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## TV Stock Tips and Fiduciary Advice: Interesting Angles on DOL's Fiduciary #4

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Wednesday, May 11, 2016

This is my fourth article about interesting observations "hidden" in the preambles to the fiduciary regulation and the exemptions.

During a recent webinar for TD Ameritrade, one of the attendees asked if Jim Cramer's TV stock tips would be considered fiduciary advice. I said that they would not be, since they were not directed to a specific investor.

In hindsight, I wish that I had told him that the preamble to the fiduciary regulation specifically addressed that issue . . . more specifically than you might think. Here's what the DOL said:

*"Many commenters, as the Department noted above, expressed concern about the phrase "specifically directed" in the proposal under paragraph (a)(2)(ii) and asked that the Department clarify the application of the final rule to certain communications including casual conversations with clients about an investment, distribution, or rollovers; responding to participant inquiries about their investment options; ordinary sales activities; providing research reports; sample fund menus; and other similar support activities. For example, they were concerned about communications made in newsletters, media commentary, or remarks directed to no one in particular. Commenters specifically raised the issue of whether on-air personalities like Dave Ramsey, Jim Cramer, or Suze Orman would be treated as fiduciary investment advisers based on their broadcast communications. The concern is unfounded. With respect to media personalities, the rule is focused on ensuring that paid investment professionals make recommendations that are in the best interest of retirement investors, not on regulating journalism or the entertainment industry."*

*The views expressed in this article are the views of Fred Reish, and do not necessarily reflect the views of Drinker Biddle & Reath.*

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