Investment Management Briefing

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Department of Labor Fiduciary Rule Update

Latest Developments

1. The Department of Labor (DOL) received 900 comment letters, along with several petitions, in respect of its proposed 60-day delay of the fiduciary rule. As expected, there was a split in support/opposition of the proposed delay. Those *supporting delay* cited widespread confusion over the rule's status to date, and most particularly the prospect of the rule going into effect only to be subsequently revised. One letter, for example, emphasized that implementing the rule now, only to have to make additional changes to its compliance later, would place an unreasonable burden on small financial service providers. Those *opposed to the delay* claimed that retirement investors would continue to receive conflicted advice, thereby driving the investors into high-priced products and services.

2. The DOL is confident it will be able to make a final decision on whether to delay the rule before the April 10 applicability date. We expect a final rule to be submitted to the Office of Management and Budget within the next two weeks, which will then conduct its own review. We continue to believe that there is a high probability the rule will be delayed by at least 60 days.

3. Alex Acosta, the Labor Secretary nominee, faced tough questioning in his March 22 Senate hearing. Senator Elizabeth Warren pressed Acosta on his views of the fiduciary rule. Acosta appears to view the rule as being overly broad, and he seems to contemplate a thorough (i.e., long) review of the rule in response to the Presidential Memorandum on Fiduciary Duty Rule (Feb. 3, 2017) (https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule), which generally directed the DOL to re-examine its legal and economic analysis underpinning the rule. This may portend a protracted review period of the rule before it becomes applicable.

Next Steps

As we discussed in our previous briefings (available here (http://www.stradley.com/insights/publications/2017/03/im-briefing-march-8-2017) and here (http://www.stradley.com/insights/publications/2017/03/im-briefing-march-13-2017)) April 17 is the deadline to submit comment letters addressing both the questions raised in the President's Memorandum, as well as the litany of questions posed by the DOL in its proposed delay. We recommend stakeholders – both in favor of and opposed to the rule – consider submitting comments to the DOL. Comments may address any or all of the questions posed.

Stakeholders may wish to consider, from a strategic standpoint, whether they: (a) support the rule without change, (b) support the rule with specific changes to make compliance less onerous, (c) oppose the rule and seek its repeal or (d) oppose the rule, but seek particular changes. In determining whether to submit a comment letter, stakeholders may consider whether: (1) the current rule provides a competitive advantage or disadvantage, (2) the bulk of compliance costs with the current rule have already been borne or not and (3) the optics of supporting/opposing the rule.

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