Reg-ucation

Regulatory changes mean industry-wide education is essential for the future of the business, heard attendees of the Non-Traded REIT and Retail Alternative Investment Symposium in New York. Theo Andrew was there

The Non-Traded REIT and Retail Alternative Investment Symposium welcomed real estate's key players to an event which took place under the shadow of the Department of Labor (DOL) new Fiduciary Rule and the Financial Industry Regulatory Agency (FINRA) Regulatory Notice 15-02.

Despite the varying levels of optimism on display from the conference participants, there was a clear consensus on the need for education for many in the industry who are coming to terms with such regulatory changes.

Regulatory Notice 15-02, introduced in May 2016, was designed to make the industry more transparent by changing the way values of non-traded REITs and non-traded business development companies (BDC) are reported, meaning the prohibited participation in a public offering of REIT or direct participation programme (DPP), unless an explanation of the valuation method is disclosed.

The Department of Labor (DOL) Fiduciary Rule was implemented on 9 June, despite the intervention of US President Donald Trump, and outlines changes to the way financial advice can be offered by professionals who work with retirement plans, or provide retirement planning advice to the level of the fiduciary.

Evan Hudson, co-chair of the Real Estate Capital Markets practice for law firm Duval & Stachenfeld, said: "We seem to be at an inflection point, with the very disruptive rulemaking of recent years, Regulatory Notice 15-02 and the DOL Fiduciary Rule, having finally come to rest."

"Now that the industry seems to understand what the law actually is, instead of worrying about what it might become, the industry might possibly start to enjoy some stability," he added.

Despite the new regulations now being in place, many believed it was still going to take an industry-wide rethink to overcome the challenges that lay ahead for the non-traded REIT.

Tim Toole, president of NorthStar Securities, said: "It's going to take a lot of education and training [to understand these rules]."

The Fiduciary Rule was the subject of a presidential executive order in February, with Trump calling for the DOL to examine it to ensure that it does not adversely affect the ability of Americans to gain access to retirement information and financial advice.

As a result of that examination, the DOL issued a 60-day extension of the applicability dates of the Fiduciary Rule and related exemptions, meaning the rule was implemented on 9 June rather than 10 April, as originally planned.

Toole saw this as providing a measure of certainty. He said: "I think the DOL Fiduciary Rule implementation is a good thing. We know where the road will lead us going forward. It will be ongoing but the implementation date [of the DOL Fiduciary Rule] forced a lot of decisions to be made, and once people know where they need to be, there will be a lot more confidence."

Mark Earley, CEO and president at Hines Securities, added: "The DOL Fiduciary Rule and Notice 15-20 hit at the same time and provided a perfect storm."

"We think greater transparency will lead to lower transactions but greater volume. So we are going to provide a choice of products."

Thomas Sittema, CEO of CNL Financial Group, added: "We are all changing our business in myriad ways. Things have to change, decompression is sweeping the industry, which makes it more focused, transparent and disciplined."

The DOL Fiduciary Rule will hold certain exemptions until 1 January 2018, when a final decision on the rule is expected to be made.

The non-traded REITs have taken somewhat of a blow in lieu of the regulation changes with some industry experts pinning the blame of Regulatory Notice 15-02 for the decline in sales from $10 billion in 2015 to $4.5 billion in 2016.

W.P. Carey recently announced it will be exiting the non-traded REIT space in a bid to focus on net lease investing and to look after the group's balance sheet.

Also discussed at the conference, and not with the trepidation that some might have expected, was the arrival of real estate behemoth Blackstone onto the market.

Despite the obvious competition it creates, Blackstone was on the whole welcomed by industry leaders, who hailed the group as the prime example of what can be achieved in the non-traded REIT market in spite of the regulatory changes.

Closing the conference, Hudson said: "Overall, the event was very lightly attended. This seems directly related to lower fundraising for lifecycle REITs, coupled with, for some of the larger sponsors, reliance on wirehouses rather than independent broker-dealers, resulting in less of a perceived need for face time in front of the lifecycle REIT ecosystem."

"Some participants expressed optimism that sales are about to bounce upwards. In the meantime, private placements are seeing renewed interest, Regulation A+ is a possibility for smaller sponsors, and interval funds are back." **REIT**