

Regulatory Insights

Regulatory Insights for Asset Managers, Mutual Funds and Retirement Firms

CONTENTS

- SEC Proposed Regulation Best Interest
 - HR 4610 “Receiving Electronic Statements to Improve Retiree Earnings (RETIRE) Act”
 - SEC Priorities
 - New SEC Fund Retail Investor Experience and Disclosure Rule Making Initiative
 - Proposed Rule 30e-3
 - Department of Labor: Fiduciary Rule
 - SEC Rule Proposal on Independent Auditor Loan Rules
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PROPOSED REGULATION BEST INTEREST

On April 18, 2018, the SEC Commission voted to propose long anticipated new standards of care for broker-dealers and advisers, including:

- New proposed Regulation Best Interest - broker-dealers would be required to act in the best interest of retail customers when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer.
- The SEC proposed clarifications to the fiduciary standard that investment advisers owe to their clients.
- To address investor confusion about the nature of investors’ relationship with their investment professionals, the SEC proposed a new short-form disclosure document — Form CRS, which would provide retail investors with simple, easy-to-understand information about the nature of their relationship with their investment professional.

- The SEC proposed to restrict certain broker-dealers from using the terms “adviser” or “advisor” as part of their name or title with retail investors.

There is a 90 day comment period on the rule proposals with comments due on August 7, 2018. The SEC requested comments from industry participants and retail investors.

The SEC press release can be found at <https://www.sec.gov/news/press-release/2018-68>.

A May 2nd speech from Chairman Clayton providing additional background about the proposed standards of conduct can be found at <https://www.sec.gov/news/speech/speech-clayton-2018-05-02>.

HR 4610 “RECEIVING ELECTRONIC STATEMENTS TO IMPROVE RETIREE EARNINGS (RETIRE) ACT”

House bill 4610 would change the defaults to e-delivery for communications to retirement plan participants. The bill was introduced in the House on 12/11/17 and referred to committee for consideration.

On April 15, the National Association of Plan Advisors (NAPA) and the American Retirement Association (ARA) announced they support the bill to make e-delivery the default method and retain the paper option.

SEC PRIORITIES

Rule 30e-3

On May 30, 2018, the SEC announced that they will consider approval of rule 30e-3 (the notice method for fund reports) at an open meeting on June 5, 2018.

The Fund Retail Investor Experience and Disclosure Initiative

In May, the SEC announced its updated short and long-term priorities. The Division of Investment Management (“IM”) included the Fund Retail Investor Experience and Disclosure rule

making. The SEC classified this new item in the Prerule Stage as “ANPRM” (Advance Notice of Proposed Rulemaking), which means that the SEC is at the stage of requesting information needed for developing a proposed rule. The stated purpose of this new item from IM, is to request public comment on enhancing investment company disclosures to improve the investor experience and help investors make more informed investment decisions. The due date is April 2019.

Other SEC Priorities

Other Short Term Actions (Active) – Other items remaining on the active list, including, Regulations S-K and S-X, ETFs, Variable Annuity disclosure updates including the use of the internet. See the SEC’s full list of active priorities: [short-term agenda](#).

Long Term Actions (not active) – A new addition to the agenda is IM’s consideration of recommending amendments to the custody rules for investment advisers and investment companies. Other new items of interest include harmonization of private placement rules, short-sale disclosure reforms, and modernization of disclosure for business development companies. Universal proxy, disclosure effectiveness, board diversity, and proxy plumbing remain on the list. See the SEC’s full list of long term priorities: [long-term agenda](#).

DOL FIDUCIARY RULE

The DOL and Department of Justice (DOJ) did not file a motion for rehearing with the Fifth Circuit by the April 30 deadline. In addition, a request by the AARP and Attorney General’s from New York, Oregon and California to intervene in the case was denied by the 5th Circuit. Although the DOL could still appeal to the Supreme Court, that is unlikely and the rule will likely be rescinded in the near future.

On May 7, the DOL issued a field assistance bulletin to help firms comply with their Fiduciary obligations during this transition period. The bulletin provides for a temporary enforcement policy related to the DOL’s definition of who is a “fiduciary” under ERISA and the IRS code and the associated prohibited transaction exemptions, including the Best Interest Contract Exemption (BIC Exemption). The field assistance bulletin can be found at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2018-02>.

SEC RULE PROPOSAL ON INDEPENDENT AUDITOR LOAN RULES

The SEC is proposing to amend its auditor independence rules regarding when the auditor has a lending relationship with certain shareholders of an audit. The proposed amendments would replace the 10 percent bright-line shareholder ownership test with a new “significant influence” test as well as certain other amendments to its auditor independence rules. This new standard would provide relief for audit firms, mutual funds and other issuers.

Comments must be received by July 9, 2018. The proposed rule changes can be found at <https://www.sec.gov/rules/proposed/2018/33-10491.pdf>.

FOR MORE INFORMATION

For more information on these and other trends, please contact your Broadridge Account Manager or Frank.Maresca@Broadridge.com

This is not intended as legal advice. We recommend you contact your legal counsel for a complete understanding of the information contained in this publication.

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