FX Service Providers Witness Probable Delay of Controversial Fiduciary Rule

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For those FX providers who were ensnared by the US Department of Labor's (DOL) controversial fiduciary rule, the recent proposed delay of the rule may provide relief. The fiduciary rule, a product of the Obama Administration, would significantly expand the ways in which one can become a fiduciary to a retirement investor by reason of giving investment advice. Certain sales activities to a retirement plan investor or IRA owner, for example, may create a fiduciary relationship, which would result in significant compliance costs and legal risk. It was set to go into effect on April 10, 2017.

On March 2, however, the DOL formally proposed delaying the applicability date of the Fiduciary Rule by 60 days. As part of this proposed delay, the DOL has solicited comments from all stakeholders on two central issues: (1) the pros and cons of delaying the full implementation of the fiduciary rule by 60 days; and (2) suggestions on revisions to the rule, including comments on whether the DOL accurately captured the economic costs of the rule on the various financial market industries. Comments on the delay are due by March 17, 2017. Comments on the substantive provisions of the rule are due by April 17, 2017.

This proposed delay comes on the heels of President Trump's direction to the DOL to reconsider its legal and economic analysis of the fiduciary rule. A new analysis will take time, perhaps longer than the 60-day proposed delay, presaging further delays.

At this point, it appears fairly likely that the fiduciary rule will in fact be delayed by 60 days. As to what happens to the rule once it is delayed is less clear. For example, the DOL could charge ahead with the rule, as drafted, just on a delayed basis. Alternatively, the rule could be revised in a surgical fashion, leaving most of the provisions intact. There is always the possibility that the entire rule is completely rescinded. Much greater clarity on this will be had over the coming months.

The uncertainty over the rule's status puts FX service providers, who may otherwise be subject to the rule, in a difficult position. While some firms may take the conservative approach and continue executing an appropriate compliance program, other firms may be putting things on hold until the dust settles.

The DOL's proposed delay reflects the Trump's Administration's view on regulations. Industry participants should expect to witness political jockeying by both Democrats and Republicans over the coming weeks and months over the fate of the fiduciary rule.

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