POINT OF VIEW

INVESTMENT ADVICE

◆ OVERVIEW

Broker-dealers are now required to comply with Regulation Best Interest (Reg BI), the SEC's strengthened standard of conduct for brokers providing recommendations to retail customers. Also, in late 2020, the Department of Labor (DOL) adopted an exemption to its retirement investment rules under the Employee Retirement Income Security Act (ERISA). The exemption is generally aligned with Reg BI. The DOL also released a reinterpretation of its long-standing rule that defines who is a fiduciary under ERISA. Finally, several states have enacted legislation or issued regulations on the standard of care when providing advice, creating a patchwork of state regulation and laws that may overlap and/or conflict with federal regulations.

◆ FIDELITY'S VIEW

REGULATION BEST INTEREST (REG BI)

Reg BI strengthens the standard of care applicable to broker-dealers by elevating the customer's best interest as the overarching standard of care.

Brokers will have a core obligation to provide advice that does not place the "financial or other interest of the broker-dealer" ahead of the interest of the retail customer.

Additionally, Reg BI requires broker-dealers to address conflicts through disclosure and consent, mitigation, or elimination based on the nature of the conflict.

DEPARTMENT OF LABOR (DOL) RETIREMENT INVESTMENT ADVICE

The DOL's reinterpretation of the "five-part test" under ERISA expands the universe of retirement activities, including rollover recommendations, that are subject to the fiduciary duty.

This reinterpretation required the adoption of a prohibited transaction exemption (PTE) to allow advice providers to make recommendations and receive compensation that would otherwise be prohibited by ERISA.

Fidelity believes the PTE provides a broad and workable exemption that allows retirement investors to maintain access to advice and education.

While the reinterpretation of the "five-part test" is a significant departure from the DOL's long standing approach to defining fiduciary advice, the reinterpretation coupled with the PTE represents an effective regulatory regime that protects investors.

Fidelity supports a level playing field and a consistent standard applicable to all broker-dealers. As a leading provider or retirement recordkeeping, IRAs, and retail brokerage, Fidelity should not be disadvantaged relative to less diversified competitors.

STATE ACTIVITY

A few states including Nevada and Massachusetts have adopted their own investment advice standard of care. Other states such as New Jersey have paused rulemaking efforts in deference to federal regulators.

Fidelity believes that states should defer to federal regulations, including Reg BI and the DOL's investment advice regulation, when applying a standard of care for advice.

#

Fidelity Brokerage Services LLC, Member NYSE, SIPC 900 Salem Street, Smithfield, RI 029178
1013758.1.0