LETTERS OF INTENT NOT IMPORTANT? BE CAREFUL.

When buying or selling a business, it is critical to take the negotiation and preparation of the letter of intent seriously. All too often, I hear the phrase, "letters of intent are not binding, so we don't need to spend time negotiating them." Other times, a new client will have already signed a letter of intent before engaging our firm or other advisors. Letters of intent contain many key terms, and while it is true that signing a letter of intent will not typically bind a party to close the transaction, it is important for all parties in a transaction to understand that if the transaction does close, it will likely close on the terms contained in the letter of intent. Accordingly, when negotiating a letter of intent in the sale of business context, the parties should invest the time and energy necessary to fully understand the impact the letter of intent's terms will have on the transaction.

A letter of intent (also sometimes referred to as a term sheet or an LOI) is usually prepared by the buyer and presented to the seller, and it describes the key terms of the buyer's proposal to purchase the seller's business. Among other things, the LOI will describe what the buyer is buying (typically, either the assets of the business or the shares in the business), the purchase price, and how the purchase price will be paid (all cash, seller note, earn-out, etc.). It may also contain additional concepts relating to non-competition, post-closing employment for the seller's owner, assumption of liabilities, indemnification, and terms relating to the buyer's lease or purchase of the real estate used by the seller's business. An LOI also typically contains certain provisions that are actually binding on the parties, including provisions that require the seller to deal exclusively with the buyer for a period of time, dictate which state's law will apply when interpreting the LOI, obligate the parties to maintain confidentiality, and state that each party will be responsible for its own transaction expenses. Finally, because buyers and sellers have varying degrees of leverage as a transaction progresses, buyers and sellers may take different approaches when selecting the terms to include and the terms to omit in an LOI.

Given the importance that an LOI will have on the transaction, the parties must understand the terms in the LOI and recognize that the agreed-upon terms in the LOI will form the basis for the terms that will be contained in the definitive purchase agreement and related documents. A party that attempts to change the agreed-upon terms in an LOI, because it did not fully understand the LOI's terms, will face challenges. That party will likely be accused of "re-trading" or "moving the goalposts," and, as a result, the party taking this approach will often lose a tremendous amount of negotiating capital; capital that could be well spent on other commonly negotiated terms in the definitive purchase documents. This practice often results in a longer transaction process, increased transaction expenses for both parties, and a lower likelihood of the transaction actually closing.

In conclusion, while an LOI is not technically binding on the parties in most cases, the LOI will have a significant impact on the overall transaction. It is critical for the parties to recognize this.

For more information on LOIs and this topic you can contact Jason Scoby at 414-291-4714 and jason.scoby@wilaw.com

Jason Scoby is a member of the firm's Business Practice Group and Banking and Creditors' Rights Practice Group. He advises and represents individuals, businesses, and banks on a variety of corporate, banking, and business-related issues, including mergers and acquisitions, commercial loan transactions, corporate issues, contract negotiation and preparation, and business entity selection and formation.

QSEHRAS ALLOW SMALL EMPLOYERS TO REIMBURSE EMPLOYEES' PERSONAL HEALTH COSTS

Although the Affordable Care Act's (ACA's) market reforms eliminated the ability of employers to permissibly reimburse employees for individually-incurred health insurance or medical costs, recent legislation now affords certain small employers with an alternate reimbursement option. The 21st Century Cures Act amended the Internal Revenue Code to authorize the creation of a new stand-alone HRA vehicle known as a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA).

An employer may elect to implement a QSEHRA if the business offers *no* group health plan *and* is exempt from the ACA's Employer Shared Responsibility provisions by virtue of having had fewer than 50 full-time (including full-time equivalent) employees in the prior year. The 50-employee limit applies to the aggregate number of employees across all commonly-controlled or affiliated businesses.

A QSEHRA is not a "health plan" within the meaning of the ACA, but may be used to pay for or reimburse the costs of medical care and health insurance premiums incurred on behalf of an eligible employee or the employee's family members. The employee must provide proof of the expenses or coverage costs and the IRS may later request written substantiation. Reimbursements in a calendar year may range up to $4,950 (for payments relating to only the employee) or up to $10,000 (for family coverage costs). These amounts will be adjusted for inflation, and must be prorated for partial years.

