PAST, PRESENT AND FUTURE OF THE DOL FIDUCIARY RULE

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U.S. Investment Management Alert

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The Department of Labor's ("DOL") fiduciary rule ("DOL Fiduciary Rule") became applicable June 9, 2017, after an intense multiyear regulatory saga involving multiple governmental actors and virtually every mutual fund company and intermediary in the fund industry. Since June, the DOL, the Securities and Exchange Commission (the "SEC" or "Commission"), and all three branches of government have been engaged on a variety of fronts in determining the future course of the DOL Fiduciary Rule. Those proceedings appear to have reached a temporary lull, and we believe that it may be useful to review the current "lay of the land" with respect to the DOL Fiduciary Rule and to look forward to anticipate what may lie ahead.

I. DOL'S FIDUCIARY RULE

The DOL Fiduciary Rule brought sweeping changes to the definition of an investment advice "fiduciary" under the Employee Retirement Income Security Act of 1974 ("ERISA"). Many market participants that had not previously been regarded as fiduciaries are now subject to ERISA's fiduciary duties, responsibilities, and prohibited transaction restrictions when dealing with retirement plans (including individual retirement accounts), plan participants and beneficiaries, and other plan fiduciaries. For other market participants, the DOL Fiduciary Rule changes when ERISA fiduciary status attaches.

This means that if a person makes a covered investment "recommendation" that makes them a fiduciary under the DOL Fiduciary Rule and they (or their affiliates) receive an additional fee or other benefit as a result, the fiduciary would violate ERISA's prohibited transaction restrictions on self-dealing, unless the fiduciary complies with an exemption. Additional fees or other benefits may result from the recipient of the advice making an investment because of the recommendation, or hiring the fiduciary or its affiliates to provide services.

DOL issued new and amended prohibited transactions exemptions ("PTEs") as part of the same regulatory package as the DOL Fiduciary Rule, including the "Best Interest Contract" exemption ("BIC Exemption"), a PTE for principal transactions in certain assets ("Principal Transactions Exemption"), and certain amendments to other PTEs, including PTE 84-24 (which applies to advisory transactions involving certain insurance and annuity contracts and mutual fund shares). As written, the BIC Exemption and Principal Transactions Exemption contain detailed and potentially onerous conditions. Further, the amendment to PTE 84-24 would revoke relief for transactions involving fixed indexed annuity and variable annuity contracts, effectively requiring fiduciaries to rely upon the BIC Exemption for those transactions.

In an April 2017 release, DOL delayed the imposition of the full conditions of the BIC Exemption and Principal Transactions Exemption, as well as the revocation of relief under PTE 84-24, during a “Transition Period” originally scheduled to end on January 1, 2018. After DOL issued a subsequent 18-month extension on November 29, 2017 (the “Delaying Rule”), the Transition Period is currently scheduled to expire on July 1, 2019, at which time all the conditions of the BIC Exemption and Principal Transactions Exemption will be fully applicable absent additional relief.

During the Transition Period, fiduciaries subject to the DOL Fiduciary Rule may meet the conditions of the BIC Exemption and Principal Transactions Exemption if they comply with “impartial conduct standards.” The impartial conduct standards specifically require fiduciaries to:

- Give advice that is in the “best interest” of the retirement client, meeting standards of prudence and loyalty;
- Receive no more than reasonable compensation; and
- Make no materially misleading statements (misleading statements about investment transactions, compensation, and conflicts of interest are generally considered “material”).

DOL and the Internal Revenue Service have also announced “non-enforcement” policies applicable during the Transition Period. Until the end of the Transition Period, neither agency will pursue claims against fiduciaries that are “working diligently and in good faith” to comply with the DOL Fiduciary Rule and the PTEs. DOL has indicated that its emphasis during the Transition Period will be to assist fiduciaries with compliance rather than citing violations or imposing penalties. These non-enforcement policies do not address the rights or obligations of other stakeholders, for example plan participants or other fiduciaries that may have a separate private right of action for breach of fiduciary duty under ERISA.

