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March 10, 2017

Via Electronic Mail to e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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

Ladies and Gentlemen:

PFS Investments Inc. ("PFSI"), a registered broker-dealer and an indirect wholly owned subsidiary of Primerica, Inc.[1] ("Primerica"), appreciates 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").[2] We strongly support a delay of the applicability date and review of the Rule. Our primary concern is the adverse impact the Rule will have on the middle-income savers and investors across the United States whom we diligently and successfully have served for 40 years. The Rule will make it more difficult for our representatives—who reflect and serve the communities in which they live—to continue to help and encourage middle-income families to save and invest for retirement. [3]

Compelled to do so by the Rule, we, along with most other firms, are preparing to notify millions of American savers across the country of the impending changes to the products and

[1]Primerica is a leading distributor of basic savings and investment products to middle-income households throughout the United States. Our clients earn, on average, between $30,000 and $100,000 in household income, a category that represents approximately 50% of all U.S. households. Our business model allows our representatives to accept the smaller-sized transactions typical of middle-income consumers and to provide clients with personal services that ordinarily would be out of reach to middle-income investors with smaller account balances. Approximately 70% of our accounts are Individual Retirement Accounts ("IRAs"). We will open an IRA for an individual with as little as $250 to invest, or for $50 per month.

[2] We incorporate by reference our comment letters previously submitted to the Department on July 21, 2015 and September 24, 2015 ("Comment Letters"). Our Comment Letters are supported by independent economic studies predictive of adverse impacts should the Rule go into effect. We respectfully request the Department to further consider this work.

[3] Oliver Wyman, *The Role of Financial Advisors in the US Retirement Market*, at 17. Oliver Wyman found that, on average, individuals that use a financial representative have more assets than nonadvised individuals across all the age and income levels examined and that the differences are meaningful.

services available to them. Because of the uncertainty regarding the Rule and the President's Memorandum,[4] we have, to date, held these communications in abeyance. Without a delay of the Rule's applicability date, these notifications are queued to be delivered to households across the country before the April 10, 2017 applicability date. **These notices will cause retirement savers to be bewildered, confused, and angry, and this confusion will be aggravated by the fact that many understand the President's Memorandum to already have directed a halt to the Rule.**

We urge you not to disrupt retirement savers in this manner. We believe that a 60-day extension at a minimum (but more likely 180 days or longer) 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 and to avoid further investor harm and disruption the Rule has caused. Since the Rule became final, there is ample evidence to suggest that the Regulatory Impact Analysis ("RIA") overstates the benefits it purports to measure and overlooks the Rule's negative effects, particularly on savers with limited means.[5]

Adequate relief is not provided by the "Temporary Enforcement Policy on Fiduciary Duty Rule" bulletin issued by the Department on March 10, 2017.[6] The bulletin addresses only the policy of the Department, not the Treasury Department, which has enforcement authority over IRAs. Nor does the bulletin avoid plaintiffs' litigation that can ensue from an expanded definition of fiduciary as of April 10, 2017. Moreover, the bulletin acknowledges the current state of uncertainty and confusion which command a need for a delay.

As such, we believe an extension of the Rule's applicability date, for good cause, should be effective immediately upon the proposed delay becoming final for the following reasons:

1. ***A delay is called for by the Presidential Memorandum.*** A delay is the obvious outcome of the President's Memorandum. It makes no sense to allow the Rule to become applicable before the reassessment takes place. Moreover, to date there is no Secretary of Labor in office nor has the position of head of the Employee Benefits Security Administration yet been filled. These officials should be permitted an opportunity to participate in the review requested by the President.

2. ***A delay is necessary to prevent further harm to middle-income savers.*** Regrettably, our concerns about the Rule's middle-market impact expressed in our earlier Comment Letters[7] are being substantiated by the public statements of independent broker-dealers and wirehouses. In response to the Rule, firms are preparing fundamentally to restructure

[4] Memorandum of February 3, 2017 for the Secretary of Labor re: Fiduciary Duty Rule, 82 Fed. Reg. 9675.
[5] *See, e.g.,* Compass Lexecon, *An Evaluation of the Department's Impact Analysis of Proposed Rules Relating to Investment Advisor Fiduciary Status* (July 20, 2015) at ¶ 2.
[6] Department of Labor, Employee Benefits Security Administration, *Temporary Enforcement Policy on Fiduciary Duty Rule*, Bulletin No. 2017-01 (Mar. 10, 2017).
[7] PFS Investment Inc. Primerica, Inc., Comment Letter, July 21, 2015, at 9: "Based on our vast experience with working with middle-income American families and the research cited above, we are deeply concerned that the Proposed Rule will have the unintended effect of depriving middle-income consumers of desperately-needed retirement guidance from SEC- and FINRA-regulated financial professionals. We anticipate the result will be an industry-wide movement to further abandon the middle-market and focus on affluent clients. The "haves" will be afforded personal services, while the "have-nots" will be left without personal assistance to fend for themselves online, or will be steered away from tax-advantaged IRAs entirely."

their Individual Retirement Account ("IRA") businesses in a manner that will shield higher-wealth individuals while abandoning more moderate savers and small independent businesses.[8] These market changes away from traditional brokerage services by the industry will harm millions of middle-income households because the announced restructurings will result in higher minimum account balances that are beyond the reach of many, reduced access to personal financial guidance, and reduced savings choices. In short, the real-world response to the Rule will cause significant investor confusion and, ultimately, lost opportunities to accumulate meaningful retirement savings through IRAs on a tax-advantaged basis for middle-income Americans.