Only an employer may fund a QSEHRA. Funds paid into the QSEHRA must be in addition to salary and not paid as a salary substitute. Accordingly, salary reduction contributions by employees are not permitted. With some exceptions, the reimbursement must be made available “on the same terms to all eligible employees” of the employer. Employees who have been employed by the QSEHRA sponsor for less than 90 days, or who work part time, are part of a collective bargaining unit, or are under age 25 may be excluded from participation.

The rules require an employer to furnish a written notice to its QSEHRA-eligible employees at least 90 days before the beginning of a year for which the QSEHRA is provided. In the case of an employee who is hired mid-year, the notice must be provided no later than the date on which the employee begins participation in the QSEHRA.

The notice must include the amount of the eligible employee’s permitted benefit under the QSEHRA and advise the employee to inform any health care Exchange of such benefit amount if the employee is applying for advance payment of the premium assistance tax credit.

Under an initial transition rule, the first-applicable QSEHRA notice deadline was March 13, 2017. In Notice 2017-20, however, the Treasury Department and IRS suspended the notice deadline and waived any penalties that could have been imposed on employers for failure to provide the first written notice. Future guidance will specify a revised notice deadline, and will provide at least 90-days’ additional time for employers to prepare and provide the notice.

While QSEHRA benefits must be reported (but not treated as taxable) on the employee’s W-2 and Form 1095-B, its benefits are exempt from COBRA, or similar, continuation coverage requirements.

Ultimately, whether or not implementation of a QSEHRA makes sense for a small employer will depend on the business’s specific personnel-related objectives and goals. For some employers, the cost and administrative requirements may outweigh the potential advantages, while for others a QSEHRA will present the best possible avenue to provide employees with assistance toward paying for health care.

WOMAN WITH DEMENTIA LOSES HOME AFTER ALLEGEDLY UNKNOWINGLY SIGNING OVER

DEED: RESOURCES TO PROTECT YOUR LOVED ONES FROM ELDER FINANCIAL ABUSE

In March 2017, Milwaukee WISN 12 reported a heart-wrenching story about a criminal investigation alleging two neighbors defrauded a 92-year-old woman suffering from dementia.

According to the allegations, they acquired her home as a gift through a deed and gained control of her nearly $2 million in assets through the execution of a durable power of attorney document. The neighbors then boxed the woman's belongings up, moved her out of the home she grew up in, and used her funds to remodel the house. You can read the full story here.

Unfortunately, this is an all-too-common story in the world of inheritance litigation. I regularly receive calls from previously unsuspecting individuals who have just realized that a loved one was financially abused during the victim's most helpless moments. Sometimes we are fortunate enough to suspect this while the victim is still alive so we can try to do something about it. More often than not, nobody recognizes this until after the victim has died. The shock usually comes when this person receives the victim's purported estate planning documents—whether a will or a trust, or their amendments—that dramatically change the expected inheritance of some or all of the victim's family members.

This type of situation happens more than many expect. As we become more aware of this problem through stories such as this and learn more about the effects of dementia and other diseases, it is important that we as a society are mindful of this issue. Of course every person, including our oldest population, has the right to do with their property as they wish. It needs to be as a result of his or her free will, however, and not at the hands of an individual with ulterior motives.

In the right circumstances, civil litigation may be the best way to position yourself to thoroughly investigate these matters. This is particularly so if you did not have reason to suspect the abuse until after the victim has died. Unlike the example above, criminal prosecutors are often limited in their ability to conduct a thorough investigation into matters involving a person's rightful estate. The obligation is often on the aggrieved person to protect his or her own rights.

I encourage you to look at the various resources referenced in the article and in your community if you fear a loved one or you are potential victims of financial abuse.

If you would like more information on this topic you can contact Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com

SECURED CREDITORS MUST FILE BANKRUPTCY PROOFS OF CLAIM IN THE SEVENTH CIRCUIT

In a reversal of a decision of the U.S. Bankruptcy Court for the Northern District of Illinois, the United States Seventh Circuit Court of Appeals in *In re Pajian* rejected a common bankruptcy court practice of not requiring secured creditors to file proofs of claim in order to receive distributions toward pre-petition secured arrearages as part of a debtor's chapter 13 plan of reorganization.

Pajian involved a chapter 13 bankruptcy debtor indebted to Lisle Savings Bank, a secured creditor. Lisle filed a late proof of its secured claim and the debtor objected to the claim based upon its untimeliness. Formerly, courts would allow a secured creditor such as Lisle Savings Bank to abstain from filing a proof of claim and, instead, wait to object to a proposed plan of reorganization that failed to include payments toward the creditor's secured pre-petition arrearage claim.

