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DOL Fiduciary Rule Could Mean More Analysis, Documentation, Say Industry Watchers

"Something that might have passed muster with the SEC or Finra may not with the DOL when it comes to the Erisa standard of prudence," according to Jason Roberts, chief executive officer at Pension Resource Institute.

By Sam Del Rowe | June 5, 2024

Since the finalization of the **Department of Labor**'s fiduciary rule, industry firms have been working to determine the changes they need to make before a September compliance deadline — and the scope of those changes, as well as the impact on advisors, could range widely depending on firms' existing measures, according to industry watchers.

The Retirement Security Rule, commonly known as the Fiduciary Rule, was released in its final iteration in April and extended the definition of investment advice under the Employee Retirement Income Security Act to include financial services professionals who are paid to give advice to retirement plan participants, individual retirement account owners, and plan officials that administer plans and manage their assets. The rule will go into effect Sept. 23.

Industry executives including **Raymond James** Chief Executive Officer **Paul Reilly** and **Stifel Financial** Chief Executive Officer **Ron Kruszewski** have downplayed the rule's impact on advisors' business. On first glance, the rule had "nothing that pops out that's overly problematic ... maybe surprisingly so," Reilly said on the firm's most recent earnings call in April. Kruszewski made a similar comment on his firm's latest earnings call that same month, saying that the rule appeared to be "less restrictive" than its previously proposed version.

Yet the extent of the rule's impact on financial advisors' businesses is complicated and dependent on various factors. The degree of change advisors can expect will largely be determined by the extent to which their supervising firm is complying with the DOL's prohibited transaction exemption 2020-02, according to **Jason Roberts**, chief executive officer at **Pension Resource Institute**, a Columbus, Ohio–based firm that assists banks, trust companies, broker-dealers and registered investment advisor firms with retirement plan compliance.

The prohibited transaction exemption allows investment advice fiduciaries to receive compensation that would otherwise be prohibited for providing advice on rollovers and assets within a plan or individual retirement account.

"When you think about some of the more impacted areas like rollovers, different firms had different approaches, and some firms felt like they were able to avoid triggering fiduciary status under the current definition," Roberts said, adding that "it will be much more difficult to make a recommendation or even in some cases avoid making a recommendation to an individual regarding a rollover without it being considered investment advice" once the new fiduciary rule goes into effect.

Advisors can at a minimum expect to have "more requirement around analysis and documentation" with the new fiduciary rule, according to Roberts, who said that the fiduciary standard of care under the Employee Retirement Income Security Act, or Erisa, has been referred to by courts as "the highest duty of care under the law."

"Something that might have passed muster with the **SEC** [Securities and Exchange Commission] or **Finra** [Financial Industry Regulatory Authority] may not with the DOL when it comes to the Erisa standard of prudence," Roberts said.

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Advisors who serve company-sponsored 401(k) plans may be required to use firm-approved software "to substantiate their recommendations made to retirement plan sponsors or employers that are sponsoring a plan for their employees," according to Roberts. In addition, those advisors might also be required by their firms to work with a "regional specialist" who has "more experience providing Erisa fiduciary services to employers and their employees," Roberts said.

The new rule represents "a very significant change" for independent insurance agents who sell more than one type of insurance product, according to **Marcia Wagner**, founder and managing partner at **The Wagner Law Group**, a Boston-based law firm that focuses on Erisa and employment law. The impact includes revisions to prohibited transaction exemptions 84-24 and 2020-02, which address fixed index annuities and variable annuities, respectively, she noted.

"It's going to be a fairly significant change for those that sell insurance products and also for those who supervise people who do so. There's going to be a lot of transition and likely transition costs," she said.

Communications with clients present another risk for advisors should a communication be "more in the form of an investment recommendation than pure marketing," **George Gerstein**, senior counsel in law firm **Simpson Thacher**'s Executive Compensation and Employee Benefits Practice, told FA-IQ via email.

"If a communication is treated as an investment recommendation, then the firm will likely have to comply with an accompanying (and complex) prohibited transaction exemption," Gerstein told FA-IQ via email.

Firms can look to the SEC's Regulation Best Interest for potential guidance as to what constitutes a recommendation, according to Gerstein. Additionally, firms "should consider vetting sales and marketing communications made to all clients, as well as the use of disclaimers," he told FA-IQ via email.

Morgan Stanley Wins Appeal in Ex-FA's Mold-Exposure Suit

A Maryland appellate court ruled that Henry Gundlach's pneumonitis wasn't attributable to his work as a financial advisor.

By Alex Padalka | June 5, 2024

Morgan Stanley has prevailed in its appeal of an award of workers' compensation benefits to one of its former financial advisors who claimed that he sustained a lung condition as a result of mold exposure at his place of work.

