Preserving Retirement Security and Investment Choices for All Americans – September 10, 2015

Testimony submitted by Scott Stolz

I would like to first thank the Committee for the opportunity to testify here today. As mentioned, I am Scott Stolz, Senior Vice President for Private Client Group Investment Products at Raymond James. On behalf of Raymond James and its 6,500 advisors and 10,000 employees that work hard every day to take care of the financial needs of our 1 million clients, I want to express my appreciation for giving me the opportunity to share our views on this very important topic. From our home base in St. Petersburg, Florida, Raymond James has grown to a national firm based mainly on a retail business model that serves individual investors. Our firm's core principle is Service First. We believe that if we take care of the client, everything else will take care of itself. This emphasis on taking care of the client, combined with our focus on long term results rather than the next quarterly earnings cycle, has helped us achieve 110 consecutive quarters of profitability – a string that I'm proud to say was not broken during the financial crises. It is with this in mind, that I want to say first and foremost that we understand the impassioned and serious debate that surrounds this issue.

Most of those in favor of the Department of Labor's proposal want to frame the debate solely on whether or not a financial advisor should put the client's best interest before their own. After all, who could possibly argue with that? Rather the debate is really about the road we take to get there. Once one fully understands the 600 page proposal that the Department has put forth to achieve this mutually agreed upon goal, the only possible conclusion is that the rule as written is overly complex, would be incredibly expensive to implement, and would expose the hundreds of thousands of trusted and well-meaning financial advisors to unfair legal liability.

On more than one occasion, Secretary Perez has cited the case of the Toffels as an example of why this rule is needed. The Toffels' had accumulated much of their life savings in various Vanguard mutual funds. Their bank recommended that they cash out the mutual funds and use $650,000 of the proceeds to purchase a "very complex" variable annuity. This recommendation has been criticized for being too costly. According to Secretary Perez, this conflicted advice most certainly caused the advisor to put his interests before that of the Toffel's. Please don't misunderstand; I'm not taking a position on the quality of the advice the Toffels received. I simply do not have enough facts to make that determination. Nor, might I add, does the Department of Labor. But what I do know is that the Toffel's case can be used as an example of the flaws of the current proposal.

According to a New York Times article on this case,[1] the Toffels told the bank that they needed an investment that provided a lifetime income. A variable annuity with the level of fees documented on this case would have come with a lifetime income benefit that paid a specific amount of income for life, even if the stock market caused the Toffels' account value to fall – a possibility that is still very much on the minds of all retirees. In addition, that variable annuity would have come with a guaranteed death benefit that would guarantee that Mrs. Toffel would receive much, if not all of the original $650,000 investment upon Mr. Toffel's death – again, even if markets had caused their account value to fall in value. The Vanguard mutual funds – while a much cheaper solution – would not have provided either of these guarantees. In addition, since the advisor understood the liquidity limitations of the annuity, he had them put $200,000 into money market accounts – an important fact left out of the DOL's version of the events.

Unfortunately, the Toffels' situation changed when Mr. Toffel's health deteriorated. Not surprisingly, financial flexibility suddenly became more important than a secure, lifetime income. It seems obvious to me that the annuity recommendation didn't work out not because it was not in the Toffel's best interest, but because their circumstances significantly changed. Yet, here we are not only second guessing the recommendation, but condemning it and labeling it a "tragic" story, to use the Secretary's words. And this is exactly what will play out time and time again if the DOL proposal is adopted as is. The complexity, ambiguity and legal requirements of the rule will insure that well-meaning advisors that work hard to put their client's best interests first will be subject to Monday morning quarterbacking. Faced with this potential, advisors will make investment recommendations based in part on how they can best limit their future liability. It is inevitable therefore that they will move to one size fits all pricing model so that they can avoid any possibility of being accused of making a recommendation based on how they are compensated. Under such a model, many will either pay more than they do today or will receive no advice at all. This will be particularly true for the smaller investors – the very investors the DOL is trying to protect.

Current securities laws and regulatory practices protect advisors from unwarranted "Monday morning quarterback" claims to some degree. Unfortunately, the Department's proposal will strip these protections and open a Pandora's Box of litigation based on investment outcomes that can never be predicted with certainty by even the best intentioned advisor.

We stand ready to continue to work with the DOL to craft a final rule. And we believe that if the DOL adopts the changes we outlined in our comment letter, they can indeed finalize a rule that accomplishes their goals with minimal disruptions to the current financial system. However, since they have indicated that there will not be a re-proposed rule, we are understandably concerned that the final rule will be no more workable than the current proposed rule. In addition, we believe that the SEC's deep industry knowledge puts them in a better position to craft a workable rule. For these reasons, we support the Wagner bill.

In closing, I want to emphasize that Raymond James has long been a supporter of a common fiduciary standard. Long before the DOL first proposed a rule, we instituted a client bill of rights that is given to every client of Raymond James. Amongst these rights is the right to expect recommendations based solely upon the client's unique needs and goals, as well as the right to know all costs and commissions associated with the recommendation. We just do not believe a rule hundreds of pages in length is necessary to achieve this goal. I would like to thank the committee for its time and I would be happy to answer any questions you may have.

[1] "Before the Advice, Check Out the Adviser", by Tara Siegel Bernard, New York Times, Oct. 10, 2014