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6 Key Points on the Fiduciary Rule

Use our checklist to help you adopt the new fiduciary standard.

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On May 23, the U.S. Secretary of Labor reaffirmed that the fiduciary rule would begin to phase in on June 9. The Department of Labor also released a FAQ and a Field Assistance Bulletin. Here are six key points to keep in mind.

1 The new definitions of who is a fiduciary went into effect along with the impartial conduct standards on June 9—60 days later than originally planned.

This means that as of June 9, IRA advisors and others are expected to provide advice that is in retirement investors' best interests, charge no more than reasonable compensation, and avoid misleading statements.

> "The Field Assistance Bulletin also confirms that the DOL will not pursue claims against fiduciaries working in good faith to comply with the rule during the transition."

2 It is important to remember that there was always supposed to be a transition period for firms to be fully compliant with the best-interest contract exemption.

That transition will now be easier. Originally, firms had a number of disclosure, monitoring, and record-keeping requirements during this transition, but these requirements have been delayed. The Field Assistance Bulletin also confirms that the DOL will not pursue claims against fiduciaries working in good faith to comply with the rule during the transition.

3 In their FAQ, the department clarified that financial institutions have flexibility in designing their internal systems to ensure that their advisors give best-interest advice during the transition.

Specifically, the FAQs note that firms can comply by documenting the basis for recommendations and monitoring their advisors' sales practices and recommendations to ensure they meet the impartial conduct standards, among other approaches. Further, the department indicated that firms do not need to transition to new compensation systems on June 9 to be compliant during the transition.

4 Going forward, we think the most likely area for adjustment is around the use of class-action lawsuits as an enforcement mechanism.

The op-ed and FAQs reinforce our belief that fully undoing the rule is unlikely, and the broad principles will likely survive. The department has also indicated an interest in further coordination with the SEC, which might eventually lead to a uniform standard across taxable and retirement accounts.

5 As it explores adjusting the rule, the department remains interested in innovations such as "T-shares" and "clean shares," which could help firms comply with the rule.

Morningstar included a paper on T- and clean shares in our comment letter on April 17 on the examination of the rule, and we believe any new rule-making should account for the potential of these new, innovative share classes—particularly clean shares. We expect a request for information shortly, followed by DOL proposals to adjust the rule, which we are optimistic will help investors receive high-quality advice while reducing risks to industry.

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6 The momentum toward offering holistic advice is inescapable.

Regardless of what happens with the DOL's fiduciary rule, the reality is that firms are moving toward a client-centric business model and delivering financial services that put investors' interests first, and regulations are moving in the same directions. The open questions now are not around whether advisors should act in the best interests of their clients. Rather, the questions are around adjustments to the final enforcement mechanisms and the extent to which the SEC will align its rules with the DOL's.