



## Hefren-Tillotson, Inc.

METICULOUS WEALTH MANAGEMENT SINCE 1948

March 9, 2017

*Via Electronic Mail to e-ORI@dol.gov*

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: Definition of the Term “Fiduciary” and Related Prohibited Transaction Exemptions  
Proposed Extension of Applicability Date (RIN 1210-AB79)

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Department of Labor’s (“Department”) proposal to extend the applicability date of the amendments to the regulation defining the term “fiduciary,” and the related prohibited transaction exemptions (the “Rule”).

We believe that an extension of the applicability date of at least 60 days (but more likely 180 days) is necessary for the Department to thoroughly examine the Rule for adverse impacts on Americans’ access to retirement investment advice and assistance, as required by the President’s Memorandum.<sup>1</sup> We are deeply concerned that the Rule will cause significant harm to retirement investors by restricting their access to retirement investment advice and services, and so we strongly support the Department in undertaking this examination.

As such, we believe, at a minimum, a 60-day (but more likely a 180-day) extension is needed to:

- ***Prevent further harm to retirement investors.*** Registered investment advisers, broker-dealers and other financial institutions, including us, have worked hard to develop solutions that both comply with the Rule and continue to provide access to a wide variety of advice and financial products for retail retirement investors. But, firms have generally found that product and service offerings must be reduced and limited to be able to

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<sup>1</sup> Memorandum of February 3, 2017 for the Secretary of Labor re: Fiduciary Duty Rule, 82 Fed. Reg. 9675.

continue to profitably service retirement investors while complying with the Rule.<sup>2</sup> The extension would allow current product and service offerings to remain in place while the Department studies the Rule for its negative impacts, thereby protecting retirement investors from needless interruption of their services—which would prove to be particularly important if the Department determines, as we expect it will, that the Rule harms investors and should be rescinded or revised.

- ***Stop needless spending on the Rule's implementation.*** We have already spent large sums and significant time on complying with the Rule. As noted above, we believe that the Department will find that the Rule harms middle-income savers and that it should be rescinded or revised. Thus, failing to extend the applicability date will result in continued expenses to implement a Rule that may ultimately be rescinded or materially revised. These resources are better spent on developing products and services that benefit our clients, employees, and shareholders.
- ***Support jobs in the financial services industry.*** Many financial advisors and registered representatives of financial institutions are entrepreneurs and small businesses, and the substantial compliance costs, legal risks, and uncertainties attendant to the Rule have already put unnecessary pressures and strain on these business owners. An extension would limit these impacts while the Rule is examined and give us more time to help them adapt to the changing business and regulatory environment.
- ***Help firms develop better, compliant solutions to the Rule.*** Though we, like other firms, are working towards an April 10th applicability date, the relatively short implementation period to comply with such a substantial rule change has been, and continues to be, challenging. The three sets of FAQs the Department promised it would issue in the summer of 2016 have only partially been completed, with the second set issued as recently as January 2017. Given the complexity of complying with the Rule and that the issued FAQs included unexpected interpretations that require firms to reconsider their compliance plans, a meaningful delay in the applicability date is warranted. We note that such a delay is consistent with the Department's past practices, such as the delays granted in connection with the rules requiring service providers to disclose fees under ERISA Section 408(b)(2).

We also encourage the Department to provide a longer extension of at least 180 days to allow time to conduct its review of the Rule and complete any new rulemaking to rescind or revise the Rule if appropriate without creating further disruption and uncertainty by requiring additional

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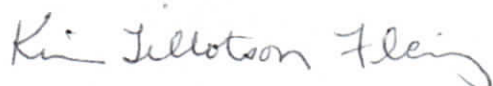
<sup>2</sup> See, e.g., Christine Idzelis, *JPMorgan Chase Will Stop Charging Commissions on IRAs Due to DOL Fiduciary Rule*, INVESTMENTNEWS (Nov. 10, 2016), available at <http://www.investmentnews.com/article/20161110/FREE/161119998/jpmorgan-chase-will-stop-charging-commissions-on-iras-due-to-dol>; Greg Iacurci, *Merrill Lynch Eliminates Commission IRA Business in Response to DOL Fiduciary Rule*, INVESTMENTNEWS (Oct. 6, 2016), available at <http://www.investmentnews.com/article/20161006/FREE/161009942/merrill-lynch-eliminates-commission-ira-business-in-response-to-dol>.

rulemakings to gain additional extensions.<sup>3</sup> Moreover, to allow a fulsome reconsideration of the Rule and its impacts, and prevent customer confusion and fragmented approach to implementation, the extension should apply to all aspects of the Rule, including the definition of fiduciary and each condition of the prohibited transaction exemptions (e.g., the impartial conduct standards). Thus, the Rule, which affects a number of different statutory provisions and the prohibited transaction exemptions, were granted as a comprehensive solution, and should not be implemented piecemeal without a comprehensive study to protect retirement investors from further harm. Finally, we request that if the proposed rule for extension of the applicability date is not finalized and effective before April 10, 2017, the Department grant relief with respect to any transactions that occur between the April 10, 2017 applicability date and the date upon which the extension becomes effective.

We stress that investors, advisors, and firms are in urgent need of certainty regarding the applicability date of the Rule. As April 10 rapidly approaches, firms will imminently need to implement changes to their solutions and offerings, amend client agreements, send disclosures required under the Rule, and communicate changes to investors. We hope that the Department will expedite this rulemaking to delay the applicability date and finalize the extension as quickly as possible.

We intend to comment separately on the other issues raised in the Department's notice of proposed rulemaking.

Sincerely,



Kim Tillotson Fleming  
Chairman and CEO

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<sup>3</sup> In considering the costs and benefits of the extension of the applicability date, it is important that the Department not start from the presumption that the costs and benefits in the regulatory impact analysis that accompanied the adoption of the Rule were reasonably estimated. Many commenters have raised significant questions about the methodology used, including the data used, interpretations of that data, and subsequent regulatory developments that reduce the relevance of that data.