Henry Gundlach, who had entered the financial services industry since 1987, joined Morgan Stanley from **Merrill Lynch** in 2008 and worked at the firm's branch office in Annapolis, Maryland, until January 2020, according to BrokerCheck.

In May 2019, Gundlach filed claims with the Maryland Workers' Compensation Commission for occupational disease and accidental injury, alleging that he developed pneumonitis because of exposure to mold in the workplace, according to an opinion filed in the Circuit Court for Anne Arundel County. In May 2020, Gundlach underwent replacement of each lung, according to court documents.

The commission ordered Morgan Stanley to cover "Gundlach's causally related medical expenses" and also ordered the case held for consideration whether Gundlach suffered permanent partial disability, according to the document.

Morgan Stanley appealed the decision, arguing that pneumonitis was "not consistent with exposure that is attributable to his type of employment as a financial advisor," and the case went before a jury in trial court, according to court documents.

In October 2022, the jury ruled in favor of Gundlach, and Morgan Stanley appealed, according to court documents.

Last week, the Maryland Court of Special Appeals ruled that Gundlach should not have been granted workers' compensation benefits.

"Claimant's pneumonitis, which was alleged to be caused by exposure to mold in an office setting, was not attributable to claimant's type of employment as a financial advisor, which involved primarily discussing and advising clients regarding their financial situation and potential investments," the appeals court wrote. "There was no evidence that mold exposure is a known risk or distinctive feature of the job of a financial advisor."

After his departure from Morgan Stanley, Gundlach never registered with another firm, according to BrokerCheck and the **Securities and Exchange Commission**'s Investment Advisor Public Disclosure database.

Longtime Morgan Stanley Exec to Take Wealth Role at Citigroup

Dawn Nordberg will lead Citigroup's newly created "integrated client engagement" group.

June 5, 2024

This article originally ran in Financial Advisor IQ sister publication FundFire.

Citigroup has snagged a 25-year **Morgan Stanley** veteran to lead a new group that will serve clients in its wealth management division, according to a memo seen by Reuters yesterday.

Dawn Nordberg is leaving Morgan Stanley in September. She will lead Citigroup's newly created "integrated client engagement" group, **Andy Sieg**, head of global wealth management at the bank, wrote in the memo.

Nordberg will be tasked with boosting collaboration across the bank's units, including the division that caters to corporations, which is led by **Viswas Raghavan**. She will also prioritize hiring in key markets while working to bolster clients' investment assets held at Citigroup, Reuters reports.

Nordberg most recently served as Morgan Stanley's group head of strategic client management.

By **Kathleen Laverty**

- To read the Reuters article cited in this story **click here** (free registration required).

UBS Adds Market Director in Oregon

Cy Aleman will oversee all five UBS locations in the state from the Portland office.

By Glenn Koch | June 5, 2024

UBS Wealth Management has added a longtime **Amundi** executive as a market director in its Pacific Northwest region.

Cy Aleman joins UBS as market director for Oregon, the wirehouse announced. Aleman, based in Portland, will oversee that office and the remaining Oregon locations in Bend, Eugene, Lake Oswego and Medford. In addition to managing the advisors and support staff in those locations, his responsibilities will include expanding the firm's business activities in the state, recruiting new advisors and coaching team members, UBS said.

Aleman had been at Amundi since 2012 and most recently held the title of divisional sales manager for the Western Division. In that role, he established and maintained relationships with financial professionals and helped them acquire new assets through target-specific marketing and market-trend education, according to UBS.

"As we build leadership and aim to provide an employee centric, hands-on, proactive, and collaborative environment, I am confident that the addition of Cy meaningfully pushes us closer to our desired values and outcomes," **Ryan Rozniakowski**, UBS' Market Executive for the Pacific Northwest Market, said in the announcement.

Aleman's resume also includes stints at **WBI Investments**, **ING Financial Partners**, **Old Mutual** and **OppenheimerFunds**, where he began his career in 2002, according to a LinkedIn profile.

Aleman replaces **James Carideo**, who in March was appointed market director for UBS' San Diego offices.

INDUSTRY MOVES

$1B Merrill FA Duo Breaks Away to Form SoCal Indie RIA

By Alex Padalka **|** **June 5, 2024**

A pair of veteran financial advisors has left **Merrill Lynch** to launch an independent registered investment advisory firm in southern California.

Co-founders **Michelle Gruber** and **Alex Markowitz**, along with Senior Vice President **Matthew Mullaly**, have launched Westlake Village–based **Alteri Wealth**, according to an announcement from the company. Alteri says it offers multigenerational planning and specializes in serving founders, entrepreneurs, physicians, athletes and entertainers.

