



BITS AND PIECES

TIPS AND IDEAS ABOUT THE FIDUCIARY RULE

August 2, 2016

The Recommendation

While not explicitly stated the many requirements of recommendations can only be accomplished through a separate well-designed permanent communication. Verbal recommendations are simply not feasible and are fraught with risk. Litigation is expected to focus on failure to comply with the requirements for making recommendations.

In the first place, BICE holds the advisor responsible for the recommendation. Unlike securities regulations, BICE is only concerned with the advice that is given, NOT whether the advice was taken and a trade executed! The recommendation becomes the "confirm" of the advice.

The BICE recommendation as an advice "confirm" informs the retirement investor of what the advisor believes to be in his/her best interest and explains how that conclusion was reached. The key functions of the recommendation include:

- The recommendation
- Reasons for the recommendation*
- Record any preferences or exclusions the retirement investor specifies
- Any limitations placed on the investments that the advisor is permitted to recommend*
- Compensation associated with recommendation*
- Proprietary products or third party compensation associated with the recommendation*
- Explicit acknowledgement of receipt of the advice
- Terms of the agreement if not previously confirmed*
- Adherence to Impartial Conduct Standards, even if no Best Interest Contract is required*