In opining that Rule 3002(c) of the bankruptcy code requires all (not only unsecured) creditors to file proofs of claim within 90 days of a Section 341 meeting of creditors, the Court of Appeals effectively barred Lisle Savings Bank from receiving distributions on its pre-petition secured arrearage claim as part of the debtor's plan of reorganization. While the Court of Appeals acknowledged that a secured creditor's lien (and right to foreclose the same) remains unaffected by its failure to timely file a proof of claim, the court's decision means that a debtor need not make plan payments to its tardy secured lender during its plan of reorganization (presumably 5 years), but is only required to make loan payments to its lender coming due during the plan in order to avoid a foreclosure of the bank's lien.

As a result, the debtor in *Pajian* was not required to make plan payments of loan arrearages during the course of its entire plan of reorganization. Because Lisle's lien was not avoided, however, the bank remained entitled to realize upon its pre-petition secured arrearage to the extent of the value of its security, but only after completion of the debtor's plan of reorganization or default under the terms thereof.

Many deadlines are very short under the bankruptcy rules. If you are a creditor, whether secured or unsecured, it is of utmost importance to contact bankruptcy counsel immediately upon receiving a notice of bankruptcy. Failure to comply with bankruptcy deadlines, including the filing of a timely proof of claim, may prejudice the rights of a secured creditor

as displayed by *Pajian*.

For further information, please contact John Schreiber or any of the attorneys in OCHD&L's Banking and Creditors' Rights Practice Group.

SETH E. DIZARD APPOINTED TO THE NATIONAL BOARD OF DIRECTORS FOR THE RUFFED GROUSE SOCIETY

Attorney Seth E. Dizard has recently been appointed to the National Board of Directors for the Ruffed Grouse Society. Established in 1961, the Ruffed Grouse Society (RGS) is North America's foremost conservation organization dedicated to preserving our sporting traditions by creating healthy forest habitat for ruffed grouse, American woodcock, and other wildlife. RGS works with landowners and government agencies to develop critical habitat utilizing scientific management practices.

Seth is a longtime member of the David Uihlein (Milwaukee) Chapter of RGS. O'Neil Cannon has been a regular corporate sponsor of RGS since Seth joined the firm. As an avid hunter and conservationist, the honor means a great deal to Seth and he looks forward to serving on the National Board. The firm is proud of Seth, as well as its longstanding tradition of giving back, in addition to supporting those causes which are important to its lawyers and staff.

RGS is mainly comprised of grouse and woodcock hunters who support national scientific conservation and management efforts to ensure the future of the species. The organization employs a team of wildlife biologists to work with private landowners, and government, including local, state and federal, land managers who are interested in improving their land for ruffed grouse, American woodcock and the other songbirds and wildlife that have similar requirements.

To read more about the Ruffed Grouse Society and their efforts click here.

WHAT IS ARBITRATION?

Arbitration is a common form of alternative dispute resolution (ADR) in which parties agree to

resolve a dispute by submitting it to one or more neutral decision-makers, or arbitrators, for decision. Arbitration consists of a formal hearing, similar to a trial, where the parties are represented by legal counsel and present evidence and testimony. The parties usually have the option to choose the decision-makers.

In Wisconsin, arbitration is governed by the Wisconsin Arbitration Act, which is found in Chapter 788 of the Wisconsin Statutes. Among other things, the Wisconsin Arbitration Act states that an arbitration clause in a contract is valid, irrevocable and enforceable unless certain grounds exist to invalidate the contract. However, a few disputes, including certain disputes over employment contracts, petroleum storage tank remediation and state employment relation matters, are exempt from this rule.

In a dispute governed by a contract containing an arbitration agreement, the Wisconsin Arbitration Act requires Wisconsin courts to send the parties to arbitration, instead of trial, pursuant to the terms of their contract. If a party seeking arbitration has failed to live up to its obligations under the contract containing the arbitration agreement, however, the court may choose whether or not to stay litigation so that the arbitration may proceed.

The Federal Arbitration Act contains a similar rule that "a written provision in any … contract" that indicates an intent to settle contract-related disputes by arbitration "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

In addition, federal courts may refer civil actions and bankruptcy adversary proceedings to arbitration if the parties consent. Both federal districts in Wisconsin have rules governing arbitration and other forms of ADR. Federal constitutional claims, some civil rights claims and claims involving damages over $150,000 cannot be sent to arbitration from federal court, however.

