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The "new" fiduciary rule

Ever since the meltdown of the financial services industry in 2008, there has been concern about the standards to which investment advisors should be held. The longstanding rule has been one of suitability; that is, the recommended investment must be suitable for the customer. That sounds perfectly reasonable.

However, one element of the new legislation for increasing the regulatory requirements on financial institutions after 2008 called upon the SEC to investigate whether a higher standard might not be appropriate, a "fiduciary" standard, the highest possible standard. That would require the advisor to put customers' interests ahead of his or her own interest, and it would bar conflicts of interest. The brokerage industry pushed back hard against any changes to the standards, and the SEC has not yet issued new rules under that mandate.

But five years ago, the Department of Labor began a parallel regulatory project on fiduciary standards. On April 8, 2016, the final regulations were issued, applying a fiduciary rule in the context of retirement plans and IRAs. The new rule takes effect over a period of 12 to 18 months. Under the rule investment advisors to retirement plans and IRAs may have to disclose the sources of their compensation to those whom they advise, and they must always put the customer's interest first.

Some advisors are worried about the change, because of the uncertainty created and the possible increase in lawsuits should an investment turn sour. But to be clear, the fiduciary rule is not a guarantee of investment success.

Banks and trust departments have generally been supportive of the new DOL rule, or at least have not resisted it. The reason is easy to understand. Trust departments already are subject to fiduciary standards, and always have been. For them the fiduciary rule is not new at all. Banks that have brokerage departments expect to be able to adapt without difficulty for those operations.

Still, regulatory compliance is not cost free. The impact of the change on smaller brokers and financial institutions, coming on top of all the other recent changes in financial services regulation, could be severe. Therefore, there has been a move in Congress to head off the DOL rule, substituting a legislative approach. The outcome of that effort remains uncertain.

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