

## PUBLIC COMMENTS ON SEC BEST INTEREST RULE

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The DOL uses a meat ax to kill a fly. The SEC uses a feather to put a raging fire out!

Neither is addressing the problem of protecting the public from unethical brokers and fee only advisors.

No one disagrees that the interests of clients always come first.

But there are easier, better steps that can be taken to handle the problem.

First, use technology to identify when investments are inappropriate. Most wire and regional houses use a trade surveillance trade blotter. This is very effective. For smaller advisors, use a centralized system that FINRA or another non-governmental organization can operate and have smaller advisors pay for surveillance.

Second, require that anyone receiving fees or commissions for advice be regulated. Currently there are exceptions which lead to misadventure. I offer a real life example below.

Third, require full and understandable disclosure of fees and/or commissions. Some no load products have fees attached. Examples are illiquid real estate partnerships and back end loads for annuities. Importantly, make the disclosure obvious. Do not bury it.

Fourth, understand the basic truth about the investing public. A large part of the public are ignorant of risk or the complexity of investing. This has little to do with levels of education and more to do with psychology. Doctors, lawyers, government officials, business owners and professors are in this category as well as waitresses, factory workers and teachers.

I estimate fully a third of investors fall into this category, with another 10% too busy to invest properly. My economist friends- many who work in government tell me that the first group is over 50%

The Milwaukee Journal Sentinel published my editorial "Unintended Consequences of Labor Department's Fiduciary Rule" on October 28, 2015. I wrote it as a futurist and as a professional in the industry. Sadly, my predictions proved true.

The DOL rules were written by inexperienced folks who, while well intended, did not understand really what we do. The DOL staff approached their rule making like a finance committee looking at a big budget. They cut the budget for paper clips but cannot

understand bigger dollar items. Thus they focused on fees and commissions and costs, which are a small part of investing.

The brokerage industry prepared for the DOL rules as they were law. The threat of wild card class action law suits was a strong motivation.

Because of this, many brokers converted their books to fee only. They meant more cost to the client (especially if you were a low cost broker) and less time to spend with clients because of the massive paperwork required by the DOL. We needed to add another staff member to handle this paperwork.

A short time ago, a 92 year of widow called to ask if I might review her portfolio. She was uncomfortable with it. As she knew several of my good clients (and I had known her late husband), I agreed to review her portfolios. I told her that my partner and I were not accepting new clients.

The lady drove to my office and showed me her \$400,000 portfolio. She has no understanding of money or investments. Her husband had handled everything.

Her portfolio consisted of 65% in a single speculative foreign stock; her IRA had lost almost \$60,000 from risky stocks. She had two ETF's in biotech stocks, which are risky and against her religious beliefs, which her advisor knew.

My partner and I decided to help the lady. I suggested she sell several investments at her current relationship. She questioned my suggestion saying that I would not be paid. I told her that the point was that she should be out of these risky investments. I did not care if I was paid.

This lady will never file a complaint. Never.

No one watched what her advisor was doing because the person "managing" this elderly widow's account was an "exempt reporting advisor." I suspect that other mishandling of accounts comes from these non-regulated advisors. Yet they are too small to oversee. The SEC and FINRA cannot generate revenue through fines as they extract from the larger firms. When Willie Sutton was asked why he robbed banks, he replied that that was where the money was. The SEC & FINRA agree!

Our Compliance Officer asked me about an account I held. A widow in her 90's had a portfolio with only two equities. These investments came from her late son, whose outside estate consisted of other investments. The widow has no investment experience. Her other son has Power of Attorney. He is also the sole beneficiary of his mother's estate. I understood this prior to the Compliance Officer's inquiry.

Why did the Compliance Officer contact me? It was because our firm's technology had flagged the account.

The SEC, FINRA and the DOL ought to require that every account use this form of surveillance. This technology would be cheaper and more effective than the present DOL rules.

Performance is in the eye of the beholder, but portfolio design has more to it than beating an index. It has much to do about finding out what a client needs and creating a plan around that. Yet the DOL actually encourages portfolio turnover by demanding "activity" in fee based account. Long term holds often equate to great profits in my experience.

The SEC's proposed rules are lax and will do little to protect the weak and innocent.

Use technology to flag bad behavior. Insure that anyone dealing with the public is regulated. Give no exemptions.

The SEC believes that the broker dealer model differs from that of other investment advisors. I agree and second the principal that the client's interests come first.

But there needs to be a better way to oversee this and it not that of the DOL, nor that of the SEC.

I have been a broker for more than four decades. Barron's named me as one of the 1200 top brokers for the last five years. I do not judge clients or prospects by their wealth, but by our ability to help them. I only accept clients through referral.

These comments are mine, and mine along. They are not those of my firm.

Bob Chernow

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Copies to: Senator Baldwin, Senator Johnson, Congressmen Grothman, Sensenbrenner, and Moore

