



# Brooklight Place Securities

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March 7, 2017

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Attention:      Fiduciary Rule Examination  
                    Department of Labor  
                    RIN 1210-AB79

To Whom It May Concern:

I am writing in connection with the request for delay of the Labor Department's Fiduciary Rule (the "Fiduciary Rule").

As background, Brooklight Place Securities, Inc. is a small securities broker-dealer based in Downers Grove, Illinois. We do not have excess money available to use to pay for lawyers to advocate for us in our nation's capital or to engage lobbyists to represent us or to spend for members of our team to travel to the District of Columbia to discuss our views on matters such as the Fiduciary Rule (unlike the organizations who were reported to have visited with the Office of Management and Budget in February regarding the Fiduciary Rule).

We are pleased to have this opportunity and to take this moment to comment for the first time regarding the Fiduciary Rule.

There are several points we would like to make in connection with the proposed delay. These items arose from occurrences in February, 2017 and this month.

**Acting Labor Secretary.** First, there was only an acting Labor Secretary during February of this year. With all due respect to acting Labor Secretary Hugler, it will be important to have a hearing, a Senate confirmation vote, a swearing-in ceremony and give some time for a new Labor Secretary to take office, become acclimated and have a chance to consider all of the issues surrounding the Fiduciary Rule (including but not limited to the items set forth in this letter). As discussed below, a delay will enable the new Labor Secretary to have some time in office and elicit information about the nuts-and-bolts of the Fiduciary Rule from existing Department of Labor staff and others. With any new rule, items arise during implementation. Taking additional time provides an opportunity for further deliberation about process and clarification of aspects of a rule; efforts were made to address some matters concerning the Fiduciary Rule with FAQs distributed on more than one occasion by the Department of Labor, but it seems as if this situation continues to unfold with one set of FAQs after another (some FAQs remaining available and other FAQs no longer available on the Department of Labor website). Again, this all is

particularly important in light of the status of the Labor Secretary position during February. If a new Labor Secretary had been in office for at least 45 days prior to the applicability date of the Fiduciary Rule, then it could be that a delay would not be necessary.

**Rulings in Lawsuits.** Second, multiple federal district courts issued lengthy rulings in February regarding the Fiduciary Rule. It has been reported that these courts were asked by the United States Justice Department to stay the lawsuits or, at least, refrain from issuing rulings. These courts had the discretion to not proceed forward. These courts decided that their rulings would be important and chose to issue rulings when making a ruling was not required. Now that these rulings are available, the new Labor Secretary will need an opportunity to study the issues addressed by the courts and how the courts decided the issues. Obviously, the information in the court rulings must be very important or the courts would have simply refrained from issuing the rulings until a later time. Again, if multiple courts had not issued rulings in February after being requested not to do so by attorneys from the United States Department of Justice, then perhaps a delay in the Fiduciary Rule would not be needed.

**Disagreements among different parts of the federal government.** Acting Securities and Exchange Commission (SEC) Chairman Michael Piwowar spoke at an Investment Adviser Association compliance conference in Washington, D.C. on March 2, 2017 and said the following about the Fiduciary Rule.

“I think it is a terrible, horrible, no good, very bad rule.”

This conclusory observation about the Fiduciary Rule reflects a strong opinion about the Fiduciary Rule. In our view, the new Labor Secretary should have an opportunity to consult with the new Securities and Exchange Commission chair to understand if this is the position of the SEC and, if so, why. What information does the Securities and Exchange Commission have regarding the Fiduciary Rule, including any of the items set forth in this comment letter?

**Communicating Freely.** Fourth, a new Labor Secretary may end up receiving (or otherwise obtaining) information that would not be made available to any other person or party in relation to the Fiduciary Rule. The following facts serve as backdrop for this point. There was a debate that was held on Wednesday evening, February 22, 2017, among candidates to become Chair of the Democratic National Committee. The debate was televised by CNN. Tom Perez (who was ultimately elected Chair of the Democratic National Committee last month) was at the debate and he is the former Secretary of Labor who headed up the Department of Labor when the Fiduciary Rule was circulated. Mr. Perez was asked a question during the debate about the Trans-Pacific Partnership (“TPP”), which was a trade agreement among Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. Mr. Perez was asked “While you were Labor Secretary, you supported and defended TPP?” Mr. Perez responded “I was part of Team Obama and I’m damn proud of being part of Team Obama. And when you’re part of a team, you don’t go to the buffet line and say I’m going to play here or I’m going to play there.” Given an opportunity in a follow-up inquiry by the CNN moderator to further explain his support for TPP in 2016 relative to his views on TPP in 2017, Mr. Perez distanced himself without supporting or defending TPP by simply answering “TPP is dead.”

