March 14, 2017

The Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Definition of Fiduciary Regulation
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: RIN 1210-AB79

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association ("SIFMA")[1] is pleased to provide comments regarding the Department of Labor's ("Department") proposed delay in the applicability date of the final rule (the "Rule") under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that redefines the term "fiduciary" under section 3(21) of ERISA and section 4975(e) of the Internal Revenue Code of 1986, as amended (the "Code") and in the applicability dates of the exemptions granted with the Rule. We strongly support the Department's proposed delay and hope that our comments are helpful in pointing out why a delay is in the interest of participants and beneficiaries and other retirement investors.

I. Delay Necessary to Avoid Customer Confusion

While the Department and the industry have been very focused on the new rules, individual investors -- those most impacted by these rules -- have not been focused on how their products, services and costs may be changing as a result of these new rules. Clients need more time to understand, process, and make decisions regarding their accounts and services. Our members have worked tirelessly to put in place the policies and procedures necessary to make the enormous shift required by the new rules, to draft

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

and implement training, to draft client correspondence and explanations of revised product and service offerings necessitated by the rule, to change their agreements with product manufacturers in an attempt to meet the requirements of various exemptions, to change guidelines for current accounts, to change sweep vehicles, to change compensation structures – the list goes on. However, there is a great deal of work left to be done, such as developing supervisory tools and refinements in order to implement these significant new rules, in a proper and responsible manner, without causing further confusion and disruption to retirement investors.

Our members have spent hundreds of millions of dollars getting ready to comply with the Rule, and a group of our largest members alone estimate that they would need to spend an additional $300 million to be ready for the April 2017 compliance deadline. If the entire industry is in roughly the same position, more than a billion dollars must still be spent to be ready for the April applicability date. Further, members need to plan for the January 2018 compliance date. Without a corresponding extension of the transition period, members will continue to expend substantial resources. The Department should also consider an extension of the transition period in light of the expenditure to prepare for the January compliance date given the proposed delay and review of the rule. The changes required here are seismic and affect every aspect of a business. If the Rule is changed, firms' compliance spending will have been unnecessary.

The April applicability date also presents significant problems for broker-dealers and asset managers as they consider the creation and implementation of new classes of shares for mutual funds that would assist in meeting some of the compliance requirements of the Rule. In some instances, there are new class shares that have been proposed and approved, and others that have not yet been approved. These new classes of shares must be approved by the SEC and the lack of coordination with the DOL and minimal implementation period provided by the Department has frustrated efforts to accommodate these changes. This type of change would require technology enhancements to accommodate this pending share class structure. These changes currently in development are required in order for investors to utilize these new share classes. In addition, these system enhancements need to be evaluated and tested to ensure a consistent and positive investor experience.

If the applicability date is not delayed, there will be confusion nearing chaos for retirement investors as our members try to communicate with millions of clients to describe options that may go into effect in April, but then may change if parts of the rule or the exemptions are reconsidered after the Department's report to the President. We think that a delay is far preferable than the potential for massive confusion for investors.

II. Delay Necessary to Address Questions Raised in the President's Memorandum

The President has asked the Department to review several factual questions relating to experience preparing for the Rule and the exemptions since they were published last April. Because that data is not part of the Department's original economic study and since the data may lead to different conclusions than those the Department reached based on data that was out of date and incomplete, we think it would be a mistake to allow the Rule to become applicable before the study called for by the President is completed. We note that comments on the President's questions are due on April 17 and, if the extensive number of comment letters received during the Rule's previous comment periods is any indication, one would expect them to be voluminous. It seems unlikely that conclusions can be reached by June 9 and digested by the new Secretary and Assistant Secretary, as well as the White House in that time-frame.

As stated above, SIFMA strongly supports the delay in the applicability date for 60 days. For the reason stated above, we further think it would be more realistic and less disruptive to the financial services industry and their clients to provide a delay of both the applicability date and extension of the transition period. SIFMA also strongly supports a longer delay of 180 days during which time the Department will receive additional comment and data. A 180-day delay is more realistic in light of the scope of the work to be accomplished.

While we believe the evidence will reinforce our 2015 comments that retirement savers will be harmed by the approach the Department has taken, we ask that the Department provide an additional delay to complete the review. This requires a review of the items raised in the President's Memorandum, among other tasks.

The President's Memorandum asked, in pertinent part:

> (i) Whether the anticipated applicability of the Fiduciary Duty Rule has harmed or is likely to harm investors due to a reduction of Americans' access to certain retirement savings offerings, retirement product structures, retirement savings information, or related financial advice;
> (ii) Whether the anticipated applicability of the Fiduciary Duty Rule has resulted in dislocations or disruptions within the retirement services industry that may adversely affect investors or retirees; and
> (iii) Whether the Fiduciary Duty Rule is likely to cause an increase in litigation, and an increase in the prices that investors and retirees must pay to gain access to retirement services.

The failure to delay the applicability date of the Rule in the face of this clear mandate from the President would be irresponsible. SIFMA is prepared to provide evidence that millions of retirement investors have had, or will have, because of this regulation, their choices of products and services reduced and in many cases, their access to retirement and investment information adversely affected.

On the litigation question, there can be no doubt that the Rule is likely to cause an increase in litigation, since the entire enforcement mechanism under the primary exemption accompanying the rule is private litigation. Indeed, that enforcement mechanism is one of our members' primary concerns with the Department's approach.

III. Delay Necessary Because Current Data Relied Upon by the Department is Flawed

Further, the current cost analysis the Department is relying upon is significantly flawed and based on incorrect assumptions. We will work to provide data to the Department that corrects the record, and updates the Department's understanding of the changing products and services in this market.

In addition, the Department significantly underestimated the compliance costs that would be needed to comply with the rule. For example, the Department determined that some of its original data requirements should be eliminated from the rule, such as certain point of sale and annual disclosures. The Department assumed that because of those changes, the costs associated with the other requirements would be reduced. However, that has not been the experience of our member firms because various compliance and supervision programs still needed to be created to ensure compliance with the rule, which was not a cost that could be decreased based on a few requirements being removed.

IV. Delay Must Become Effective on Date Published

It is critical that the delay from the Department become effective on the date it is published in the Federal Register, and not be delayed beyond that time. We are very concerned about the impact on retirement investors should the delay not be effective in a timely manner. The Department has adequate authority under the Congressional Review Act to waive any waiting period required under that law and we strongly urge the Department to do so. It's hard to dispute that there is good cause that notice is impracticable, unnecessary and contrary to the public interest. We urge the Department to make it clear that the delay is effective on the date that the final rule is published in the Federal Register.

We strongly urge the Department to delay the applicability date and extend the transition period of the definition of fiduciary package immediately.

Sincerely,

Kenneth E. Bentsen, Jr.
President and CEO
SIFMA