Schulte Roth & Zabel

Alert

DOL Fiduciary Duty Rule Officially Dead

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It's official – after months of uncertainty, the DOL regulation that expanded the definition of who is a fiduciary in the context of marketing investment products to Individual Retirement Accounts and ERISA-covered pension plans ("Fiduciary Rule") died at the end of June 2018.

In March 2018, relying on the Administrative Procedures Act, the U.S. Court of Appeals for the Fifth Circuit issued a judgment in *Chamber of Commerce of the U.S. v. U.S. Dep't. of Labor*, No. 17-10238, 2018 U.S. App. LEXIS 6472 (5th Cir. Mar. 15, 2018) vacating the Fiduciary Rule. Because the deadline for petitioning either the Fifth Circuit for a rehearing or the Supreme Court for a review has passed, the Fiduciary Rule is effectively vacated from the books.

Many private fund managers have been complying with the Fiduciary Rule since it went into effect on June 9, 2017, by requiring IRAs and ERISA plans to make certain representations drawn from the Fiduciary Rule prior to investing. Now that the Fiduciary Rule is no more, these managers should remove the *Supplement to the Subscription Agreement, ERISA Representations and Warranties* (available here) that we distributed in June 2017 from their subscription agreements, as it is no longer required. Accordingly, fund managers should no longer feel constrained when marketing fund interests to unrepresented IRAs and retail ERISA plans.

While the U.S. Securities and Exchange Commission has proposed a rule to address the standard applicable to securities recommendations by broker-dealers, unlike the now-defunct DOL Fiduciary Rule, the SEC's proposed "Regulation Best Interest" would apply only to funds offered by a registered broker-dealer to retail customers primarily for personal, family or household purposes.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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