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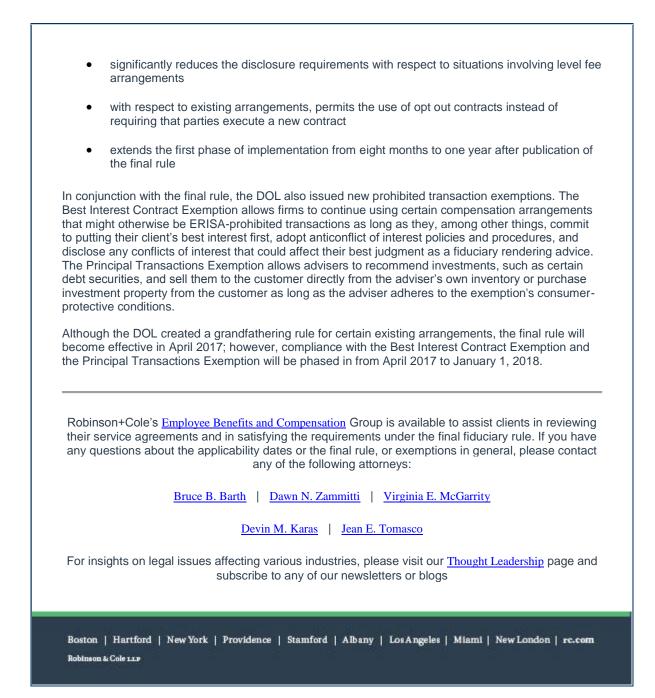
Department of Labor Issues Final Fiduciary Rules

On April 6, 2016, the U.S. Department of Labor (DOL) issued its long-awaited final conflict of interest rule defining the term "fiduciary" for retirement investment advice purposes. The final regulations and accompanying exemptions are contained in approximately one thousand pages of guidance. While subjecting a myriad of new financial market participants to strict fiduciary requirements under the Employee Retirement Income Security Act of 1974 (ERISA), the final rule also provides greater latitude than was initially predicted in what constitutes "investment advice." In connection with the final rule, the DOL also released related exemptions from certain transactions prohibited under ERISA.

The DOL first proposed changes to the fiduciary rule in 2010 but withdrew the proposal in 2011 in the face of strong opposition from members of both parties of Congress and the financial services industry. The DOL subsequently reproposed the fiduciary rule last April. Following the release of the reproposed rule, the DOL conducted two comment periods, which generated thousands of letters, and held four days of hearings in August 2015.

The final rule broadly defines a fiduciary as any individual receiving a fee or other compensation (whether direct or indirect) for providing investment advice to a plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner. This is a significant departure from existing rules, which created large loopholes that allowed broker-dealers to avoid adherence to ERISA's fiduciary standard and investment recommendations. Although the final rule does not materially alter the structure and scope of the April 2015 reproposal, it does make a number of modifications, including the following:

- clarifies the types of information and activities that constitute nonfiduciary investment education
- removes appraisals from the rule, reserving that issue for a separate future rulemaking
- eliminates the requirement that a formal contract be required for participants in ERISAcovered plans
- provides an expanded seller's exception whereby recommendations to plan sponsors managing more than \$50 million in assets (versus \$100 million in the re-proposed rule) will not be considered "investment advice" if certain conditions are met
- expands the Best Interest Contract Exemption (see below) to cover all asset types
- reduces the disclosure requirements and eliminates the requirement to show one-, five-, and ten-year projections



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