EXPLORING THE IMPACT OF THE DOL'S FIDUCIARY RULE

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Operator: Please standby, we're about to begin. You are holding for the Department of Labor Conflicts of Interest Regulation Finalized Webcast. Today's call is being recorded. Before we begin today's meeting we would like to make sure that everyone is logged onto the Web portion of this conference.

If you haven't already done so, please click the link that was delivered to your e-mail address when you registered for this session. You will be asked for a meeting number which for this meeting only is 743967994.

You will also be asked for a password which is April 28. That's capital A, lower-case P-R-I-L28 with no spaces. At this time I will turn the call over to your host, Christine Gill. Please go ahead.

Christine Gill: Thanks, Jamie, good day, everyone. Thanks for joining us to discuss the impact of the Department of Labor's fiduciary standard rule. As the investment company for the world, BNY Mellon services the entire investment continuum from asset managers to distributors.

Therefore, we have a unique perspective as to how this particular rule will transform our industry. Today we plan to share those insights with you our client so thank you very much for joining. I'm grateful that we have a panel of experts here to discuss the rule and what it will mean for the financial services industry.

First we have Rob Cirrotti. Rob is a Managing Director and Head of Retirement Investment Solutions. He oversees our retirement business including the development of investment solutions for broker-dealers and registered investment advisor clients. We also have Tonia Bottoms. Tonia is a Managing Director and Managing Counsel.

Tonia specializes in the legal aspects of retirement plans and financial products. She provides advice and guidance regarding the compliance and oversight of retirement and education savings plans. We also have Eli Peterson and Eli is a Managing Director in our Office of Public Policy and Regulatory Affairs.

He represents BNY Mellon in Washington primarily focusing on government reform initiatives following the financial crisis. In terms of our agenda for today, Eli is going to give a quick overview as to how we approach regulatory issues at BNY Mellon in support of our clients.

Then we'll discuss the final rules and the changes that have been made. We'll cover the new definition of investment advice, the best interest contract exemption, the impact to asset managers and distributors and the timeline for compliance.

We'll then open it up for questions and so you can enter your questions actually throughout the course of the Webinar right on your screen in the lower right-hand corner so we hope that you ask lots of questions.

We've been interacting with our clients regularly on this topic and I think everyone's still reviewing the rule and trying to interpret what it means so if you have a question, it's likely someone else on the line has one as well and so with that I'll now hand it over to Eli to give us a quick overview on our approach to regulatory affairs at BNY Mellon.

Eli Peterson: Sure, thank you, Christine. I hope everybody can hear me loud and clear so I'm going to be very, very brief and then turn it over to Rob and Tonia to get into the substance of it.

We thought it would be helpful to just kind of start with a level set of what the company's public policy and regulatory affairs program looks like because we do try to leverage all of our capacity in those areas for our clients particularly when there's synergistic business reasons to do so.

So as Christine alluded to since the financial crisis we've invested a lot of resources to build-out capability in Washington, in London, in Brussels, even in Asia to try to be ahead of the curve on all regulatory policy changes that are happening, in particular be ahead of the curve on trying to understand what those changes will mean for the company.

And in turn what those changes will mean for the provision of products and services to all of our clients across our businesses and particularly those impacts are likely to be localized for our serving businesses so that's basically investment servicing in Pershing when you think about the entire BNY Mellon corporate structure.

So the way we approach regulatory initiatives is effectively to try to begin by prioritizing since we obviously have a limited amount of political capital as an institution to effectuate changes in a limited amount of resources. We want to ensure that they're dedicated to the things that will matter most to the company and to our clients.

So we trying to prioritize issues that will either be sort of something that will hit the firm across the entire company or have really significant impacts in one particular business area and those are the sorts of items that we would give a sort of Tier 1 prioritization to where we're focusing the most of our time, attention and resources on those matters.

And then there's other issues that are important to the company, important to our clients but they're not areas that have any real specific impact to our business versus say other banks or other large financial institutions or they're just on a longer time trail as far as implementation goes or the consequences could just be a little bit more attenuated.

So those are more Tier 2 or Tier 3 priority initiatives are more watching briefs for the company where we're happy to talk with clients about what we see happening in those spaces but they're not things that we five as being as strategically important as say the top 15 or 20 issues on our public policy agenda and I think thinking about this particular issue, it clearly was one from the beginning that was going to be a Tier 1 policy issues.

It's something that we've been discussing with clients through various events and at various flora for several years going back to the original iteration of the proposal through the tabling of the initial proposal and then again through the re-proposal and now the final rule so we see impacts for the company in the investment management space, in the asset servicing space and in the Pershing space.

