Best Interest Compliance Team

STATE FIDUCIARY AND BEST INTEREST DEVELOPMENTS

State	Fiduciary/Best Interest Development	Sources
Connecticut	• Connecticut HB 7161 "An Act Requiring Administrators of Certain Retirement Plans to Disclose conflicts of Interest" went into effect on October 1, 2017. • On January 1, 2019 any company that administers a retirement plan offered by a political subdivision of the state will have to disclose: "(1) The fee ratio and return, net of fees, for each investment under the retirement plan, and (2) the fees paid to any person who, for compensation, engages in the business of providing investment advice to participants in the retirement plan either directly or through publications or writings." • The law applies to any person that: (1) enters into a contract or agreement with a 403(b) plan not regulated under ERISA to provide services to the plan; and (2) reasonably expects to receive $1,000 or more in direct or indirect compensation for such services	National Tax Deferred Savings Association Article Text of HB 7161
Illinois	Illinois Legislature HB4753, which is just a short title with no text. The legislative record so far is: • Introduced in the Illinois House by Rep. Will Guzzardi on 2/13/18 • Read before the Illinois House also on 2/13/18 • Referred immediately to the Illinois House's Rules Committee, which is five individuals (three democrats and two republicans)	HB4753
Maryland	• The Maryland Senate has introduced a bill, the Financial Protection Act of 2019. • The bill would impose a fiduciary standard on brokers and insurance representatives, including "to act in the best interest of the customer without regard to the financial or other interest of the person or firm providing the advice." • Investment advisors are already subject to a fiduciary standard, but would now be subject to the best interest standard as well. • Hearings will be held on March 12-13, 2019 to clarify this provision. • The bill does not currently contain an effective date or a private right of action.	The Financial Protection Act of 2019 Maryland bill to Impose Fiduciary Duty on Brokers and Insurance Representatives Hearings Set for Maryland's Proposed Fiduciary Duty Bill

This chart is regularly updated based on current developments. Please check our blog page at http://www.brokerdealerlawblog.com/resources for the most recent version of this chart.

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Massachusetts	• As of February 7, 2018, The Massachusetts Securities Division ("Division") was seeking preliminary comments on a proposed regulation that would require investment advisers who are registered with the Division to create a fee table for advisory clients • Specifically, an investment adviser would create one fee table, which includes all fees and services provided by the investment adviser • The fee table would be updated annually and delivered annually in paper or electronic form to the investment adviser's current advisory clients	Preliminary Request for Public Comment on Proposed Fee Table for State-Registered Investment Advisers
Nevada	• New state law effective July 1, 2017, amended NRS 628A.010 and NRS 90.575 • Provides that a financial planner "has the duty of a fiduciary toward a client" • "Financial planner" means a person who for compensation advises others upon the investment of money or upon provision for income to be needed in the future, or who holds himself or herself out as qualified to perform either of these functions • The law also imposes a fiduciary duty on broker-dealers, sales representatives and investment advisers who for compensation advise other persons concerning the investment of money • The law does not include a definition of fiduciary duty but does provide for a private right of action. • Implementation of the law is dependent on the adoption of regulations. • The law does not apply to sales of insurance, unless accompanied by investment advice • On January 18, 2019, Nevada released draft regulations. • In general, the draft regulations describe the substantive duties investment advisors and broker-dealers owe their clients, what actions constitute a breach of their fiduciary duties, as well as certain exceptions to these regulations. • The comment period ended on March 1, 2019.	Senate Bill No. 383 September 8, 2017 Notice of Regulation October 2, 2017 Notice of Regulation January 18, 2019 Draft Fiduciary Duty Regulations

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New Jersey (Legislation)	• New Jersey proposed two related bills on January 9, 2018 • The first (Senate No. 735) would require financial advisors to disclose their fiduciary status to investors. Senate No. 735 delineates between "non-fiduciary investment advisors" and advisors subject to a fiduciary duty. Specifically, non-fiduciary investment advisors would have to advise clients—both orally and in writing—that they are not fiduciaries, and thus have no duty to act in the client's best interests. Any advisors subject to a fiduciary duty would have to let clients know they are subject to a fiduciary duty. Both types of advisors could face a $5,000 fine for failing to disclose this information • The second (A208) requires disclosures from individuals who administer certain school retirement plans created in accordance with section 403(b) of the Internal Revenue Code • Specifically A208 requires "person[s] administering annuity retirement plans for teachers to annually disclose fee ratio, return, and fees to each participant." These disclosures would need to be made both upon enrollment and annually after	New Jersey Proposed Bill Text No. 208 Proposed Bill Text
New Jersey (Regulation)	• On September 18, 2018, Governor Phil Murphy announced his intention to direct the New Jersey Bureau of Securities to adopt rules to "impose a fiduciary duty on all New Jersey investment professionals, requiring them to place their clients' interests above their own when recommending investments" • Governor Murphy specifically stated that "New Jersey is pursuing state-level regulatory reforms that would enhance the integrity of its financial services industry by holding every investment professional to the highest standard under the law" • The New Jersey Bureau of Securities issued a pre-proposal seeking comments on a fiduciary standard and held two public hearings in November 2018. The comment period ended December 14, 2018. • It is anticipated that a proposed regulation will be issued in early 2019, but no official announcement has been made.	Governor Murphy Announces Plan to Require NJ Financial Industry to Put Customers' Interests First New Jersey Business Magazine article on Adopting 'Uniform Fiduciary Standard' New Jersey Bureau of Securities Pre-Proposal