DOL has indicated that it intends to complete its presidentially mandated reexamination of the DOL Fiduciary Rule and PTEs prior to the end of the Transition Period on July 1, 2019. Because the ultimate structure of the DOL Fiduciary Rule and the conditions of the PTEs may be altered as a result of this reexamination, market participants affected by the DOL Fiduciary Rule may be uncertain regarding what actions they should take now to comply with the DOL Fiduciary Rule and what preparations they should make to comply with a post-Transition Period world. However, there are some concrete actions that firms can and should take now, if they have not already. These actions include the following:

- Examine and put in place procedures to comply with the requirement that advice be in the “best interest” of retirement clients. This may include using checklists to ensure advice given is prudent considering the client's circumstances, developing new forms and processes for obtaining client information, training employees and representatives, and developing procedures to monitor and verify that advice given is not subject to improper bias.
- Review marketing material, contracts, and other agreements to make sure there are no misleading statements and that there are appropriate disclaimers when fiduciary status is not intended.
- If dealing with other fiduciaries, large plans, or sophisticated market participants, consider whether the safe harbor for transactions with independent fiduciaries with financial expertise may be available. To take advantage of the safe harbor, build representations, disclosures, and acknowledgements into client

agreements (such as investment management agreements and subscription agreements) or send negative consent letters with the relevant representations, disclosures, and acknowledgements to clients and distribution partners.

- Evaluate fees or compensation practices, including performance compensation and bonuses (cash and non-cash) to determine reasonableness and whether changes may be made to avoid or reduce conflicts of interest.
- Examine ERISA fiduciary liability insurance coverage and needs.

II. THE SEC'S STANDARDS OF CARE

The general antifraud provisions of the Investment Advisers Act of 1940 (“Advisers Act”) indirectly prescribe a federal fiduciary standard for all investment advisers, regardless of their registration status with the SEC. [1] In a foundational decision, the Supreme Court recognized that the Advisers Act reflected “a congressional recognition 'of the delicate fiduciary nature of an investment advisory relationship,' as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser—consciously or unconsciously—to render advice which was not disinterested.” [2] The standard of care between an adviser and its clients generally includes the duty to: (i) disclose conflicts of interest to clients and in specified cases obtain the consent of clients with respect to conflicts of interest, (ii) obtain best execution of client portfolio transactions, (iii) recommend suitable transactions, and (iv) act with utmost and exclusive loyalty to clients. [3]

The SEC regulates broker-dealers pursuant to a separate and comprehensive regulatory regime codified in the Securities Exchange Act of 1934 (“Exchange Act”) in recognition of their separate business. Broker-dealers are not generally considered to be “fiduciaries” per se, although the SEC staff has formally stated, “[i]f a broker-dealer has established a customer relationship based on trust and confidence, and the customer depends on and follows the broker-dealer's advice, a *fiduciary* relationship is created between the broker-dealer and the customer.” [4] More generally, broker-dealer's operate under a standard of care, derived from common law, to act fairly and in accordance with the standards of the industry. [5] This common-law standard has been codified in rules of self-regulatory organizations (“SROs”), which require broker-dealers to “adhere to the principles of good business practice” [NYSE Rule 401(a)] and to “observe high standards of commercial honor and just and equitable principles of trade” [FINRA Rule 2010] in the conduct of their business. Thus, like investment advisers, broker-dealers have duties of best execution and suitability. [6]

The standards of care between investment advisers and broker-dealers are similar but historically have been applied differently to two distinct businesses. Indeed, broker-dealers are excluded from the Advisers Act should they give incidental advice for no “special compensation.” [7] Over the past several decades, business lines between investment advisers and broker-dealers, at the retail level, have become less distinct. For example, investment advisers and broker-dealers both provide financial planning advice to retail accounts ostensibly under different standards of care pursuant to different regulatory regimes. Moreover, registered representatives of broker-dealers and representatives of investment advisers refer to themselves as “financial advisors” or “financial counselors” when giving financial planning or other securities-related advice. [8] In the mid-1990s, fee structures for brokerage services were modified to better align a firm's interests with its customers, which blurred even more the lines distinguishing advisory and brokerage businesses. [9] Advisers typically are paid asset-based fees for their advice. Broker-dealers historically have been paid commissions for brokerage, which bundled the cost of any incidental advice into the firm's commission rates. New brokerage fee structures have evolved to an asset-based fee. [10]

