
SEC Sides with the Brokers

By Editorial Staff Thu, Jun 6, 2019

Although there will be no higher standard of conduct for advice on tax-deferred retirement accounts—the essence of the Obama DOL fiduciary rule—the new 'Regulation Best Interest' will apply to rollover recommendations.

The Securities and Exchange Commission yesterday voted along party lines to adopt the so-called Regulation Best Interest that it first proposed in April 2018, as well as a new Form CRS Relationship Summary for advisors to share with new clients and two separate interpretations under the Investment Advisors Act of 1940.

A fact sheet about the new rule is available [here](#).

In a prepared statement, the SEC said its actions bring “legal requirements and mandated disclosures in line with reasonable investor expectations, while preserving access (in terms of choice and cost) to a variety of investment services and products.”

With qualifications, the Commission effectively maintained the special dispensation enjoyed by broker-dealers and their representative brokers to recommend products to clients while accepting indirect compensation from product manufacturers.

[In discussions about conflicts-of-interest, a distinction is seldom made between sales commissions paid directly by the client to the brokerage, on the one hand, and sales commissions paid to the brokerage by product manufacturers—payments of which the clients are often not aware. Understanding that distinction is essential for understanding the need for broker disclosures and other regulations.]

During the live webcast Wednesday morning, SEC chairman Jay Clayton said, “A one-size-fits-all approach won’t work,” and went on to echo the talking points of the brokerage industry lobby. “There will be no uniform rule set for both broker-dealers and advisors. It would be a loss for Main Street investors.

“The initial implementation of the DOL fiduciary rule showed that our concerns about choice are not theoretical. There was a significant reduction of access to brokerage solutions and a shift to more expensive options. Our recommendations are consistent with the key goals of a uniform standard. We incorporate fiduciary principles, but adapt them to the broker-dealer model.”

Nonetheless, Clayton maintained that brokers, like advisors, will have to act in the best interests of clients. Second, although there will be no higher standard of conduct for advice on tax-deferred retirement accounts—the essence of the Obama DOL fiduciary rule—the new best-interest standard will apply to rollover recommendations.

Judging by press reports today, the final rule did not define “best interest” to the satisfaction of all observers. But the SEC, in its statement, asserted that “broker-dealers will be required to act in the best interest of a retail customer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer” and “a broker-dealer may not put its financial interests ahead of the interests of a retail customer when making recommendations.”

The new Form CRS Relationship Summary disclosure will require registered investment advisers and brokers to provide retail investors with “simple, easy-to-understand information about the nature of their relationship with their financial professional. While facilitating layered disclosure, the format of the relationship summary allows for comparability among the two different types of firms in a way that is distinct from other required disclosures.”

Regulation Best Interest and Form CRS will become effective 60 days after they are published in the Federal Register, and will include a transition period until June 30, 2020 to give firms sufficient time to come into compliance.

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