If you have any question, please contact Grant Killoran at grant.killoran@wilaw.com or 414-276-5000.

TAX AND WEALTH ADVISOR ALERT: FINANCIAL ADVISOR SUCCESSION–PART ONE: GOAL CLARITY

Given my combination of experience (13 years in the home office of a national life insurance company) and expertise (working with clients on the creation and execution of succession

strategies), a growing part of my practice is in leading financial advisors in the creation of a succession plan that ultimately leads to the sale of a practice. It only takes a glance at the demographics of the advisory world to understand what is at stake. The average age of an American financial adviser goes up materially every year as the recruiting and retention statistics in the industry continue to get more dire. In the next few blog posts, I wish to explore some issues that must be dealt with in the transition of an advisory practice:

1. Goal clarity of both the selling and buying advisor.
2. Valuation of the practice.
3. Transition of client relationships.
4. Managing the risks to the buyer.
5. Taxation of the transaction to the seller.

FINANCIAL ADVISOR SUCCESSION–PART ONE: GOAL CLARITY

I think it might have been A. A. Milne in the book "Winnie the Pooh" that first coined the saying: "If you don't know where you are going, any path will get you there." With something as intellectually and emotionally challenging as financial advisor succession, it is critical for both the buyer and seller to be very clear and precise about what they want and need from the transition.

In my experience working with advisors, the set goals are rarely clear; however, the seller wants to get as much purchase price as possible while the buyer wants to pay as little as possible. Certainly price is a factor. The goal of the business owner in developing a succession plan is to maximize value and take care of the people the business owner cares about. But, the successful advisors I have worked with share a common attribute, their financial success is due to their selflessness. Their systems, structures, practices, values and beliefs all center on the achievement of their clients' wishes, hopes, dreams and desires.

With this cultural mindset, it is not uncommon for the number one goal of the seller to be ensuring his or her clients are taken care of. I am working with a seller right now whose top transition goal is "making sure my clients are taken care of as well or better than I promised. In fact, I want the top goal of this transition to be just that; the buyer must be committed to delivering the promises I made to my clients." Powerful, right? But also, clarifying. That goal has had immense impact on client transition strategy, staff retention, and even price and terms.

So, as I reflect on the numerous financial advisor transitions I have quarterbacked, here is a representative list of seller goals:

- Client satisfaction
- Providing an advisor who is young enough to "be around when my clients most need

the advice”
- Staff retention
- Strong “fit” with referral sources and advisory team members (including other advisors, attorneys, accountants, bankers and investment bankers)
- Values align
- Personality consistency

Again, maximizing price to the seller, particularly on an after tax basis, is always on the list. But, again in my experience, it gets little focus compared to other goals, probably due to the fact that these advisors built attractive businesses by concerning themselves with doing the right thing rather than the proceeds of any particular transaction.

On the buyer’s side, the goals tend to surround client retention. We will talk in a later blog post about typical pricing in these transactions, but, to put it in the simplest terms, the “typical” price of an advisory practice is very enticing to the buyer if the buyer can retain a high percentage of the client relationships and their resulting revenue. With that in mind, the buyer’s goals tend to focus on the transition period:

- The seller’s advocacy of the buyer as the right person for the client
- The successful transition of client relationships
- The successful transition of referral relationships
- An in depth understanding of the seller’s systems and processes and how those impact the client experience
- Oftentimes, a desire to be mentored by the seller on business, relationship building and substance

As to where the most common goal conflicts exist, the top one is the contingency of the purchase price. As I stated above, simply put, in my opinion, if retention is high, when a market common purchase price of 1.5 to 2x recurring revenue is used in the sale of an advisory practice, the buyer is getting a great deal. Given that, most of the time, the seller is not willing to make the purchase price contingent upon retention. But, again given the critical importance of retention, it is as common for the buyer to want a purchase price contingent on retention. The buyer’s strategy is twofold: one, obviously, is to shift the risk of retention to the seller. The other is to financially motivate the seller to economically own retention and to take all possible steps to insure the client stays with the buyer. One place where we have sometimes bridged this gap is to use a contingent purchase price wherein the seller gets the full purchase price with average retention and gets a material increase in purchase price with high retention.

