SNODGRASS
CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS

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COMPLIANCE UPDATE

Labor's Fiduciary Rule effective June 9, 2017

After recent implementation delays, the Department of Labor issued Guidance FAQs on a phased-in implementation of its Fiduciary Conflict of Interest Rule and related exemptions beginning at midnight Friday, June 9, 2017, with certain provisions in the exemptions delayed to January 1, 2018. As a result, on June 9, investment advice providers to retirement savers will become fiduciaries, and the "impartial conduct standards" will become requirements of the exemptions. The Department will continue to examine the Fiduciary Rule in compliance with the president's February 3, 2017, memorandum.

This guidance, like the Fiduciary Rule and related exemptions, is generally limited to advice concerning investments in IRAs, ERISA-covered plans, and other plans covered by section 4975 of the Internal Revenue Code.

Firms and their advisers must comply with the exemptions' conditions after June 9, 2017 if they receive compensation for investment advice in a manner that would violate the prohibited transaction rules, which are designed to protect retirement investors from conflicts of interest. Firms and advisers must either structure their compensation arrangements to avoid prohibited transactions or they must comply with an exemption such as the BIC Exemption or Principal Transactions Exemption.

The Department has adopted a phased implementation approach to both of these exemptions. The Fiduciary Rule's amended definition of fiduciary advice will first apply on June 9, 2017. On that same date, the BIC Exemption and Principal Transactions Exemption will become available to fiduciary advisers. At the outset, however, and for a transition period extending until January 1, 2018, fewer conditions will apply to financial institutions and advisers that seek to rely upon the exemptions.

During the transition period, financial institutions and advisers must comply with the "impartial conduct standards" which are consumer protection standards that ensure that advisers adhere to fiduciary norms and basic standards of fair dealing. The standards specifically require advisers and financial institutions to:

- Give advice that is in the "best interest" of the retirement investor. This best interest standard has two chief components: prudence and loyalty:
    - Under the prudence standard, the advice must meet a professional standard of care as specified in the text of the exemption;
    - Under the loyalty standard, the advice must be based on the interests of the customer, rather than the competing financial interest of the adviser or firm;
- Charge no more than reasonable compensation; and
- Make no misleading statements about investment transactions, compensation, and conflicts of interest.

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Additional information can be found in the Conflict of Interest FAQ's that were just published at https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period.pdf

QUESTIONS?

If you wish to discuss these matters in detail, please contact Steve Zanardelli, Tim Schofer, or Frank Antiga at (724) 934-0344 or (800) 580-7738, or email szanardelli@srsnodgrass.com, tschofer@srsnodgrass.com, or fantiga@srsnodgrass.com.