Gruber joined the financial services industry in 2002, when she registered with **UBS**, before switching to Merrill in 2009, according to BrokerCheck. Markowitz started his industry career at Merrill in 2022.

Mullaly has been in the industry since 1980 and had been with Merrill since 1983.

The team, which previously managed more than $1 billion in assets under management at the wirehouse, also includes Chief Operating Officer **Veronica Hoy**, Chief Compliance Officer **Roseann Higgins**, Client Relationship Manager **Breann Young**, Client Operations Manager **Celina Whinery** and Client Experience Manager **Cheyenne Meinecke**.

"We found ourselves wondering if there was a better way to serve clients," Gruber said in the announcement. "Founding Alteri Wealth is the culmination of our vision and provides us with the freedom and framework needed to fulfill our mission, embracing the fiduciary standard and always acting in the best interests of our clients."

The new RIA custodies with **Charles Schwab**, according to Alteri.

Citizens Grabs $1B JPMorgan FA Team

By Nate DiCamillo | June 3, 2024

This article originally ran in Financial Advisor IQ sister publication FundFire.

Citizens Financial Group has hired a financial advisor team from **JPMorgan**, extending a yearlong run on former **First Republic** talent.

The team is led by **Brian Nagle** and based in Boston. He's joined by Client Associate **Zachary Noke**, Investment Specialist **Grayham Lohrey** and Relationship Manager **Emily Fluke**. The practice specializes in equity and balanced portfolios for ultra-high-net-worth clients, trusts, endowments and foundations.

Nagle worked at First Republic before it was acquired by JPMorgan last year, regulatory records show. His exit from JPMorgan follows a string of departures by former First Republic advisors who opted to leave before they had to domicile their client accounts with JPMorgan, as reported. JPMorgan declined to comment on Nagle's departure.

In April, Citizens snagged a 12-person advisor team from JPMorgan that oversaw $5 billion. In February, Citizens also hired wealth executives from JPMorgan to help build out its wealth business.

As part of its expansion in Boston, Citizens hired **Mark Thompson** to serve as the market executive for the its private bank office in that city. Thompson previously was chief executive officer of **Boston Private Bank** and president of **Cambridge Trust**.

Kestra Brings in $500M Ohio Team

By Alf Wilkinson | June 5, 2024

Kestra Private Wealth Services says it has expanded its presence in Ohio with the addition of **Attain Wealth Partners**.

Austin, Texas–based **Kestra Financial**'s registered investment advisor subsidiary, which announced the deal today, says Attain's team offers "tailored solutions from wealth and investment management to retirement."

Related Content

April 5, 2024
Kestra Lands $600M FA Team

Attain, based in Zanesville, Ohio, oversees $500 million in client assets and offers portfolio management, retirement strategies, risk management and estate strategies to ultra-high-net-worth individuals, according to the announcement.

The Attain team consists of co-founders **Shakir Kaka** and **David Weinberg**, wealth advisors **Bridget Tetak**, **Ross Weinberg**, **Sierra Brown** and **Nazneen Kaka**, and Administrative Partner **Anissa Judd**.

Prior to founding Attain, the team was associated with **Merrill Lynch Wealth Management**.

Attain now has access to Kestra's full-service support model, allowing the team to focus on strengthening and building client relationships while Kestra oversees the firm's transition to an independent business, Kestra says.

Joining Kestra will enable Attain to "develop trust and stronger, long-term relationships with our clients, working alongside like-minded partners who believe in our mission and goals," Kaka said in the announcement.

Formed in 1997, Kestra Financial also includes **Kestra Advisory Services** and **Kestra Investment Services**.

Proposed Bill Would Cut SEC's Budget, Ban CAT Data Collection

The House Appropriations Committee has proposed cutting the SEC's budget by more than $144 million for 2025.

By Alf Wilkinson | June 5, 2024

The **Securities and Exchange Commission** is facing a significant budget cut and a ban on data collection related to the Consolidated Audit Trail under a proposed spending bill.

The Financial Services and General Government Appropriations Bill, released yesterday, provides $2 billion for operating expenses at the SEC, according to a summary of the bill published by **Tom Cole**, the Oklahoma representative who chairs the House Appropriations Committee.

The proposed figure is $589.3 million below the budget request for the 2025 fiscal year and $144.3 million below the enacted level for the 2024 fiscal year, Cole writes.

The SEC's "aggressive" enforcement division would be limited to $644 million, which represents a decrease of $168 million from the budget requested by President **Joe Biden**, the committee chair points out.

Meanwhile, policy riders attached to the bill would, among other things, prohibit the U.S. financial regulator "from implementing or collecting information related to the Consolidated Audit Trail."

