THE DOL FIDUCIARY RULE IS DEAD; LONG LIVE THE DOL FIDUCIARY RULE

Reactions to the Fifth Circuit Court's decision to vacate the entirety of the Department of Labor's fiduciary rule were swift, plentiful, and split. Yet the divergent opinions largely overlooked why so many firms understood and accepted the basic point of the DOL fiduciary rule: providing advice and recommendations in the best interest of their clients is also in the best interests of their advisory businesses.

The acceptance by firms across the industry of the fiduciary principle, that they are working in their clients' best interests, is not something they can walk back now. It's the proverbial toothpaste out of the tube – you can't put it back in. In a way, the Court's ruling could turn out to be a blessing that paves the way for a more robust and comprehensive Best Interest Standard to emerge and to apply to all customers and accounts.

ECHOES OF THE DOL FIDUCIARY RULE

No matter what happens to the DOL Fiduciary Rule, financial firms can be sure of the following:

THE DOL FIDUCIARY RULE WILL CONTINUE TO HAVE AN IMPACT

Whichever side of the argument you fell on, the impact of the DOL Fiduciary rule will have an ongoing impact, regardless of the Court's ruling (including the Supreme Court – if/when it gets that far). Customers are now more aware than ever of their advisor's fiduciary and suitability responsibilities. Merrill Lynch wants its advisors to know that, despite U.S. Court of Appeals for the Fifth Circuit's decision to throw out all of the Department of Labor's fiduciary rule, it upholds its client-first stance and support for the principles outlined in the DOL rule.

FAILURE TO PREPARE STILL REPRESENTS SIGNIFICANT COMPLIANCE RISK

The ruling doesn't change the fact that many firms have already implemented and advertised changes that they have made to adhere to the Best Interest standard. This was very well summarized by Paul Ellenbogen, head of regulatory solutions at the fund-rating firm Morningstar, in Financial Advisor IQ: "broker-dealers are going to evolve away from transactions one at a time and move to giving long-term advice." In turn, that trend will generate more widespread industry acceptance should the SEC step up and introduce fiduciary obligations for investment advisors generally. Those who continue to resist fiduciary rules are protecting something that's slipping away from them economically, Ellenbogen says.

OTHER REGULATORY RULES WILL EMERGE, AND THEY WILL REQUIRE JUST AS MUCH EFFORT TO COMPLY

DOL will likely push the rule through the courts, even as they continue to make changes to the rule itself (as they have been). The SEC has suggested that they too will wade into this regulatory conversation and state governments (especially those with prior "run-ins" in the financial regulatory space) have and will put their own requirements and laws into focus.

WILL THE SEC ACT SOONER?

Prior to the new ruling, the SEC, led by Commissioner Jay Clayton, made plenty of noise about proposing a fiduciary measure of its own. “I don’t think it’s any secret that we’re going to make a big effort to try to bring clarity and harmony to the investment advisor, broker-dealer standard of conduct regulation — something that’s important to me,” Clayton told attendees at a law conference in Washington, D.C., last month. “It’s something that the market needs,” Clayton added. “I think it’s something that regulators need.”

After the ruling, the SEC was even more direct: “Securities and Exchange Commission Chairman Jay Clayton said Monday that the agency is moving forward on a fiduciary rule and its work would not be affected by a court decision last week that struck down a similar Labor Department regulation.”

CONCLUSION

Despite the regulatory tug-of-war surrounding the regulatory implementation of fiduciary rules and guidelines, we are confident that providing advice in your client’s best interest will be a foundational characteristic of the wealth advisory firms that thrive in the years ahead.

Xtiva will continue to be your partner in building Incentive Compensation and Sales Performance Management solutions that support your business and empower advisor success regardless of the regulatory posture of the day.