**Press Release**

## *Warning: Now that the Fiduciary Rule is Cast in Stone Common Rollover Practices Violate Regulations*

Many sales practices currently being used in the enormous IRA Rollover market are in violation of new FINRA and long standing ERISA requirements but in the absence of proper compliance procedures, the violations go undetected and uncorrected. The common violation in question is the rollover process and not the investment process.

For the most part, compliance with existing regulations regarding the rollover act itself has gone unattended while many firms cautiously await a final resolution of the DoL Fiduciary Rule ("DoL Rule") before making any changes.

With attention focused on the DoL Rule, the regulations from FINRA and ERISA have had little attention. Unlike the DoL Rule that is still in flux, FINRA Regulatory Notice 13-45 went into effect December, 2013 and ERISA 408(g) became effective December 2011. As a result, thousands of advisors are already non-compliant.

The FINRA regulations apply to rollovers by non-fiduciaries while SEC and ERISA apply to fiduciaries. ERISA 408(g) provides protection for rollover activities.

While the language and structure may be different, the rollover sales practices required to comply with FINRA, SEC and ERISA are similar in many respects. There are three areas where compliant practices are compatible. These are the extreme importance of the rollover decision, potential conflicts of interest and acting in the interest of the client.

Regulators agree that the rollover decision at retirement may be the most important one many investors ever make and it is often irreversible. It generally involves large sums and there have been many reports of abuse. Regulators have begun to place more scrutiny on this important decision.

The compensation paid from an IRA rollover generally exceeds what is paid by an employer sponsored plan, creating a natural incentive to roll assets out of a plan. Regulators recognize that there may also be benefits to rolling the assets into an IRA. Since there is no clear cut advantage either way, regulators look to advisors to overcome conflicts of interest in guiding investors in the rollover decision. In all cases, evidence of compliance requires training, disclosures and enhanced sales practices.

Acting in a client's interest has different labels in various regulations but all these labels require the same core practices. FINRA regulations use terms such as suitability, fair dealing and know your customer. The SEC and ERISA use the term fiduciary and apply the prudent expert rule.

Training must cover the differences between employer sponsored plans and rollover IRAs and address issues of investment options, fees and expenses, services provided and distributions.



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Sales practices require a more formal approach to practices that are currently in use. This formalization requires consistency and a record of each step in the process. Sales practices must include a deliberate effort to determine what the client's interests are, finding the alternative that meets those interests and an assessment of the reasonableness of compensation before making a recommendation.

For more details of compliant practices watch the *introductory video* and then take the Rollover Self-Study course.

For more information on ways to maximize rollover business, contact CClark@DALBAR.com.

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