Further Uncertainty on DOL Fiduciary Rule

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We reported in a Foley Adviser on February 3 that President Trump had delayed implementation of the Fiduciary Rule by 180 days. This was based on the draft executive order that the White House had circulated that day. We have since learned, however, that the final memorandum actually issued by President Trump on Friday, February 3 to the U.S. Department of Labor ("DOL") did not include the express provision for a 180-day delay. The memorandum instructed DOL to re-examine the Fiduciary Rule to determine whether it may harm retirees and other investors as well as the retirement services industry, and whether it may lead to an increase in litigation and an increase in cost to gain access to retirement services. Further, if the DOL determines that the rule may have such negative impacts, it is directed to issue for notice and comment a proposed rule that rescinds or revises the current Fiduciary Rule. It has been reported that the DOL will look at its legal options to delay the applicability of the Fiduciary Rule as it seeks to comply with the presidential memorandum, but at present the April 10 effective date remains in place. Foley Hoag will keep its clients informed of further developments as they occur.

Investment advisers with further questions regarding the effect of this executive action should contact their Foley Hoag lawyer.

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