# Fidelity Testifies at DoL Hearing on the Fiduciary Rule

## Supports best-interest standard for investment advice

Ralph Derbyshire, Senior Vice President in the Fidelity Legal Department, testified on August 11 before the Department of Labor ("DoL") on the proposed regulation on the Fiduciary Rule.

Derbyshire reiterated that Fidelity fully supports a best-interest standard for investment advice, as articulated in the firm's previously submitted comment letter, but he stated that the rule as proposed is unworkable and would prevent firms like Fidelity from providing customers with the assistance they want and need in preparing for retirement.

As an alternative, he recommended to DoL representatives that they rethink the rule by separating out the sales process from the period after the advisor has been retained. He stated that the sales process should continue to be viewed, as it always has been, as operating outside a fiduciary relationship. However, as soon as a relationship is established with the investor, all the advisor's recommendations must then be in the best interest of the investor.

Derbyshire proposed that this relationship could be established and become enforceable to the investor through a simple investor disclosure with three key features:

1. A statement describing the scope of the advisor's services, including the transactions on which the advisor is advising
2. A disclosure of the compensation or ranges of compensation payable to the advisor
3. When necessary, a link to a website where an investor may obtain more detailed information about the cost of and compensation related to any investment recommendations

In response to specific questions from DoL representatives regarding the written contract requirement part of the new prohibited transaction exemption, called the "BIC exemption," Derbyshire stated that he did not believe that a written contract executed by the customer was either necessary or practicable. Rather, he stated that a reworked exemption could allow for the creation of a legally binding commitment on the basis of a unilateral contract with every customer. He explained that it would be impossible to obtain written contracts that capture the activities of retail investors who may visit various financial services firms before finally selecting a previously recommended investment. It is also not part of the current enrollment process for 401(k) investors and having to retroactively execute written contracts with millions of investors would be a costly administrative endeavor.

Derbyshire reinforced that the written contract requirement, as well as the other requirements of the BIC exemption, are so burdensome and costly they make the entire regime unworkable, and again encouraged the regulators to consider the simpler, alternative approach outlined in Fidelity's comment letter.

In closing, he stated that the rule must be made workable so that Fidelity can continue to provide investment assistance to millions of working Americans.

Below is a link to the testimony of Ralph Derbyshire, SVP, Fidelity Investments:

https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/investment-advice-testimony.pdf

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