

State securities regulator says states can enforce DOL fiduciary rule, InvestmentNews, ft. Brendan McGarry

Brendan P. McGarry, Esq., was quoted in an article by Mark Schoeff Jr. published in *InvestmentNews* on February 16, 2018.

Experts expect more states to follow Massachusetts' lead.

A prominent state securities regulator backed Massachusetts' effort to enforce the Labor Department's fiduciary rule and said he would do the same thing under the right circumstances.

Industry participants, investor advocates and others were jolted Thursday when Massachusetts Secretary of the Commonwealth William Galvin charged Scottrade Inc. with violating state law and internal policies by conducting sales contests that failed to adhere to the impartial conduct standards of the DOL rule.

Those standards were implemented last June. The remainder of the regulation is delayed until July 2019 during a DOL review mandated by President Donald J. Trump that could lead to major changes. There was some question about whether the applicable parts of the rule would be enforced.

Mr. Galvin gave a resounding answer.

"Massachusetts was certainly within its parameters to say, 'Hey, we've got a problem here,'" said Joseph Borg, director of the Alabama Securities Commission. "I see this as part of the normal scope of what states ought to be doing to protect their citizens and ensure that firms are following their own rules, let alone state rules."

Mr. Borg, the president of the North American Securities Administrators Association, said that if other states see conflicts of interest between brokers and their clients related to the DOL rule, they'll follow in Massachusetts' footsteps.

"If that requires taking an action, most states will take an action," he said.

During its review of the rule, the agency said that it wouldn't bring enforcement against firms that are making a good faith effort to comply with the implemented provisions.

One of the delayed parts of the regulation would allow investors to file class-action suits against brokers who violate the DOL regulation, which requires them to act in the best interest of clients in retirement accounts. With that provision in limbo, Massachusetts burst onto the scene.

"I'm not sure industry participants were expecting that," said Brendan McGarry, an attorney at Kaufman Dolowich & Voluck. "It broadens the scope of potential enforcement implications of the rule itself."