with his or her broker: one of trust. Clients do not believe they have to negotiate with their brokers to receive solid advice, nor do they think their brokers are trying to squeeze every last bit of compensation from their accounts. Simply put, clients do not think their brokers are lying to them and that it is the client’s job to find the lies. PIABA does not believe that Fidelity’s suggested disclosures are the right solution to the problems investors face today.”

The comment letter continues: “Providing greater disclosure does not appropriately mitigate the conflicts of interest inherent in the relationship between financial advisors and customers. It

places the burden on the customers to fully understand the impact of those conflicts on the future of their retirement savings. However, the financial advisors have held themselves out to be professionals, to offer guidance to investors on important, life decisions. They should accept the responsibility that comes with the profession and with the trust they have sought to earn by managing the life savings of an individual. “

ABOUT PIABA

The Public Investors Arbitration Bar Association is an international, not-for-profit, voluntary bar association of lawyers who represent investors in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect those investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights. For more information, go to <http://www.piaba.org>.

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