<u>DOL and Discretion – Case Restated</u>

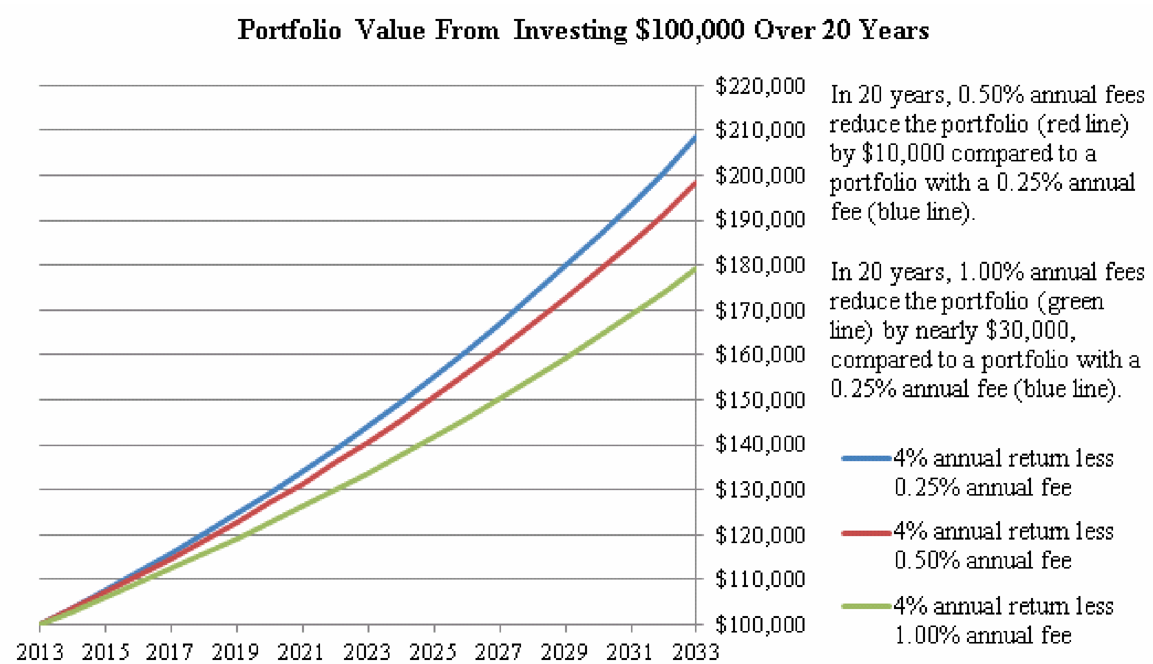
The BIC exemption does not cover variable compensation that arises as a result of discretionary advice. Nevertheless, the exemption can still provide relief for advisers who are in the business of providing discretionary advice, as long as the discretionary advice itself does not generate variable compensation.

For example, a fiduciary adviser may make a recommendation for a participant to roll over the plan account to an IRA, where the fiduciary adviser would then provide investment management services for the rollover IRA for a fee. As long as the fiduciary adviser does not have discretion over the rollover decision, the BIC exemption ("Level Fee Fiduciary"), would be available to provide relief for the rollover advice. As cited in this example, relief under the BIC exemption is available, even though the adviser is in the business of providing discretionary investment advice. *Marcia Wagner, Wagner Law Group Newsletter 4/21/16* www.wagnerlawgroup.com

INVESTOR FOCUS

<u>Investor Bulletin: How Fees and Expenses Affect Your Investment Portfolio</u>

As with anything you buy, there are fees and costs associated with investment products and services. These fees may seem small, but over time they can have a major impact on your investment portfolio. The following chart shows an investment portfolio with a 4% annual return over 20 years when the investment either has an ongoing fee of 0.25%, 0.50% or 1%.   Notice how the fees affect the investment portfolio over 20 years.



SEC Investor.gov Bulletin 9/8/16

VULNERABLE CLIENTS (SENIOR INVESTORS)

<u>State Coordinated Exams Focus on Policies and Procedures for Senior Investors</u>

The 2016 NASAA coordinated examination initiative, which included 62 exams, focused largely on activity in senior client accounts at the examined firms. The coordinated examination initiative focused on whether the subject broker-dealer had implemented written procedures specific to four key issues: the suitability of recommendations to senior investors; communications with seniors; escalation protocols in the case of suspected elder abuse; and escalation practices in response to signs of diminished capacity.

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