Investment Management Briefing

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Fairly Good News on Department of Labor Fiduciary Rule

On May 22, the U.S. Department of Labor (DOL) officially confirmed that the phased implementation of the DOL Fiduciary Rule will begin on Friday, June 9, at 11:59 p.m. local time. Coupled with this confirmation were a set of FAQs and a temporary enforcement policy addressing compliance during the implementation period of June 9, 2017 – Jan. 1, 2018. The key takeaways are listed below.

1. ***The Big Story:*** The fact that June 9 is truly the official start of the DOL Fiduciary Rule is not surprising and was largely expected by market participants notwithstanding certain media reports that indicated the June 9 start date could be pushed back. More notable, however, is the DOL's acknowledgment that the date on which the more onerous conditions of the various exemptions under the Rule are set to take effect, currently Jan. 1, may need to be further delayed. Also, the DOL appears amenable to changing the Rule, as we discuss next.

2. ***Is a Trump Version of the Rule Emerging?*** The seeds of a new version of the DOL Fiduciary Rule may have been planted. In its FAQs, the DOL previewed the release of a Request for Information (RFI), which will seek feedback from stakeholders "on specific ideas for possible new exemptions or regulatory changes based on recent public comments and market developments." The DOL will ask stakeholders whether the aforementioned Jan. 1 compliance date should be delayed further. The RFI may practically serve as a bridge between the Obama version of the Rule and a President Donald J. Trump version that addresses concerns about overregulation and the concomitant increased cost of retirement investment advice. The DOL expects to release the RFI "in the near term" and we think it can be viewed as a meaningful opportunity to shape a new Trump version of the Rule.

3. ***Sighs of Relief:*** The DOL helpfully recognizes that many stakeholders may not be fully compliant after June 9 despite ardent efforts. The DOL once again reiterated its compliance-first approach (rather than imposing penalties) during the implementation phase, as reflected in the new temporary enforcement policy. The DOL noted that the Treasury Department and Internal Revenue Service will not impose excise taxes for prohibited transactions in connection with the Rule during the phased implementation period. The key is to act in good faith in trying to comply with the Rule and related exemptions. Third-party litigation remains a risk, however.

4. ***The New DOL:*** The guidance on May 22 reflects the first action in respect of the Rule taken by the DOL under its new Secretary Alex Acosta, a Trump-appointee. Additional DOL political nominations remain outstanding and may further affect the trajectory of the Rule.

5. ***Next Steps:*** We continue to monitor developments in this area and will provide updates of any further developments, including the release of the RFI.

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