And what we've tried to do and how we've tried to address this both from a lobbying perspective on the front end and now from a conformance and compliance perspective on the back end is to try to bring together resources from those areas across the company.

So all the control function and resources that you would think of so legal, compliance, risk, finance within BNY Mellon along with most importantly the front-line business people and client management folks who you all deal with on a daily basis to bring together kind of the best thinking to start with, okay, how is this going to impact BNY Mellon?

And as Rob and Tonia are probably are going to get into, the impacts for BNY Mellon ourselves are probably a little bit more distant than what they are actually for our clients so then the initial analysis pivoted from okay, what is BNY Mellon going to have to do across the company or what could be the potential economic compliance strategic implications for BNY Mellon to what are our clients going to need to do.

And how do we position BNY Mellon to be a helpful partner in allowing our clients and helping our clients get to where they need to get to as you all come to terms with the rule, digest it and start thinking about any migration and activity that you guys may be undertaking due to the rule, any changes in your organizational structure or your operating structure because of the rule, etcetera.

So in that respect it's really quite a traditional issue and the fact that we deal with these things all the time and that our design to sort of reshape a particular market and we hope to be able to bring to bear some of that expertise for our clients and I think that to begin doing that in this particular space the most useful thing is to probably turn it over to Rob and Tonia who can get into the actual substance of the rule and then at the end I can talk a little bit about the lack of really any likelihood of change or anything like that and why we probably should all just be approaching this as though you're going to need to implement it in accordance with the timing that's in the final rule so Christine why don't I hand it back to you or to Rob or to Tonia, whomever is going to take-up the baton from here?

Christine Gill: Okay, great, thanks so much, Eli. Yes, Rob, if you could jump-in and give us an understanding of what the final rule actually covers, that would be quite helpful.

Rob Cirrotti: Great, thanks, Christine so from a distance the Department of Labor's regulation can be quite difficult to decipher. Even its name change during the rulemaking process from the definition of fiduciary to the conflicts of interest rule as part of the administration's effort to reposition the rule before re-proposing it in 2015.

The regulation in its final form represents a fundamental change to how retirement advice is delivered. The Department of Labor greatly expanded the definition of investment advice, essentially lowering the bar for that is considered investment advice and also broadened its application to include both ERISA plans as well as IRAs.

As a result of this change, most advisors will be considered ERISA fiduciaries when advising retirement investors. In addition to changing the definition of investment advice, the Department also narrowed a number of existing prohibited transaction exemptions while creating two new exemptions.

So for those who may not be conversant in the language of exemptions, it's important to understand that exemptions are necessary for a fiduciary to be compensated under ERISA.

The net effect of these changes is that most advisors will be ERISA fiduciaries and the changes to existing prohibited transaction exemptions will funnel reliance on the two new exemptions that the Department of Labor created so let me turn this over to Tonia and she's going to outline a little bit more in greater detail what these changes are. Tonia?

Tonia Bottoms: Thanks, Rob, so as Rob mention on April 8th, 2016, the Department of Labor published the final rule redefining investment advice under both ERISA and the Internal Revenue Code.

By way of background, ERISA defines three ways to become a fiduciary: discretion over the investment of a plan, discretion over the administration of a plan, or providing investment advice for a fee.

The DOL's final rule focuses on the investment advice prompt. Basically the Department has lowered the bar and expanded circumstances under which an individual can become a fiduciary. The existing regulation which has existed for the last 41 years requires a five-part test to be met in order to meet the definition of investment advice.

The final rule essentially unwinds that test and removes certain requirements. The final rule is actually the same broad definition of fiduciary advice that was in the 2015 proposal. Still, it has revised the categories of advice covered under the rule and provided more clarity on what qualifies and what does not qualify as a recommendation for purposes of the rule.

Fiduciary status is not dependent on an individual's registration or licensing status as you might be familiar with under their regulatory regime. Please keep in mind that each firm must assess the impact of the final rule on its own structure so generally under the final rule any individual receiving compensation for providing one of two types of covered advice is a fiduciary.

In addition to providing one of these types of advice to a retirement plan investor, an individual must represent or acknowledge that it is acting as a fiduciary, render the advice pursuant to a written or verbal agreement, arrangement or understanding, if the advice on the particular needs of the recipient, or directs that advice to a specific recipient regarding the advisability of a particular investment or management decision.