To be clear, prior to the DOL's fiduciary rulemaking odyssey of its own, as discussed above, any firm that provided “investment advice” under ERISA was an ERISA fiduciary subject to ERISA's prohibited transactions provisions, notwithstanding regulatory status under the Advisers Act or the Exchange Act. Historically, broker-dealers were careful to avoid providing fiduciary investment advice (as it was previously defined) to ERISA accounts, providing instead only non-fiduciary services. The DOL Fiduciary Rule changed that status, and broker-dealers when making recommendations to ERISA accounts are now likely to be fiduciaries absent reliance on specific exceptions. Thus a broker is subject to the fiduciary standard when providing advice to a qualified retirement account, and subject to a different standard based on suitability and best execution when providing advice to the same customer with respect to taxable brokerage accounts. As a result of the DOL Fiduciary Rule, the SEC has revisited the staff's recommendation to establish a uniform standard of care for investment advisers and broker-dealers for retail accounts, presumably on par, or at least tenably consistent, with the DOL Fiduciary Rule.

To this end, SEC Chairman Jay Clayton requested public comments on the public's confusion between broker-dealers, investment advisers, and their respective legal duties. [11] This request for information followed two major studies commissioned by the SEC in 2005 and 2008, [12] as well as its own internal study required by Dodd-Frank. [13] Among the matters to be considered under this public comment request included consideration of “a single standard of conduct combined with a harmonization of other rules and regulations applicable to both investment advisers and broker-dealers when they provide advice to retail investors . . . .” The request covered multiple far-ranging questions under 17 separate data points, including a request for information regarding (i) investor confusion, (ii) conflicts of interest, (iii) the role of technology in rendering advice, (iv) costs and benefits of multiple standards of conduct across account types, and (v) disclosure as a means of managing confusion and standards of care. The SEC received over 150 comment letters ranging from industry groups representing the investment adviser and broker-dealer industries, financial services firms, leaders in government, and retail investors, among others. Since the request, Chairman Clayton has mentioned the standard of care initiatives in several speeches, most recently briefly in opening remarks before the Securities Regulation Institute on January 22, 2018, [14] and in testimony before Congress, most recently on October 17, 2017, where he advocated working closely and constructively with the DOL to formulate appropriate standards of conduct for financial professionals who give advice to retail clients. [15]

III. MUTUAL FUND FEE STRUCTURES AND INDUSTRY RESPONSE TO THE DOL FIDUCIARY RULE

Due in part to uncertainty regarding the ultimate expiration date of the Transition Period, conditions required for compliance with the BIC Exemption and an expectation that the SEC may, either in collaboration with the DOL or on its own, adopt a universal fiduciary standard, most financial intermediaries have reevaluated their initial requests regarding mutual fund fee structures. As a result, the changes that many mutual fund complexes initiated in response to those initial requests or in anticipation of future requests generally have not yet been implemented. Mutual fund sponsors continue to wait for determinations from financial intermediaries as to their preferred fee structures. This section of the Alert summarizes and discusses the current status of various types of mutual fund fee structures that have been considered in response to the requests of financial intermediaries.

Clean Shares

Financial intermediaries have expressed significant interest in offering “Clean Shares” on their platforms. The DOL appears to approve of this approach, having referred to the anticipated use of Clean Shares as one of the “most promising responses to the [DOL] Fiduciary Rule” in a set of frequently asked questions issued in May 2017. [16] To help facilitate responses by mutual fund companies, the staff of the SEC issued an IM Guidance Update, [17] responses to frequently asked questions regarding the IM Guidance Update, [18] and an interpretive letter (the “Section 22(d) Letter”). [19] The Section 22(d) Letter defines Clean Shares as a class of shares of a mutual fund without any front-end load, deferred sales charge, or other asset-based fee for sales or distribution. Nevertheless, the features of Clean Shares are still being refined. In July 2017, the DOL issued a request for information (the “DOL RFI”), which, among other matters, solicited public input regarding the use of Clean Shares by financial intermediaries to comply with the DOL Fiduciary Rule. [20] In response to the DOL RFI, one major industry participant expressed the view that, although not prohibited by the Section 22(d) Letter, Clean Shares should not include revenue-sharing arrangements, platform fees, or sub-transfer agency fees, among other types of payments, while others believe that revenue-sharing payments associated with Clean Shares should be permissible.

