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# The Fiduciary Year In Review

## (with an eye towards what lies ahead)

Presenters:

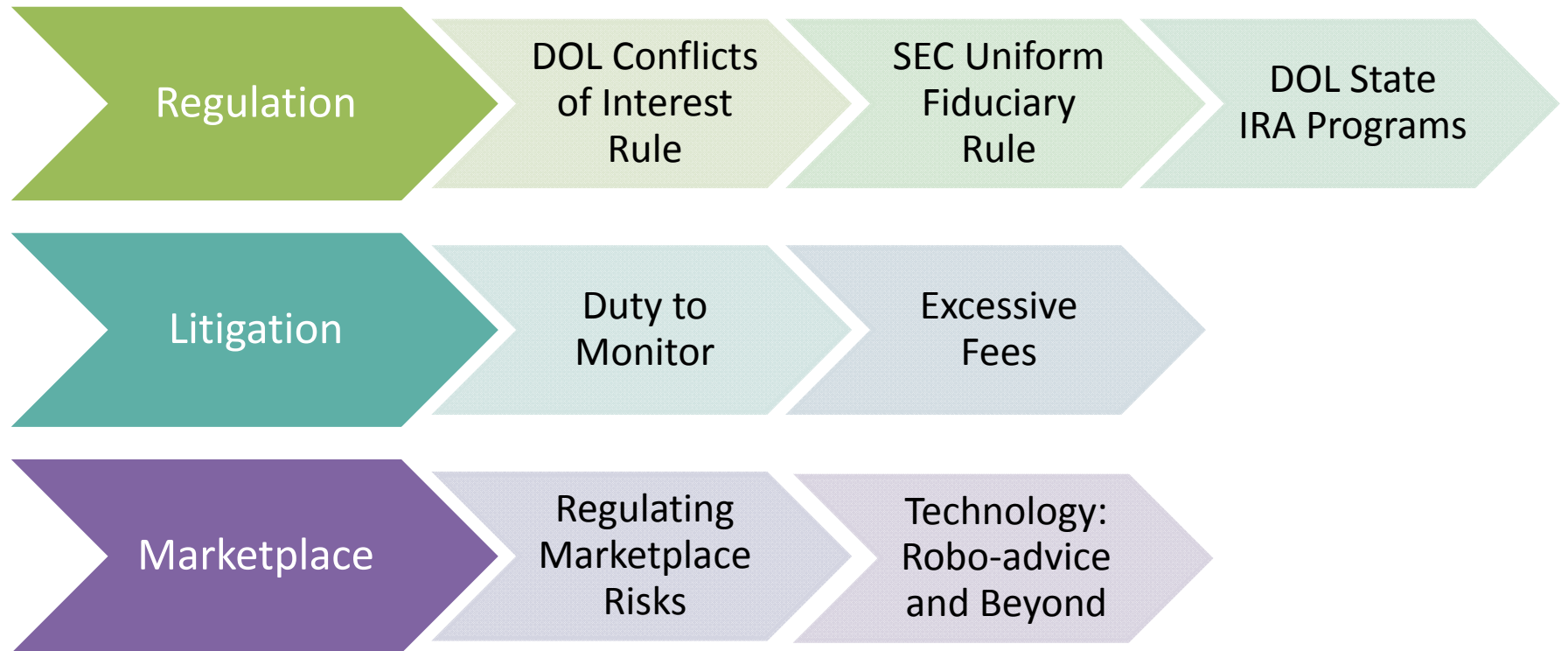
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# Key Fiduciary Events -- 2015

