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Fiduciary timetable pushed back into 2012

Even universal-rule advocates want coordinated Labor Department, SEC approach

By Mark Schoeff Jr.

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Advocates of extending fiduciary duty to cover more financial advisers had their hopes dashed last week — at least temporarily — as the two federal agencies that have been considering such a rule acknowledged that no action will be taken this year.

Last week, the Labor Department announced that it would withdraw a rule that would expand the definition of “fiduciary” for those providing advice about retirement plans and reintroduce it in 2012.

Meanwhile, a Securities and Exchange Commission official said a cost-benefit analysis the agency was asked to conduct on the impact of extending the fiduciary standard will cause the agency to delay proposing a rule until next year. The SEC was supposed to propose a fiduciary rule this fall.

“The time frame certainly has slipped,” said the SEC official, who asked not to be identified. “It's extremely unlikely that there will be a rule this year.”

At least one fiduciary-duty advocate is frustrated by the delay. Barbara Roper, director of investor protection at the Consumer Federation of America, noted that most of the industry is backing universal fiduciary duty.

“That's the bizarre world we live in today,” Ms. Roper said. “It should not be this hard to protect investors.”

But even Ms. Roper's group had qualms about the proposed Labor regulation, which generated withering criticism from across the financial industry as well as bipartisan condemnation in Congress.

Opponents said that it would limit investor access to individual retirement accounts by subjecting IRA advisers to fiduciary duty for the first time — curtailing commissions and driving up regulatory costs.

One industry official sees the slowdown as an opportunity to ensure that the Labor Department and the SEC produce fiduciary-duty polices that work together.

“The No. 1 thing that we'd like to see is harmonization and coordination between what the SEC does and what the DOL does on any fiduciary standard that applies to personalized investment advice for retail clients,” said John Taft, chief executive of RBC U.S. Wealth Management and chairman of the Securities Industry and Financial Markets Association. Broker-dealers adhere to the less stringent investor suitability standard.

“There's no urgent problem that needs to be solved right now by having a fiduciary standard effective next week,” Mr. Taft added. “There's a lot more work for everyone still to do. And we have more time to do it. That's a good thing.”

Dale Brown, chief executive of the Financial Services Institute Inc., which represents independent broker-dealers, viewed last week's developments with equanimity.

“I'm not alarmed by the delays, because these are very important issues, and it's more important to get them right than to get them done quickly,” he said.

A major part of the get-it-right theme is for the Labor Department and the SEC to conduct thorough cost-benefit analyses of their proposals. Both agencies have been under pressure from the industry, Capitol Hill and the courts on the issue.

“We are spending tons of time re-evaluating how we did cost-benefit analysis historically,” the SEC official said. “And that is going to take longer.”

The Labor Department said that it will issue a revised rule early next year. It will be designed to protect workers and retirees who now must provide their own retirement nest eggs through 401(k) plans and IRAs, while clarifying that brokers can continue to receive commissions on retirement products.

“I think average folks won this time because Washington finally listened,” Rep. Carolyn McCarthy, D-N.Y., a member of the House Financial Services Committee, said about the Labor Department's backing down. “It would have ended up costing the consumer more money. It would have reduced consumer access to affordable financial advice, not expand it — which is what we're trying to do.”

Ms. McCarthy, a member of the New Democrat Coalition, who helped lead her side of the aisle against the Labor proposal, also said that she wants the SEC and the Labor Department to work together.

“Labor must work with the SEC and [the Commodity Futures Trading Commission] to come up with a ruling that is not a mixed message,” Ms. McCarthy said.

While the Labor Department attempts to come up with a new approach that quells the critics of its first attempt, the SEC will continue to cobble together its own proposal as the fiduciary-duty issue lumbers along.

“There appears to be a long-term commitment to harmonizing the regulatory infrastructure for retail investors,” Mr. Taft said. “[But] there are more-pressing priorities right now, given the limited resources of regulators.”