
From: Gil Baumgarten
Sent: Monday, November 27, 2023 4:08 PM
To: Amy Kopleton <KopletonA@dca.njoag.gov>
Subject: [EXTERNAL] REG BI Comments

Ms. Kopleton-

As a forty-year veteran of the advice business, a former arbitrator for FINRA, and a former broker with a spotless compliance record, I have a panoramic view of the advice landscape. I spent 25 years as an advisor for UBS and Morgan Stanley and the last 13 years as a fee-only fiduciary. I am a ten-time honoree of BARRON'S Top 1200 advisor list, and am also a BARRON'S top-25 advisor in Texas among more than 26,000 registrants.

The SEC's singling out of advice on retirement accounts as involving "special risks" for investors is barking up the wrong tree. Advice on retirement plans is just one wheel in the advice cog. Investors deserve an understandable ecosystem, not adding special risks to advisors when advising on IRA's or qualified plan assets. Pursuing this path will pose a direct risk to investors from a shrinking number of advice choices, which will be riskiest to the least sophisticated investor with lowest asset values. Every dollar is important to investors regardless of whether that dollar is a retirement asset or not.

Further, calling Reg BI a "best interest standard" only gives fodder to advisors to spread even more confusion since Reg BI is not a best interest standard at all.

The real issue we should be focusing on is the co-existence of conflicted advice and best interest advice within the same relationship, or even the same advisor-client conversation. Investors are not sophisticated enough to distinguish minor shifts in the direction of the conversation when an advisor switches hats in mid-stream. It does not take much wordsmithing to convey language of trust and then insert high commission items in the recommended mix and still remain compliant. This issue exists within any firm that is dually registered as both a broker-dealer and RIA.

While it will surely create more of an industry backlash, go ahead and rip off the band aid by splitting the firms into separate parts (BD & Fiduciary) with separate rules being the only long-term solution. Otherwise we will be wrangling over a patchwork of less effective and irreconcilable rules for decades.

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