The comment period for the DOL RFI closed on August 7, 2017. In the adopting release for the Delaying Rule, the DOL indicated that “[m]ore time is needed to carefully and thoughtfully review the substantial commentary received in response to the multiple solicitations for comments in 2017.” However, the DOL also indicated in that release that it “anticipates that it will propose in the near future a new streamlined class exemption,” which many industry participants expect will be an exemption for financial intermediaries offering Clean Shares on their platforms. The specific features of Clean Shares that would qualify for any future exemption remain unclear.

In light of the uncertainty surrounding the version of Clean Shares that will ultimately be accepted by the industry for purposes of complying with the DOL Fiduciary Rule, financial intermediaries have yet to formally request that mutual fund sponsors offer Clean Shares. Nevertheless, in anticipation of such a request, certain mutual fund complexes have registered a new class of shares that would qualify as Clean Shares under the Section 22(d) Letter or modified the features of an existing class of shares to accomplish the same goal.

Class T Shares

Many mutual fund complexes registered Class T shares between late 2016 and the first half of 2017 in response to requests from financial intermediaries. Class T shares generally include a maximum front-end sales load of 2.50% and a Rule 12b-1 fee of 0.25%. The financial intermediaries that initially expressed interest in offering Class T shares on their platforms have since decided not to move forward with that approach. Therefore, mutual funds that registered Class T shares have either withdrawn the filings that registered those shares or have indicated that the shares are not currently offered for sale. In the DOL RFI, the DOL asked whether commenters anticipate that some mutual fund providers will proceed with Class T share offerings instead of, or in addition to, Clean Shares. In our opinion, while it is possible that interest in Class T shares could reemerge, the development of Clean Shares has made that outcome less likely.

Sales Load Variations

A number of large intermediaries have requested that mutual funds include in their prospectuses disclosure regarding sales load variations that are available to investors purchasing fund shares through that intermediary's platform. To accommodate this request, mutual funds have either added the requested disclosure to the body of their prospectuses, or added appendices to their prospectuses that include the requested disclosure. To the extent that mutual funds have added appendices to their prospectuses, they have complied with the disclosure requirements set forth in the IM Guidance Update. Given the uncertainty surrounding the end of the Transition Period and the potential for a universal fiduciary standard promulgated by the SEC, we have not seen additional intermediaries implement intermediary-specific sales load waivers to comply with the DOL Fiduciary Rule to this point.

IV. WHAT COMES NEXT?

So what might we expect in the near-term regarding progress with the DOL Fiduciary Rule? Predictions in this area have proven very difficult, but several developments seem likely. First, it appears inevitable that the SEC will become increasingly active in this area. Regardless whether Congress acts to invalidate the existing DOL Fiduciary Rule, Chairman Clayton has made clear that completing a comprehensive rule-making in this area is one of the SEC's top priorities. As discussed above, the SEC has already solicited comments from the financial industry and the public, and we expect that a proposed rule will be introduced by the Commission in the next 90–120 days.

Second, there is considerable support within many sectors of the industry for adopting a “best-interest standard” for broker-dealers in advising all of their customers, whether retail or retirement accounts and regardless of the nature of the recommendation. For example, the Securities Industry and Financial Markets Association (“SIFMA”) commissioned a study and found that the DOL Fiduciary Rule has already had a negative impact on retirement savers. [21] SIFMA found that access to brokerage advice services has been eliminated or limited by many financial institutions as part of their approach for compliance with the DOL Fiduciary Rule. They found that retirement assets have shifted to fee-based or advisory programs, which while they can offer a higher level of services generally have higher fees to pay for those services. SIFMA advocates adopting a “Proposed Best Interests of the Customer Standard” for all broker-dealers handling brokerage accounts. [22] SIFMA's Best Interests of the Customer Standard would apply across all investment recommendations made to individual retail and retirement customers in all brokerage accounts. Among other requirements, this standard would require that advice given to customers “reflect the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the customer's investment profile.” [23]

The Investment Company Institute (“ICI”) has likewise recommended that “the Commission should adopt – and DOL should recognize in a streamlined exemption – a best interest standard of conduct for broker-dealers that would apply when they make recommendations to retail investors in non-discretionary accounts, whether those investors are saving for retirement or other important goals.” [24] The ICI further believes that “the SEC should maintain the existing fiduciary duty standard for investment advisers that has served investors well.” [25]

