



American  
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Association®

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# A Glimpse Ahead

- A New Administration
- Ambitious Congressional Agenda
- DOL Fiduciary Rule – Is It a Rule or Not?
- FINRA – Old and New Business
- EGRPRA – Did Anything Happen?
- Non-depository Institutions – New Opportunities
- Robo Advisers – Increased Regulatory Attention
- “The New Fiduciary”

# A New Administration

- Executive Orders – A Different Approach
  - January 30: 2 for 1
  - February 3: Fiduciary Rule
  - February 3: Core principles of financial regulation

# A New Administration, Cont'd

- Nominations – Key Financial Agencies Pending
  - SEC – Chair nominee Jay Clayton
  - CFTC – Chair nominee Christopher Giancarlo
  - DOL – Secretary nominee Alexander Acosta
  - FRB – Three vacancies including VC supervision

# Ambitious Congressional Agenda

- Financial CHOICE Act – Reforming the Reforms
  - Regulatory relief if 10% leverage capital is maintained
  - Independent exam review
  - Tailored regulation
  - Repealing the Volcker rule
  - Cost benefit analysis with stringent congressional oversight

# Ambitious Congressional Agenda, Cont'd

- House Republican Blueprint for Federal Tax Reform
  - Consolidation of individual tax brackets
  - Elimination of deductions except mortgage interest and charitable
  - Reduction of corporate tax
  - Repeal of federal estate tax

# DOL Fiduciary Rule

- Game Changer for Retirement Advice
- Investment Advice a Light Trigger
- Takes Direct Aim at IRA Rollovers and Fee/Compensation Arrangements
- Fragments Customer Relationship

# DOL Fiduciary Rule, Cont'd

- Impact on Banks – Fiduciary Status?
  - Investment education
  - Call centers
  - Customer inquiries
- BIC Exemption
  - Where most arrangements fall
  - Onerous and costly



# DOL Fiduciary Rule, Cont'd

- Caught in Fiduciary Rule
  - Routine marketing and sales activity
  - Bank retail deposit products (e.g., CDs)
  - Bank trust department accounts
- Mounting Industry Concerns
  - Compliance challenges: significant
  - Liability exposure: unknown
  - Exempt activities can trigger fiduciary status

# DOL Fiduciary Rule, Cont'd

- Fate of DOL Fiduciary Rule?
  - White House memo (February 3, 2017)
  - DOL proposed delay in applicability date
  - DOL study, then propose (i) repeal or (ii) revision
  - Impact of litigation
  - Impact of legislation
- Fiduciary Rule's Lasting Impact

# FINRA

- Old Business:
  - Retained Associates: SEC release 34-80371
    - Good first proposal
- New Business:
  - Financial exploitation of seniors: Rule 2165 is final
    - Effective February 5, 2018

# EGRPRA – Action?

- Some Results from ABA Request to OCC to Modernize Part 9
- Caution Regarding Collateralizing Self Deposits
- Brief Mention of the MLA and Trust Accounts

# Non-depository Institutions

- New Charter Possibilities at OCC
- OCC Resolution Rule Finalized December 2016

# Regulatory Focus on Robo-Advisors

- Bank Regulators Focus on Third-Party Relationships
- 2017 SEC Exam Priorities Focus on Robo-Advisors
  - Marketing
  - Formulation of investment recommendations
  - Data protection
  - Disclosures on conflicts of interest
  - Compliance practices, including algorithm oversight

# Regulatory Focus on Robo-Advisors, Cont'd

- Challenges for Robos:
  - Holistic picture of client's investment needs
  - Untested in a bear market
  - Not all robos are the same
  - Customer support: Two-thirds still want a live person
- Compliance Issues:
  - Faulty assumptions
  - Limited/conflicted universe of investments
  - Investments not monitored

# The New Fiduciary

- “Fiduciary”: A Regulatory Prism
  - Different levels and shades
  - Tripwires into fiduciary status
  - Variables for fiduciary status
    - Customer agreement
    - Governing law
    - Investment vehicle (brokerage? IRA?)
    - Discretion level (full investment management? shared? customer directed? advisory?)



# The New Fiduciary, Cont'd

- What Can You Do?
  - Policies and procedures
  - Staff training
  - Documentation
  - Software detection

# Questions

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