This is fifteenth article about interesting observations “hidden” in the fiduciary regulation and the exemptions.

In my last post, I said that the prudent process requirement would apply to many, but not all, advisers. This article explains that statement.

ERISA does not apply to individual IRAs (but does apply to SEP and SIMPLE IRAs). As a result, ERISA’s prudent man rule does not govern the conduct of advisers when providing investment advice to individual IRAs.

However, when the Best Interest Contract Exemption (BICE) applies to “conflicted” advice on April 10, 2017, those advisers will need to, among other things, satisfy the Best Interest standard of care (which is, in its essence, a combination of ERISA’s prudent man rule and duty of loyalty). In effect, conflicted advisers will be bootstrapped into a prudent process requirement. (As background, a “conflicted” fiduciary adviser is one with a conflict of interest, e.g., the advice can result in higher compensation or payments from third parties – such as 12b-1 fees or where proprietary investments are used.)

However, a pure level fee adviser does not have any financial conflicts and therefore will not need to use BICE. (A “pure level fee adviser” is one who charges a level fee, e.g., one percent per year, and neither the adviser, his supervisory entity nor any
affiliated or related party receives any money or financial benefit on top of that fee.) Since a pure level fee, or non-conflicted, adviser won’t commit a prohibited transaction and therefore won’t need an exemption, that adviser will not be bound by the best interest standard for investment advice to individual IRAs. Instead, the adviser will only be subject to the conduct standards in the securities laws.

As a result, pure level fee advisers for IRAs won’t be affected by the new fiduciary rules . . . with a couple of notable exceptions. The biggest of those exceptions is a recommendation to a plan participant to take a distribution and roll over to an IRA with the adviser. But that is a subject for a future article.

For the moment, though, let me leave you with a positive thought. If you are a pure level fee adviser, your existing IRA clients, and your services to those clients, will not be affected by the new rules.

*The views expressed in this article are the views of Fred Reish, and do not necessarily reflect the views of Drinker Biddle & Reath.*

Part 1 - Interesting Angles on DOL’s Fiduciary Rule #1

Part 2 - Best Interest Standard of Care: Interesting Angles on the DOL’s Fiduciary Rule #2

Part 3 - Hidden Preamble Observations: Interesting Angles on the DOL’s Fiduciary Rule #3

Part 4 - TV Stock Tips and Fiduciary Advice: Interesting Angles on DOL’s Fiduciary Rule #4

Part 5 - Level Fee Fiduciary Exemption: Interesting Angles on DOL’s Fiduciary Rule #5

Part 6 - Fiduciary Regulation And The Exemptions: Interesting Angles on the DOL’s Fiduciary Rule #6

Part 7 - Fiduciary Regulations And The Exemptions: Interesting Angles on the DOL’s Fiduciary Rule #7

Part 8 - Designated Investment Alternatives: Interesting Angles on the DOL’s Fiduciary Rule #8

Part 9 - Best Interest Standard and the Prudent Man Rule: Interesting Angles on the DOL’s Fiduciary Rule #9

Part 10 - FINRA Regulatory Notice: Interesting Angles on the DOL’s Fiduciary Rule #10

Part 11 - ERISA and the Internal Revenue Code: Interesting Angles on the DOL’s Fiduciary Rule #11

Part 12 - Potential Prohibited Transactions: Interesting Angles on the DOL’s Fiduciary Rule #12
Part 13 - Investment Policies: Interesting Angles on the DOL’s Fiduciary Rule #13

Part 14 - Investment Suggestions: Interesting Angles on the DOL’s Fiduciary Rule #14

Part 16 - Adviser Recommendations: Interesting Angles on DOL’s Fiduciary Rule #16

Part 17 - Level Fee Fiduciary: Interesting Angles on DOL’s Fiduciary Rule #17

Part 18 - Best Interest Contract Exemption and IRA Advisor Compensation: Interesting Angles on the DOL’s Fiduciary Rule #18

Part 19 - Interesting Angles on the DOL’s Fiduciary Rule #19: Advisors' Use of "Hire Me" Practices.

Part 20 - Three Parts of "Best Interest Standard of Care": Interesting Angles on the DOL’s Fiduciary Rule #20

Part 21 - Retirement Plan Documentation and Prudent Recommendation: Interesting Angles on the DOL’s Fiduciary Rule #21

Part 22 - Banks and Prohibited Transactions: Interesting Angles on the DOL’s Fiduciary Rule #22

Part 23 - Prohibited Transactions: IRA and RIA Qualified Money: Interesting Angles on the DOL’s Fiduciary Rule #23

Part 24 - Differential Compensation Based on Neutral Factors: Interesting Angles on DOL’s Fiduciary Rule #24

Part 25 - Reasonable Compensation Versus Neutral Factors: Interesting Angles on the DOL’s Fiduciary Rule #25

Part 26 - Interesting Angles on the DOL’s Fiduciary Rule #26- Reasonable Compensation for IRAs: When and How Long?

