SEC Chairman Jay Clayton outlines goals for a new fiduciary standard

Rule should provide clarity on role of adviser, enhanced investor protection and regulatory coordination.

February 23, 2018 By Mark Schoeff Jr.

An SEC fiduciary rule should provide investors clarity about the role of their adviser, enhanced protection and offer regulatory coordination, Chairman Jay Clayton said Friday.

"I don't think it's any secret that we're going to make a big effort to try to bring clarity and harmony to the investment adviser, broker-dealer standard of conduct regulation — something that's important to me," Mr. Clayton said at the Practising Law Institute's SEC Speaks in Washington. "It's something that the market needs. I think it's something that regulators need."

In a question-and-answer session with former Securities and Exchange Commission Chairman Harvey Pitt, Mr. Clayton mentioned a fiduciary rule first when Mr. Pitt asked him about the SEC's agenda for this year. SEC watchers speculate that a proposal will be released near the end of the second quarter. Mr. Clayton did not mention a timeline on Friday.

The Dodd-Frank financial reform law authorized the SEC to promulgate a regulation establishing a uniform fiduciary standard for retail investment advice. The agency has not acted since then becauase of disagreements among the five SEC commissioners on the issue.

The agency is now trying to catch up with the Labor Department's fiduciary rule, which was partially implemented last year. The remainder of the regulation, which requires brokers to act in the best interest of their customers in retirement accounts, was delayed until July 2019 while the DOL reviews the measure under a directive from President Donald J. Trump that could lead to major changes.

The SEC and DOL have promised to work together on investment-advice standards.

On Friday, Mr. Clayton did not offer any details on what a SEC fiduciary rule might look like. He did reiterate that he wants an advice regulation to clarify for investors what standard of care they receive from investment advisers and brokers.

Advisers must meet a fiduciary standard that requires them to act in their clients' best interests. Brokers meet a suitability standard that requires them to sell products that meet a client's objectives and risk appetite but also allows them to recommend investments that give the broker the biggest fee or commission.

"No doubt there's a great deal of confusion in the marketplace as to what standard of conduct applies to a particular relationship," Mr. Clayton said.

His second goal with a fiduciary rule is "enhanced protection," he said.

"There are areas where protection appears to be lacking," he said.

His third goal is to achieve regulatory coordination. He gave an example of an investor who has a 401(k), purchased an annuity and holds a brokerage account. That investor's portfolio would be regulated by state insurance commissioners and securities regulators, the Financial Industry Regulatory Authority Inc., the SEC, the DOL and potentially other agencies.

"Having that many people with different standards and a different lens around that same relationship — I think that we can bring some regulatory harmony to that place," Mr. Clayton said.

During his appearance, Mr. Clayton returned to another of his favorite themes — protecting retail investors.

"I've asked the enforcement division to focus on the long-term interests of Main Street investors," Mr. Clayton said. "I want to have the maximum impact on returning dollars to Main Street investors or preventing dollars from being impermissibly being taken from them."