In order for the advice to be considered fiduciary advice, it must be a recommendation that is specifically directed to a retirement investment. Retirement investors are defined as an IRA, an IRA owner, a plan, plan sponsor or fiduciary, participant in a plan or a beneficiary of a participant.

Recommendations must relate to the provision of advice and are considered to be a communication that's based on its content, context and presentation would be viewed as a suggestion that the advised recipient either refrain from or take part in a specific course of action.

A recommendation includes a recommendation with respect to buying, holding, selling or exchanging securities or other investment property including assets that are rolled over from a plan or a recommendation as to the management of securities or other property, investment policies or strategies, portfolio composition, the selection of other persons to provide investment advice or services and/or with respect to rollover, distributions or transfers from a plan or an IRA.

A recommendation also includes the selection of account arrangements including the recommendation of brokerage services versus advisory services. The Department also identifies situations in which individuals could act without being considered to provide a recommendation that would be treated as investment advice.

These recommendations generally cover platform marketing, selection and monitoring assistance, general marketing and communication and the provision of investment education so now we're just going to talk a little bit about some of the changes that were part of the best interest contract exemption.

As Rob mentioned, the final rule in addition to changing the definition of investment advice under ERISA and the code included amendments to existing prohibited transaction exemptions as well as two new exemptions. Focusing on the best interest contract exemption on this slide, it will briefly talk about some of the changed in the BIC broadly.

This exemption provides relief to both individual retirement accounts and ERISA plans to fiduciaries to both IRAs and ERISA plans to provide investment advice so functionally the best interest contract would allow an advisor or financial institution to receive variable compensation including commissions.

To qualify for the exemption, fiduciaries must meet several conditions. The 2015 proposal included many conditions which garnered criticism as unworkable in a retirement market. In the final rule the Department made modifications. The blue tiles on this slide include exemption conditions to which a change has been made.

The gray tiles indicate exemption conditions that have been eliminated and the green tiles indicate new concepts under the final rule so first, blue tiles. Contracts.

The fiduciary must have a written contract between the financial institution and the retirement investor that provides for commitment to following the best interest standard, representations and warranties that the firm has adopted in compliance policies, mitigate conflicts and if there was no differential compensation for any other incentive that would tend to encourage the advisors to make improper recommendations.

The contract must also indicate any conflicts that have been identified and disclose them. It must provide a private right of the retirement investor to take action against the firm and the advisor for contractual breaches.

The written contract requirement in the final rule does not apply to ERISA plans but it does require contracts for IRAs and other non-ERISA plans that are covered by the extension. Finally the contract may be entered into either prior or at the same time as the transaction is executed which results from the provision of the advisor's investment advice.

The second blue tile is pre-trade disclosure and those pre-trade disclosure requirements which are in the 2015 proposal have been substantially revised. The 2015 proposal included a requirement to project total costs over one, five and 10-year periods to the retirement investor. That condition has been eliminated from the final exemption.

Requirements to provide disclosure prior to the trade has been modified to a requirement that disclosure must be provided before or at the time of purchase regarding the best interest standard, material conflicts of interest and information about the financial institution's services, fees and other compensation.

The retirement investor may request more specific and customized disclosure from the fiduciary and the fiduciary would need to comply with that request within 30 days.

The next tile is the gray tile, annual disclosure. This requirement to disclose fee and compensation information annually has been eliminated from the conditions along with the requirement to collect data regarding quarterly investment flows, outflows and holding periods for each asset held, purchased or sold by retirement investors.

The next blue tile is on Webpage disclosure. A public Webpage must be maintained and updated at least quarterly. The Website must include a description of the financial institution's business model and the material conflicts of interest that are associated with it.

The schedule of typical account or contract fees and service charges is to also be posted on the public Website along with a model contract or either a model notice of the contract terms and required disclosures.

The Website must also have a written description of the financial institution's policies and procedures as well as a list of product manufacturers and other parties which whom the financial institution maintains arrangements under which they receive third-party payments.

Finally disclosure of the financial institution's compensation and (attention) arrangements with advisors must be included. The next tile is a gray one, eligible assets indicating that that requirement has been removed from the final exemption. There is no longer a defined list of assets which may be used under this particular exemption.

Annuities, a blue tile. The best interest contract was modified to cover recommendations of six indexed annuities to retirement investors along with the recommendations of variable annuities. Previously the condition of this exemption included fixed index annuities under another exemption.

The bottom three tiles are green tiles which indicate new concepts under the exemptions. The first one is grandfathering. The final rule provides relief from the prohibited transaction rules for preexisting transactions where the advisor and financial institution may have provided advice to retirement investors before the April 17 applicability date.