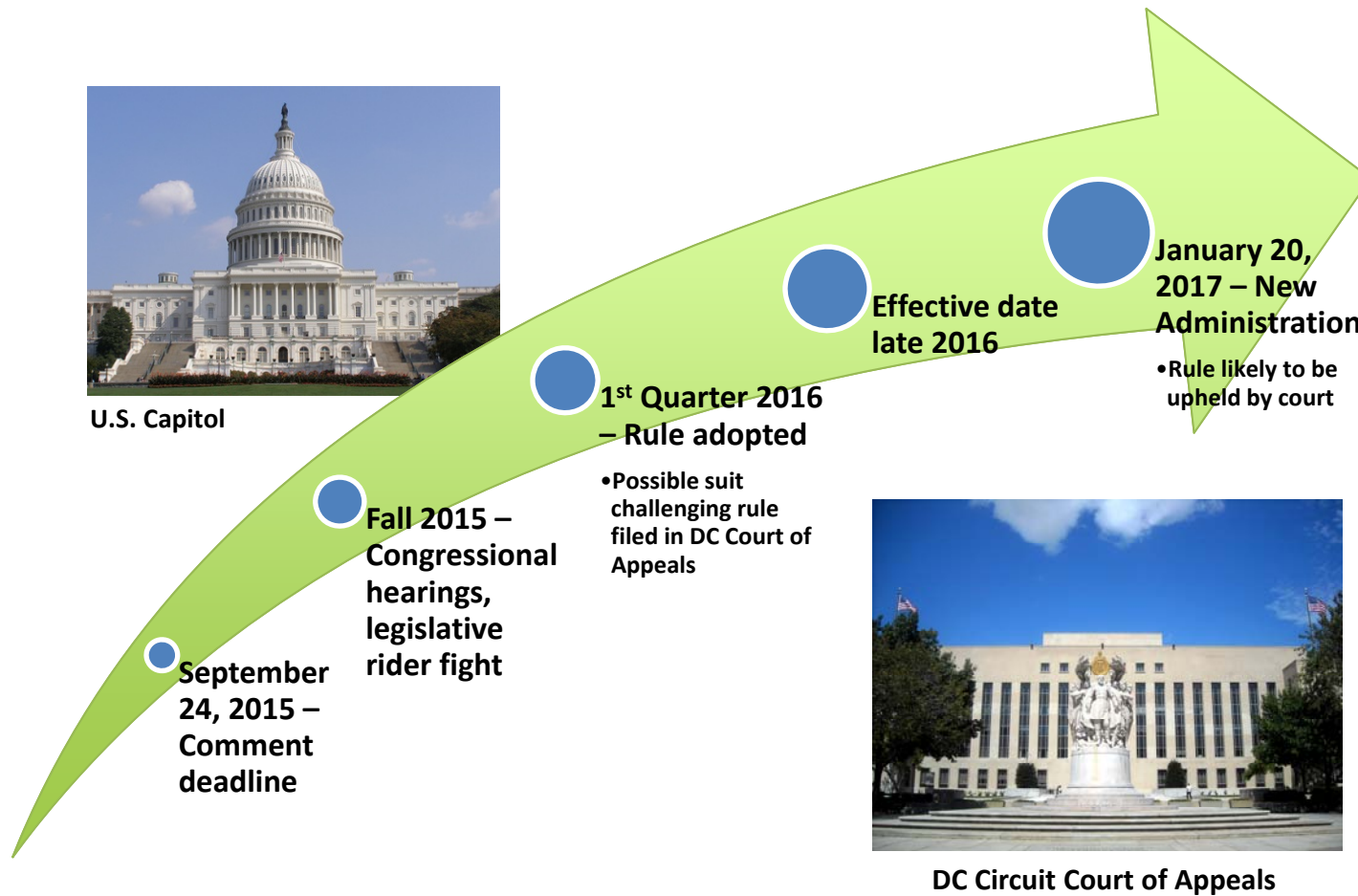


# DOL Fiduciary Rule Summary



- Affirms and enforces the fact that advice is a fiduciary function
- Giving advice on an IRA-rollover is a fiduciary act
- Non-fiduciary education must stop short of recommending investments or investment managers
- Platform providers “can identify investment alternatives that meet objective criteria”
- New Best Interest Contract Exemption (BICE) would allow variable compensation, if certain conditions are met