The other common area of goal conflict is staff. This conflict is natural and understandable. The seller believes strongly in the staff he or she put together and sees it as the most obvious way to keep the clients and their revenue intact. The seller believes the client has bought “the team” and thinks the buyer would be crazy to change it in any way. The buyer, on the other hand, often has a different style with different strengths. These differences

might mean that the buyer's best team has different strengths and skills than the seller's perfect team. Also, the buyer might have a team already and want to use that team to service the seller's clients. These conflicts can often be resolved with creativity, but, in my experience, lack of agreement on the post-transaction team is the issue that craters the transaction.

So that is the first step to a successful advisory transition. Capture each party's goals and see if they are consistent. If so, then the transaction can move forward. If not, the parties need to determine if they can creatively compromise. If they figure out a workable solution, it is on to the next topic- valuation or, stated another way, an agreement on price.

TAX AND WEALTH ADVISOR ALERT: CREATING A SUCCESSFUL SUCCESSION PLAN: VALUE

A successful succession plan maximizes the value of the business in order to take care of the people the owner cares about. Of course, that raises an important question: "What factors maximize the value of a business in transition?" That question leads to another important question: "Why does a buyer want a particular business?" The answer to this question is of course that the buyer wants a business that will produce sufficient post-transfer cash flows to provide the buyer with (1) sufficient cash to service the debt or equity raised to facilitate the purchase, and (2) earn a rate of return commensurate with the risk of the purchase. Essentially, a buyer wants a business where post-transaction cash flows are projected to grow. With that in mind, here are some of the factors the buyer will find important:

1. A large, diverse customer base – the more customers that are producing the revenue that leads to cash flow, the safer the cash flow will be to the buyer. Contrarily, if the revenue comes from fewer customers, the riskier the replication and retention of the cash flow, and the less the buyer will be willing to pay.
2. Available capacity – the more the business's revenue can grow from the current capital and people, the more the buyer will be willing to pay. The reason, of course, is that any growth in revenue should lead to a commensurate growth in profit. On the other hand, if revenue growth will require substantial investments in people and capital, the less the buyer will be willing to pay.
3. Innovative product or service – the more unique and valuable the business's product, the more the buyer will be willing to pay. If the product or service is easily replicable by competitors – or worse, is viewed by the marketplace as a commodity – the less the buyer will be willing to pay.
4. Is the owner Michelangelo? – The question I often ask my succession planning clients is, "how much would you pay for Michelangelo's sculpture studio?" The answer, of course, depends on whether Michelangelo will continue to sculpt. If so, you would pay top dollar

(presuming Michelangelo will not demand all of the profits in compensation for his unique skills). If not, you would pay nothing. Likewise, if the cash flow depends on the skills or relationships of the seller, the buyer will pay less. If, on the other hand, the revenues depend on the talents and relationships of the team the seller has built, the buyer would be willing to pay full value presuming that team is willing to stay.

5. Age of the capital and/or team – if the revenue-producing equipment and/or people are getting too old to be counted on for the long term, and as a result the revenue generation capabilities of the business depend on finding and investing in new equipment and/or people, the buyer will be willing to pay less than if the equipment and team have a long useful life.
6. Do the financials tell the true story? – Again, the buyer is purchasing future cash flows, and certainly the best indicator of those cash flows is the business's historic revenues and profits. Oftentimes, the seller has used the business checkbook to pay for personal items, and when that has happened, the seller will seek to add back expenses to cash flows to "normalize" expenses; in other words, to show the buyer what the business is expected to produce when run as a business, not as part business, part personal checkbook. The problem is, the more add-backs the seller applies, the less credible the books become to a sophisticated buyer (not to mention the greater the perceived business risks for a company that was not run compliantly).

With these value drivers in mind, for a seller looking to transition his or her business, it is important to audit these factors and, if possible, remedy the weaknesses. If the owner can better empower the team, report expenses accurately, and focus more on customer diversity, the seller can potentially add 20-25% to the purchase price. And, of course, the time to start addressing these concerns is 3-5 years before the business is to be sold. Any time later than that has a much lower probability of success.

EMPLOYMENT LAWSCENE ALERT: WHAT PRESIDENT TRUMP'S SUPREME COURT NOMINEE COULD MEAN FOR EMPLOYERS

On January 31, 2017, President Donald Trump nominated Judge Neil Gorsuch of the Tenth Circuit Court of Appeals to fill the vacant seat on the U.S. Supreme Court left open by the death of Justice Antonin Scalia in early 2015. Many employers are wondering what impact a potential Justice Gorsuch would have on employment law decisions, and the news is generally positive. Judge Gorsuch, during his time on the Tenth Circuit, has issued decisions that have gone in favor of both employers and employees. However, he favors a straight forward application of facts to the law to reach conclusions and has been critical of administrative agencies overstepping their authority.

