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EBSA.FiduciaryRuleExamination@dol.gov

Office of Exemption Determinations, EBSA (Attn: D-11933)
U.S. Department of Labor
200 Constitution Avenue, N.W., Suite 400
Washington, DC 20210

Reference: RIN 1210-AB82

Ladies and Gentlemen:

In light of the Department of Labor's ("Department") July 6, 2017 additional requests for information ("RFI") regarding its fiduciary rule¹ and related prohibited transaction exemptions², (the "Rule"), we believe that the January 1, 2018 applicability date should be delayed to ensure effective implementation of any revisions to the Rule made as a result of responses to the RFI.

In an effort to maintain choices for our clients as to the manner in which they wish to maintain their relationships with their financial advisors (be that on a commission or fee basis, without the imposition of minimum thresholds on retirement accounts), balancing customer choice and compliance under the Rule is a significant undertaking. We want to do it right. Therefore, we urge that the January 1, 2018 date be delayed by a minimum of 12 months. This would allow us the time to implement technology systems changes, product changes and compensation changes in a thoughtful cost-effective manner.

Our answers to the questions posed in the RFI regarding a potential delay of the Rule's implementation date are set forth below:

¹ See <https://www.gpo.gov/fdsys/pkg/FR-2017-07-06/pdf/2017-14101.pdf>. On March 2, 2017, the Department previously requested comments on the Rule, see <https://www.gpo.gov/fdsys/pkg/FR-2017-03-02/pdf/2017-04096.pdf>.

² The Best Interest Contract Exemption, the Principal Transactions Exemption and amendments to Prohibited Transaction Exemption 84-24.

Would a delay reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments?

The answer is a resounding “yes”. The changes required to comply with the prohibited transaction exemptions scheduled to take effect in January 2018 are extraordinarily expensive, complicated and interrelated. Even if a financial institution has the in-house capability to make the program and system technology changes required by the Rule, despite market developments, sourcing data needed for compliance purposes is extremely challenging. For example, no vendor has emerged offering a comprehensive set of the retirement plan data needed to complete the detailed comparison required to onboard an IRA account. Additionally, given the market developments and unsettled state of mutual fund share classes it is difficult to build operating systems that take into account rights of exchange or rights of accumulation that may not exist for that share class. Absent a delay, it is likely that financial institutions may greatly reduce the number of products available for purchase in retirement plan accounts, which hardly benefits retirement investors. A delay in implementation of the Rule will give financial institutions more time to thoughtfully implement operational changes supporting a broader range of products.

Would such a delay carry any risk?

On the contrary, it will reduce wasted implementation effort, give participants more time to understand the new business models, and allow for more efficient implementation of a fiduciary standard in a consistent fashion.

A delay is necessary to allow the industry to fully analyze the requisite changes and to properly make adjustments to their business models, products and services to reflect those changes. Furthermore, time is needed to communicate these changes to financial advisors and their retirement clients in an appropriate and orderly fashion. It should be noted that there are a number of current disclosure requirements for both brokerage and investment advisory business that need to be properly evaluated and sequenced so that retirement plan clients understand the context of additional disclosures. Moreover, we believe that any risks caused by delay are mitigated by the fact that dual registrant broker-dealers/investment advisers are subject to regular sales practice examinations by both FINRA and the SEC, and that both regulators are highly focused on retirement plan accounts.

Would a delay otherwise be advantageous to advisers or investors?

A delay would otherwise be advantageous to both advisers and investors in that it would allow for more efficient implementation of a consistent fiduciary standard across accounts and give participants more time to understand the new business models. Additionally, it would give the Department more time to work in coordination with the SEC to ensure that retirement investors have access to needed products and services while being adequately protected at the same time. The two agencies could, and should, work together to create an approach that would harmonize the standards for retail investors and ensure that financial institutions are not subject to conflicting requirements on the same investment transaction.

What costs and benefits would be associated with such a delay?

While the Rule's intent was to protect retirement investors from conflicted advice and losses to their savings, implementation of the Rule as currently adopted appears to have unintended consequences, *e.g.*, costs involved to investors who now must move to fee-based accounts or, alternatively, will have no financial advisor. A delay will allow for necessary time to observe the impacts of the Rule more fully, and to devise approaches in a cost-effective and meaningful manner whereby the retirement investor can best be serviced.

We appreciate the opportunity to respond to the Department's RFI and strongly urge the Department to delay the January 1, 2018 date for a minimum of 12 months in order to ensure that the Rule does not cause disruption, loss of services and loss of choices for retirement investors.

Sincerely,



Nina McKenna
Chief Legal Counsel & General Counsel
Advisor Group, Inc