# Fiduciary Rule Current Trajectory



# Conflicts Rule Implications



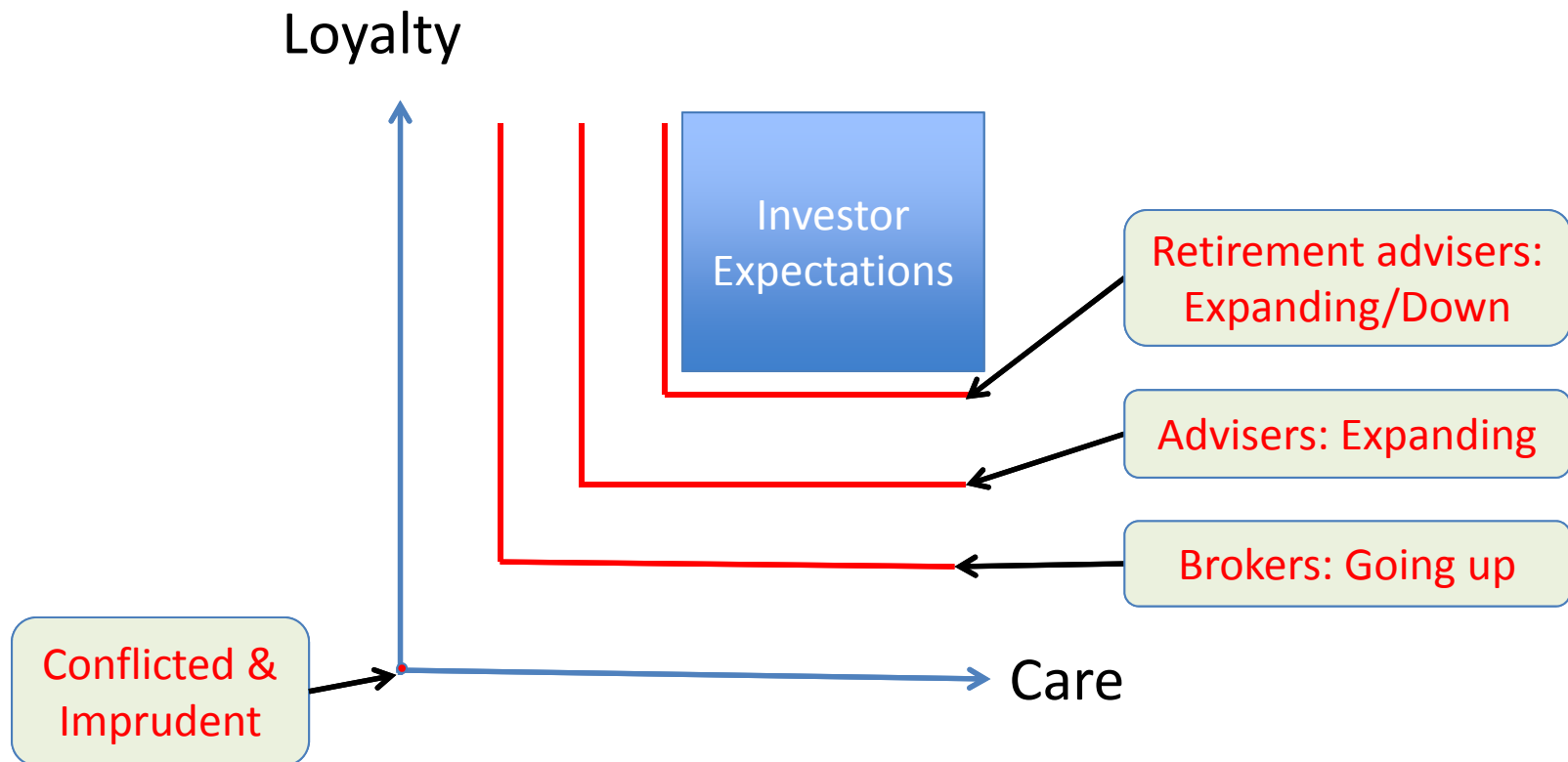
- Three choices for advisors serving the retirement market
  - Fiduciary advisor
  - Non-fiduciary seller
  - Exit the retirement market
- Coping with the Best Interest Contract Exemption (BICE)
  - Must be highly selective in product recommendations
  - Standardized contracts will become a practical necessity
  - Due diligence processes and documentation will be critical
- Greater accountability and compliance risks
  - Better products for advisors
  - Better advice for investors

# SEC Fiduciary Rule Summary



- Dodd-Frank authorized the SEC to extend fiduciary accountability to all who provide advice to retail investors
- March 17, 2015 – SEC Chair White announced that the SEC will pursue fiduciary rulemaking
- Proposed Rule is slated for October 2016 release
- DOL Conflict Rule could pave the way for the SEC Rule
- More fiduciaries = More fiduciary-friendly products
- Pricing will change
  - Product prices will go down
  - The cost of comprehensive, specialized, high-touch service may go up
  - Technology driven advice will be priced and geared for the mass market

# Regulation: Fiduciary Convergence





# State Auto IRA Programs



- DOL proposed rule allows states to sponsor
  - ‘Auto IRA’ programs
    - Mandates auto-enrollment program for workers w/o plans
    - Safe harbor from ERISA for states, participating employers
      - ERISA exemption may be challenged in court
      - State fiduciary law application unclear
- Interpretive guidance\*
  - 401(k)-type plans
    - State plans subject to ERISA
      - ‘Marketplace’ plans
      - State MEP
      - Proto-type plans

\* Effective 11/18/15

# Litigation

- Duty to monitor
  - Supreme Court affirms duty in *Tibble v. Edison*
- Excessive fee cases nearing end?
  - *Tibble, Spano v. Boeing, Kruger v. Novant Health*
- Takeaways for plan sponsors
  - Increased focus on due diligence processes for
    - Monitoring
    - Expenses -- Share classes, revenue offsets, prudent selection

# Regulating Marketplace Risks: Trading

- High-Frequency Trading
  - Trader registration w/FINRA
  - ‘Spoofing’ enforcement
- Derivative holdings of mutual funds, RIAs
  - New disclosures by funds to SEC, in Form ADV
- Liquidity holdings of mutual funds

# Marketplace Regulation: Cybersecurity

- Risk alerts, sweeps continue
- Enforcement now underway – *In the Matter of R.T. Jones Capital Management*

