THE STEPHENSON
National Bank & Trust
Financial Solutions from Advisors You Trust

March 17, 2017

Via E-mail: EBSA.FiduciaryRuleExamination@dol.gov

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

Re: RIN 1210-AB79

Ladies and Gentlemen:

The Stephenson National Bank & Trust [Bank] appreciates the opportunity to provide comments to the proposed rule of the Department of Labor (Department) that would delay the applicability date of the Fiduciary Rule (Applicability Date) by 60 days, from April 10, 2017, to June 9, 2017.[1] For the reasons described below, the Bank believes that the Department should delay the Applicability Date by at least 60 days – and should consider a significantly longer extension – in order for the Department to properly reexamine the Fiduciary Rule and, in response to the questions raised in the President's Memorandum (Memorandum), either revise or rescind the Rule.[2]

We believe that a delay of at least 60 days will be necessary for the Department to complete a review according to the Memorandum, and having the Applicability Date occur on April 10, 2017 would simply lead to concerns and confusion for both customers and financial institutions alike. The Memorandum requires the Department to provide an updated economic and legal analysis which must consider at least three factors: first, whether the Fiduciary Rule is likely to harm investors due to a reduction in access to retirement products and services; second, whether the Fiduciary Rule's anticipated applicability will result in dislocations or disruptions to the retirement services industry that may adversely affect investors or retirees; and third, whether the Fiduciary Rule is likely to cause an increase in litigation or in the prices that investors and retirees must pay to gain access to retirement services. Should the Labor Secretary find that the Fiduciary Rule is harmful under any of the three factors above, or if the Labor Secretary concludes for any other reason that the Fiduciary Rule is inconsistent with the priorities listed in the Memorandum, then

[1] The Fiduciary Rule (Rule) defines who is a "fiduciary" of an employee benefit plan under the Employee Retirement Income Security Act (ERISA) as a result of giving investment advice to a plan, or to its participants or beneficiaries. The Fiduciary Rule also defines as a "fiduciary" anyone who renders investment advice to the owner of an individual retirement account (IRA) under the Internal Revenue Code (Code).
[2] See Presidential Memorandum on Fiduciary Duty Rule (Feb. 3, 2017).

www.snbt.com • bank@snbt.com • 800-924-1732

1820 Hall Avenue, Marinette, WI 54143 | 715-732-1732 • 704 Main Street, Wausaukee, WI 54177 | 715-856-5116
606 Henriette Avenue, Crivitz, WI 54114 | 715-854-2541 • Inside Piggly Wiggly, Crivitz, WI 54114 | 715-854-2220 • N18630 Hwy 141, Pembine, WI 54156 | 715-324-5217
W7912 Amberg Street, Amberg, WI 54102 | 715-759-5256 • 101 Bralick Way, Oconto, WI 54153 | 920-834-7628 • 1111 Tenth Street, Menominee, MI 49858 | 906-863-2526
Marquette Trust & Investment Services 115 S. Lakeshore Blvd Ste D, Marquette, MI 49855 | 906-273-1501

the Secretary is directed to issue a proposed rule that would rescind or revise the Fiduciary Rule. Given the potential that at least one of these factors will be triggered, the Department will need a delay in order to either revise the Fiduciary Rule or repeal it altogether.

Since the Fiduciary Rule was finalized in April 2016, the Bank has engaged in good-faith efforts to comply with all of the Rule's requirements. However, the Fiduciary Rule does not yet appear to be properly functional. There remain critical ambiguities and uncertainties in how to comply with the Rule. For instance, it is still not clear what constitutes, and what does not constitute, a "recommendation," the linchpin of whether or not investment advice is given under the Rule. As another example, the Department has not yet determined whether bank IRA/CD programs are subject to the Fiduciary Rule or whether they are exempt under statute.[3] The Bank's structuring or restructuring of its IRA/CD business – which would take months to complete – hinges entirely on the agency's decision, which at this time still is unknown. Therefore, while the Bank has undertaken a wholesale review of its entire line of retirement products and services, and while the Bank has expended enormous time, labor, and costs in an effort to ensure compliance by the Applicability Date, there is still not sufficient clarity from the Department as to many facets of this Rule.

Given these significant challenges and obstacles, the Bank requests that the Department delay the Applicability Date for at least 60 days, and consider a substantially much longer period, as the Department reexamines the Fiduciary Rule. Thank you for your consideration of our comments.

Sincerely,

Daniel J. Peterson,
President & CEO

---

[3] According to an August 24, 2016, white paper issued by the law firm of Morgan Lewis & Bockius LLP, section 4975(d)(4) of the Code permits a bank to advise its customers on IRA investments and on IRA rollovers, so long as the IRA is designed to invest exclusively in the bank's deposits in accordance with that section of the Code. We understand that the American Bankers Association and Department staff are in discussions on the applicability of this statutory exemption to bank IRA/CD programs.