

[Securities Regulation Daily Wrap Up, FIDUCIARY DUTIES—D.D.C.: NAFA continues to come up short in its protracted battle with the DOL, \(Nov. 28, 2016\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By Brad Rosen, J.D.

The D.C. District Court again rebuffed the efforts of the National Association for Fixed Annuities to enjoin the effective date of three new Department of Labor rules which seek to address the conflicts of interest inherent in providing commission-based investment advice to retirement plans. The court denied NAFA's renewed motion seeking to stay a [final order](#) granting the DOL's summary judgment motion earlier in the month, and in so doing rejected NAFA's attempt to enjoin the DOL from moving forward with the implementation of its customer protection rules (*National Association for Fixed Annuities v. Perez*, November 23, 2016, Moss, R.).

In reaching its decision to uphold the DOL's right to proceed, the court considered the four preliminary injunction factors and applied them to the case at hand. First, the court concluded that it was highly unlikely that NAFA would prevail on the merits as it did not even set forth which of its multiple arguments would likely prevail on appeal. Second, NAFA was unable to demonstrate that little harm would be suffered by the public as the very reason for the new rules was to guard against retirement investors suffering an economic loss as a result of receiving conflicted investment advice.

Third, the court noted that granting the injunction would delay protection to the investing public and delay the implementation of three regulations that were lawfully adopted after nearly six years of study, public comment, and consideration. Finally, NAFA was unable to satisfy high burden of demonstrating that its members would suffer irreparable injury. Even though the court acknowledged that the members would incur significant and unrecoverable costs in connection with the implementation of the rules, the court noted that it had rejected the plaintiff's claims based on the merits, and others would sustain losses if the injunction was granted.

Accordingly, the court firmly rejected NAFA's efforts to delay the implementation of these investor safeguards, concluding "that the overall balance of equities tips decidedly against granting preliminary relief."

The case is [No. 16-1035 \(RDM\)](#).

Attorneys: Jacob A. Kramer (Bryan Cave LLP) for National Association for Fixed Annuities. Emily Sue Newton, U.S. Department of Justice, for Thomas E. Perez.

Companies: National Association for Fixed Annuities

LitigationEnforcement: FiduciaryDuties InvestmentAdvisers DistrictofColumbiaNews