FINRA Comments on DOL Proposed Conflict of Interest Rule and Related Proposals

On July 17, 2015, FINRA submitted comments on the DOL's April 14, 2015 proposals, which included amendments to the definition of "fiduciary," a proposed best interest contract exemption, and a proposed exemption for principal transactions in certain debt securities. FINRA's comments support the implementation of a best interest standard for financial intermediaries, including broker-dealers, but suggest that the DOL's proposals need to be amended to meet certain minimum criteria.

Specifically, FINRA notes that the proposals do not build upon existing regulations. As a result, the proposals will require significant amounts of interpretive guidance because they introduce new concepts and ambiguous terms without providing adequate definition. In addition, FINRA is concerned that the DOL's new fiduciary standard is a fractured approach because it is different than those for registered investment advisers under federal or state law and applies only to retirement accounts. FINRA notes that this approach would likely create confusion over which standard applies and to whom.

In response to these shortcomings, FINRA recommends five specific improvements: 1) clarifying the scope and meaning of the best interest standard; 2) simplifying the proposals for differential compensation; 3) grounding the proposal in existing standards from federal securities laws and FINRA rules; 4) streamlining the prohibited transaction exemptions to eliminate ambiguous conditions that will not meaningfully restrict conflicts of interest; and 5) clarifying the effects of non-compliance with the prohibited transaction exemptions.

The public comment period for the DOL's proposal expired on July 21, 2015. However, due to the high volume of comments it has received and the potential cost of implementing the new rules, the agency might allow further comments after an August 10, 2015 hearing.