HSBC

September 15, 2017

Via Electronic Mail to EBSA.FiduciaryRuleExamination@dol.gov

Office of Exemption Determinations
Employee Benefits Security Administration, D-11712, 11713, 11850
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Extension of Transition Period and Delay of Applicability Dates for Prohibited Transaction Exemptions 2016-01, 2016-02, and 84-24 (RIN 1210-AB82)

Ladies and Gentlemen:

HSBC North America Holdings Inc., on behalf of itself and its subsidiaries, including HSBC Securities (USA) Inc. (collectively, "we" or "HSBC") appreciates the opportunity to comment on the Department of Labor's ("Department's") proposal to delay the applicability of certain conditions of the Best Interest Contract Exemption (Prohibited Transaction Exemption ("PTE") 2016–01), the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02) and PTE 84-24 and to extend the "transition period" to July 1, 2019.

A delay is necessary, given that:

- ***The Department needs additional time to complete its reexamination of the rules***. The Department is in the process of reexamining the fiduciary rule and related exemptions as required by the President's Memorandum[1] and has stated that "more time is needed to carefully and thoughtfully review the substantial commentary received in response to the March 2, 2017, solicitation for comments and to honor the President's directive to take a hard look at any potential undue burden."[2]

- ***There remains significant uncertainty regarding the final form of the fiduciary rule and exemptions***. The Department acknowledged that "[w]hether, and to what extent, there will be changes to the Fiduciary Rule and PTEs as a result of this reexamination is unknown until its completion."[3] The Department also states that the reexamination will help with respect to approaches that may "reduce costs and increase benefits to all affected parties, without unduly compromising protections for retirement investors."[4] The Department has stated that it "anticipates it will propose in the near future a new and more streamlined class exemption built in large part on recent innovations in the financial services industry," and that "neither

[1] Memorandum of February 3, 2017, for the Secretary of Labor re: Fiduciary Duty Rule, 82 Fed. Reg. 9675.
[2] 82 Fed. Reg. 413,70-71 (Aug. 31, 2017).
[3] *Id.*
[4] *Id.*

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such a proposal nor any other changes or modifications to the Fiduciary Rule and PTEs, if any, realistically could be implemented by the current January 1, 2018, applicability date."[5]

- ***Coordination with the SEC***. The Department has indicated that it wishes to coordinate with the SEC with respect to any changes to the ruleset, including proposed new exemptions.[6] This coordination is important and will take time.

Absent a delay, firms will have no choice but to ready themselves for the January 1, 2018, applicability date, notwithstanding that the rules may be significantly changed from their current state.[7] A delay will assist service providers in avoiding significant costs associated with complying with conditions that may well be revised, repealed, or replaced. More importantly, a delay will help to avoid attendant investor confusion, while preserving the protections that are currently applicable.[8]

For the reasons set forth above, the Department should provide a delay. We request a delay of at least 18 months from the date on which the Department finalizes, through a final rule, any changes to the rules in connection with the reexamination or formally communicates that there will be no changes thereto. Such a delay provides a level of certainty that will curb potentially unnecessary expenditures to comply with rules and conditions that may change, as well as marketplace disruption and investor confusion. The additional delay of at least 18 months post-certainty will provide financial institutions with time to implement the rules, in whatever form.

In any case, we also request that the Department issue extensions of non-enforcement policies[9] consistent with any delay.

We would be pleased to provide further information or assistance to the Department or its staff. Please contact the undersigned or Jane Knight, Associate General Counsel (212-525-8134) if we can provide any additional information.

Very truly yours,

Jeanine L. McHugh

Jeanine L. McHugh
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[5] *Id.*
[6] *See id.*
[7] *See id.*
[8] The Department stated: "If advisers fully adhere to these requirements, affected investors will generally receive the full gains due to the fiduciary rulemaking." 82 Fed. Reg. 16,902, 16,909.
[9] *See generally* Field Assistance Bulletin 2017-01, 2017-02, 2017-03.