Judge Gorsuch, in line with holdings from the Seventh Circuit, has been critical of the *McDonnell Douglas* burden shifting framework that is frequently used in employment discrimination cases. Judge Gorsuch favors focusing on the real question – whether discrimination actually took place – instead of focusing on whether a *prima facie* case can be established. This straight-forward approach to the facts will likely be welcomed by employers who want to avoid getting bogged down in technicalities.

As we have covered multiple times, in recent years, administrative agencies such as the EEOC, OSHA, and particularly the NLRB have expanded the scope and reach of the employment laws they oversee by broadly interpreting existing laws, often to the confusion and detriment of employers. This expansion could be significantly curbed by a U.S. Supreme Court conservative majority anchored by Judge Gorsuch. In particular, Judge Gorsuch has issued opinions limiting the judicial deference that should be given to administrative agencies and stating that lawmaking should be left to Congress. For example, in his dissent in *Trans Am Trucking Inc. v. Administrative Review Board, U.S. Department of Labor,* Judge Gorsuch penned a dissent that stated that nothing in the Surface Transportation Assistance Act stated that an employee could operate a vehicle in a way the employer forbid and that the DOL did not have the authority to expand the law to say so. He also opined in a case involving the NLRB that the agency did not provide a persuasive explanation to reverse its long-standing precedent that interim earnings should be deducted from back pay awards and, therefore, should not be allowed to change its policy.

Finally, Judge Gorsuch has issued opinions favorable to arbitration agreements, which is of particular interest to employers as the Supreme Court has agreed to hear cases regarding whether the NLRB is correct in its interpretation that arbitration agreements that bar workers from pursuing class actions are illegal restraints of employees' Section 7 rights. If confirmed, Judge Gorsuch may be able to weigh-in on this important issue as the U.S. Supreme Court, yesterday, indicated that it will not address this issue during the Court's current term, but will address it next term. Hopefully, by that time Judge Gorsuch will be confirmed by the U.S. Senate. As a result, then Justice Gorsuch could be the deciding vote on this important issue.

Although Judge Gorsuch's confirmation process is likely to be long and contentious, a Justice Gorsuch anchored U.S. Supreme Court can be something that employers can look forward to in providing common sense to employment laws.

EMPLOYMENT LAWSCENE ALERT: EXECUTIVE

ORDER HALTS IMPLEMENTATION OF DOL FIDUCIARY RULE

Early this afternoon (Friday, February 03, 2017), President Trump signed an Executive Order directing the Department of Labor (DOL) to halt implementation of final regulations relating to "investment advice fiduciaries," as defined under ERISA and the Internal Revenue Code.

The Order directs the DOL to reevaluate the regulations and to report back to the President. The regulations, collectively known as the "Fiduciary Rule," had been set to take initial effect on April 10, 2017. The Fiduciary Rule's effective date is now expected to be at least delayed, if not also altered or withdrawn.

The purpose of the Fiduciary Rule, which has been over six years in the making, is to impose a fiduciary standard on individuals and companies receiving compensation for retirement investment advice, including brokers and insurance agents who are currently held to a lesser standard dating to 1975.

The rule would also have required brokers to clearly and prominently disclose any conflicts of interest, like hidden fees or other undisclosed commission payments often buried in the fine print.

A 2015 government study concluded that retirement plan savers lose $17 billion, in the aggregate, each year due to receiving conflicted investment advice that reduces the value of their retirement accounts.

The Trump Administration, on the other hand, takes the view that the DOL rule is unnecessary. The White House Press Secretary called the DOL Fiduciary Rule "a solution in search of a problem," and as protecting consumers "from something they don't need protection from." This view reflects the perspective of those who regard the Fiduciary Rule as an unneeded limit upon investor options and its implementation as a burden upon asset management firms.

Industry spokespersons, as well as politicians with competing views are certain to continue to engage in lively debate regarding the future of the Fiduciary Rule.

While such a discussion has been ongoing over recent years, financial advisors and brokers have steadily worked to update their compensation methods to provide greater transparency to retirement plan savers. For this reason, it is not clear that even the elimination of the Fiduciary Rule would reverse the market trend of providing greater clarity regarding the fees and costs of investing.

We will continue to monitor relevant developments.