Conservative estimates of the reduction in retirement assets that will be attributable to the loss of access to advice and other unintended consequences of the Rule suggest that the Rule could result in losses of retirement savings of $68-$80 billion each year.[9] An extension of the applicability date would protect millions of American families in every state from needlessly being told they can no longer receive advice from their financial representative of choice on their savings vehicle of choice, or that their services will otherwise change or be more limited. An extension would also forestall the accompanying frustration and perturbation that America's middle class would suffer when such notices are accompanied with a message informing them that they are now being restricted to the use of online tools for advice because they have not acquired sufficient assets to be eligible for human assistance. This would prove to be particularly important if the Department later determines that the Rule harms investors and should be rescinded or revised.

3. ***A delay is necessary to avoid a reduction in the number of professionals in the financial services industry.*** Approximately 360,000 brokerage-only agents and countless other small independent broker-dealer businesses in the United States are entrepreneurs and small businesses. The substantial compliance costs, legal risks, and uncertainties attendant to the Rule have already put unnecessary pressures and strain on these business owners. The Department itself has acknowledged that 90% of broker-dealers, registered investment advisers, insurance companies, agents, and consultants are small businesses.[10] The compliance burdens on independent agents and small and mid-size firms are enormous, and many are likely to be unable to survive the costs.[11] An extension would limit these impacts while the Rule is examined and help us provide additional support to our financial professionals and agents as they adapt to the changing business and regulatory environment.

4. ***A delay is necessary to focus investment on economic growth rather than the Rule's implementation.*** In 2016, we spent over $3 million on implementation costs. If the rule

[8] Public statements from companies in response to the rule have included notices of the following: elimination of commission brokerage for IRAs (Merrill Lynch, JP Morgan Chase & Co., Capital One, Commonwealth Financial); limitation of small accounts to robo-advice only or no face-to-face service (Merril Lynch, State Farm); establishment of higher minimums for brokerage accounts (Edward Jones, Stifel); sales of brokerage businesses (Met Life, AIG, Stifel).
[9] Quantria Strategies, LLC, *Unintended Consequences: potential of the DOL Regulations to Reduce Financial Advice and Erode Retirement Readiness* (July 20, 2015), at 29.
[10] RIN 1210-AB79, Proposed Rule; extension of applicability date, 82 Federal Register 12322 (March 2, 2017).
[11] Manganaro, John, *Broker/Dealer Evolution Ahead of Fiduciary Rule*, Plan Advisor, December 12, 2016.

is not delayed, we expect to continue to incur significant implementation and ongoing compliance costs. We believe that the Department will find that the Rule leads to fewer financial representatives and harms middle-income savers' ability to save for retirement. Thus, failing to extend the applicability date will result in continued expenses to implement a Rule that may ultimately be materially revised or rescinded. These resources are better spent in the interim on continuing to provide products and services that better benefit our clients.

5. ***A delay is necessary to help firms develop better, compliant solutions to the Rule.*** The short implementation period to comply with such a substantial rule change has been, and continues to be, challenging. Most firms are at real risk of being unable to comply by April 10, 2017. The Department frequently provides longer compliance periods for far less significant regulations. 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 lengthen the extension from the proposed 60 days to at least 180 days. A longer period is needed to allow time to conduct a thorough review of the Rule and to complete any new rulemaking to rescind or revise the Rule, if appropriate, without creating the further disruption and uncertainty that sequential rulemakings for extensions would cause.[12] Moreover, to allow a fulsome reconsideration of the Rule and its impacts, and prevent customer confusion and a 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 that were granted as a comprehensive solution, should not be implemented piecemeal without a comprehensive study to protect middle-income savers from further harm. Finally, we request that, if the proposed rule for extension of the applicability date is not finalized and made effective before April 10, 2017, the Department grant retroactive 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

[12] 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 RIA 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.

required under the Rule, and communicate changes to clients. We hope that the Department will expedite this rulemaking to delay the applicability date and immediately finalize the extension.

We thank the Department for its efforts in this matter. We intend to comment separately on the other issues raised in the Department's notice of proposed rulemaking, including the flawed RIA issued to support the Rule's promulgation, problems encountered trying to implement the Rule, and how the Rule will harm middle-income earners ability to save and invest for retirement. We will work to provide data to the Department responsive to the President's concerns and to update the Department's understanding of the changes that the Rule compels.

Sincerely,

Kevin Sui