On the industry side, mutual fund companies and intermediaries have expended considerable time and energy evaluating various methods for facilitating financial intermediaries' compliance with the DOL Fiduciary Rule. Despite these efforts, a standard approach has not yet emerged, and the implementation of any fee structure changes is largely on hold. Nevertheless, given the general enthusiasm for Clean Shares, mutual fund sponsors may wish to be in a position to respond to expected future requests for Clean Shares either by registering a new class of shares or altering the features of an existing class of shares. Since the version of Clean Shares that will ultimately be accepted by the industry is still in flux, mutual fund sponsors may wish to focus simply on developing a version of Clean Shares that falls within the definition set forth in the Section 22(d) Letter. It is possible that financial intermediaries will request a version of Clean Shares that goes beyond this definition, but any changes to an existing share class that would need to be implemented to fulfill such a request would be unlikely to trigger a Rule 485(a) filing requirement.

Finally, and perhaps somewhat optimistically, recent indications from both the SEC and DOL suggest that both recognize the need to work in concert going forward. The confusion and investment of resources resulting so far from DOL's fiduciary rulemaking and the absence of SEC leadership in the area appears to have convinced most participants of the need for the two agencies to work together to provide clear guidance to broker-dealers and investment advisers.

But even if the SEC moves expeditiously to adopt a “best interests” standard for broker-dealers in all retail and retirement accounts, a number of questions still remain:

- Would the SEC try to combine the duties of broker-dealers and investment advisers into a single standard of care?
- If not, how would a “best interests” standard for broker-dealers be articulated in a manner different from the “fiduciary duty” imposed on investment advisers, and how would these differences be explained and interpreted?
- How would a “best interests” standard differ from the current suitability standard applicable to broker-dealers?
- What (if anything) will remain of the existing DOL Fiduciary Rule?
- How will the financial services industry react to a best interests standard for broker-dealers and a fiduciary duty standard for investment advisers, and what will be the effect on product development and operational conduct?
- Will the mutual fund industry coalesce around a single Clean Share paradigm as the standard for compliance with a best interests standard?

Like everyone reading this Alert, we eagerly await further regulatory developments and the answers to these questions. We will follow up with additional Alerts as these developments become public.

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[1] *See* SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963). Sections 206(1) and 206(2) of the Advisers Act set forth these general antifraud provisions.

[2] *Capital Gains,* at 191–92 (footnotes omitted).

[3] *See generally In the Matter of Alfred C. Rizzo,* Investment Advisers Act Release No. 897 (Jan. 1, 1984); In re Kidder, Peabody & Co., Inc., 43 S.E.C. 911, 915 (1968); and *Interfinancial Corporation*, SEC No-Action Letter (pub. avail. Mar. 18, 1985).

[4] *Market 2000: An Examination of Current Equity Market Developments, Division of Market Regulation*, United States Securities and Exchange Commission, (Jan. 1994) ("Market 2000 Study") (emphasis added), *citing In re* Arleen Hughes, 27 S.E.C. 629 (1948), aff'd, 174 F.2d 969 (D.C. Cir. 1949). The Hughes case involved an SEC action against a broker-dealer that was also registered as an investment adviser where the registrant effected securities transactions on a principal and riskless principal basis absent disclosure of conflicts and in the absence of obtaining the most favorable price.

[5] *See In* re Duker & Duker, 6 S.E.C. 386, 388–89 (1939).

[6] Market 2000 Study, at V-1 (best execution). Courts have recognized unsuitability claims as a subset of antifraud claims under Section 10(b) of the Exchange Act. See, *e.g*., Dodds v. Cigna Securities, Inc., 12 F.3d 346, 351 (2d Cir. 1993); *see also* Policy of the Board of Governors of the National Association of Securities Dealers, Inc., Fair Dealing with Customers, Article III, Section 2 of the Rules of Fair Practice of the NASD. Suitability is codified in SRO rules [NYSE Rule 405; and FINRA Rule 2111].

[7] 15 U.S.C. §80b-2(a)(11)(C).