Advisors, financial institutions and other affiliates are permitted to receive compensation as a result of the advice given to IRA owners, participants or beneficiaries in all plans regardless of size.

The compensation must be received under an arrangement that was entered into prior to the applicability date in April of 2017 and that arrangement must not have expired or come-up for renewal after April 2017.

The compensation must not be received in connection with an investment of any additional amounts in the previously-acquired investment but it does allow for the exchange of investment within a mutual fund family or the continuation of a systemic investment program as well as exchanges among funds are permitted.

Limited advice may be given but the grandfathering provision does not cover any advice relating to new investment in the retirement account. The second tile level C fiduciary is a new concept under the best interest contract which allows for a limited set of conditions to apply.

Under this provision financial institutions and advisors are level C fiduciaries. It's the only C received by the institution, advisor and any affiliate in connection with advisory or investment managed services is a level C. That fee must be disclosed in advance to the retirement investor.

The financial institution and the advisor cannot rely on the best interest contract if any transaction-based compensation is received by not only the financial institution or advisor but also an affiliate in connection with advisory of investment management services.

Level C is defined within the best interest contract exemptions in the definition section. No contract of the retirement investor is required and no BIC warranties or disclosures are made or given.

With regard to rollover recommendations, the fiduciary must document the specific reason why the recommendation was considered to be in the best interest of the retirement investor.

The recommendations to switch to a level C arrangement, level C must document the reason the arrangement was considered to be in the best interest of the retirement investor including consideration of other factors.

The last green tile talks about three (tacks of it) compliance. We're going to flip to the next page so you can see those concepts. When considering prohibited transaction exemptions, view those exemptions as a path forward which will allow the fiduciary who's engaging in activity to continue an activity that would otherwise be prohibited.

It's not an exemption for fiduciary status. When we looked at the BIC, we identified really three paths forward and we're going to call those hold it, one-way BIC and BIC light.

One-way BIC indicates that it may be used for ERISA investors only. It's in the center box on this chart and it's really a very simple compliance structure requiring unilateral disclosures and acknowledgements be made to ERISA investors and no written contract or signed contract is required.

If we look to the left, full BIC which indicates complete and full requirement of the BIC exemption must be met. It requires the bilateral contract between the financial institution and the retirement investor and full BIC must be used with IRA investors. A little bit of context around the difference.

In reading through the preamble for both the change in definition of investment advice plus the preamble to the BIC. The Department notes in several places within an ERISA plan there is an independent fiduciary, usually a plan sponsor or a plan committee that oversees the administration and investment choices of the plan.

In light of that the Department feels that there is a third party who's overseeing the operation of the plan and can have the ability to oversee and act in the best interest of participants.

Distinguishing that relationship from the IRA world where the IRA investors is the individual engaged in discussions around investments in the plan and the IRA investor may not be as financially aware or financially informed as an independent fiduciary might be.

So the caution there is to make sure that IRA investors are fully informed of the issues associated with investing through a financial institution or an advisor. On the far right is BIC light and BIC light is meant to be used in very limited circumstances for the level C fiduciary which we described on the previous slide as well as any rollover recommendations.

This exemption requires specific documentation with regard to the recommendations but it does not require any sort of separate written arrangements. All of these paths to BIC compliance require compliance with the impartial conduct standard.

Firms and financial institutions must develop policies and procedures which are designed to ensure that the impartial conduct standards are adhered to as well as disclosing and keeping records with regards to fee, compensation and other conflicts. Rob, I'll turn it back to you.

Christine Gill: So Rob and Tonia, I guess I had a quick question. I wanted to get your overall assessment on the BIC and how it's changed in the final rule. I think initially people were thinking it was pretty onerous and going to be challenging to leverage. Do you think it's significantly better and it's going to be used more widely?

Tonia Bottoms: Why don't you take the first part of it, Rob?

Rob Cirrotti: Sure, so I think as we look at what the Department has done with the final rule specific to BIC, they definitely made many changes that make utilization of that exemption more practical from an implementation perspective and from a process perspective so the changes that Tonia walked through in terms of who's a party to the contract and the timing of that, they lightened some of the transaction-specific disclosures and the Website disclosure all making it more practical if you will to implement.

What they did not do however was to lessen the responsibility or the exposure that firms could subject themselves to as a result of complying with the exemption and in particular where they have a contract in place and where they have to make certain warranties about how they do their business, about the policies and procedures that they're following and so forth.

So on the one hand, much easier to comply from a practical implementation standard or perspective but on the other hand they did not lessen their responsibilities that firms take on as a result of relying on the exemption for relief.

