

Office of Exemption Determinations

Employee Benefits Security Administration
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue
Suite 400
Washington, DC 20210

Bernardi Securities, Inc. (BSI) is pleased to submit this letter in response to the Department of Labor's request for Information (RIN 1210-ab82).

BSI is a Chicago based middle-market broker-dealer specializing in the municipal bond marketplace. BSI was founded in 1984 and serves investor and issuer clients across the country. Its activities focus on municipal bond underwriting, trading and bond portfolio management on behalf of our investor clients. A number of the bond portfolios we manage are IRA accounts and invest in taxable municipal bonds and other fixed income securities.

Our Chairman, Edward Bernardi, has been involved in the municipal marketplace for more than 57 years. I have over thirty-six years of experience in the industry.

We believe our diverse experiences across many different market cycles and our role as a leading municipal bond market participant gives us a meaningful perspective and we would like to share some thoughts with the Department regarding the impending rule. Our intention is to assist the Department as it re-examines and contemplates amending the final rule defining who is a "fiduciary" of an employee benefit plan for purposes of ERISA and the Internal Revenue Code as a result of giving investment advice for a fee or other compensation with respect to assets of a plan or IRA.

We have worked diligently for many months investing hundreds of hours of time and significant financial resources in order to understand the rule and develop and implement appropriate policies and procedures to ensure our compliance. We have learned and discovered much throughout this arduous process.

Because of our diligence we have been able to creatively craft a cost effective and attractive investment platform for our retirement investors.

That said, to the detriment of certain investors we are unable to serve them as before due to limits and outright prohibitions imposed by the rule.

This letter focuses on several issues important to our clients (investors and issuers) as well as several issues important to us. Here are the points we want to make:

1. The genesis of the rule, placing investors' interests ahead of the potentially competing financial interest of the adviser, is appropriate and needed. We strongly support enhancing standards of conduct for broker-dealers (B/D) and registered investment advisers (RIA).

Currently, a B/D is subject to numerous regulations governing how it interacts with clients including: suitability rule, best execution rule, know your customer rule, and the impending mark-up/down rule.

These are just a few of the existing rules that require a B/D to “observe high standards of commercial honor and just and equitable principals of trade.” As an example, The FINRA suitability rule requires a broker-dealer recommendation to be in concert with a customer’s interests meaning the B/D is prohibited from placing its interest ahead of the customer’s interest.

All of the currently applicable rules serve to protect investors’ interest and provide a solid foundation upon which to build a more robust B/D standard of conduct for the benefit of retail IRA investors.

We believe the optimal approach is a federal, disclosure based standard of care harmonized with other similarly focused regulatory agency initiatives.

2. In my numerous conversations about the rule with our investor clients their consistent message is that they seek from their RIA or B/D :
 - Transparency regarding costs and fees
 - Upfront disclosure regarding the role and applicable standards their RIA or B/D must adhere to
 - Reasonably priced investment management services
 - Investment management options rather than regulatory imposed dictates

We have seen the retirement marketplace evolve over the years and regulatory initiatives, in part, have helped foster this development. Additionally, the marketplace is innovative and various products and services have been developed over the years responding to market demand and competition amongst market participants. These are healthy dynamics that benefit investors and other market participants.

Given what we understand as our clients’ preferences coupled with the continuing positive evolution of the retirement marketplace building a more stringent standard of care should not be overly prescriptive.

The impending rule is overly prescriptive in several areas as currently written.

Here is an example:

Principal trading is prohibited for certain fixed income investments (corporate bonds, certificates of deposit, and U.S. treasury and agency bonds) absent an exemption. Explaining this particular nuance of the rule to an investor is confusing and requires that he or she sign a “principal transaction exemption” (PTE) document in order to have access to dealer inventories. It is a cumbersome and time consuming process and introduces a high degree of definitional subjectivity related to its requirements such as its “liquid investment” requirement. The practical effect of this aspect of the exemption is to limit investors’ choices.

