FIDUCIARY RULE REFORM – SEC DEVELOPMENTS

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U.S. Investment Management Alert

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As we wait to see if the Department of Labor (DOL) will appeal the 5th Circuit's mid-March ruling that vacated the DOL's fiduciary rule, the Securities and Exchange Commission (SEC) is also making news on the fiduciary front. [1] Earlier this month, SEC Chairman Jay Clayton reportedly said, “the sooner the better” as to when the SEC will release its fiduciary proposal. With a full set of commissioners since the January 11 swearing in of Robert Jackson Jr. and Hester Peirce, the SEC may now be prepared to act.

At an open meeting on Wednesday, April 18, at the SEC's headquarters in Washington D.C., the SEC will consider the following proposals:

- Whether to propose new and amended rules and forms to require registered investment advisers and registered broker-dealers to provide a brief relationship summary to retail investors.
- Whether to propose a rule to establish a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.
- Whether to propose an SEC interpretation of the standard of conduct for investment advisers.

We may see a specific proposal from the SEC shortly after the meeting. Uncertainty, however, will likely continue for investors and service providers for the foreseeable future. An SEC proposal would go through a comment period and could encounter legal challenges. Further, the ultimate fate of the DOL's fiduciary rule is far from certain. In the coming weeks, the DOL may appeal the 5th Circuit's decision, which could result in a stay of the court's mandate and possible review by the Supreme Court.

Adding to the uncertainty is state-level activity. Many states are increasingly taking an interest in benefits-related matters (e.g., state run retirement plans). Several states, including Connecticut, Maryland, Nevada, New Jersey, and New York have passed or are considering their own fiduciary bills. [2] Further delay of a fiduciary rule may prompt more states to act. Just days before the 5th Circuit's decision regarding the DOL's fiduciary rule, 11 state treasurers sent a letter to the SEC in which they endorsed the DOL's fiduciary rule “as a critical protection” and expressed concern that delay of a fiduciary rule will imperil consumers. [3]

The SEC's meeting on Wednesday, April 18, is open to the public and will be webcast on the SEC's website. We will continue to monitor this dynamic situation.

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[1] On March 15, 2018, the 5th Circuit issued an opinion that vacated the DOL's fiduciary rule and related prohibited transaction exemptions in their entirety. U.S. Chamber of Commerce v. DOL, No. 17-10238, 2018 WL

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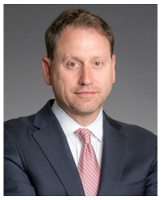
1325019 (5th Cir. Mar. 15, 2018). Vacatur will take effect when the court issues its “mandate”, which could happen as early as May 7, 2018. The DOL has until April 30, 2018, to request a rehearing.

[2] 2017 Conn. Pub. Acts No. 17-142; S.B. 383, 2018 Leg., 79th Sess. (Nev. 2017); S.B. 735, 218th Leg., 2018 Sess. (N.J. 2018); S.B. 1068, 2018 Leg. Reg. Sess. (Md. 2018); Proposed First Amend. to N.Y. Comp. Codes R. & Regs. Tit. 11, section 224.

[3] The treasurers of the following states signed the March 8, 2018 letter to the SEC: Illinois, Iowa, Maryland, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Washington, and Wyoming.

KEY CONTACTS



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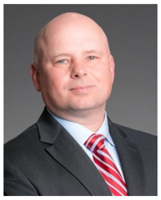

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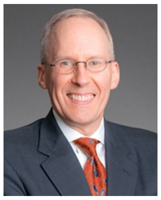

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