

SEC Investor Advocate's 2018 Objectives Target Key Issues for Life Insurers

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On June 29, the SEC's Office of the Investor Advocate released a report that prioritizes addressing the inconsistency in the standard of care applicable to broker-dealers (a suitability standard) versus investment advisers (a fiduciary standard) in fiscal year 2018. The investor advocate emphasized the confusion this inconsistency can cause for investors, which has been compounded by the Department of Labor's recently-adopted fiduciary rules concerning recommendations made in the retirement plan context. However, the investor advocate expressed concern about possible consumer harm if the SEC were to weaken the fiduciary standard for investment advisers or further confuse investors by purporting to provide them with the protections of a "fiduciary" duty that is actually less stringent than the traditional notion of fiduciary duty enshrined in other areas of law. The investor advocate, therefore, would have the SEC tailor any revised standard of care so that it deviates as little as possible from the current fiduciary standard applicable to investment advisers. It will be interesting to see whether the SEC's commissioners and investor advocate ultimately agree on the extent to which deviations from such a fiduciary standard are necessary or appropriate. Formal and informal statements made to date by SEC Chairman Jay Clayton and Commissioner Michael Piwowar suggest that they, at least, would be more flexible in tailoring a standard of care to different circumstances than the investor advocate may support. The investor advocate's report also called for Congress to provide the SEC with a respite from its various statutory mandates to free up resources for other rulemaking on "noncontroversial" and "promising ideas" that have taken a backseat. In this connection, the investor advocate singled out the proposal for a variable annuity summary prospectus as a worthy candidate for SEC action. Nevertheless, observers in the insurance industry who have long awaited SEC action on this proposal know better than to read too much into this statement. The variable annuity summary prospectus has been on the SEC's "to-do" list for several years now, without ever, apparently, enjoying a high enough priority to be formally proposed for adoption.

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