

# NASAA BROKER-DEALER SECTION

## IRA ROLLOVER REPORT

### NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION

April 24, 2018



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North American Securities Administrators Association | Washington, D.C. | [www.nasaa.org](http://www.nasaa.org)  
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## Introduction

In May 2017, the Market and Regulatory Policy and Review Project Group (Project Group), under the direction of the North American Securities Administrators Association (NASAA) Broker-Dealer Section, surveyed broker-dealers concerning their policies and practices for rollovers of investor funds from employer-sponsored retirement plans to individual retirement accounts (IRAs).

The purpose of the survey was to determine the standard of care the broker-dealers were using prior to the effectiveness of the U.S. Department of Labor's 2016 conflict of interest rule, also known as the fiduciary rule, and steps firms were taking in anticipation of the Rule's implementation.

**KEY POINT: NO BROKER-DEALER SURVEYED WAS PROVIDING A STANDARD OF CARE OTHER THAN SUITABILITY TO IRA ROLLOVERS PRIOR TO JUNE 9, 2017, THE ADVENT OF THE BEST INTEREST STANDARD REQUIRED UNDER THE DOL RULE.**

The surveyed firms were located across the United States and varied in size and business model, ranging from independent broker-dealers with a small number of registered representatives to large national firms. Some firms were dually licensed as investment advisers and broker-dealers.

NASAA sincerely appreciates the cooperation of the 96 firms that provided the information compiled and summarized in this report.

## Background

The size of the IRA rollover industry is significant. The Internal Revenue Service estimated that in 2014 alone, approximately \$435 billion of retirement funds were rolled from employer-sponsored retirement plans into IRAs by nearly 5 million taxpayers.<sup>1</sup>

There are many important factors to consider when deciding whether rolling over funds from an employer-sponsored retirement plan into an IRA is the best choice and decision for an individual investor. There are some disadvantages to an IRA as compared with an employer-sponsored retirement plan. For example, an investor often can take penalty-free withdrawals from an employer-sponsored retirement plan but, penalty-free withdrawals generally may not be taken from an IRA until the investor reaches age 59½. And, ERISA covered employer sponsored plans have more protection from creditors under federal law.<sup>2</sup>

The DOL fiduciary rule, released on April 8, 2016, expanded the scope of who would be deemed to be considered fiduciaries under the Employee Retirement Income Security Act (ERISA).<sup>3</sup> Of note, the DOL rule would treat as fiduciaries broker-dealers that make recommendations to customers with respect to IRA rollovers. The rule initially was scheduled to become partially effective in June, 2016, with full implementation by April, 2017.

On March 15, 2018 a panel of the U.S. Fifth Circuit Court of Appeals voted 2-1 to vacate the rule.<sup>4</sup> As of publication of this report, the future of the DOL rule remains in question as the Department of Labor has not indicated what next steps it will take.

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<sup>1</sup> See *SOI Tax Stats – Accumulation and Distribution of Individual Retirement Arrangements (IRA)*, Internal Revenue Service <https://www.irs.gov/pub/irs-soi/14in01ira.xls>.

<sup>2</sup> See *FAQs about Retirement Plans and ERISA*, U.S. Department of Labor, Employee Benefits Security Administration, <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/retirement-plans-and-erisa-compliance.pdf>

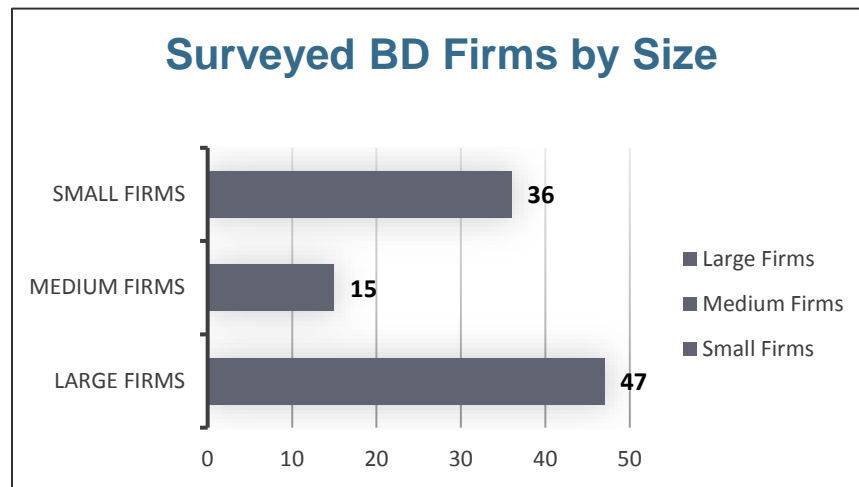
<sup>3</sup> See Definition of the Term “Fiduciary”, Employee Benefits Security Administration, U.S. Dept. of Labor, *81 FR 20946* (Apr. 8, 2016).

<sup>4</sup> The decision is available at <http://www.ca5.uscourts.gov/opinions/pub/17/17-10238-CV0.pdf>.

Relatedly, on April 18, 2018, the Securities and Exchange Commission proposed rules and guidance on standards of care for broker-dealers and investment advisers. The Commission proposed new and amended rules and forms to require investment advisers and broker-dealers to provide a brief relationship summary to retail investors; proposed a rule to establish a standard of conduct for broker-dealers when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer; and, proposed a Commission interpretation of the standard of conduct for investment advisers.<sup>5</sup>

## IRA Rollover Survey

In May 2017, the Project Group issued its survey to firms nationwide based on size and location. The chart below depicts a breakdown of the firms by their sizes.<sup>6</sup>



The key question asked in the survey was what standard of care was in place for IRA rollovers between April 1, 2017 and May 29, 2017 – *i.e.*, just prior to the DOL rule’s best interest standard becoming legally required. The survey also requested copies of firms’ written policies and

<sup>5</sup> See proposed Regulation Best Interest at <https://www.sec.gov/rules/proposed/2018/34-83062.pdf>

<sup>6</sup> Firm size mirrors the definitions set out for small, mid-size, and large firms as defined in the Article 1 of the FINRA Bylaws.

procedures; copies of exception reports and/or trade and transaction reviews; memoranda, guidance and correspondence; and advertising or marketing materials in use.

The results of the survey found that no broker-dealer surveyed was providing a standard of care other than suitability to IRA rollovers prior to June 9, 2017, the advent of the best interest standard required under the DOL rule.

Prior to the Court of Appeals' March 15, 2018 decision to vacate the DOL rule, many broker-dealers undertook significant steps and expended considerable time and resources to modify their policies and practices for handling IRA rollovers to bring these activities into compliance with the best interests standards in the Rule. These efforts included developing new policies and procedures and providing guidance to agents administering these accounts.

In the survey, the Project Group saw examples of what broker-dealers planned to do after June 9, 2017 in terms of analyzing, reviewing with investors, and documenting with detail the key risks, advantages and disadvantages of rolling over retirement funds into individual IRAs. For example, one firm submitted materials it planned to use with brokerage clients after the June 9 implementation date, which included a three-page checklist of all features of an account rollover comparing and contrasting the non-investment features of an employer-sponsored retirement program account with an IRA account.

## Conclusion

The survey demonstrates, in light of the DOL fiduciary rule, that broker-dealer firms were moving toward increasing and improving their training, standard of care, and account opening materials. The decision to roll funds from an employer-sponsored retirement plan into an IRA is increasingly important as the responsibility of a financially secure retirement shifts onto the shoulders of hard-working Americans. For that reason alone, the advances made for the protection of investors, as highlighted by the report, should be maintained.