

SEC Probes Retirement Advice

April 25, 2016

The SEC has been sending lengthy sweep examination letters to many registered investment advisers (RIAs) and broker-dealers, requesting a broad variety of information regarding retirement plan advice. A form of the letter made public by the SEC includes 75 questions requesting information on advisory client accounts, fees, conflicts of interest, and supervision and compliance controls. For example, the letter requests copies of written disclosures and scripts regarding:

- distribution options (e.g., rolling assets over to an IRA);
- conflicts of interest when recommending a specific product or account type;
- account options available (e.g., IRA rollover) and applicable charges; and
- investment options available and applicable charges.

Interestingly, 25 questions pertain to products or services that are "qualified default investment alternatives" (QDIAs) under Department of Labor (DOL) rules, which include certain types of mutual funds and managed accounts. For example, registrants are asked to provide a "list of all retirement plans for which Registrant or an affiliate is the QDIA," the name of the product or service, and the amount of such plans' assets. If the registrant has "recommended that an RIA serve as a [plan's] QDIA," the letter asks for the RIA's name and the amount of such plan's assets. Further, if the plan participant pays the advisory fee, the letter requests extensive information about, among other things, disclosures to and contracts with plan sponsors, compliance reports, fees, and detailed plan data. **These requests are somewhat novel, as the DOL has historically been more active than the SEC in addressing regulatory concerns regarding QDIAs.** The DOL, of course, has pressed forward with its proposed fiduciary standards for retirement advice. (See a summary of Predicted Litigation under the DOL's Proposed Fiduciary Rule in the Summer 2015 edition of *Expect Focus*.) Against that backdrop, the SEC's recent focus on retirement seems to signal that the SEC intends to preserve, and perhaps increase, its own role in providing constructive regulation of such advice.

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