BDA Bond Dealers of America

1909 K Street NW • Suite 510
Washington, DC 20006
202.204.7900
www.bdamerica.org

July 21, 2017

Submitted Electronically

Office of Exemption Determinations
Employee Benefits Security Administration (EBSA)
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue NW
Suite 400
Washington, DC 20210

RE: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemption (RIN 1210-AB82)

Ladies and Gentlemen:

On behalf of the Bond Dealers of America ("BDA"), I am pleased to submit this letter in response to the Department of Labor's Request for Information ("RFI") (RIN 1210-AB82). BDA is the only Washington, DC based trade association representing middle-market and regional broker-dealers active in the U.S. fixed income markets. This letter is specifically focused on the question of delaying the January 1, 2018 applicability date for the Best Interest Contract Exemption and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs.

BDA believes that delaying the January 1, 2018 applicability date is the proper course of action for the Department of Labor as it continues to evaluate this highly burdensome rule.

BDA strongly supports delaying the applicability dates of the Best Interest Contract Exemption and Principal Transaction Exemption until such time as the Department completes its review of the rule and the exemptions. BDA member firms do not believe that the Department should allow the exemptions to become applicable before it has completed its review and proposed new, more streamlined, and more legally sound approaches for delivering the investor protections that the exemptions are designed to provide.

It would be an enormous regulatory and compliance burden to not delay the applicability date and then propose amendments to the rule and exemptions.

It would be highly burdensome for dealers to continue to work with outside vendors and counsel to put the necessary systems in place to comply with the January applicability date if the Department intends to propose amended, streamlined exemptions in the future. Dealer costs to develop, test, and implement expensive compliance solutions, including compliance with contractual obligations, would become sunk costs. Additionally, allowing the applicability date of the exemptions to stand only to then make significant amendments in the future would cause widespread investor confusion. BDA members believe it would be a waste of resources to have the applicability dates remain unchanged as the Department considers the necessary amendments.

Cooperation with the Securities and Exchange Commission is essential.

On June 1st, 2017 the Securities and Exchange Commission released its own RFI on the standards of care applicable to non-retirement investors to which the public, including broker-dealers impacted by the Department's rule, will respond.

BDA continues to believe that the optimal approach for retirement and non-retirement investors is a federal, disclosure-based regulatory standard-of-care that is harmonized to the greatest degree possible. This standard of care should not take an overly prescriptive approach to principal trading by restricting investor access to dealer inventories. Investors benefit from principal trading by accessing unique inventory and through dealer price improvement versus the market price. Additionally, investors are protected by the current broker-dealer regulatory framework of FINRA and MSRB rules, including the duty of best execution, fair pricing rules, and, effective May 2018, dealers will be required to disclose markups and markdowns on certain retail transaction confirmations. These rules will be vigorously enforced and are in place to protect and inform investors. The Department and the SEC should examine these rules and seek to not add duplicative regulations to the broker-dealer regulatory regime.

Delaying the applicability date of the exemptions will facilitate greater time for the Department to work with the SEC, which should result in a better federal investor protection framework and a less burdensome regulatory process for market participants.

BDA agrees with the Department's legal view related to the Best Interest Contract Exemption and class litigation.

BDA believes that the Department should allow for a best interest standard of care that does not bar arbitration in favor of class litigation. BDA members are concerned that the class action lawsuits associated with this rule will be a highly burdensome legal issue

for market participants unless the Best Interest Contract Exemption is amended. Given the Department's recently stated legal position that it will not defend the anti-arbitration clause of the Best Interest Contract Exemption and the fact that the contract is a significant compliance, client communication, and legal burden that will become applicable in January, BDA believes it is another primary reason for why delaying the applicability date until such time as the Department is able to offer significantly revised exemptions is the right thing to do.

In conclusion, BDA is encouraged by the Department's acknowledgement of the complex policy issues inherent in the exemptions and the need for streamlining. It would be a logical and welcome next step for the Department to delay the January 1, 2018 applicability date until it has had the time to review the rule thoroughly.

Thank you for the opportunity to provide comments.

Sincerely,

Mike Nicholas
Chief Executive Officer