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***Via Electronic Submission***

March 16, 2017

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Attention: Fiduciary Rule Examination

RE: Proposed Rule to Extend Applicability Date of the Fiduciary Rule (RIN 1210-AB79)<sup>1</sup>

The Futures Industry Association (“**FIA**”)<sup>2</sup> urges the U.S. Department of Labor (“**Department**”) to extend by 60 days the applicability date of the final regulation defining who is a “fiduciary” of an employee benefit plan under the Employee Retirement Income Security Act of 1974 and the associated exemptions (“**Fiduciary Rule**”).<sup>3</sup> Indeed, we believe a longer extension would be appropriate to allow firms time to comply with the final regulation. A delay will also give the Department time to give due consideration to the questions posed by the President in his Memorandum to the Department.<sup>4</sup>

As noted in our prior letter to the Department,<sup>5</sup> the Fiduciary Rule is causing enormous upheaval in the financial industry. Its impact extends to FCMs, many of which are embedded in large banks. Not only are FCMs considering modifications to their client documentation as client service providers, but they also are in many cases having to coordinate with other divisions and affiliates within their bank structure on Fiduciary Rule implementation. Among the more challenging

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<sup>1</sup> 82 Fed. Reg. 12,319 (Mar. 2, 2017).

<sup>2</sup> FIA is the leading trade organization for the global futures, options and over-the-counter cleared derivatives markets. Its mission is to support open, transparent and competitive markets, protect and enhance the integrity of the financial system and to promote high standards of professional conduct. FIA’s core constituency consists of futures commission merchants (“**FCMs**”), which provide clearing and execution services for clients active in financial markets around the world. FIA’s FCM members play a critical role in managing systemic risk in the global financial markets. They provide the majority of the funds that support clearinghouses and commit a substantial amount of their own capital to safeguard customer transactions. FIA’s membership also includes the major global exchanges, clearinghouses, trading platforms, technology vendors, legal services, and consulting firms representing the futures and derivatives industry.

<sup>3</sup> 81 Fed. Reg. 20,946 (Apr. 8, 2016).

<sup>4</sup> Memorandum from President of the United States to Secretary of Labor (Feb. 3, 2017).

<sup>5</sup> Letter from Walt L. Lukken, President and Chief Executive Officer, Futures Industry Association, to Edward Hugler, Acting Secretary, U.S. Department of Labor (Feb. 15, 2017). FIA submitted the February 15 letter before the Department published the proposed extension. Although the Department has posted our earlier letter to the record of public comments for the proposed extension, this letter reflects our comprehensive comments on the proposal.

aspects of that implementation effort is work to prepare and provide relevant documentation to plans, plan investment managers and other plan-related clients and counterparties. In the absence of an extension of the April 10, 2017, applicability date, we fear that plan trading in such usual and important instruments as futures, foreign exchange, swaps, and repurchase agreements will be harmed.

Further, on February 3, 2017, the President directed the Department to examine whether the Fiduciary Rule may adversely affect the ability of Americans to gain access to retirement information and financial advice. As part of this examination, the Department must prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Rule. We believe the public would materially benefit from the additional time allotted by an extension of the applicability date for the Department to solicit public comments on the issues identified in the President's memorandum, hold a public hearing and review and assess all the written comments and testimony offered during the review process.

We appreciate the Department's issuance of Field Assistance Bulletin No. 2017-01 ("**FAB 2017-01**"),<sup>6</sup> acknowledging the confusion and disruptions that are occurring and may further occur if an extension is not finalized by April 10. The Department rightly notes in FAB 2017-01 that "many financial services firms and advisers are concerned that, if the Department decides not to issue a delay, there may not be sufficient time to provide retirement investors before the April 10 applicability date with disclosures or other documents intended to comply with . . . the independent fiduciary exception in the rule, or other disclosure provisions of the rule or the PTEs." While this guidance is helpful and provides some comfort, it may not address every concern and should not be a substitute for acting on the 60-day extension promptly. Therefore, notwithstanding FAB 2017-01, it is essential that the Department finalize an extension well in advance of the current April 10 applicability date.

In sum, it is imperative that firms have clarity as the April 10 compliance date nears and that the Department carry out the President's directive in a thorough and thoughtful manner. Accordingly, we urge the Department to extend the applicability date of the Fiduciary Rule by at least 60 days as soon as possible (and as far in advance of the April 10 applicability date as possible).

If Department staff has any questions relating to this letter, please contact Allison P. Lurton, Senior Vice President and General Counsel, at 202.466.5460 or [alurton@fia.org](mailto:alurton@fia.org).

Sincerely,



Walt L. Lukken  
President & Chief Executive Officer

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<sup>6</sup> Field Assistance Bulletin, No. 2017-01, U.S. Department of Labor (Mar. 10, 2017), *available at* <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2017-01>.