# Marketplace Regulation: SEC Oversight of RIAs

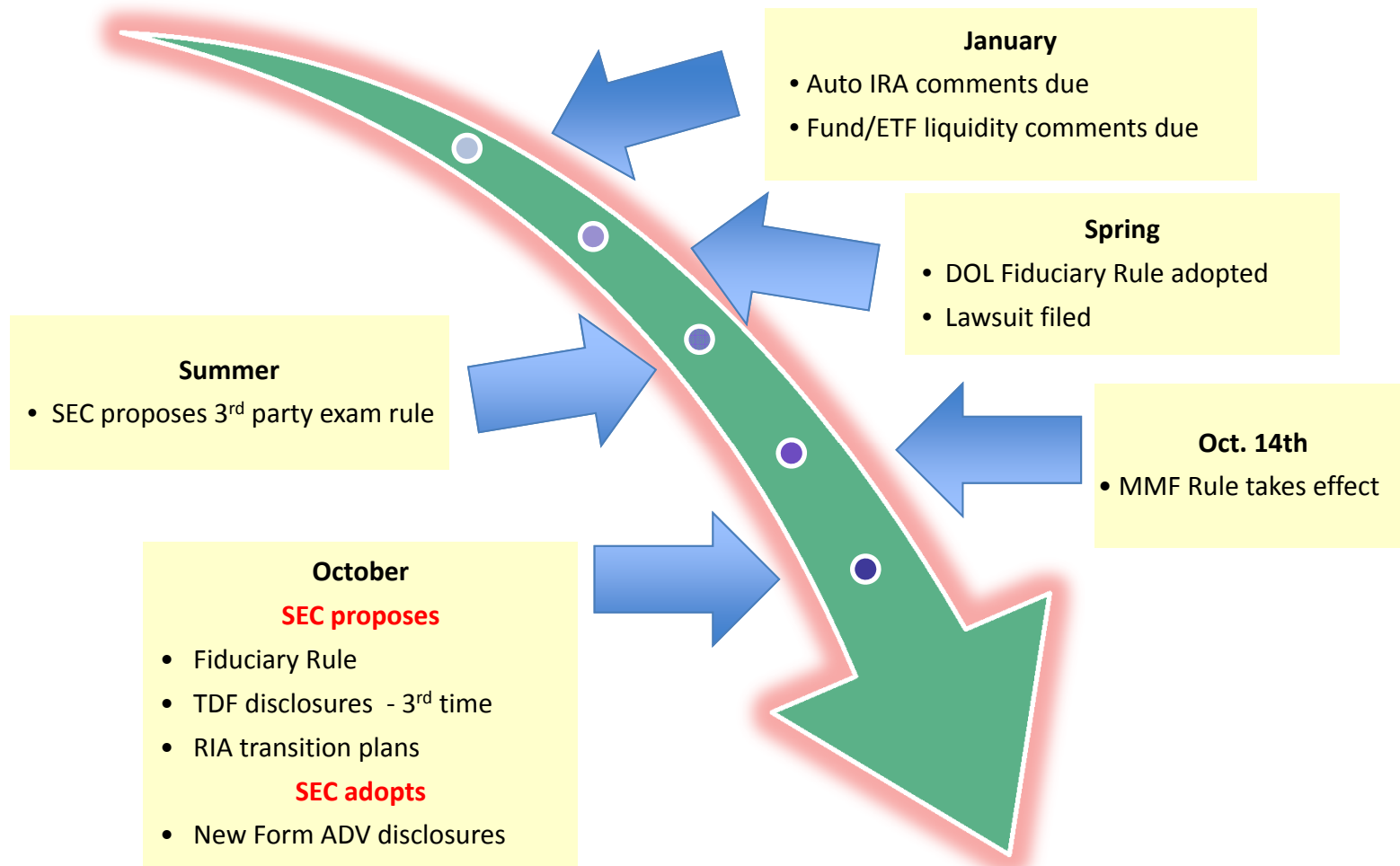
- 3<sup>rd</sup> Party Exams
  - Augment OCIE exams
  - SEC drafting rule
  - Debate already underway
- Other ideas not going anywhere

# Robo-advice and beyond



- Robo-advisors are capturing assets and headlines:
  - \$489 billion by 2020 (Cerulli)
- Key question: Robo-advisors are RIAs but can they fulfill fiduciary obligations?
- Technology enables advisors rather than replaces them: algorithmic prudence holds promise
- The SEC (Commissioner Stein) has raised the question of how robo-advisors should be regulated
- Technology and competition are setting the pace of change, regulation is struggling to keep up

# 2016 Calendar



# Questions

Additional information on fiduciary trends can be found at

fi360 Fiduciary Talk Podcast

[www.fi360.com/fiduciarytalk](http://www.fi360.com/fiduciarytalk)

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