Investment Management Briefing

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Stradley Ronon Stevens & Young, LLP
2005 Market Street
Suite 2600
Philadelphia, PA 19103-7018
215.564.8000 Telephone
215.564.8120 Facsimile
www.stradley.com

With other offices in:
Washington, D.C.
New York
New Jersey
Illinois
Delaware

The DOL, the SEC and the States: Fiduciary Law Developments

On Oct. 17, Stradley Ronon Partner Lawrence Stadulis (http://www.stradley.com/professionals/s/stadulis-lawrence-p) and Counsel George Michael Gerstein (http://www.stradley.com/professionals/g/gerstein-george) held a conference call, "The DOL, the SEC and the States: Fiduciary Law Developments," to discuss the latest on the Department of Labor (DOL) Fiduciary Rule, the prospect of a uniform standard by the Securities and Exchange Commission (SEC) and the recent emergence of states developing their own fiduciary laws (most notably, Nevada). An audio recording of the briefing can be found here. For convenience, they have prepared this summary for those who wish to simply gather a high-level overview of these developments.

- The president officially nominated Preston Rutledge as an assistant secretary of labor, Employee Benefits Security Administration, which could have a significant impact on the DOL's re-examination of the Fiduciary Rule. Rutledge most recently served as senior tax and benefits counsel on the Majority Tax Staff of the Senate Finance Committee. Rutledge would need to be confirmed by the Senate.

- Representative Ann Wagner (R-Mo.) introduced in the House of Representatives the Protecting Advice for Small Savers (PASS) Act. This bill would repeal the DOL Fiduciary Rule while creating a best-interest standard for broker-dealers and requiring broker-dealers to disclose compensation they receive and any conflicts of interest that exist.

- Jay Clayton, the chairman of the SEC, has confirmed during his recent testimonies before Congress that one of the SEC's top priorities is to put forth a uniform fiduciary standard, and that staff are currently working on a new rule while coordinating with the DOL and the states.

- Several states are now considering laws that could impose their own fiduciary duties on federally regulated broker-dealers and advisers. Nevada passed a law on July 1 that imposes significant requirements on broker-dealers and advisers, though the contours of these requirements will be defined in regulations, which have yet to be promulgated. Unfortunately, the lack of regulations has created significant compliance uncertainty in the industry. The Nevada Securities Division recently held a workshop in Las Vegas on the new law, and Lawrence Stadulis attended; unfortunately, little guidance was offered. Separately, various states have introduced bills, including New York, New Jersey and Massachusetts.

- The DOL is expected to finalize the proposed delay of the transition period with respect to the Fiduciary Rule's associated exemptions. Should the proposal be adopted, the transition period would extend from January 1, 2018 to July 1, 2019. The DOL has also confirmed that it is drafting a proposed class exemption, which would be aimed at products and services that present fewer conflicts of interest and greater fee transparency. It is not yet clear when this new exemption will be proposed.

George Michael Gerstein

Lawrence P. Stadulis

For more information, contact George Michael Gerstein at 202.507.5157 or ggerstein@stradley.com *or Lawrence P. Stadulis at 202.419.8407 or* lstadulis@stradley.com.

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