

July 21, 2018

[EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Reference : EBSA-2014-0004

Ladies and Gentlemen:

I appreciate the opportunity to provide comments regarding the Department of Labor's ("Department") request for information regarding the Fiduciary Rule (the "Rule") and related Transaction Exemptions. As a broker/financial adviser, I believe that a delay to the January 1, 2018 applicability date of the provisions in the Best Interest Contract Exemption, the Principal Transaction Class Exemption, and Prohibited Transaction Exemption 84-24 (together, the "Exemptions") relating to the redefinition of the term "fiduciary" under section 3(21) of the Employee Retirement Securities Act of 1974, as amended ("ERISA") and section 4975(e) of the Internal Revenue Code, as amended, (the "Rule") is in the best interest of my clients who are investors with assets in ERISA accounts and/or Individual Retirement Accounts (an "IRA" and together with ERISA accounts, "Retirement Accounts").

I strongly believe that the Rule has caused great disruption, loss of services, and loss of choices for my clients when investing their retirement assets. Some of the limitations I have seen first-hand, while other limitations are prevalent throughout the industry<sup>1</sup>. I believe that should the Rule and Exemptions as finalized in April 2016 take effect without further changes, such disruption, loss of services, and loss of choices for my clients will only increase. I believe the Rule and all the corresponding Exemptions must be reexamined, especially, considering expected rule making by the Securities and Exchange Commission (the "SEC"), and it is highly unlikely that the SEC's rule making process will not be complete by January 1, 2018. Accordingly, I believe a delay of at least twenty-four (24) months is in the best interest of my Retirement Account investors, and would provide an opportunity for the Department, the SEC and other regulatory or self-regulatory bodies to coordinate a rule that protects such investors and yet does not disrupt the markets.

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<sup>1</sup> <http://www.cutimes.com/2017/05/31/new-evidence-of-fiduciary-rules-harm-chamber-repor>, citing a U.S. Chamber of Commerce Report and noting that "92% of firms surveyed say that the rule could limit or restrict investment products... 71% [of advisors] will stop providing advice to at least some of their current small accounts due to the risk and increased costs of the rule; Other surveys found that 35% of advisors will stop serving accounts under \$25,000, and 25% will raise their client minimum account thresholds."

A delay is necessary to allow the Department to work with the SEC to ensure that retail investors, such as my clients, are not further harmed by the Rule in its current form. Both the Best Interest Contract Exemption and The Principal Transactions Exemption have impacted clients, including mine, by taking away their choices with respect to their Retirement Accounts. It is difficult to reconcile the needs and desires of my clients with the new limitations on their ability to access certain products, at certain prices, with certain yields, when such limitations or prohibitions have been a direct result of the Rule. Delaying the rule so that the SEC and Department can work together to harmonize the rules that govern how transactions in securities occur, while still ensuring an efficient market will protect investors while being less likely to limit their choices. In fact, I have been forced to re-focus my practice and I am no longer providing services to certain clients at all, as a direct result of the requirements, limitations and prohibitions stemming from the Rule. In order to protect, and not limit my clients' choices or curtail my clients' access to investment advice, scenarios such as the following ones *that my clients have been faced with* must be addressed by both the Department and the SEC:

- An investor with an IRA is in the “distribution phase” of investment. The investor relies on the income from his IRA and, in turn, relies on his adviser/broker to select and purchase income producing securities within that IRA. Very often, securities such as preferred stocks meet the investor’s risk tolerance while producing the requisite level of current income. While the purchase of preferred stocks was permitted previously, now, he is no longer permitted to make such purchases in his IRA.<sup>2</sup> Since the nature of preferred stocks is that they take precedence in a company’s capitalization, and they otherwise meet his risk tolerance, time horizon expectations and objectives for his account, the investor is angry that he can no longer purchase these stocks in his IRA, as had been his choice and as he had done previously.
- An investor, who is the President of a small community bank, has \$25 million in investable assets and meets the definition of “accredited investor” under the Federal securities laws; he has multiple accounts, including an IRA. But, with “only” \$25 million, he is not sophisticated enough from the Department’s perspective to engage in certain transactions, nor does he have an independent fiduciary for the accounts he holds with his broker. He often uses the assets in his IRA to purchase ownership interests in his community bank. However, because the bank often issues the stocks through a private placement, and his broker is a placement agent for his bank, he is now required to purchase such interests through a different firm where he is charged higher fees because he needs to open a new, stand-alone

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<sup>2</sup> See, <http://www.investmentnews.com/article/20170524/FREE/170529959/wells-fargo-advisors-restricting-investments-for-retirement-accounts>; “Other prohibited fixed income products in retirement accounts include: corporate convertible securities and structured products; preferred stock; international debt; unregistered debt; and private label mortgage-backed and other asset-backed securities.”

account (and he does not receive the benefit of relationship pricing), or he must forgo purchases in his IRA.

- An investor who has been purchasing taxable municipal bonds in his IRA for a number of years, in part because of the attractive yield potential associated with such bonds, has an account with a broker who is an expert in the investor's local municipal market. The investor often purchases new issues, which in many cases are issues for which his broker is a member of the underwriting syndicate<sup>3</sup>. The investor can purchase the bond at a better yield by purchasing the bonds in the initial underwriting; the investor can get the bonds for the same price as institutional investors. But now, to sell the same municipal bond the investor's broker must wait until someone else has purchased it, hope for a reoffering, and only then can the broker acquire it for the client, on an agency basis at a higher price, after a mark-up and, accordingly, a lower yield. The investor has been disadvantaged because the bond is not as attractive, moreover it is now more expensive for him to purchase it, than it was before the Rule. Thus, the Rule has led to limitations which are clearly not in the best interest of the client.

My clients are now being limited - they are being kept from being able to access investment advice, from being able to invest in things that they want to invest in, from accessing certain products at the best prices (yields, etc.), and from things that are in their best interest - as a direct result of the Rule and the steps financial institutions have been required to take because of the Rule. Allowing the SEC and other regulators or self-regulatory organizations more time to work with the Department to harmonize all existing regulations seems the most prudent course of action. Accordingly, I strongly recommend the Department delay the January 1, 2018 date for a minimum of twenty-four (24) months beyond the Department's full review of regulatory language and exemptions that constitute the change to the definition of fiduciary.

Sincerely,

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<sup>3</sup> See, <http://www.investmentnews.com/article/20160707/FREE/160709966/dol-fiduciary-rule-gets-it-half-right-on-the-municipal-bond-market>. "One reason [the Rule] could negatively affect investors in muni bonds is that the \$3.5 trillion municipal bond market is made up of 65,000 different issuers of debt. This is not a globally commoditized market, like Treasury bonds or even corporates."