

## ERISA Advisory Council Meeting

August 27, 2021

### Testimony of Lisa Bleier of SIFMA on Open Brokerage Windows

Thank you for the opportunity to speak to the ERISA Advisory Council this morning on behalf of SIFMA and our members. SIFMA is the leading trade association for broker-dealers, investment banks and asset managers, where we are committed to advocating for a strong retirement system which provides access and options to individuals of all income levels and backgrounds.

We have listened carefully to the views of plan sponsors and other services providers, as you have, throughout these days of testimony on brokerage windows, and would like to add our voice to those who believe that all of the reasons why Congress recognized and approved the broadest array of investment choices when drafting ERISA are still valid today. In our view, there is no reason to limit or circumscribe the choices of plan participants and beneficiaries. Nor is additional guidance necessary to ensure that plan participants and beneficiaries are appropriately informed and protected. We urge the Advisory Council to recognize the fiduciary responsibilities already in place for plan sponsors, and to take no action that would lead them to move away from ERISA covered arrangements.

Employer-sponsored retirement plans play an important role in helping ensure Americans are prepared for retirement. As of March 2021, 401(k) plans held nearly \$6.9 trillion in assets<sup>1</sup>. Participating in an employer-sponsored retirement plan is often the easiest and most convenient way for workers to save. Many employers offer automatic enrollment, tax-deferred payroll deductions, and matching contributions which incentivize employees to set aside money for retirement. This system; however, is not endlessly elastic. Additional regulatory requirements that make the plans more expensive to administer or more at risk to litigation could adversely affect a plan sponsor's inclination to maintain a plan.

Plan sponsors want participants to participate in the plan. Open brokerage windows provide flexibility for plan sponsors to offer a wider range of investment options, which, in turn, gives increased flexibility to plan participants. As you heard from plan sponsors, brokerage windows are often offered in addition to a core investment menu to provide further flexibility. In these instances, full brokerage windows or mutual fund windows are added to accommodate participants who desire to customize their portfolio through a broader array of investment options without the plan sponsor having to add dozens of extra funds to the base plan line-up as participants request access to one fund or another.

As you heard yesterday afternoon, plan sponsors consider their participants' expressed interests, as well as cost, liability, complexity, and other factors when they are deciding to sponsor a plan, and when they are designing the plan. Requiring or forbidding certain kinds of investment menus will only serve as a barrier to entry for employers considering maintaining a plan, especially smaller employers. We spend a

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<sup>1</sup> [https://www.ici.org/faqs/faq/401k/faqs\\_401k](https://www.ici.org/faqs/faq/401k/faqs_401k)

lot of time as an organization working to come up with new ideas to engage more employers to offer a plan to their employees. We know that a workplace plan that makes things easy for an employee, while also allowing choice that an employee would be interested in, is most likely to engage the individuals.

Brokerage windows serve specific retirement needs of a group of participants who seek access to a much broader set of investments. As you heard from the American Benefits Council yesterday, by responding to these individuals with the choices available through a brokerage window, the plan sponsors are able to keep these participants engaged in the plan.

Similarly, if regulatory restrictions limit brokerage windows, then there will be constant pressure to require “the investment idea of the month.” For example, rather than pick a green fund for the plan’s menu, today a plan sponsor can choose an open brokerage mutual fund window to allow participants to choose their own green fund. This would provide the individual investor the opportunity to research and select with their own factors in mind.

Moving to the fiduciary responsibilities that are in place already when there is a brokerage window included in the plan - current law places certain responsibilities on the plan sponsors related to an open brokerage window - plan fiduciaries prudently select and monitor a brokerage window provider, as well as furnishing participants with key information about the brokerage window option. The plan fiduciary also has a responsibility to assess the nature and quality of the services to be provided when selecting an appropriate brokerage window provider and to monitor that provider to ensure it is meeting the requirements of its contract. This is no different than the fiduciary obligation in selecting and monitoring other service providers.

In terms of disclosure - based on guidance provided by the Department in its final 404a-5 regulations, plans are required to provide information to all participants that includes a description of the window and an explanation of any fees and expenses that could be charged on an individual basis.

The plan participant will also receive detailed information directly from the provider of the open brokerage window. This will also include any further explanation necessary of any fees and expenses, along with an explanation of any fee or expense that was in fact charged to the individual.

In addition, there are the disclosures the individual investor will receive directly from the investments they have chosen from the window options. These include various disclosures required by the SEC or FINRA, including the prospectus, the Statement of Additional Information and any proxy information from that fund.<sup>2</sup> This information includes everything from financial statements, business risks and prospects, as well as information about the management team and their compensation. I could cover a lot more of the disclosures, but instead I would direct you to an excellent summary from the SEC’s investor.gov page instead.<sup>3</sup>

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<sup>2</sup> Many of these requirements can be found in the Securities Act of 1933 (P.L. 73-22) and the Securities Exchange Act of 1934 (P.O. 73-291).

<sup>3</sup> See “The Laws that Govern the Securities Industry” available at <https://www.investor.gov/introduction-investing/investing-basics/role-sec/laws-govern-securities-industry>

Requiring any additional new disclosures relating to the underlying investment would be duplicative of current laws, and an undue burden.

Lastly - a few brief comments about the overall retirement system. We have in place a robust retirement system that engages employers to help their employees prepare for retirement. This system has helped millions have a secure retirement, and we continue to work with Congress to further refine and improve this robust employer engaged system. Congress has been clear in providing many options and choices to encourage employers to offer plans, and that system will continue to thrive as long as new limitations are not put in place.

In summary, due to the extensive disclosures provided to those investing through the brokerage windows, and the important guardrails in place under ERISA today, we believe that there is no further action that the Department needs to undertake with regard to the brokerage window offering.

Thank you again for providing SIFMA with this opportunity to testify. I am happy to answer any questions.