Advisors Weigh in on DOL Fiduciary Rule's Final Demise

By Thomas Coyle June 26, 2018

The President **Barack Obama**-era **Department of Labor** rule governing retirement accounts, on life support since President **Donald Trump** entered the White House, gave up the ghost altogether last week when a federal appeals court confirmed a March 2018 decision vacating the regulation.

The DOL rule stipulated that all retirement account brokers act as fee-only fiduciary agents to the account holders — barring client agreement on a step-out provision called the "best-interest contract exemption," which let advisors be compensated on a commission basis for trading in the account. Though the rule's demise was widely expected, the fact of its overturn has triggered a range of reactions from financial advisors, with some expressing sorrow on behalf of unwitting consumers, others saying its passing will help fiduciaries and a few saying it opened the door to home-office shenanigans.

Gregory Kurinec fits in the last slot. "The regulation and paperwork requirements that were coming down from broker-dealers and other financial institutions seemed excessive," says Kurenic, an advisor with **Bentron Financial Group**, an independent brokerage affiliate of LPL Financial in Downers Grove, Ill. "Some institutions used this as a way to regulate advisors on transactions they were not previously required to submit" — making it more of an excuse for "a cash grab" by brokerage HQs than genuine compliance supervision, he says.

Kurinec, who expresses "mixed emotions" over the DOL rule's failure, says "some of the issues it brought to the forefront were important for the industry to recognize," but "the fact we needed a proposed rule to tell advisors, and more importantly the public, that it is an advisor's duty to put their clients' interest before their own is very disheartening to me."

For **Thomas Yorke** of **Oceanic Capital Management** in Red Bank, N.J., the whole BICE workaround, on which the DOL rule's hopes for widespread support seemed to hang, was untenable from the start. "Those fighting the implementation recognized that telling customers they needed the Best Interest Contract Exemption signed annually wasn't going to fly," he tells FA-IQ. "Ultimately, no matter how deep it would be buried in the paperwork, clients would realize they were agreeing to let their advisors out of a fiduciary standard."

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James Schwarz
Clear Retirement Advice

Adds Yorke: "A buyer-beware model may be suited to used-car sales, but not retirement accounts."

Meanwhile at least one captive brokerage is taking time to assess the impact of the DOL rule's disintegration. Merrill Lynch, which planned to bar its advisors from using the BICE opt-out of the DOL rule, guessed it was dust a week before the appeals court delivered its coup de grace. On Friday, June 15, it told its brokers "we would be reviewing our policies and procedures" around retirement accounts "in a 60-day review," according to **Jerome Dubrowski**, a spokesman for Bank of America, Merrill's corporate parent. "And that, obviously, is still ongoing."

What other major players in retail brokerage have in mind is harder to discern. Morgan Stanley, UBS, Wells Fargo, Raymond James and Commonwealth Financial Network declined to say whether the rule's passing would affect their priorities or initiatives.

Independent advisors, meanwhile, aren't as reticent with their views on the rule's demise.

For instance, **James Schwarz** of **Clear Retirement Advice** in San Mateo, Calif., views it as a good thing, more or less. "It's actually a competitive advantage for independent RIAs there isn't a rule in place, because we can say we are fiduciaries and then explain what that means" — a task made easier by the publicity kicked up since Obama proposed the rule early in 2015, he says. "I really wish there were a very good fiduciary rule in place for everyone," he says. "Yet the truth is that from a business perspective, it's actually a plus that there isn't."

David Rae

David Rae of **Financial Planner LA**, a firm in West Hollywood, Calif., affiliated with **DRM Wealth Management**, echoes that view. "I hate to say it, but sometimes what's bad for the consumer is great for the advisor," he tells FA-IQ. "As a fee-only financial planner, the fiduciary rule going away will help me maintain a competitive advantage over those hawking high-commission products."

Brad Wright, an FA with **New England Financial Planning Group** in Burlington, Mass. linked to Raymond James' independent-advisor platform, agrees industry back-and-forth about the DOL rule has heightened interest in the concept of fiduciary financial advice among consumers in the past several years.

"When I do corporate speaking, I am now frequently being asked about the term," says Wright. "The fact that the rule is going away can actually serve as great marketing for those of us who continue to uphold it."

But there's no silver lining for **Kashif Ahmed**, president of **American Private Wealth**, an LPL affiliate in Bedford, Mass. "It's a shame and disgrace," he says of the DOL rule's negation. "It's back to business as usual in the dirty world of Wall Street and its treatment of American investors."

For **Edward Snyder** of **Oaktree Advisors** in Carmel, Ind., meanwhile, it's decidedly "too bad" the rule didn't take hold. "Though it wasn't perfect, it was a step in the right direction" — even if "the good guys don't need a rule."

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