

## **Fiduciary Rule Update – SEC to Consider Broker Dealer and Investment Adviser Standards**

---

### Working Together

04.17.2018

By George Kasper and Karen Wackerman

The SEC has announced it will hold a public meeting on Wednesday, April 18 at 3:30 p.m. to discuss possible standards for broker-dealers and investment advisers when dealing with retail investors (e.g., small retirement plans, their participants, and IRA owners), signaling that it will consider a new fiduciary standard of conduct and related rules. At this meeting the Commission will consider:

- whether to propose new and amended rules and forms to require registered investment advisers and registered broker-dealers to provide a brief relationship summary to retail investors.
- whether to propose a rule to establish a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.
- whether to propose a Commission interpretation of the standard of conduct for investment advisers.

The meeting will be webcast on the Commission’s website at [www.sec.gov](http://www.sec.gov).

This is consistent with Chairman Jay Clayton’s announcement late last year that the SEC would prioritize this matter and was drafting a proposal of a fiduciary rule. The U.S. Department of Labor’s Fiduciary Rule was at the time under heavy criticism and legal challenges, as well as on-going internal review. Last month, the Fifth Circuit vacated the DOL’s Fiduciary Rule (and related exemptions, including the Best Interest Contract (“BIC”) Exemption) in *Chamber of Commerce of the United States of America, et al. v. United States Department of Labor*; a ruling that has likely accelerated the SEC’s efforts. The DOL has since announced that it would not enforce its Fiduciary Rule “pending further review.” In light of these developments, we anticipate the SEC will publish a proposed rule soon after the open meeting. In the meantime, one might ask “What’s an adviser to do?”

Investment advisers should continue to monitor developments and keep apprised of the necessity of complying with the Fiduciary Rule. Similarly, retirement plan fiduciaries should stay abreast of the applicable rules and monitor the efforts of their service providers who provide investment advice to their retirement plans and participants. The DOL’s non-enforcement policy does not prevent private parties, including service providers and plan participants, from bringing lawsuits challenging compliance with the Fiduciary Rule, and the Fifth Circuit’s ruling that vacated the Fiduciary Rule may be stayed if it is appealed - meaning that the

---

**[pullcom.com](http://pullcom.com)**  [@pullmancomley](https://twitter.com/pullmancomley)

<b>BRIDGEPORT</b> 203.330.2000	<b>HARTFORD</b> 860.424.4300	<b>SPRINGFIELD</b> 413.314.6160	<b>WAKEFIELD</b> 401-360-1533	<b>WATERBURY</b> 203.573.9700	<b>WESTPORT</b> 203.254.5000	<b>WHITE PLAINS</b> 914.705.5355
-----------------------------------	---------------------------------	------------------------------------	----------------------------------	----------------------------------	---------------------------------	-------------------------------------

## **Fiduciary Rule Update – SEC to Consider Broker Dealer and Investment Adviser Standards**

---

DOL's Fiduciary Rule would remain in effect pending the outcome of an appeal.

**Tags:** U.S. Department of Labor