Tonia Bottoms: Christine, I think that Rob said that all the clients have what is mentioned, just to add one other comment though. You know, the slides and the overview that we gave here briefly, you know, we really didn't have a chance to walk through every little piece of the exemption and as you point out, a lot of changes were made but I really think the devil's in the details here.

And once a firm or financial institution has the opportunity to sort of sit back and absorb the BIC in its entirety, you know, when you look at those full BIC conditions, there's a lot there and once firms start to dissect that and analyze it and understand the impact, you know, to the firm's operations, how it'll impact their ability to interact with the investors, there's still a lot of substantial work here.

Christine Gill: Okay, great, thanks very much for clarifying so now we're going to jump into the overall impact of the rule and where we see the business headed so Rob I'm going to hand this off to you.

Rob Cirrotti: Thanks, so I thought a good way to discuss the impact of the regulations would be to compare and contrast how various offers are affected by the regulations.

I think it's important to keep in mind however that the reality is that there's no clear winners or losers and that there's dynamics that are at work in both directions that sort of create tension around many different aspects of our business so discretionary advice versus non-discretionary advice.

Non-discretionary advice was clearly at the heart of this rule change from the very beginning, the very definition of which was expanded as Tonia discussed. Discretionary advice on the other hand was not changed by way of a definition.

Further, given that discretionary advice is not eligible for relief under the next best interest contract exemption, many had hoped that those who advise in this way would be unaffected by the regulation.

However, in defining investment advice to include rollover recommendations, recommendations between advisory and brokerage arrangements as well as recommendations of third-party managers, it is now clear that even those who provide discretionary advice will likely be subject to the new exemptions.

Christine Gill: So we actually got a question from our audience on this Rob so the question is how does the BIC apply in the discretionary manager context and can reps of a discretionary manager who are paid on total AUM with no commission receive costs at various based on products so fixed income versus equity and vehicles like fund versus IMA?

Rob Cirrotti: So I think that's a great question in thinking about how the investment advisor business model will be impacted by this rule so essentially one of the things that the department did was define the list of activities or types of recommendations that I just mentioned to specifically add investment advice.

So the recommendation to rollover, the recommendation of a program, a recommendation of this program versus another firm's program as investment advice and if there's investment advice in conjunction with compensation and knowing that we don't provide those services for free, there's compensation.

Even if you are putting the individual into a discretionary program, you may need the best interest contract exemption to make the recommendation to get them there whether that's to move the money or whether it's to put them in a specific program.

So that's one way how the best interest contract exemption sort of intersects with the advisory model. The second part of this question talks about whether or not compensation in fee-based or fee-only compensation can vary by different asset types.

And I think that that's an area where it would seem that the Department has indicated that differentiated compensation, I get paid more if I recommend more money in the equity sleeve of asset allocation versus the fixed income sleeve is a conflict and the recommendation of how much to put in one versus the other is subject to the requirements of the exemption.

So as a result of a manager who has description over a portfolio, it would seem to indicate that those variations of compensation between asset types will either need relief through the best interest contract exemption which they may not be eligible for or it will need to be levelized across all of those asset types and I would add one more thing to consider and that's the treatment of cash.

To the extent that an investor - it's being recommended to an investor - how much to hold in cash versus how much to put in the market, I think we have to ask ourselves whether or not the same dimensions of differentiated comps are in play as it relates to that type of allocation as well so there's clearly intersection between the exemption and the discretionary advisory model as well.

So with that let me move on to a couple of the other points here so annuities versus mutual funds. It seems that both of these products are squarely impacted by the rule.

While the proposal distinguished between variable annuities and indexed annuities as Tonia mentioned, the final rule treats them similarly in that they're both subject to an eligible for relief under the BIC and no longer eligible for relief under existing exemptions so recommendations related to both types of products will require relief under the BIC exemption.

This mortgage stringent approach to annuities is now consistent with mutual funds in the final rule so again, forces at play with both annuities as well as mutual funds.

Load share classes versus no load, with pressure on commissions of all types as a result of the BIC exemption coupled with an acceleration towards advisory model, it seems clear that while not the death of load share classes, there will continue to be increased demand for no-load funds and institutional share classes.

The addition of institutional share classes to no transaction fee platforms and the removal of 12B1 paying funds in some instances are further evidence of these changes that are taking place.

Brokerage versus advisory. There's definitely pressure on the brokerage model as a result of this new rule; however, as I mentioned before both brokerage and advisory models will be impacted. Advisors will need to comply with the BIC exemption in a wide range of scenarios, some of which we just discussed.

