

March 10, 2017

**VIA ELECTRONIC MAIL TO:** [EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Conflict of Interest Rule  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

RE: RIN 1210-AB79: Proposal to Delay the Applicability Date of the Definition of the Term  
"Fiduciary"

Securities America, Inc. ("Securities America") appreciates the opportunity to comment on the Department of Labor's ("Department") proposed rule regarding the delay of the applicability date of the Definition of the Term "Fiduciary."

### **About Securities America**

Securities America, a wholly owned subsidiary of Ladenburg Thalmann Financial Services Inc. (NYSE MKT: LTS, LTS PrA) a publicly-traded diversified financial services company based in Miami, Florida, is one of the nation's largest independent broker-dealers with more than 2,000 independent advisors and approximately \$60 billion in client assets.

### **Support for Delay**

The President's Memorandum dated February 3, 2017 directed the Department to examine the Definition of the Term "Fiduciary" and related Prohibited Transaction Exemptions ("Rule") to determine if (1) if investors will have reduced access to retirement products and financial advice, (2) if investors will be negatively impacted by disruptions within the industry, and (3) if there will be a likely increase in litigation. To that end, the Department has initiated a 45-day comment period to undertake such an examination.

We agree with the Department that should it revise or rescind the Rule after the current applicability date, two major changes in the regulatory environment will cause disruption to retirement investors and produce additional and unnecessary frictional costs. Additionally, if the current applicability date is maintained, retirement investors will face harmful disruptions and reduced access to retirement products and financial advice.

Due to the Rule's requirements that compensation be level within a product category (ex. Fixed Index Annuity product category), Securities America will be forced to significantly reduce retirement products available to investors. This is because product sponsors simply have not had the time necessary to modify their products to meet this requirement. For some product lines this will be a reduction from thousands of available options to less than ten available options. This is one area in particular where the industry needs more time to comply with the Rule; otherwise, retirement investors will likely be harmed.

Other Financial Institutions have announced the discontinuation of commissionable retirement products and services. For many investors who prefer a buy-and-hold investment strategy, a commission relationship is in their best interest due to long-term performance and reduced costs. For those buy-and-hold investors working with a trusted advisor at one of these Financial Institutions, this means that the investor will be required to either:

1. Move to an advisory relationship with their current trusted advisor; a relationship that increases long-term costs to the investor, or
2. Move their account to another advisor who can provide commission retirement products and services, but does not have a long-term relationship with the client.

Both scenarios harm the investor either by increasing costs, reducing access to a trusted financial advisor, or both.

Due to the fact that (1) the 45-day comment period ends after the current applicability date of the Rule, (2) the Department will need additional time to review such comments, (3) retirement investors will face reduced access to advice and products, and (4) the industry needs more time to fully comply with the Rule, Securities America fully supports the Department's proposal to delay the applicability date. Further, we believe that all aspects of the Rule should be delayed, and that a delay period of 180 days is more appropriate to allow the Department ample time to complete a full examination of the Rule.

#### **Support for a Carefully-Crafted, Universal Fiduciary Standard of Care**

**Securities America supports a carefully-crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients.**

However, we do not support the Department of Labor's Rule as currently written and will provide comments to that effect in a separate letter. We believe such carefully-crafted universal fiduciary standard of care should make it easier for investors to receive high-quality,

individualized investment advice from a trusted advisor, while maintaining the ability for “Americans to make their own financial decisions.”

Such regulation should provide retail investors with a clear and easy to understand standard of care that is applicable to the entirety of the client’s relationship with a trusted advisor.

Professionals should be required to do the following:

- Act in the best interest of the client;
- Provide advice with skill, care, and diligence based upon the individual needs of the client; and
- Disclose material conflicts of interest, avoid them when possible, and obtain informed client consent to act when conflicts cannot be reasonably avoided.

Thank you for considering Securities America’s comments. Should you have any questions, please don’t hesitate to contact me at (402) 399-9111 ext. 1007.

Respectfully,

A handwritten signature in black ink, appearing to read "Kevin J. Miller", with a long horizontal line extending to the right.

Kevin J. Miller

Executive Vice President & General Counsel