State	Fiduciary Duty Development	Sources
New York (Regulation)	• On July 18, 2018, the New York Department of Financial Services (NYDFS) issued a final version of New York Insurance Regulation 187 (now called "Suitability and Best Interests in Life Insurance and Annuity Transactions") which sets forth a "best interest" standard for sellers of life insurance and annuity products. It requires an insurer to have reasonable grounds for believing a recommendation is in the best interest of the consumer. • While annuity products were already subject to a suitability standard, a best interest standard is new. Further, prior to the Regulation, a best interest or suitability standard did not apply to the sellers of life insurance, but now both standards apply to life insurance. • The Regulation expands the applicability of the regulation to apply to insurance producers, life insurance policies, and in-force policies/contracts. It applies to policies/ contracts delivered or issued for delivery in New York • The Regulation continues to exempt policies/contracts used to fund qualified retirement plans, ERISA plans, and employer-sponsored IRAs • The Regulation also will not apply to sales of mutual funds or other securities, unless related to an annuity or life insurance product • There are two effective dates: August 1, 2019 for annuities and February 1, 2020 for life insurance.	Drinker Biddle Blog Post on Proposed Regulation Final Version of New York Insurance Regulation 187
New York (Legislation)	• On January 22, 2019, the Investment Transparency Act (the "ITA") was introduced in the New York Assembly. This bill was introduced last term but did not pass. • The ITA is aimed at "mandating greater levels of disclosures by non- fiduciaries that provide investment advice" • This would be accomplished through amending several sections of the general obligations law. • Investment advisors not currently subject to a fiduciary standard would be required, at the outset of the client relationship, to specifically disclose to clients, orally and in writing, that they are not fiduciaries • The specific disclosure must state: "I am not a fiduciary. Therefore, I am not required to act in your best interest, and am allowed to recommend investments that may earn higher fees for me or my firm, even if those investments may not have the best combination of fees, risks, and expected returns for you" • Investment advisors that the bill specifically requires to make this disclosure include: "brokers," "dealers" "financial advisors," "retirement planners," or any advisor whose title would suggest expertise in financial planning, retirement planning or investments	The Investment Transparency Act

Authority	Fiduciary Duty Development	Sources
National Association of Insurance Commissioners ("NAIC")	• On November 19, 2018 the NAIC released its latest draft model regulation concerning suitability in annuity transactions. • The purpose of this regulation is to "require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that are suitable, in the consumer's interest." • The regulation would require insurers to act in the consumer's interest, without placing its financial interest ahead of the consumer's. • Prior to recommending the annuity, insurers would be required to disclose: (1) the scope and terms of their relationship with the consumer; (2) any limitations it has; (3) how it is being compensated; and (4) any material conflicts of interest. • Insurers would need to establish a supervision system "reasonably designed" to achieve its compliance with the regulation. • Should an insurer violate this regulation they would need to take corrective action and could be subject to "appropriate penalties and sanctions." • This regulation would not create a private right of action.	Suitability in Annuity Transactions Model Regulation

Best Interest Compliance Team

Our national Best Interest Compliance Team assists clients with the evolving and overlapping federal and state regulations related to the standard of care for broker-dealers, investment advisers, and insurance companies, agents and brokers.

The interdisciplinary group of more than 20 lawyers consists of attorneys from the firm's Investment Management, ERISA, SEC and Regulatory Enforcement Defense, Litigation/FINRA Arbitration, and Insurance Regulatory and Transactional practice areas. The team includes attorneys who were former financial services in-house counsel, legislative professionals, compliance supervisors and/or regulators.

We actively assist investment managers, broker-dealers, registered investment advisers, retirement plan/IRA service providers and insurance companies with the challenges resulting from the ever-changing regulations from the SEC, FINRA, the Department of Labor and state agencies related to fiduciary requirements and best interest duties.

Our experience with fiduciary and best interest compliance and reporting obligations includes strengthening supervisory procedures and internal controls. In addition, our lawyers draft agreements, disclosure documents and Written Supervisory Procedures to assist with the implementation of the anticipated new standard of care, and supervision of that standard. We also advise clients on the development of products and services that are consistent with ERISA's fiduciary standards and prohibited transaction restrictions, including retirement income investments and guaranties.

We represent clients involved in investigations and enforcement matters before agencies such as the SEC, the Department of Labor, the IRS, FINRA and other self-regulatory or state agencies. Our lawyers also provide independent assessments of risk management and supervisory frameworks, and overall compliance policies and procedures related to conflicts of interest, breaches of fiduciary duty and securities law violations. In addition, our lawyers represent broker-dealers, investment advisers, insurance companies and other financial services entities in litigation and arbitration matters on standards of care and conflicts of interest.

Through articles, webinars, audiocasts and white papers, our Best Interest Compliance Team also provides investment advisers, brokers, insurance representatives and others with counsel and information to stay ahead of directives from the SEC, FINRA, the Department of Labor and other regulatory agencies.

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