Part 27 - Definition of Compensation: Interesting Angles on DOL’s Fiduciary Rule #27

Part 28 - What About Rollovers that Aren’t Recommended?: Interesting Angles on the DOL’s Fiduciary Rule #28

Part 29 - Capturing Rollovers: What Information is Needed?: Interesting Angles on the DOL’s Fiduciary Rule #29

Part 30 - Three Kinds of Level Fee Fiduciaries . . . and What’s A “Level Fee“?: Interesting Angles on the DOL’s Fiduciary Rule #30

Part 31 - “Un-levelizing” Level Fee Fiduciaries: Interesting Angles on the DOL’s Fiduciary Rule #31

Part 32 - What “Level Fee Fiduciary” Means for Rollover Advice: Interesting Angles on the DOL’s Fiduciary Rule #32
Part 33- Discretionary Management, Rollovers and BICE: Interesting Angles on the DOL’s Fiduciary Rule #33

Part 34- Seminar Can Be Fiduciary Act: Interesting Angles on DOL’s Fiduciary Rule #34

Part 35- Presidential Memorandum on Fiduciary Rule: Interesting Angles on the DOL’s Fiduciary Rule #35

Part 36 - Retirement Advice and the SEC: Interesting Angles on the DOL’s Fiduciary Rule #36

Part 37 - SEC Retirement-Targeted Examinations: Interesting Angles on the DOL’s Fiduciary Rule #37

Part 38- SEC Examinations of RIAs and Broker-Dealers under the ReTIRE Initiative: Interesting Angles on the DOL’s Fiduciary Rule #38

Part 39- FINRA Regulatory Notice 13-45: Guidance on Distributions and Rollovers: Interesting Angles on the DOL’s Fiduciary Rule #39

Part 40 - New Rule, Old Rule - What Should Advisers Do Now?: Interesting Angles on the DOL’s Fiduciary Rule #40

Part 41 - While We Wait: The Current Fiduciary Rule and Annuities: Interesting Angles on DOL’s Fiduciary Rule #41

Part 42 - Rollovers under DOL’s Final Rule: Interesting Angles on DOL’s Fiduciary Rule #42

Part 43 - BICE Transition: More Than the Eye Can See - Interesting Angles on DOL’s Fiduciary Rule #43

Part 44 - Basic Structure of Fiduciary Package (June 9): Interesting Angles on DOL’s Fiduciary Rule #44

Part 45 - DOL Fiduciary “Package”: Basics on the Prohibited Transaction Exemptions: Interesting Angles on the DOL’s Fiduciary Rule #45

Part 46 - How Does an Adviser Know How to Satisfy the Best Interest Standard?: Interesting Angles on the DOL’s Fiduciary Rule #46

Part 47- “Real” Requirements of Fiduciary Rule: Interesting Angles on DOL’s Fiduciary Rule #47

Part 48- The Last Word: The Fiduciary Rule Applies on June 9- Interesting Angles on the DOL’s Fiduciary Rule #48

Part 49- The Requirement to Disclose Fiduciary Status: Interesting Angles on the DOL’s Fiduciary Rule #49

Part 50- Fourth Impartial Conduct Standard: Interesting Angles on DOL’s Fiduciary Rule #50
Part 51 - Recommendations to Transfer IRAs: Interesting Angles on the DOL’s Fiduciary Rule #51

Part 52 - The Fiduciary Rule and Exemptions: How Long Will Our Transition Be?: Interesting Angles on the DOL’s Fiduciary Rule #52

Part 53 - Fiduciary Rule and Discretionary Investment Management: Interesting Angles on DOL’s Fiduciary Rule #53

Part 54 - The DOL’s RFI and Possible changes to BICE: Interesting Angles on the DOL’s Fiduciary Rule #54

Part 55 - DOL’s RFI and Recommendation of Annuities- Interesting Angles on DOL’s Fiduciary Rule #55

Part 56 - Recommendations of Contributions as Fiduciary Advice: Interesting Angles on the DOL’s Fiduciary Rule #56

Part 57 - Relief from 408(b)(2) Requirement on Change Notice: Interesting Angles on the DOL’s Fiduciary Rule #57

Part 58 - Recommendations to Contribute to a Plan or IRA- Interesting Angles on the DOL’s Fiduciary Rule #58

Part 59 - What Plans and Arrangements Are Covered by the Fiduciary Rule: Interesting Angles on the DOL’s Fiduciary Rule #59

Part 60 - What the Tibble Decision Means to Advisers: Interesting Angles on the DOL’s Fiduciary Rule #60

Part 61 - The Fiduciary Rule, Distributions and Rollovers: Interesting Angles on the DOL’s Fiduciary Rule #61

Part 62 - Is It Possible To Be An Advisor Without Being A Fiduciary? - Interesting Angles on the DOL’s Fiduciary Rule #62

Part 63 - Policies and Procedures: The Fourth BICE Requirement - Interesting Angles on the DOL’s Fiduciary Rule #63

Part 64 - What Does the Best Interest Standard of Care Require?-Interesting Angles on the DOL’s Fiduciary Rule #64

Part 65 - Unexpected Consequences of Fiduciary Rule - Interesting Angles on the DOL’s Fiduciary Rule #65

Part 66 - Concerns About 408(b)(2) Disclosures: Interesting Angles on the DOL’s Fiduciary Rule #66

Part 67 - From the DOL to the SEC - Interesting Angles on the DOL’s Fiduciary Rule #67

Part 68 - Recommendations of Distributions - Interesting Angles on the DOL’s Fiduciary Rule #68