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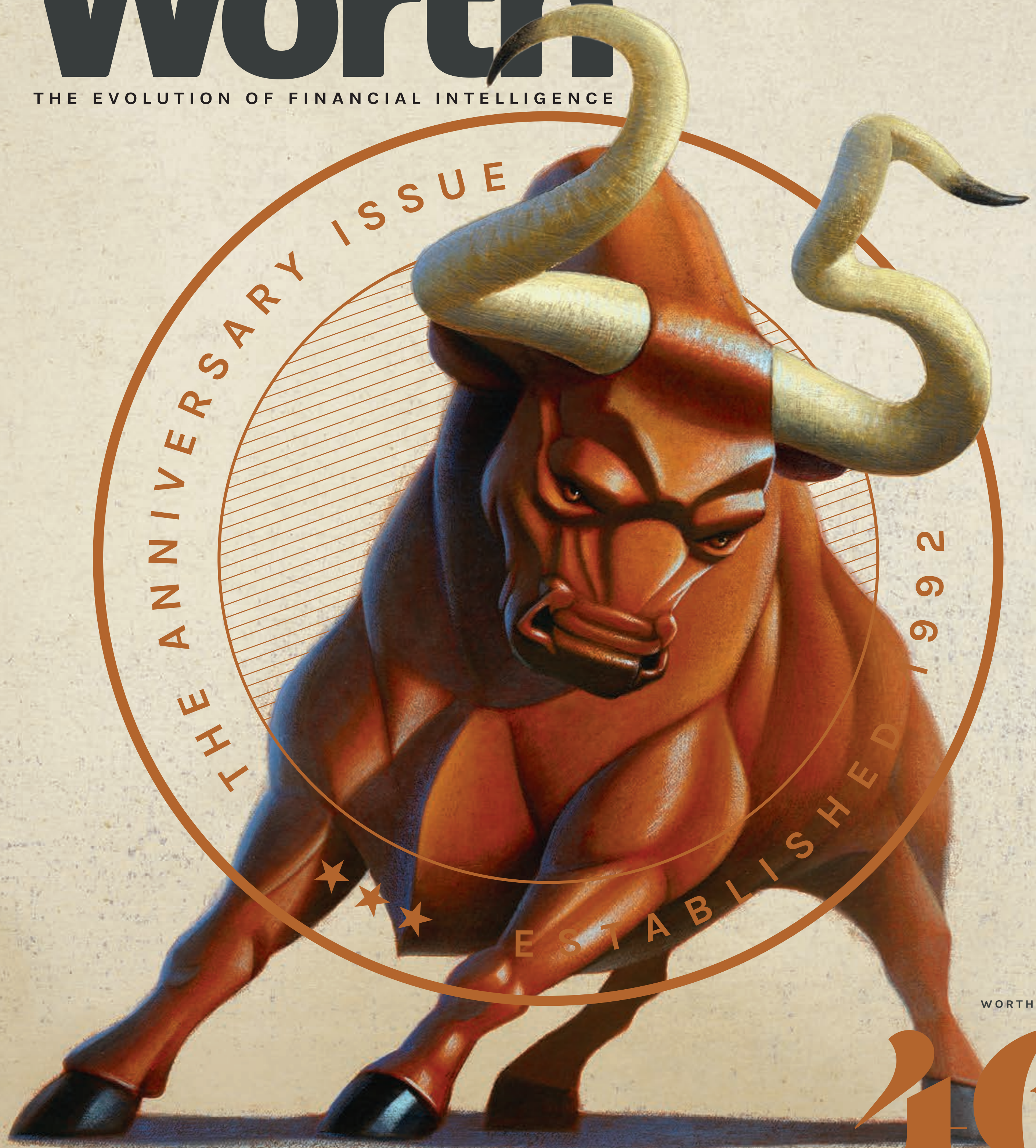

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What questions should every business owner ask before the DOL's "fiduciary" rule goes into effect?

BY PHIL WEBB

WHAT MAKES A GOOD CLIENT...

A good client is someone who sees value in the solutions you provide.

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ILLUSTRATION BY KEVIN SPROULS

On April 10, the Department of Labor's (DOL) new fiduciary rule will begin phasing in, going into full effect on January 1, 2018 (assuming no delays from the new presidential administration). The DOL's purpose for the new rule is to ensure that people saving for retirement have access to unbiased investment advice.