Why are former Labor Secretary Perez’s positions on TPP in 2016 and in 2017 important in relation to the Fiduciary Rule? This is because former Labor Secretary Perez and all of the individuals at the Department of Labor should be given the opportunity during a Fiduciary Rule delay to “go to the buffet line” and communicate with a new Labor Secretary. Any or all of these people can now (quietly or not

so quietly) bring forward any questions, observations or concerns that they might have about the workability of any parts of the Fiduciary Rule or with implementation of any parts of the Fiduciary Rule and not worry about whether they are seen as a team player. Fairness dictates that these people be given this chance to come forward, be heard and for all Americans to benefit from any information they might supply to the new Labor Secretary. In light of his statement about TPP made in February, we have no way to know whether former Labor Secretary Perez wholeheartedly supports each and every part of the Fiduciary Rule or whether he feels there should be any modifications based on everything that he has seen or that has taken place (including court rulings) or whether he was just being a “damn proud” member of a team and now thinks the Fiduciary Rule is dead. The former Labor Secretary’s remark last month makes it clear that the new Labor Secretary needs to be given some time to find out if there have been any unspoken or uncommunicated issues (at least, issues that only current or former Labor Department personnel might know about) with any part of the Fiduciary Rule, including implementation. Current and former government workers need to be given a voice on this important topic. If no reactions arise from any current or former Labor Department people during a delay of the Fiduciary Rule, this will also be telling. Once again, but for the comment from the former Labor Secretary in February, there would be no reason to wonder whether any current or former Labor Department personnel have any thoughts about the Fiduciary Rule that have not been shared and it is possible that a delay would not be in the best interest of the American people.

The confluence and interplay of the four issues outlined above is perhaps most critical:

- No new Labor Secretary was confirmed in February and, therefore, has not had access to relevant information (court rulings and a determination of whether there are possible insights from current or former Labor Department workers that have not yet been provided) to analyze all the aspects of the Fiduciary Rule;
- Very important court rulings were issued in February (after requests from attorneys representing the United States Department of Justice not to issue rulings) and the new Labor Secretary should have an opportunity to study these rulings;
- Securities and Exchange Commission may not agree with the direction of the Fiduciary Rule and may have strong reasons for this view; and
- Current and former Labor Department workers need to be given time to put together any unfiltered thoughts they might want to share with the new Labor Secretary, particularly in light of the federal court rulings and particularly once they know who the Labor Secretary is after the person is sworn-in; these thoughts need not be filtered by notions of loyalty to a particular politician or “team” but might only be focused on the best interests of all the people of the United States of America. It is imperative that people be given time to reflect and to decide whether they have anything helpful (positive or negative) to bring forward to the new Labor Secretary about the Fiduciary Rule. Their voices should not be silenced.

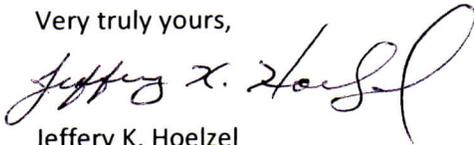
Taxpayers pay for the President to put forward quality nominees for various positions, such as the role of Labor Secretary. Taxpayers pay for the United States Senate to confirm or reject nominees. Taxpayers pay for federal district court judges to render decisions or to use discretion and not render decisions. Taxpayers pay for personnel at the Securities and Exchange Commission. Unfortunately, all of the persons and institutions listed above who are paid for by taxpayers have not been working in harmony in recent months in relation to the Fiduciary Rule.

Clearly, there are many issues for the federal government to analyze if the Fiduciary Rule is delayed. For example, how has the pattern of market developments and preparation efforts occurring since the Fiduciary Rule was published in April, 2016, compared with the implementation pattern prior to compliance deadlines in other jurisdictions, such as the United Kingdom, that have instituted new requirements for investment advice? What does a comparison of such patterns indicate about the Department of Labor's prospective estimates of the Fiduciary Rule's impact?

The original applicability date in April, 2017 leads to the urgency of the delay taking effect very swiftly. If the applicability date had been set at May 31, 2017, then perhaps no delay would be needed and all issues could be assessed. Unfortunately, any result other than a delay would be arbitrary and capricious to parties and constituencies. The out-of-the-ordinary circumstances alluded to herein are good cause for delay.

For the reasons set forth above, and while the actual precise impact of delay is unknown, we support a delay of the applicability date of the Fiduciary Rule as a determination is made as to whether any change will be made to the Fiduciary Rule. Obviously, if there is no delay and the federal government (including the President, the Congress, the court system and agencies such as the Labor Department and the Securities and Exchange Commission) decides to make any change in relation to the Fiduciary Rule, various constituencies could face two major changes in the regulatory environment rather than one which would cause unnecessary disruption to and costs in the marketplace. It is impossible to calculate the costs without having even a general sense of what the possible change to the Fiduciary Rule will be. In our estimation, the benefits of the proposed delay for the entire Fiduciary Rule, including the potential reduction in transition costs should steps be taken in relation to changing the Fiduciary Rule, justify the costs to all parties associated with the proposed delay. Thank you for your consideration.

Very truly yours,



Jeffery K. Hoelzel  
President