

July 21, 2015

By Electronic Mail (*e-ori@dol.gov*)

Office of Regulations and Interpretations
Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: RIN 1210-AB32 – Comments on Proposed Rule for Conflict of Interest and Related Exemptions

Ladies and Gentlemen:

As Chairman and Chief Executive Officer of Stifel Financial Corp.¹ (“Stifel”), I appreciate the opportunity the Department of Labor (“DOL”) has given Stifel, and other interested parties throughout the industry, to comment upon your new proposed rule for Conflicts of Interest and Related Exemptions. We support the comments submitted by the Securities Industry & Financial Markets Association (“SIFMA”) and by the Financial Industry Regulatory Authority (“FINRA”) in their comment letters. We also endorse the call for a single best interest standard as outlined by FINRA in their comment letter. (the “FINRA Best Interest Standard”)

The IRA marketplace is huge and growing. In a 2011 study submitted to the Department in response to a similar proposal, Oliver Wyman, Inc. examined the impact of such a proposal on the IRA marketplace (the “Wyman Report”). In that report, they highlighted the fact that IRAs represent \$4.5 trillion held in 49 million accounts.² It is estimated that by 2016, that marketplace will grow to \$7 trillion.³

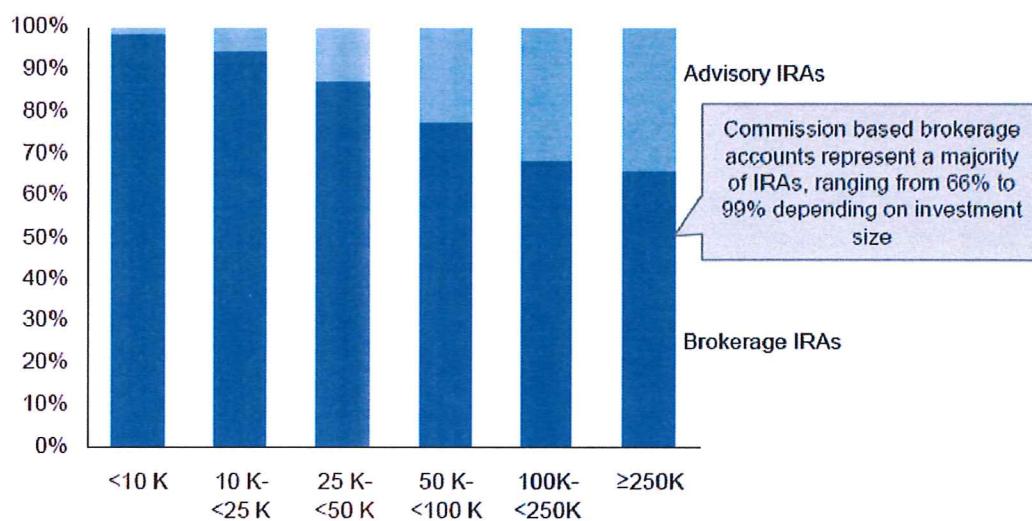
¹ Stifel Financial Corp. is a financial services holding company headquartered in St. Louis, Missouri, that conducts its banking, securities, and financial services business through several wholly-owned subsidiaries including two domestic retail broker-dealers: Stifel, Nicolaus & Company, Incorporated and Century Securities Associates, Inc. Stifel Financial’s largest operating subsidiary is Stifel, Nicolaus & company, Incorporated, a full-service broker-dealer with over 2,000 registered representatives in more than 300 branches in 45 states with over \$175 billion in client assets under management.

² Oliver Wyman Report “Assessment of the Impact of the Department of Labor’s Proposed “Fiduciary” Definition Rule on IRA Consumers”, April 12, 2011.

³ Cerulli Associates, *The State of the Rollover and Retirement Income Markets: Sizing, Segmentation and Addressability* (Dec. 2011)

From a business model perspective, the IRA market is serviced via two main models: the advisory model and the brokerage model. The key difference between the advisory model and the brokerage model is that in an advisory relationship, the investment advisor is ultimately responsible for the investment decisions in the account, and is generally governed by the provisions of the '40 Act, while in the brokerage model the investor decides, and such brokerage accounts are governed by the provisions of the '34 Act. More importantly for those purposes, advisory accounts are virtually always structured as "wrap fee" accounts, while brokerage IRAs are compensated through transaction specific commissions. The Wyman Report noted that the vast majority of IRA accounts are commission based brokerage accounts, noting that the smaller the account, the more likely it is to be a brokerage account. The following chart illustrates this point:

Proportion of IRAs using each relationship model by asset size segment, year-end 2010



Source: Oliver Wyman study sample

It is important to note that the DOL proposal does not significantly impact the advisory model. Instead, the proposed DOL rules would expand the fiduciary standard of ERISA to self-directed IRA brokerage accounts held at firms such as Stifel. However, as outlined in greater detail below, the unintended consequence of such expansion will be to force brokerage firms to stop offering self-directed IRA brokerage accounts in favor of placing such accounts on their advisory platforms. The net effect of that will be to eliminate investment advice altogether to many small IRA investors, while dramatically increasing the costs to millions of others. This is being done with little or no proven tangible benefit to the affected investors.

