

# How An RIA Can Profit Off Of The New Fiduciary Rule

By Ary Rosenbaum, Esq.

When it comes to an industry, change is often fraught with trepidation and fear. However, I always believe that change also brings opportunity. So while people are predicting gloom and doom when discussing the Department of Labor's (DOL's) new fiduciary rule, I believe that it can be an opportunity for growth for registered investment advisors (RIAs) since they've been fiduciaries the moment they were hired by their first retirement plan client. This article is how RIAs can take advantage of the new Fiduciary Rule in a way to grow their retirement plan book of business.

## Life before the new rule

The old rule, which is the current rule in place until April 2017, created what I thought was an unfairness in the retirement plan marketplace. There were two sets of people, who could call themselves retirement plan financial advisors, but only one of them was required to serve as a fiduciary and that's an RIA. A broker who served as a retirement plan financial advisor owed no fiduciary duty to the plans they served and they could offer investment options that could net them a better fee while not having to

disclose any conflicts of interest, especially if they were pushing proprietary products belonging to their broker-dealer. So the old rule or the current rule (if you're reading this before April) had an unfair playing field where two sets of people called themselves a retirement plan financial advisor, but only one had to serve as a plan fiduciary and put the needs of the

plan sponsor client ahead of themselves.

## The new rule: a tale of two standards?

The old rule has been in effect since 1976 and that was at a time when 401(k) plans didn't even exist and Congress didn't have the foreseeability that the retirement plan industry (when it came to investment selections) could be riddled with so many conflicts of interest. A new fiduciary rule had been contemplated by the DOL for many

would somewhat water down the fiduciary standard so that brokers could serve in that role. When I read the new rule, I knew I was right. While brokers had to serve as plan fiduciaries under the new rule, they just had to show that they acted in the best interest of the client in order to meet the exemption of the new rule to avoid being labeled a prohibited transaction (we call that the BIC exemption and brokers would have to offer a best interest contract (BIC)). In a nod to how broker-dealers worked, the new rule still allowed brokers to offer proprietary products as investment options as well as different levels of compensation. So RIAs were screaming bloody murder because they thought that brokers got off lightly with the new rule. However, when you think how the brokerage industry really works especially since it's business is selling securities, you know that they didn't get off the hook because they would have to change the way they did business in order to meet the requirements of the new rule.

## The new rule is actually a marketing advantage

People will think that I'm crazy, but I think the kind of different standards

of the new fiduciary rule can actually be an advantage for the RIAs. The idea that brokers and RIAs are now both fiduciaries, but brokers can still charge different levels of fee and still sell proprietary products can actually be a marketing advantage of RIAs. This kind of different standard level between brokers and RIAs (best interest vs always putting client needs first) reminds me



of the old Hebrew National hotdog marketing. The old commercial featuring Uncle Sam spoke of how there was a standard of hotdog making in the United States that Hebrew National was exceeding because they had to answer to a higher authority because they were Kosher. No matter what the DOL says, an RIA still must meet a higher standard of care than a broker because under the new rule, they still charge a level fee and they don't push their



own proprietary product because they don't have one. I think an RIA who can communicate with plan sponsors about the new fiduciary rule and how as an RIA, they still have a higher standard of conduct to meet, will be able to show that their work is probably still in the better interest of the plan sponsor client. In my mind, the standard that RIAs and brokers must meet under the new rule still isn't equal because one group can still charge varying levels of compensation and still push their own proprietary product to get a better trail as long as they can show it was in the client's best interest. How can one determine what is in the client's best interest? When you find out, let me know. Actually future litigation or future DOL guidance will delineate what that best interest rule actually means. RIAs have the same standard of care and duty since the advent of RIAs while the brokers are late to the dance with a watered down standard for them to meet. I think that's a competitive advantage for the RIA to advertise.

#### **The problem of broker-dealer compliance with the new rule: outside legal counsel**

When I first read the rule and thought of the impact on brokers and broker-dealers, I didn't think it would have that much effect on broker-dealers. Sure, they would have to change how they would operate in recommending investment options, but I thought the sky wasn't going to fall on them. That's before I realized that many broker-dealers were relying on outside counsel, with many of the counsel outside not really understanding how brokers work with retirement plan clients. I find many outside counsel being just over cautious with how brokers operate

and saying something is a recommendation that might fall under a best interest contract when it really shouldn't. I base that opinion on the consulting work I've done for broker-dealers. I believe that many broker-dealers are unnecessarily going to suffer with the new rule. They are taking three steps back when they really should take one step forward. They are waving the white flag before the first shots are fired.

#### **Brokers are going to get rid of clients**

While many broker-dealers have decided to forsake commissions for their individual retirement account (IRA) clients and some will maintain the status quo, there are going to be some broker-dealers who don't want to be in the business of giving advice to IRA holders. That means there are going to be broker-dealers that may jettison all IRA clients or just the smaller account balances. So why should an RIA who works in the retirement plan business care? Well, IRA holders may own a business that sponsors a retirement plan. More importantly what may be among the IRA accounts that a broker-dealer may toss aside are SEP-IRAs and SIMPLE-IRAs, retirement plans that may actually cover employees. Also, self-directed brokerage accounts may be dropped by a broker-dealer who might be unsure whether the plan sponsor or the participant is the actual client. The mad dash to comply with the fiduciary rule may force broker-dealers to eliminate business just because they are unsure what they actually have and that's an opportunity for RIAs because these accountholders aren't likely to going to be able to fend for themselves. What better way to get clients by handling the accounts of broker-dealer clients that

are abandoned in some last second attempt to comply with the rule?

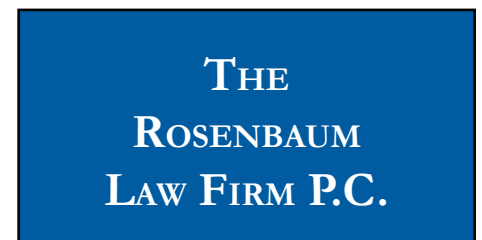
#### **Position yourself as the master of all plans**

The fiduciary rule is not only going to eliminate the conflicts of interests when it comes to investment selection and compensation, it's also going to go a long way making retirement plan advice to plan sponsors a specialty. This has been in the works for many years, but retirement plans are going to

be a specialty for financial advisors, so the dabbler broker who had one plan on the books is going to be a thing of the past. Use the fiduciary rule as a platform to showcase current and potential clients that you're a retirement plan expert. If you need help in rounding out your expertise, give me a call because the call is always free for advice.

#### **Keep doing what you're doing**

Fee based advice is becoming a bigger and bigger part of the retirement plan business. It's estimated that 40% of advice to plan sponsors is fee based. That means as an RIA, you are part of a growing business and the new fiduciary rule is going to make that 40% number larger and larger. So that means you should keep on doing what you're doing.



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