[8] For example, in 2017, a Consumer Federation of America ("CFA") study argued that broker-dealers market their services in a way that made them sound as if they are investment advisers, having a fiduciary duty to clients, specifically referring to themselves as "financial advisors," describing their services as "advice" or "planning," and promoting their services with messages designed to convince investors that they will be looking out for the investors' best interests. See Financial Advisor or Investment Salesperson?, Brokers and Insurers Want to Have it Both Ways, CFA (Jan. 18, 2017), http://consumerfed.org/wp-content/uploads/2017/01/1-18-17-Advisor-or-Salesperson_Report.pdf.

[9] *See* The Tully Report (April 10, 1995). The Tully Report is available at https://www.sec.gov/news/studies/bkrcomp.txt.

[10] The shift to asset-based fees for brokerage accounts led to a six-year rulemaking process by the SEC that was later invalidated by *Financial Planning Association v. SEC*, 482 F.3d 481 (D.C. Cir. 2007). One of the arguments against the rulemaking was that it created a competitive imbalance because investment advisers are fiduciaries and broker-dealers are not. See Securities Exchange Act Release No. 50980 (Jan. 6, 2005), 70 F.R. 2716, 2718 (Jan. 14, 2005).

[11] Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers, Public Statement by SEC Chairman Jay Clayton (Jun. 1, 2017), https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31.

[12] *See* Results of Investor Focus Group Interviews Regarding Brokerage Account Disclosures, Report to the Securities and Exchange Commission by Siegel & Gale, LLC and Gelb Consulting Group, Inc. (Mar. 10, 2005), https://www.sec.gov/rules/proposed/s72599/fcrpt031005.pdf; and Investor and Industry Perspectives on Investment Advisers and Broker-Dealers, Technical Report by the LRN-RAND Center for Corporate Ethics, Law,

and Governance and sponsored by the SEC (2008), https://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf.

[13] Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Study by SEC Staff (Jan. 2011), https://www.sec.gov/news/studies/2011/913studyfinal.pdf.

[14] Opening Remarks at the Securities Regulation Institute, Chairman Jay Clayton, SEC (Jan.22, 2018), https://www.sec.gov/news/speech/speech-clayton-012218.

[15] Testimony Before the House Comm. on Financial Services, House of Representatives, Examining the SEC's Operation, Agenda and Budget, Chairman Jay Clayton, SEC (Oct. 17, 2017), https://www.sec.gov/news/testimony/testimony-examining-secs-agenda-operation-and-budget.

[16] Conflict of Interest FAQs (Transition Period), May 2017, https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period-1.pdf.

[17] IM Guidance Update No. 2016-06, Mutual Fund Fee Structures (Dec. 15, 2016), *available at* http://www.sec.gov/investment/im-guidance-2016-06.pdf.

[18] Frequently Asked Questions on IM Guidance Update 2016-06, Mutual Fund Fee Structures (Feb. 15, 2017), https://www.sec.gov/divisions/investment/guidance/frequently-asked-questions-mutual-fund-fee-structures.htm.

[19] Capital Group, SEC Interpretive Letter (Jan. 11, 2017), http://www.sec.gov/divisions/investment/noaction/2017/capital-group-011117-22d.htm.

[20] Dept. of Labor Request for Information, 82 Fed Reg. 31278 (July 6, 2017), https://www.federalregister.gov/documents/2017/07/06/2017-14101/request-for-information-regarding-the-fiduciary-rule-and-prohibited-transaction-exemptions.

[21] Study Conducted for SIFMA by Deloitte & Touche LLP: The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors, August 9, 2017. See link at https://www.sifma.org/resources/submissions/deloitte-study-on-the-dol-fiduciary-rule-august-2017/.

[22] *See* SIFMA Press Release dated June 3, 2015.

[23] *See* SIFMA proposed mark-up of current FINRA Rule 2111 (June, 2015).

[24] *See* Letter dated August 7, 2017 from Dorothy Donohue of the ICI to SEC Chairman Jay Clayton.

[25] *Id.*

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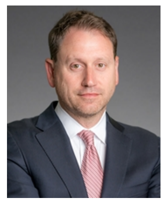

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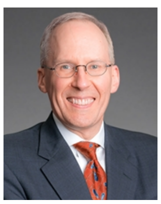

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