The unintended consequence of forcing firms like Stifel to abandon offering brokerage accounts to basic self-directed IRAs (governed by the '34 Act) and instead placing such accounts on an advisory platform (governed by the '40 Act) will be a dramatic increase in direct and indirect costs to clients holding such accounts. With respect to direct costs, Stifel alone has over 300,000 IRA accounts. Over 80% of these IRAs are non-managed brokerage accounts. It is important to note that Stifel's non-managed IRAs are charged, on average, 47 basis points *less* than Stifel's managed IRA accounts. Moving these non-managed IRAs to Stifel's advisory program would cost these investors in excess of \$150 million annually. In addition, a straw poll of five SIFMA member firms revealed similar results. The estimated additional costs to the clients of the five firms surveyed (all regional firms), representing 1.5 million accounts, is approximately \$2 billion annually. Extrapolating from these results, a mass movement of brokerage IRAs to advisory programs will be monumental and requires further cost benefit analysis.

With respect to indirect costs, a review of the various studies submitted by SIFMA and other industry representatives, including the Wyman Report, the NERA Consulting Report, and the Deloitte Study reveal several common themes:

1. Retirement investors save more when they have the services of a financial advisor.
2. Those investors are better diversified.
3. Their performance is not significantly different if advised for a fee or a commission.
4. The cost of implementing the DOL proposal is significant.

These studies highlight the need for average retirement investors to have as an option a commission based retirement account rather than being forced to "go it alone", or pay fees for services they don't want or need. With respect to the importance of advice, the DOL estimated in 2011 that consumers who invest without professional advice make investment errors that collectively cost them \$114 billion per year. Under the DOL's present proposal, when combined with the likelihood that a large number of investors will lose access to advice, aggregate costs to investors will be well beyond any benefit that could be derived from such proposal. This is in addition to the estimated \$4.7 billion start-up costs to firms, as well as ongoing costs of over \$1 billion a year.⁴ All of these costs will ultimately be borne by investors.

As outlined in greater detail in both the SIFMA and FINRA comment letters, the proposed "Best Interest Contract Exception" and "Principal Transaction Exemption" are unworkable for many reasons. We would incorporate all of their observations herein by reference. The consequence of this unworkable standard will be to force many firms, such as Stifel, to restrict the services they offer to basic IRA investors. Doing so will limit the choices investors have as how they choose to pay for investment services (i.e. commission-based), and in the case of smaller account holders that don't meet firms' minimum balance requirements, deny them access to investment services altogether. This is of particular concern to such smaller investors, given the fact, that according to the Wyman Report, 98% of IRA investors with less than \$25,000 invested are in brokerage relationships as opposed to advisory relationship. The executive summary of the NERA analysis submitted by SIFMA to the Department said it best: "*The DOL proposal may effectively make the commission-based brokerage model unworkable for*

⁴ SIFMA Executive Summary submitted July 20, 2015
One Financial Plaza | 501 North Broadway | St. Louis, Missouri 63102 | (314) 342-2000 | (800) 488-0970
Stifel, Nicolaus & Company, Incorporated | Member SIPC & NYSE | www.Stifel.com

investment accounts covered by ERISA due to the operational complexity and costs of compliance that would be required under the Best Interest Contract Exemption.”

As a solution to the unworkable rules proposed by the Department, Stifel supports the FINRA Best Interest Standard. Specifically, Stifel believes that a universal best interest standard would best serve its clients’ interests. However, like FINRA, we believe that a single standard applicable to both advisory accounts regulated by the ‘40 Act, and brokerage activities regulated by the ‘34 Act, is the only approach that makes sense both for clients and the firms that service them. We believe that a universal best interest standard is the only viable approach because at Stifel, as with most brokerage firms, our clients maintain different types of accounts, both advisory and brokerage, within the same portfolio. These accounts are almost always handled by the same person, who is dually licensed as a Registered Investment Advisor and Registered Representative. To have those accounts held to different standards, with different limitations on investment choices, is confusing to clients and fails to better protect them in any meaningful way.

Furthermore, the DOL itself recognizes the value of the brokerage model. The preamble of the DOL proposal cites the need to “*preserve beneficial business models for delivery of investment advice by separately proposing new exemptions from ERISA’s prohibited transaction rules that would broadly permit firms to continue common fee and compensation practices, as long as they are willing to adhere to basic standards aimed at ensuring that their advice is in the best interest of their customers*”. However, those proposed exemptions fail to provide that solution, effectively eliminating the commission-based brokerage model.

The DOL’s proposal is to be commended for highlighting the need to insure that retirement investors can obtain financial advice without fear of being subjected to abusive sales practices occasioned by inherent conflicts of interest. However, the proposal is so flawed, in conflict with existing rules and regulations, burdensome and so expensive to implement that it will have the unintended consequence of causing many smaller investors to lose the benefit of the services of an investment advisor altogether. IRA brokerage accounts which are moved to advisory accounts will be forced to pay fees well in excess of the commissions they currently pay. We would urge you to reconsider the overly complex and unworkable DOL proposal. Instead, Stifel supports FINRA’s Best Interest Standard which harmonizes the rules pertaining to all brokerage accounts, whether governed by the ‘34 Act or the ‘40 Act. This solution will preserve investor choice, eliminate confusion, and provide a cost effective means for investors (and in particular smaller investors), to save for their retirement. This matter is of utmost importance to investors and as such, I would like an opportunity to testify at your upcoming public hearings.

Yours truly,

A handwritten signature in black ink, appearing to read "Tom Stifel", with a long horizontal line extending to the right.