CARLTON FIELDS

SEC Seeks Public Comments on Standards of Conduct for Investment Advisors and Broker-Dealers

June 23, 2017

On June 1, SEC Chairman Jay Clayton issued a statement seeking comments from interested parties regarding the standards of conduct for investment advisers and broker-dealers providing investment advice to retail investors. The statement came just before the June 9 partial applicability date of the DOL's Fiduciary Rule, and responded to labor secretary Alexander Acosta's previously expressed desire that the SEC and DOL work together as both continue to assess potential changes in this area. Although Clayton noted that the SEC has been assessing these standards for over a decade, he emphasized that significant changes in this area — including the fiduciary rule itself, and recent technological innovations impacting the marketplace — have renewed the need to examine the current regulatory framework. He also expressed his intent to coordinate with the DOL and to pursue more harmonized regulatory treatment of investment advice given to retail customers by investment advisors and broker-dealers. To that end, Clayton asked interested parties to submit data, suggestions, and other information that will help the SEC assess this regulatory framework and inform potential future actions — the first such request since the SEC sought public comment on these standards in 2013. There is no specific deadline, and interested parties can submit comments online and by email outside of official comment periods. And while the chairman clarified that the SEC seeks all relevant information, he posed a long list of specific questions and particular areas of interest. Some of these topics address recent developments, such as the multiple standards of conduct that will apply under the fiduciary rule and the impact of technological advances. Many, however — including retail investor confusion about the applicable standards, the effects of the differing standards, potential conflicts of interest, and the trend toward a fee-based advisory model — overlap with information gathering and analysis the SEC previously undertook in response to the Dodd-Frank Act's mandate that it consider standardizing regulations in this area. Differences among SEC commissioners at that time meant that little ultimately came of that prior assessment. This time, however, the result may be different, as the chairman is committed to a more active approach and the potential exists for coordinated efforts by the SEC and DOL.

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