

DOL Fiduciary Rule Delayed, Share Class Questions Remain

By Whitney Curry Wimbish, BoardIQ, April 11, 2017

The Department of Labor last week delayed its fiduciary rule for 60 days and may postpone it further. The rule, which would have been effective starting April 10, is now effective June 9. That change was made in the final rule released last Tuesday.

For independent fund directors, the delay is only the latest headache related to the rule. Prior to this, directors had been grappling with how to handle demands by intermediaries to create new share classes – ones that would satisfy the intermediaries’ requirements under the new rule but which came with unappealing aspects.

The fiduciary rule restricts commissions on products sold in retirement accounts, among other things, so intermediaries have told fund complexes they want share classes with specific sales loads suited to their individual demands or no loads at all.

Intermediaries hold outsized power over fund companies, and many agreed.

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But there are serious concerns over whether the class is in shareholders’ best interest, because it’s up to the intermediary to provide the fund with up-to-date information that would be published in the prospectus and to honor such things as breakpoints and waivers.

Intermediaries’ long track record of failing to do so at other times has led some to worry they will treat investors unfairly now.

Last year, 16 intermediaries were fined roughly \$2.4 million and ordered to pay more than \$11 million in restitution for failing to provide sales charge waivers and other failures, according to data from Niels Holch, founding partner of **Holch & Erickson** and executive director of the Coalition of Mutual Fund Investors.

Earlier this month, the Financial Industry Regulatory Authority fined Citizens Securities, an affiliate of Citizens Bank, \$50,000 and ordered it to repay clients \$64,023 for selling them fund shares in classes with loads when they were eligible to buy load-waived ones. The self-regulatory body has been conducting a sweep of broker-dealers on the issue for nearly a year.

In 2015, 31 broker-dealers were fined nearly \$8 million and told to pay more than \$53 million in restitution for similar failures, according to Holch’s data.

“The broker-dealers don’t have an economic interest to be in compliance,” Holch says.