However with the modified set of BIC exemption requirements, for level fee fiduciaries as Tonia outlines, it seems that the advisory model has the potential to mitigate the exposure created by the BIC exemption.

Perhaps it's the hybrid model that's most impacted because there are a range of investment advice types that subject them to the best interest contract exemption including the recommendation to serve a client in a brokerage capacity versus an advisory capacity as well as where the broadest range of investment products are generally used.

Advice versus computer-generated advice. The point I made at the beginning of this slide about there being sort of opposing forced at work is definitely true here. It's difficult to imagine reading any industry publication without touching on robo trends so it's interesting that the Department of Labor commented about how they liked the direction that robo advice is heading.

As a result however, they did not provide relief for these arrangements under the BIC exemption. This seems to indicate that robo advice will need to operate under a fee-only model. On the other hand, any interaction by an advisor that complements a computer or robo interaction changes the Department's analysis.

At the same time there's interesting developments at the state level where state regulators are raising questions about whether a computer model can meet a fiduciary standard at all creating challenges for robo RIAs seeing state registration. Many firms are currently contemplating their robo strategy so this is an area where the market is still taking shape.

For the distribution side of the industry, the new regulation creates a set of requirements that will take significant time and effort to assess and to make the necessary business model changes.

While we are only a few weeks removed from when the final rule was released, there are a number of actions proactive firms are taking, creating a clear view of how various aspects of their business may require a reliance on the best interest contract exemption as well as assessing changes to policies and procedures are some early steps for firms to pursue.

Further, firms that are thinking about continued growth are working to ensure the productivity of their advisors as well as thinking about how the regulation will impact recruiting. With regard to the product side, there are certain trends that are likely to be accelerated as a result of the rule that might warrant product development work.

Consider how your product set aligns with these trends. Will the additional transparency and higher standard of care result in great utilization of passive investment? How does this change how active management is positioned?

Are new compensation structures or share classes needed to support the approaches by distributors and with pressure on economics as a result of this rule, you have the right solutions to solve for emerging investors in the rise of robo advisors.

So these are just a few of the likely trends but they serve as good reminders of the types of changes we collectively may need to respond to as a result of this regulation.

Christine Gill: Okay, great, thanks very much Rob so now Eli can you give us a sense for the timeline for compliance and your thoughts on what might transpire between now and then?

Eli Peterson: Sure, and I think is there another slide that was in cycle too after this? There we go so I think, you know, everybody can kind of see here what the effective dates are in particular wanted people to understand that to the extent that people think that January 1st, 2018 is really the only compliance day, one way to think of it is the ultimate compliance day.

But there are interim compliance dates not the least of which is that the rule technically becomes effective in June and then you start having the rule apply to new transactions the grandfathering provisions pick-up and then you start getting into some disclosures being required by April 10th of next year so just about one year away, about 11 months away before everything takes effect in about a year and a half so just wanted people to understand those nuances.

And perhaps most importantly I just wanted to underscore, I noted there's a lot of swirl around these issues in the sort of political space and there has been for some time so we really do not see in the horizon any viable path to sort of undo watered-down delay what the Department of Labor has done here.

Obviously I think everybody would be entirely and wholly supportive of if there was any real opportunity for that but we would just caution folks from taking too seriously things that they may see in the media or elsewhere around attempts to derail or slow-down or delay the ultimate compliance dates here.

Just because while there's a lot of what I would call sort of messaging legislation that folks might see, in other words people may introduce bills to do some of those things. You might even see a bill pass the House of Representatives. Everybody should be operating as though there will be no changes to these timelines because it's highly unlikely that they're will be.

So that's kind of all I had Christine on the end part of it here unless there's questions or comments.

Christine Gill: Okay, so good point, Eli because I think some people got a little bit excited earlier this week when saw that the ICI was urging Congress to pass a bill that would set a best interest standard instead of a fiduciary standard but you're thinking that that's fairly unlikely? As you said...

Eli Peterson: Yes, I mean, it's basically impossible to get any meaningful legislation through the Senate. The very people who just, I mean, the President's not going to sign into law something that waters down or changes what's one of the, you know, become one of the more significant financial services-related pieces of legislation over the past couple of years.

So people in Congress can pass whatever they want in Congress but it's very difficult to imagine the scenario where it will become a law and the actual law will change.

Christine Gill: Okay, okay, great, thank you so we have some great questions that have come in online so the first one is what impact do you see this rule having on investment advisors who already serve as advisors to ERISA plans? Tonia, do you want to take that one or okay.

