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How to Roll Out The Best-Interest Contract Exemption, On Wall Street, ft. Brendan McGarry

Brendan P. McGarry, Esq., was quoted in an article by Kenneth Corbin published in *Financial Planning on August 22, 2016.*

For advisers helping clients plan for retirement, drafting a binding contract may now simply be a cost of doing business.

He commented on the binding contract, through which advisers must pledge to act as fiduciaries and make recommendations in the best interests of their clients, which is at the heart of a new fiduciary regulation from the Department of Labor, which is aiming to mitigate the harm to investors from conflicted retirement advice.

In longhand, the provision is known as the best-interest contract exemption, and advisers should begin thinking about how to incorporate it into their practices if they want to help clients plan for retirement.

So how then should advisers approach the BIC exemption and other provisions of the fiduciary regulation?

“First and foremost, documentation for any decision [or] recommendation will be key,” says Brendan McGarry, an attorney with the law firm Kaufman Dolowich Voluck. “Advisers will have to be diligent keeping records of their basis for making recommendations.”

McGarry recommends that advisers go over the BIC exemption provisions (and the broader regulatory shift that the DoL's action represents) with their clients in person, as well as documenting the agreement in writing.

Both DiCarlo and McGarry point out that the BIC exemption has a negative consent provision that allows advisers simply to notify clients of the new contractual terms, which would then take effect if the client doesn’t object.

The BIC exemption also carries the right of private action, affording clients the ability to sue their advisers if they feel the contract was violated, which naturally increases a firm's exposure to risk.

“Unfortunately, advisers will have to begin thinking defensively,” McGarry says.

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