Securities Regulation Daily Wrap Up, SEC NEWS AND SPEECHES—SEC chairman calls for updated assessment of the fiduciary rule, (Jun. 2, 2017)

Securities Regulation Daily Wrap Up

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By Jacquelyn Lumb

SEC Chairman Jay Clayton has called for an updated assessment of the current regulatory framework governing investment advisers and broker-dealers to aid in the Commission's consideration of potential regulatory action. The Department of Labor's fiduciary rule takes effect next week. DOL plans to issue a request for information with respect to various aspects of the rule and Secretary Alexander Acosta has called for a constructive dialogue with the SEC about the standards of conduct applicable to investment advisers and broker-dealers when they provide investment advice to retail investors. Clayton said he welcomes that invitation since the rule could significantly impact retail investors and entities regulated by the SEC.

When areas are overseen by more than one regulator, Clayton said that clarity, consistency, and coordination are key elements for effective oversight and regulation. He mentioned the reviews of investment adviser and broker-dealer regulations that have been conducted over the years, including the RAND study in 2006, a Dodd-Frank Act staff study in 2010-2011, and the SEC's request for data and other information in 2013. These efforts reflect the complexity of the matter and the rapidly changing markets, he noted, including the evolving manner in which investment advice is delivered.

Range of options. The SEC has received recommendations on a wide range of potential actions, Clayton added, including maintaining the current regulatory structure, requiring enhanced disclosure to address investor confusion, developing a best interests standard of conduct for broker-dealers, and adopting a single standard to harmonize the regulations for investment advisers and broker-dealers when they provide advice to retail investors.

Since the SEC last solicited information from the public, Clayton said the marketplace has seen significant developments including financial innovations, changes to investment adviser and broker-dealer business models, and regulatory developments, including the issuance of DOL's fiduciary rule. These developments call for an updated assessment, in his view.

Solicitation of comments. The SEC has set up a web form and an email box so that members of the public can submit comments on potential future actions. Clayton provided a series of questions that the public may wish to address, including whether investor confusion has been addressed with respect to the type of profession or firm that is providing investment advice, and the standards of conduct that apply to them. If the confusion remains, he asked what steps the SEC can take to mitigate it.

Conflicts of interest. The SEC is also seeking comments on whether potential conflicts of interest have been addressed, or whether retail investors are being harmed by conflicts through systematically lower net returns or greater risks in their portfolios compared to other investors in different relationships.

Technology. Advances in technology may transform the way in which retail investors receive advice, such as the use of robo-advisers and fintech. The SEC is asking for input on how retail investors perceive the duties that apply when investment advice is provided in new ways or by new market entrants and whether the SEC should address a lack of information in these areas.

The SEC is also seeking information with respect to any trends toward a fee-based advisory model for retail investors and whether any observed trends are driven by demand, fee-based income streams, regulations, or other factors.

Different standards. Clayton noted that efforts to comply with DOL's fiduciary rule are already underway and asked for information about its implementation. Once the rule takes effect, there will be different standards of conduct for accounts subject to the DOL's rules and those that are not. The SEC is requesting information about the costs and benefits of complying with multiple standards.

If new requirements are adopted, the SEC is asking for views on whether private remedies should be available for violations and the venues in which such claims should be brought. Another line of inquiry is how U.S. regulations compare to approaches in other jurisdictions and whether those approaches should be considered.

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