The SEC came up with the idea for CAT in response to the flash crash of May 2010, which erased as much as $1 trillion of the value of U.S. stocks before markets rebounded.

The database is designed to track trading in equities and options markets on a consolidated basis across exchanges, to make it easier to spot market manipulation and pinpoint triggers of market turbulence.

A further policy rider would prevent the SEC's proposed rulemaking that would "require public companies to disclose climate-related risks and emissions in their SEC filings," Cole writes.

Another would prohibit the agency from "implementing or enforcing" Staff Accounting Bulletin No. 121, which implements "harmful digital asset requirements," the chairman continues.

ThinkAdvisor first reported the bill.

BNY Mellon Bundles Advisor Platforms

The investment management firm, bank custodian and wealth manager is aiming to get on the radar of its existing clients by merging services onto one platform.

By Michael Taffe | June 5, 2024

BNY Mellon is consolidating several of its advisor service offerings on one tech platform, the firm announced yesterday.

The move connects the firm's managed accounts platform, investment management products, tax strategies, and custody and clearing services on a single platform as part of a larger move toward "one BNY Mellon," which would allow the firm to promote services from across the bank to existing clients. Firm executives teased the initiative on the firm's earnings call earlier this year.

The new platform builds on **Pershing**'s wealth management platform, Wove, which debuted around this time last year at the firm's INSITE conference. Advisors using the platform would receive discounts of as much as 40%, according to a statement from the firm.

The bundling effort comes in response to advisor demand for less complexity, said **Dave DiPetrillo**, head of North America distribution at BNY Mellon investment management.

"Nobody likes the swivel chair," DiPetrillo said. "You don't want to keep going back and forth between all these different apps when you're really just trying to do one thing. That is the ultimate ambition: to deliver what historically has been viewed as distinct sets of products and services in the industry in a way that you can't tell when you're leaving the desktop app platform and going to the managed accounts platform and then going to the investments platform. I think the goal is seamlessness and efficiency."

DiPetrillo said the merged platforms resembles the model employed by **BNY Mellon Advisors**, formerly called **Lockwood Advisors**, in that the platform offers managed accounts, tech and fee-based tax overlays, like turnkey asset management platforms, he said.

"[T]hat is clearly an area of growing demand as the world moves away from brokerage to managed accounts, just broadly," DiPetrillo said.

BNY Mellon is also expecting uptake from financial advisors adopting an independent registered investment advisor model as well as the national advisory firms, wirehouses and broker-dealers, he added.

The move comes as the bank seeks to boost its investment management division's margins by connecting the unit to the broader organization.

"[I]f you only operated in a silo in investment management, where it was manufacturing and only its own distribution, there's a legitimate question there about whether or not it would have the scale and the capacity to be able to truly compete," Chief Executive Officer **Robin Vince** said during the firm's earnings call in April. "But when you put it together with the rest of the company, we think there's a pretty compelling thesis. [L]et's let investment management stretch its legs in that new approach."

BNY Mellon, by way of its varied service offerings, is well positioned to meet the demand from advisors for fewer platforms, said **Craig Kilgallen**, director of relationship management at **FUSE Research**.

"As the advisor marketplaces evolve, it's become very much about scale," he said. "In order to compete in this market, it's about all the other services and things that you can provide to your clients in order to grow. So being able to streamline a lot of your processes and save time and effort — and potentially money — I think would be something that would obviously be attractive to a firm if they're trying to maintain the business in what is a fairly competitive environment."

Offering personalized tax-management strategies and managed accounts is also key to the firm's client base, said Kilgallen.

"[P]ershing has a good number of advisors that are focused on the high-net-worth side, so the tax capabilities are obviously very important to many clients these days," he said. "Certainly, managed accounts is a more high-net-worth-focused product. So, providing that opportunity, again, seems to align with a lot of the trends that are going on right now."

DiPetrillo said the world's largest custodian bank is moving to have its component parts interact more, but that it is "more of a philosophy and culture change" than an organizational restructuring.

"We have historically tended to show up a little bit more in silos than we'd like, and so there is an awful lot of work to deliver more parts of the bank to clients in a seamless way," he said. "There have definitely been a lot of talent additions, particularly on the technology side, with the significant investment into Wove and Pershing."

Streamlining units and alts are the two industry priorities, said DiPetrillo.

"The industry seems to have decided there's two real areas of growth and change: One is this drive towards customization and personalization in all its forms and fashion because that's what retail clients want. And the other is [alternatives]. Those seem to be the two things that everyone agrees are growing, hands down," he said. "And I think we have, relative maybe to some standalone asset managers, some real advantages."