Additionally, the rule outright prohibits investors from buying taxable municipal bonds from dealer inventories as the PTE exemption is not available in this particular instance even though the exemption is available and allows investors to sell municipal bonds to a dealer.

Therefore, retirement investors seeking quality income producing investments offered by taxable municipal bonds are prohibited by the rule from dealing with a B/D they have vetted, rely on and trust. I have spoken to many investors and municipal bond issuer clients and all find this partial prohibition objectionable and confusing.

Investors benefit in many instances from a dealer's principal trading apparatus by accessing unique dealer inventory positions. There are other attendant benefits that often result like price improvement on investments they seek to sell.

Why deny investors' access or make it difficult for them to benefit from this useful service?

As cited previously, there are numerous existing rules already rigorously enforced that protect investors from any potential conflicts that may exist due to a principal relationship.

And the impending rule ensures the fiduciary responsibility exists regardless of the basis on which an investment is made (agent or principal) thereby implicitly protecting investor from unscrupulous advisers or B/Ds.

So why limit investor choice, reduce market liquidity and potentially increase municipal issuer borrowing costs with an overly prescriptive rule?

3. **We believe the impending rule should require a best standard of care that does not bar arbitration in favor of class action litigation.**
4. **We believe the contractual and warranty requirements (BICE and PTE) of the impending rule negatively impact investors' access to quality advice and, in certain instances, increase their costs.** We believe this part of the rule should be a revised. The revised rule should require a stringent best interest standard of care coupled with clear, concise upfront disclosures pertaining to scope of services, standard of conduct that may apply in the relationship, type and level of compensation that the B/D or adviser may charge the investor and disclosure of any potential material conflict of interest that may apply to the relationship. An enhanced version of FINRA's suitability rule would be appropriate for investors and other market participants. This could be relied upon to incentivize proper behavior in the absence of contractual and warranty requirements.
5. **An alternative, market innovative approach: write the rule so that it allows IRA retirement investors a choice.**
 - 1) fiduciary, asset-based pricing services through an RIA subject to ERISA
 - 2) best standard of care, transaction-based pricing services through a B/D

In both cases, the rule should require clear, concise upfront disclosures (see # 4). Such an approach will result in numerous positive developments for retirement investors.

- It will lower their costs
- Ensure transparency about investor cost and market participants' roles, responsibilities
- Provide investors options
- Ensure the advice they receive from their RIA or B/D is subject to very high standards

A rule so crafted will allow for IRA investors to decide what is best for their situation, ensure their access to personalized, affordable advice while offering them meaningful regulatory protections.

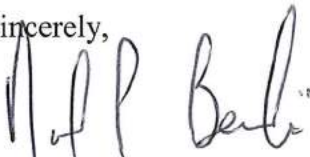
A similar approach is already in use and has been working well in the municipal bond market with the implementation in July 2014 of the SEC Municipal Advisor Rule. The rule regulates how advisors and broker-dealers interact with municipal bond issuers and requires they provide upfront disclosures as to their roles and responsibilities in the relationship. Specifically, the rule requires a B/D disclose to an issuer it is not acting in a fiduciary capacity and is prohibited from giving advice or recommendations until it has been engaged. Additionally, the rule requires a municipal advisor (MA) to register with the SEC, pass certain exams and pay annual fees, practices similar to long established B/D requirements. The MA must also disclose its fiduciary status and all fees it intends to charge the issuer for its services.

The bottom line effect of the rule ensures municipal issuer officials understand the responsibilities and relationship of the advisor and/or the broker-dealer it selects. The rule helps them make an informed decision as to whether to hire an M/A, a B/D (or both) to help them with a particular transaction. Importantly, the rule was crafted in a way that allows them a choice rather than mandating who the issuer must hire.

We believe retirement investors would benefit if the Department crafted the Fiduciary rule using a similar approach.

We are encouraged by the Department's willingness to re-examine the rule and its many complicated facets. We hope our comments are helpful and taken in the positive manner they are intended.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. P. Bernardi', written over a faint, larger version of the same signature.

Ronald P. Bernardi
President and CEO
Bernardi Securities, Inc.
August 2, 2017