

## SEC Proposes Best Interest Standards

On Wednesday, the SEC proposed new standards for registered investment advisers and broker-dealers that would cast a wider net than the controversial fiduciary guidance that DOL had finalized and begun to implement before an appeals court vacated it last month. It remains to be seen what will happen with the DOL or SEC guidance, and how vendors and fiduciaries will react as judicial and regulatory processes move forward.

### Background

In 2016, the DOL finalized the “fiduciary rule” and thereby expanded the scope of the definition of fiduciary and impermissible conflicts of interests for employer-sponsored plans as well as certain non-ERISA investment vehicles. In February 2017, however, President Trump directed the DOL to re-evaluate the effect of the rule and its likely impact on retirement savings efforts. DOL extended until July 1, 2019, the effective date for the written disclosures and fiduciary representations required under prohibited transaction exemptions to the new fiduciary rule. The rest of the regulation went into effect on June 9, 2017, but DOL announced an “enforcement lite” policy for fiduciaries working diligently and in good faith to comply. (See our [November 28, 2017 For Your Information](#).)



Last month, the 5th Circuit Court of Appeals vacated — as arbitrary, capricious, contrary to the law, and in excess of its authority — DOL’s expanded definition of investment advice fiduciary and newly created prohibited transaction exemptions, putting the brakes on the application of the fiduciary rule in its entirety, nationwide. It remains unclear how DOL will react to this ruling. (See our [March 19, 2018 FYI Alert](#).)

Meanwhile, it was broadly expected that the SEC would fashion similarly enhanced conflict-of-interest rules that would apply to all investors — not just those touched by DOL’s directives.

### SEC Proposes New Standards

On Wednesday, the SEC jumped into the fray — in a move that some believe was at least partially designed to fill the void created by the possible demise of the DOL’s rule. Addressing themes similar to those in the DOL rule, the

[SEC proposal](#) aims to better protect retail investors by raising the standard of conduct for broker-dealers providing recommendations to retail investors and reaffirming/clarifying the terms of the relationship between retail investors and investment professionals.

The proposed package of guidance includes:

[Proposed Regulation Best Interest](#): This would require broker-dealers to act in the best interest of their customer at the time a recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interest of the retail customer. This best interest duty would be discharged if the broker-dealer meets a disclosure obligation, a care obligation, and two conflict of interest obligations.

[Proposed SEC Interpretation on Investment Advisers' Standard of Conduct](#): Investment advisers owe a fiduciary duty to their clients. To the extent current market conduct falls below what SEC believes this duty means, this interpretation would put the market on notice of the SEC's views.

[Proposed Rule on Form CRS Relationship Summary](#): Proposed changes in disclosure requirements would bar broker-dealers from using “advisor” or “adviser” as part of their name or title to be clear about their legal form. Investment advisers and broker-dealers would provide standardized disclosures to highlight key differences in services and legal standards, fees the customer will pay, and certain conflicts of interest that may exist.

## In Closing

It's too soon to predict next steps by the DOL or SEC. If the DOL does not appeal the 5th Circuit decision — or loses on appeal — their rule may be retroactively defunct. For its part, an SEC final rule could be years in the making. Vendors that have modified their business models and practices in response to DOL's rule will have to consider exposure to liability where they have asserted fiduciary status that could turn out to have been unnecessary.

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