The rule will apply to IRAs and 401(k) plans, as well as distributions and rollovers to and from each. Business owners will find it imperative to understand how their plan providers are operating within, or adapting to, this new regulation.

Prior to this rule, many brokers and insurance agents operated under a "suitability" standard when it came to recommending investments. As long as an investment recommendation was "suitable" for the client, it complied with regulations. This approach, however, often led to high-cost investments and high commissions for the brokers.

Under the new rule, these parties will be held to a higher "fiduciary" standard of care. As a result, if your current service provider is a broker, insurance agent or other nonfiduciary advisor, you should expect this individual to approach you soon with details of a new working relationship, and a stack of new contracts to sign.

To determine how this rule affects your plan, consider these questions:

How does your service provider get paid? If your company uses a broker or advisor, payments come one of two ways: through commissions from the mutual funds or investment products, or from fees charged directly to the sponsor or taken from the plan assets.

> "These parties will be held to a higher standard."

If your advisor collects commissions, or some other form of compensation with a potential conflict, he or she will likely have to enter into a new contract with your company, called a "Best Interest Contract," or BIC. The BIC will require, among other things, that the advisor:

- Acknowledge fiduciary status
- Disclose compensation and fee information
- Give advice that is in the retirement investor's best interest
- Charge no more than "reasonable compensation"

As the plan sponsor, your key task will be to monitor fee arrangements with your service providers and understand how your relationship works within the confines of the new regulation.

Does your current broker/advisor give advice to plan participants? In addition to working with your plan committee, does your broker/advisor meet with employees and offer advice? This could include advice on whether to roll over old 401(k) balances to an IRA, or which funds to choose, in their 401(k) plans.

Under the new rule, these actions would be considered advice. And unless you are already working with a fee-based, SEC-registered investment advisor (RIA) who acknowledges his/her fiduciary status in writing, you and your participants may have to enter into a BIC with the current advisor.

Do any employees disseminate information related to the plan? Generally, most companies have a human resources or benefits coordinator who disseminates plan information to employees. This may include investment information. Fortunately, this alone will not trigger fiduciary status, so no changes would need to be made. Just be sure to monitor these activities to ensure that they don't cross the line into "advice" territory.

Who handles enrollment and education for the 401(k) plan? Depending on your service arrangement, a representative from the record keeper or TPA might conduct the education and enrollment sessions. Or, your financial advisor might handle this function directly. Regardless, monitoring will be necessary to ensure that the information provided is general in nature and not "advice." There is an education carve-out that will allow general information to be disseminated, but if advice is given, you will need to ensure that the proper contracts and service agreements are in place.

The bottom line is this: The DOL's new fiduciary rule will ultimately protect you and your employees, but it may require some work. If you are a business owner currently working with a fee-only RIA who acknowledges his/her fiduciary status in writing, your changes will likely be minimal. Without an acknowledged fiduciary, you will have more to consider. ●

The above assumes, of course, that the new administration takes no action against the legislation and the rule continues on its present course for 2017 implementation.

ABOUT US

RICHARD P. SLAUGHTER ASSOCIATES IS A LEADING WEALTH-MANAGEMENT FIRM, SPECIALIZING IN DELIVERING TAILORED STRATEGIES AS A FIDUCIARY AND ADVOCATE FOR HIGH NET WORTH INDIVIDUALS, FAMILIES AND BUSINESSES. Slaughter Associates constructs wealth-management strategies around a financial plan, providing active, diversified and conservative asset management through its internal experts. These experts establish a collaborative relationship with clients and all their financial service professionals, helping clients navigate the financial complexities that high net worth individuals and families face. Founded in 1991 in Austin, Texas, by Richard P. Slaughter, Slaughter Associates is one of the original fee-based firms in the nation. Through its subsidiary, RPS Retirement Plan Advisors, Slaughter Associates works with corporate clients by providing 3(38) fiduciary services, which help mitigate risk for plan sponsors and secure retirement readiness for employees. With offices in both Austin and the Dallas-Fort Worth Metroplex, Slaughter Associates has been recognized by the National Association of Board Certified Advisory Practices as a Premier Advisor and has been awarded Exemplary status for expertise in personal risk management. ●

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