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Update: 5th Circuit Confirms Decision to Vacate DOL Fiduciary Rule

After much anticipation, the US Court of Appeals for the Fifth Circuit on Thursday confirmed its earlier decision to vacate the Department of Labor's "fiduciary advice rule."

The controversial rule became effective June 2017 and significantly expanded the universe of broker-dealers and other financial advisers subject to ERISA's fiduciary standards. In March of this year, however, in *Chamber of Commerce of the USA v. US Dep't of Labor* the Fifth Circuit determined that the DOL exceeded its authority in implementing the rule and ordered its *vacatur*. Following the unsuccessful attempt by various parties to intervene in the litigation and expiration of the parties' right to appeal the decision to the US Supreme Court, the Fifth Circuit gave effect to its earlier decision by issuing its mandate—officially terminating the rule nationwide.

It remains unclear how financial advisers and institutions will react to the fiduciary rule's *vacatur*, including those institutions that made significant changes to their business practices following its issuance. In addition, this past April the SEC issued its own "best interest" regulations and various states have undertaken similar initiatives to regulate the investment advice provided to retirement investors. While the fiduciary rule's *vacatur* is no doubt welcomed by many in the financial industry, it appears that, in the near term, regulation in this area will remain uncertain.

We will continue to monitor these developments and provide additional information as it becomes available. For more information on this topic, see our prior advisories, "[Closer Look at the 5th Circuit Decision Vacating the Fiduciary Rule](#)," and "[5th Circuit Vacates DOL Fiduciary Rule](#)."

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