Q&A: DOL Fiduciary Rule

Rob Klapprodt is president at Vestmark

By Emily Sakamoto, Thursday 1st June, 2017 7:47 PM ET

ES: **What does June 9 "soft" implementation date for the rule entail and what does January 1 entail?**

RK: The rule itself, and the implementation and full compliance with the rule, doesn't kick in until Jan. 1. Initially there were parts that would be effective on April 10. With the new administration and new head of the DOL, that April date was delayed until June 9. Firms should be aware that they nee dto comply with the partial conduct standard come June. There are other elements that don't kick in until January, most notably the requirements like the BIC (Best Interest Contract) and BIC Exemption. The impartial conduct standard comes down to three components. The first is receiving no more than reasonable compensation, which can be fuzzy. The next component is refraining from making materially false statements – basically don't lie. That is an element of what kicks in June 9. The third component is providing advice in accordance with the best interest standard of care. Those all commence on June 9.

ES: **Why do you think the rule is being partially enacted?**

RK: A lot of the rule original enactment was intended to address bad actors. There's inevitably going to be some bad actors in the mix. The fiduciary rule itself is on the federal register. There is a formal process that the DOL would have to go through to unwind it if they want to. Something had to commence, something had to begin. There was the delay from April to June. There are additional steps that are going to be occurring between now and Jan 1. The new head of the DOL has hinted at possible changes to come. I don't know if complete self-regulation has proven effective across financial industry and advice industry.

ES: **What did Secretary of Labor Alexander Acosta say in his Wall Street Journal op-ed?**

RK: There were elements of the original executive order that President Trump issued in February that he repeated. They largely came down to making sure this wasn't an act for the attorneys, it was truly for the end investor.

ES: **What are the overall ramifications of this early stage implementation for firms?**

RK: There have been a lot of firms that were expecting some sort of delay especially small independent firms. Here we are, the rule is not going to be delayed anymore. There are aspects that won't go away, like the impartial conduct standard. If you might be doing things that could be considered questionable from a client's best interesting point of view, you need to be sending out negative consent letters by June 9. Beyond that there's speculation, hints, that the SEC may be getting involved in defining a fiduciary rule. If the DOL finds that the rule may be too costly for the industry to implement, or the sole purpose is to enrich lawyers … then maybe changes will come. As of now the rule that's on the books kicks in come Jan. 1. Firms can be confident in that at least. They should engage with their technology providers and attorneys to make sure they're prepared. They need to have a plan in place … if they intend to continue operating in those lines of business.

ES: **What technology underpins fiduciary compliance?**

RK: Much of the technology falls on the distribution side: the broker-dealers, the RIAs, the banks. Anyone who has a direct relationship with the end client should be thinking on the technology front. A lot of contracting needs to be in place, like a document management system to facilitate execution; documents prove that you have all contracts in place that are required under the law. We're seeing demand is going to drive digital advice and interaction. A lot of folks are coming to us asking how to digitize and push the whole client interaction online. We see a lot of applicability in web-based communications with clients to streamline the interaction and drive efficiencies, capture electronic signatures. There is a shift away from commission-based transactions. They become far more onerous under the fiduciary rule. Firms are pushing towards fee-based advisory, charging an asset-based fee for the advice provided.

ES: **What tech is necessary for a fee-based advisory structure?**

RK: It starts with a needs assessment of the client, going through a profiling process which culminates in an investment proposal. Next you have portfolio construction. There are tools to help an advisor construct a portfolio for a client; there's a need to rebalance the portfolio and trade the portfolio to keep it in line with its prospective targets. The last overarching area is compliance and oversight. There is a central need to oversee what the advisors are doing, and to double check that they're operating in accordance with the client's best interest in mind.