WUNDERLICH

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

April 17, 2017

Re: RIN 1210-AB79, Proposed Delay and Reconsideration of DOL Regulation Redefining the Term "Fiduciary".

Dear Sir or Madam:

Please accept this letter submitted by Wunderlich Securities, Inc. ("WSI") commenting on the proposed delay and reconsideration of the Department of Labor's regulation redefining the term "fiduciary" under section 3(21) of ERISA and section 4975(e) of the Internal Revenue Code. This letter is submitted to add to the discussion of whether the redefined term "fiduciary" achieves the goal of making investment advice more objective, available and cost effective to consumers so as to enable investors to achieve their retirement goals. We would suggest it does not.

By way of background, WSI is dually registered as a broker dealer and an investment advisor. For those accounts that fall under the Investment Advisors Act, WSI is already acting as a "fiduciary". As a dually registered entity, WSI has differing obligations depending upon whether an account is an "advisory account" or a "brokerage account". Each account type, necessarily, has products tailored to the interest of the investor under each regulatory regime. There are, by necessity, different supervisory structures and standards applicable to each arrangement. By extension, and regulation, there are different contractual requirements for each account type.

A "brokerage account" has a far different level of duty than an "advisory account". The case law that has developed around the level of "fiduciary duty" owed an investor for a typical, non-discretionary brokerage account shows the duty owed in the "brokerage" account dramatically less than that owed under an account governed by the Investment Advisors Act. The registered representative, by rule, must only make a "suitable" recommendation based upon the information available at the time and has a "fiduciary duty" only to properly execute the transaction as authorized. If there is no recommendation made, there is no suitability obligation. There is no ongoing duty requiring continuing to monitor investments in such an instance.

Here's the rub: With the implementation of the change of the term "fiduciary" for retirement accounts as proposed by the DOL, a third "fiduciary standard" is being created. There will be different standards, documents, contracts and duties for a standard brokerage account, an investment advisory account and an IRA. Many investors have retirement accounts, such as IRAs, alongside taxable accounts. Current regulations virtually require that certain routine transactions, such as purchasing shares of IPOs or other principal transactions, be done in a "brokerage" account. Many purchases or sales of individual bonds are undertaken on a "principal basis" in a "brokerage" account to the benefit of investors. Purchases and sales of individual bonds often result in a better price for investors if executed as a "principal" by the Firm. Regulations continue to evolve to improve pricing transparency for such transactions. Continuing to hold such securities, or other buy and hold investments in a "brokerage account" will incur no additional asset based fees. The point here is that different account types, subject to different regulatory regimes requiring different documents, contracts and duties will necessarily lead to increased costs on the part of the Firm and, more importantly, confusion on the part of investors.

It is common sense that an increased cost burden in a shrinking revenue environment will necessarily lead to a reduction in services. One of the purposes of the change in definition of "fiduciary" is to reduce costs to the consumer. The effect of the change is to increase the documentary and supervisory costs to the provider of the services. Something must give.

At WSI we are looking to require service standards on all retirement accounts. This is a significant part of WSI's reaction to the DOL's redefinition of "fiduciary". This means a segmentation of accounts and the service to be provided to each such segment. Accounts with assets below a certain threshold will be afforded lesser levels of service, including reference of the account to a "no advice" level. The net result will be a reduction in the availability of advice for retirement investors with assets below some established threshold.

The effect of the change in definition of "fiduciary" is to create confusion for both the industry and the investing public as to what, if any, "fiduciary duty" is owed on a particular account or transaction. An investor's taxable brokerage bond account has a different duty than that investor's taxable equity advisory account and both have different duties than that same investor's IRA which may include the exact same securities as are held in either taxable account.

The change in the definition of "fiduciary" will also see the reduction in available resources for retirement investors with a greater emphasis on impersonal "robo" advice and/or "no advice" arrangements.

The solution is a comprehensive look at the level of "fiduciary" duty across all accounts, products and types of transactions. Differing duties imposed on different account types, products and the characterization of a transaction as "principal" or "agent" can only lead to investor (and industry) confusion. A comprehensive review and redefinition of "fiduciary" applicable across all account types, products, transactions and relationships will simplify the regulatory scheme overseeing the investment landscape and lead to innovation of products and services with resultant cost reductions for both the industry and investing public. The reduction in costs in compliance by simplifying the regulatory landscape will make investment advice for smaller retirement accounts more available to the benefit of retirement investors. Simplifying regulation does not necessarily lead to a reduction in investor protection.

We would urge a further delay in the implementation of the rule regarding the redefined "fiduciary" applicable to retirement accounts. A delay would allow a thorough review of the rule and the definition of "fiduciary". We believe that a uniform definition of "fiduciary" and the attendant duties and responsibilities to act in the best interest of investors accompanying such a standard, should be applicable across all securities accounts, products and transactions.

Respectfully Submitted,

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