

New Jersey Fiduciary Rule Pre-Proposal

December 18, 2018

On October 15, the New Jersey Bureau of Securities (Bureau) requested public comments on the concept of amending the New Jersey Blue Sky regulations “to require that broker-dealers, agents, investment advisers, and adviser representatives be subject to a fiduciary duty.”

The proposal is intended to impose a fiduciary duty uniformly across different categories of financial professionals to ensure that investors receive unbiased advice from all of them.

Under the current regulatory regime, investment advisers, and their representatives owe customers a fiduciary duty. Broker-dealers and their representatives, however, are subject to a suitability standard, which could allow them to place their interests before the customer’s if they have a reasonable basis to believe that their recommendations are suitable for the customer.

Thus, the New Jersey Bureau joins other efforts in many jurisdictions to address these issues with revisions in state securities laws or regulations. See *State Suitability, Fiduciary Duty and Disclosure Initiatives Roundup*, *Expect Focus*, Vol. I, Mar. 2018. These initiatives follow in the wake of major and continuing efforts by the DOL, SEC, and others to address such issues.

The Bureau has yet to specify details as to the definition of the required standard of conduct or who would be subject to it. Among other considerations, coverage of any such proposal may be limited by the National Securities Markets Improvement Act of 1996 (NSMIA). Section 203A(b) of the federal Investment Advisers Act preempts “all regulatory requirements imposed by state law on SEC-registered advisers relating to their advisory activities or services, except those provisions that are specifically preserved by [NSMIA],” and a similar provision with regard to federally registered FINRA member broker-dealers preempts state regulations relating to, among other things, making and keeping records.

The comment period is now closed and the comments received by the Bureau, including at two roundtables in November, reflected an exceedingly wide variety of opinions.

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