Tonia Bottoms: Sure, I'll start out so I think that looking at existing relationships, I think that this question points out is going to be very important. In providing investment advice to an ERISA plan, an advisor may be complying with exemptions that previously existed which may have been substantially modified by this regulatory package.

We mentioned very briefly that there were amendments to five existing exemptions which substantially have the effect of moving reliance out of those exemptions for advice to retirement accounts that are IRAs into the best interest contract and so a change like that could fundamentally, you know, affect how advisors deal with clients.

They may also be performing activities that in today's world aren't considered to be investment advice under ERISA and so because this rule substantially redefines what those things mean as well as identify some very specific actions that will be deemed to be investment advice under ERISA and advisors to ERISA plans, you know, need to take a very close look at the services they provide.

They may be now providing services that are fiduciary in nature, requiring them to have some form of relief if they're going to continue to engage in that fiduciary activity.

Christine Gill: Okay, makes sense. Great, the next question is how does the rule impact 12B1 fees and revenue sharing payments?

Rob Cirrotti: So I think for many that those are important questions that really relate to the fundamental economic model for so many firms and I think the answer to that is not a single or easy answer in that it will vary greatly depending upon how firms react and respond to their compliance with the regulation.

As I mentioned in my earlier remark, clearly this regulation creates more pressure on the commission-based model and as a result certainly puts pressure on 12B1 fees that go to advisors and also will probably lead to further scrutiny of how 12B1 fees are handled even when funds that have 12B1s are being used in an advisory model context.

So we know that there is lots of scrutiny there. With respect to revenue share, I think again if firms are intending to comply with the best interest contract exemption, right, there are opportunities for firms to continue to receive indirect compensation as well as differentiated compensation but they now need to think about the many different ways that they conduct business.

So they may not only conduct business with respect to or only conduct business in compliance with the exemption, they may also look to do discretionary investment management business as an example.

And so these revenue sharing agreements typically stretch across the entire business that they do and are not limited to the way they conduct the business in a brokerage capacity or in an advisory capacity so as a result again I think these revenue-sharing arrangements are likely to get significantly restructured. I think firms are currently evaluating how they want to approach it and how they're comfortable structuring that.

And it's unclear exactly how that will play-out over time but it could lead to a narrowing of the investment shelf if you will or a product that many distributors make available as a result because of the importance that those payments represent to their economic model.

So I think short term and long term, you know, it's going to change over time. Short term firms are going to look to comply with the regulation and over the longer terms as we better understand how this is going to be interpreted by other regulators, by the courts and so forth, I think business models will continue to evolve for some period of time.

Christine Gill: Great, great points, Rob. I think we've already seen that in terms of the narrowing of the shelf space. We've seen some major distributors out in the marketplace talking about narrowing shelf space, you know, for a long time distribution has been king and now it's looking like performance is going to be king.

But then there's also the other dynamic of the focus on outcome-based solutions so we'd love your opinion on that.

Rob Cirrotti: So a couple of thoughts there, you know, I spoke to one distributor who talked about, you know, the possibility of narrowing their shelf of what they make available but yet also recognize that sometimes outperformance is really driven by more niched plays, right, and that sort of seems counterintuitive if you're looking at creating portfolios that really create the best outcomes for individuals.

So I think there's this notion of dynamics that are sort of opposing forces sort of holds true on any number of topics. With respect to sort of performance versus distribution and what will drive, you know, product utilization going forward, I think as you point-out again multiple sort of dynamics at work.

On the one hand a higher standard of care will likely cause advisors to focus on performance in a way that perhaps they hadn't before but yet as you think about individuals really looking for outcomes at the end of the day, the role of the advisor has never been more central.

And so to the extent that many solutions are about how investments get packaged together to create an outcome for an individual, performance is one key element but it's not the only element, ease of use, ease of understandability, how they drawdown those assets, all of those elements are important as well.

But I think the other last point I'd make on it is just that when you think about an ERISA fiduciary standard, right, it's about prudent process and so recommendations are in the best interest of an individual if they are prudent based on what you know, not based on what actually happens.

And so I think that that's an important thing to think about as we think about the types of recommendations that advisors will be making. They have to make sense at the time with the information they have at the time that they're making the recommendation.

And it's not predicated if you will only on the actual results of that recommendation but rather whether it was in their best interest at the time that they made it and it was a prudent recommendation so lots of forces of work that sort of push things in different directions and I think they'll take some time to play-out.

