



MFS Investment Management  
111 Huntington Avenue  
Boston, MA 02199

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

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Department of Labor’s (“Department”) proposal to extend the applicability date of the final regulation which re-defined the term “fiduciary” under Section 3(21) of ERISA and section 4975 of the Internal Revenue Code of 1986 and the related prohibited transaction exemptions (the final fiduciary rule and related exemption, the “Rule”).

In our view, an extension of the applicability date of at least 60 days is necessary for the Department to examine the Rule for adverse impacts on Americans’ access to retirement investment advice and assistance and to prepare an updated economic and legal analysis concerning the likely impact of the final rule, as required by the President’s Memorandum.<sup>1</sup> We hope that our comments are helpful in explaining why an extension of the applicability date is necessary.

We believe that, at a minimum, a 60-day (or longer) extension is needed to:

- ***Prevent Market Disruption.*** Extending the applicability date will allow the Department to carry out its review and make changes it deems appropriate without causing market disruption. We believe retirement investors will be confused if firms announce changes in April that then need to be re-visited due to any changes to the Rule. In the Department’s recent Field

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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 (“President’s Memorandum”).

Assistance Bulletin No. 2017-01<sup>2</sup> ("the FAB") the Department noted that to address the potential "gap" period during which the fiduciary duty rule becomes applicable before a delay is published after April 10, some financial services firms and advisers are considering distributing communications to clients that, include language regarding an uncertain applicability date and conditional acknowledgements of fiduciary status. It is reasonable to expect that firms and advisers would feel the need for similar cautions in their communications should the Rule become applicable before the Department completes its review. Accordingly, we ask that the Rule not become applicable earlier than the questions raised in the President's Memorandum are addressed and a decision has been made whether rescission or revisions are required or appropriate; we believe that a thorough and complete review and decision making process is likely to require more than 60 days. Further, we recommend that in choosing an extended applicability date the Department build in the time that the financial services industry will need to respond to any revisions to the Rule. Finally, we believe 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) as these were designed as a packaged solution that should be reviewed as a whole.

- ***Preserve choice for retirement investors.*** Like other investment product providers, we have been working hard to develop product solutions that will meet the needs of our financial intermediary partners that service the IRA and small plan market. However, as discussed below, the need for regulatory guidance and the uncertain outcome of the review mandated by the President have hindered the ability to have new product options available for the April 10th applicability date. Consequently, should the Department not extend the applicability date, we expect that firms that service IRAs and small plans will find it necessary to reduce and limit the availability of product and service offerings to be able to comply with the Rule while maintaining profitability.<sup>3</sup> The extension would allow current product and service offerings to remain in place while the Department studies the Rule for its potential negative impacts, thereby protecting retirement investors from needless interruption of their services.
- ***Allow firms to develop level fee products that facilitate compliance with 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. Only two of the three sets of FAQs the Department promised it would issue in the summer of 2016 have been completed. The second set of FAQs, which addresses questions about the definition of fiduciary, was not issued until January 2017 and included unexpected interpretations that firms are still digesting.<sup>4</sup> In addition, some solutions presented

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<sup>2</sup> DOL Field Assistance Bulletin 2017-01—Temporary Enforcement Policy On Fiduciary Duty Rule, March 10, 2017, available at: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2017-01>

<sup>3</sup> See, e.g., "A Complete List of Brokers and Their Approach to 'The Fiduciary Rule'", Wall Street Journal, February 6, 2017, available at <https://www.wsj.com/articles/a-complete-list-of-brokers-and-their-approach-to-the-fiduciary-rule-1486413491>

<sup>4</sup> The first set of FAQs, issued on October 27, 2016, dealt with the exemptions, including the Best Interest Contract Exemption. The expected scope of the third set is not known.

securities laws concerns which were only recently addressed by the Securities and Exchange Commission.<sup>5</sup> Given these complexities, it is not surprising that some intermediaries are still evaluating business models. Accordingly, we believe that 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).

- ***Avoid unnecessary spending on the Rule's implementation.*** The industry has already spent significant time and money preparing for compliance on complying with the Rule. However, as noted above, some product decisions have been delayed while intermediaries finalize their business models and product providers have held off in investing in products changes. Accordingly, an extension of the applicability date would allow the industry to avoid additional costs that might be unnecessary or not helpful under a revised Rule. For example, the industry has invested time and money in considering new share classes and changes to existing share classes. If the applicability date is extended, funds will be able to avoid the risk of incurring costs for new share classes that will not be used once the Department's review is complete.

We urge you to grant the delay of at least 60 days as soon as possible, and we further urge you to apply the delay to all parts of the Rule and the related prohibited transaction exemptions.

Sincerely,



Heidi W. Hardin  
Executive Vice President and  
General Counsel

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<sup>5</sup> See SEC Interpretive Letter (pub. avail. Jan. 11, 2107), available at <https://www.sec.gov/divisions/investment/noaction/2017/capital-group-011117-22d.htm>