FINRA Sides with Brokers against DOL Proposal

By Kerry Pechter *Thu, Jul 30, 2015*

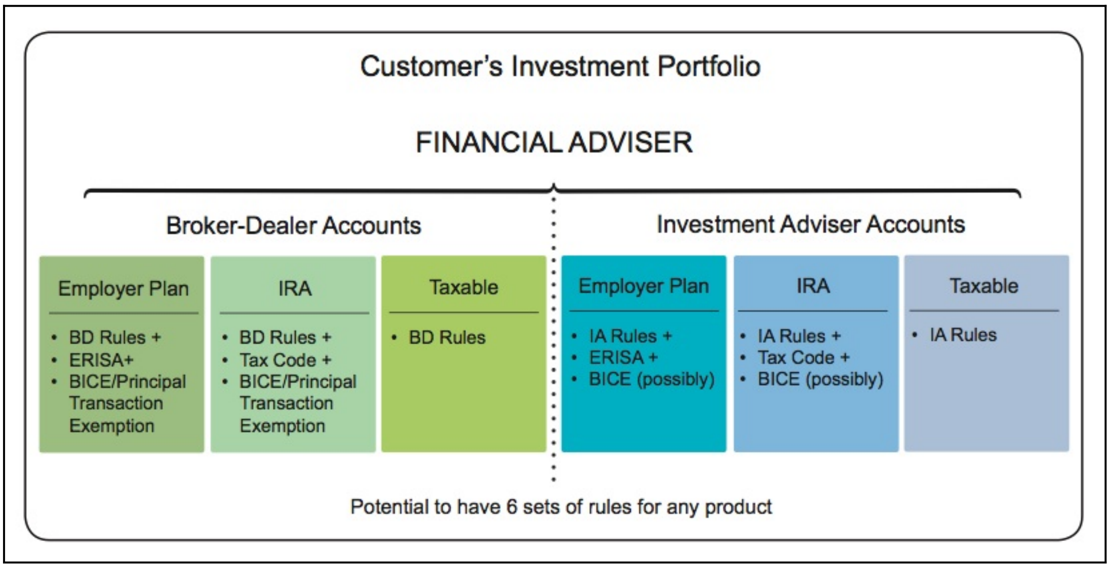
As it stands, the "fractured approach" of the Department of Labor conflict-of-interest proposal "will confuse retirement investors, financial institutions, and advisers," wrote FINRA executive Marcia Asquith in a comment on the DOL/EBSA website.

FINRA, the securities industry's in-house watchdog, is urging several changes in the Department of Labor's proposed "fiduciary rule" for retirement accounts, including a change that would create a single "best interest standard," based on current securities laws, for both retirement and non-retirement accounts.

The recommendation was one of several that FINRA (Financial Industry Regulatory Agency) made in a 21-page **letter** sent to the DOL on July 17 in response to the DOL's request for comments on the proposal. It is posted in the public comments section of the DOL's website.

Many of FINRA's recommendations are consistent with those made by other members of the industry that it both serves and polices. In its letter, FINRA asked the DoL to clarify its best interest standard, or "BICE," and to "harmonize" the standard of conduct for commission-paid brokers and fee-based advisors, in addition to harmonizing it for retirement and non-retirement accounts.

Otherwise, the proposal's "fractured approach will confuse retirement investors, financial institutions, and advisers," said the FINRA letter. The letter provided the chart below to show that the DOL proposal would create the potential for six different sets of rules for any product a financial advisor might offer:



FINRA also asked the DOL to eliminate the proposal's requirement that financial institutions maintain public web pages, updated at least quarterly that:

"show the direct and indirect material compensation payable to the Adviser, Financial Institution and any Affiliate for services provided in connection with each Asset (or, if uniform across a class of Assets, the class of Assets) that a plan, participant or beneficiary account, or an IRA, is able to purchase, hold, or sell through the Adviser or Financial Institution, and that a plan, participant or beneficiary account, or an IRA has purchased, held, or sold within the last 365 days, the source of the compensation, and how the compensation varies within and among Asset classes."

In addition, FINRA called for the limit that the DOL wants to place on the range of assets that financial institutions can sell to IRA owners. The current version of the proposal defines the permitted assets as:

"bank deposits, CDs, shares or interests in registered investment companies, bank collective funds, insurance company separate accounts, exchange-traded REITs, exchange-traded funds, corporate bonds…, insurance and annuity contracts (both securities and non-securities), guaranteed investment contracts, and equity securities" but not "any equity security that is a security future or a put, call, straddle, or any other option or privilege of buying an equity security from or selling an equity security to another without being bound to do so."