Christine Gill: All right, so the next question comes from one of our no-load fund clients who is concerned about the impact having to do with call centers and the phone reps so their phone reps don't get any kind of commission or bonus on new business that they help get to bring in but how will this be interpreted?

If a client calls and they say that they want to roll their 401(k) into an IRA, how is the fund supposed to respond and those call center reps? Is there a way that they can handle this without becoming a fiduciary?

Rob Cirrotti: So I'm going I think probably both Tonia and I will weigh-in on this question. I'm going to go back to something that Tonia always asks me when I ask her questions like this, right, and it's what exactly are they doing, right, because it really comes back to is a recommendation being made?

So it's clear in the regulation that a recommendation to rollover is investment advice and that investment advice if the firm is being compensated is subject to, you know, the best interest standard and the best interest contract exemption in some form whether that be in a level fee fiduciary form or otherwise.

So it's clear that it's that type of a recommendation is investment advice subject to the definition of fiduciary. However, not every conversation rises to the level of a recommendation.

If that conversation is limited to education and options, while I think it would be prudent to document that and document, you know, that discussion and perhaps script that conversation, that does not necessarily mean that a recommendation was made that would subject someone to reliance on the exemption or subject them to fiduciary status more importantly so I'm sure Tonia has a point or two that she'd like to add to that.

Tonia Bottoms: No, Rob, I agree. I think you made a lot of good points. I would add that it's important to remember that this definition's a functional test to, you know, to Rob's point, not every conversation must be covered as an investment advice conversation.

But a lot of it is going to depend on what controls and what structures, policies and procedures firms might be able to put in place within their call centers. I agree that it's going to be a very challenging area. I think that one thing to keep in mind, I know that the question talked about the fact that the call center rep didn't receive any compensation but the result of the rollover conversation, compensation under ERISA is viewed very broadly.

So as firms start to unpack this rule, I think they should be remembering to keep that concept in mind so compensation, not just specifically to the advisor but think about it also in the context of compensation that would flow more broadly to the firm and in the instance of wanting to rely on something like the level fee fiduciary to affiliates.

So the tentacles with regard to the compensation question reach far and wide and you'd be mindful to keep that in your mind as you think through all of this process. I think the only other comment I would add on this is that the preamble to the rules and the exemptions are quite long but there's also some pieces in there that are some insights into how the Department might be thinking about things.

I know that some of the comment leaders specifically asked for a carve-out for call centers and the Department declined to give on and discuss just a little bit of their reasoning in the preamble which might be insightful if people think for the issue.

Rob Cirrotti: I'll also add one of the issues connected to the call centers that came-up was who needed to be party to the BIC contract if the best interest contract needed to be put in place and that's one area with regard to the change that the Department made where no longer is it a tri-party contract but rather it's a contract between the firm and the investor.

Certainly facilitates the utilization of that exemption if you will in the call center context because each call center rep doesn't need to go and execute a new contract every time they have a conversation with the client if there is one in place between the firm and the investor to cover the relationship so that is one area where there was a meaningful change.

Christine Gill: Okay, good. That seems logical and we have time for one more question. This has to do with proprietary funds and how is that going to be handled particularly for those firms that exclusively sell proprietary products? What will the impact be?

Rob Cirrotti: So I'll start here so one of the things the Department said was that the limitation of the product sets to proprietary products in and of themselves are not somehow cause you to be non-compliant if you will.

They do however in the rule talk about and put the use of proprietary product on the same footing as third-party products that pay you and so there is an amount of disclosure and rationale that has to be behind the limitations you put on your product platform and, you know, significant disclosure with respect to any conflict that might arise as a result of the limitations you put on but it doesn't cause you to de facto be in non-compliance.

Tonia Bottoms: Yes, but Rob, I agree with Rob's points. I think, you know, the only other thing you would want to be thinking about is yes, you've got to be able to document why you have a limitation, also in identifying those conflicts remember you've got to be able to explain how you're mitigating them.

So again, you know, it ties back to policies, procedures, process which all go to as Rob had described your prudent actions as a fiduciary.

Christine Gill: Well, thanks very much Rob, Tonia and Eli for your early interpretation of the rule and I think Tonia you said it best that the devil is in the details so it's going to take us all some time to digest exactly what this rule means and the overall impact.

It's a journey that we've been on for a while now but still we have a ways to go and so we look forward to staying engaged with you our clients to answer any questions that you have and to work with you to deliver solutions that will help meet your needs and help you to service your clients.

So thanks again for your participation and your engagement today and we look forward to talking with you again soon.

Operator: Thank you for your participation. This does conclude today's call.

BNY MELLON