SIFMA DOL Fiduciary Seminar
Wednesday, May 11, 2016

Kenneth E. Bentsen, Jr., President and CEO of SIFMA
Opening Remarks
As prepared for delivery

Good morning. I'm Ken Bentsen, president and CEO of SIFMA. Thank you for joining us today for SIFMA's Department of Labor Fiduciary Rule seminar. We had always intended to hold this seminar within a month after the rule's release, with the goal of providing our members with a deeper understanding of the rule's text and its vast prescriptions and mandates as well as next steps for operationalization and implementation by financial firms.

That being said, one month is not a lot of time to comb through the 1,025 pages regulatory text and provide a thorough analysis and interpretation. Nor is it a lot of time to put together a conference, so before we get started I'd like to thank our members from SIFMA's Retirement and Savings Committee and my colleagues at SIFMA for the outstanding job of pulling together such a strong program in such a short timeframe. I'd particularly like to thank Lisa Bleier who has spent countless hours reviewing the rule and helped put today's program together and Jillian Enoch who has been leading our operations and implementation working group along with members of SIFMA's Operations and Technology team. In fact, many of the SIFMA subject matter experts from OGC and Business Policy have been pulled in to assist on various aspects of the rule as it touches so much. I would also like to thank my colleagues on the Conferences team for making sure this event comes off smoothly. I also want to thank and acknowledge the many panelists, leaders from both the industry and ERISA bar, for taking time prepare for and be here today. And, lastly, but not least, our sponsors, E&Y and Pricemetrix platinum sponsors and Broadridge silver sponsor. Your support for today's event and many others help us serve our members and the industry.

We had initially intended to host today's event in the SIFMA conference center; however, we changed the location to a larger venue due to high demand. The need for a larger conference space to accommodate all of you here today is a testament to the complexity of the rule, the challenges it creates for you and your firms, and the uncertainty surrounding its impact on the brokerage industry and the clients it serves.

The long debate over the Department of Labor's redefinition of fiduciary under ERISA was most certainly not about whether the industry's supported a fiduciary duty. The record of the industry's support for a best interest standard is quite clear and well documented, and pre-dates the Department's initial rule proposal. Notwithstanding some rather incendiary comments and assertions that lacked factual basis, such as "business model built on bilking" clients, the industry operates in a highly competitive and strictly regulated environment where effectively clients interests must be put first

and most firms that provide retail financial advisory services operate under both SEC/FINRA suitability and SEC fiduciary standards.

In fact, of the 375,000 registered representatives who actually advise retail clients, over half are also acting as an investment adviser operating under a "fiduciary" standard. In addition, many of the nation's brokerage firms are either dually registered as a registered investment advisor or have an affiliate that engages in investment advisory activities.

Most if not all of SIFMA's members who serve retail clients fit this mold and many of their clients have both types of accounts (not just qualified retirement accounts like IRA's) as the client chooses the type of product and service he or she wishes to purchase. The firms have established robust compliance regimes to operate under both standards, subject of course to a robust regulatory, supervision, examination and enforcement regime. Ironically, it is the broker-dealer commission-based regime which has the greatest level of supervision, examination and enforcement oversight with the most client friendly form of redress.

Further, and no less important, it is because of this dual structure that the industry, through SIFMA and other trade associations as well as multiple industry leaders, called for the establishment of a uniform fiduciary standard of care for brokers and advisers when providing personalized investment advice. The industry took this position, in 2009, again well before the Department published its first proposal, because we recognized that it was in our clients' best interest to streamline an otherwise confusing regulatory framework. And by the way, we also called for enhanced supervision and examination of investment advisers comparable to that of broker-dealers. And, we advocated that the pre-eminent federal securities regulator, the Securities and Exchange Commission, should be the agency to do so. Congress clearly believed that when it adopted Section 913 of the Dodd-Frank Act, and we still do today.

But, here we are. So rather than the SEC acting the Department of Labor has, and instead of streamlining the regulatory construct, we may now find it to be more convoluted and most certainly more costly to clients and firms alike. To be fair, the Department of Labor made many changes in its final rule, some which appear helpful and some not so much. Perhaps most troubling is the lack of clarity with respect to the new prescriptions and mandates, particularly under the new Best Interest Contract Exemption, which combined with a new private right of action established outside the normal legislative process creates the potential for unlimited liability risk hanging over firms and advisers like the sword of Damocles as they seek to serve their clients.

Left unchecked, this could well result in firms having to alter product mixes in an attempt to be compliant with regulation, severely tailored to limit litigation risk, if that's possible, but from a practical standpoint not necessarily in the client's true best interest nor possibly what the client wants. That would be an unfortunate outcome and a policy failure.

As the industry proceeds with implementation, it will be absolutely necessary that the Department, and other regulators who will ultimately touch this new regulation such as FINRA, provide clear guidance and text as to exactly what they intend. Frankly, I do not believe this is an option but rather an obligation. A *sine qua non* of the implementation process.

Fortunately today we will have the benefit to hear from the Department and FINRA as well as leading industry experts and counsel as our members and their clients head down the path toward implementation. Ours is a resilient industry that is highly competitive, which benefits the client, and contrary to some commentators, is the envy of the world. Populated with smart and innovative individuals who put their clients' interests first every day, the industry has and will work to implement and operationalize this rule with laser focus on the client.

It is now with great pleasure that I introduce our next panel who will walk us through the revised definition of fiduciary and its exemptions and explore how retirement advice will be fundamentally affected by the Department of Labor's final rule.

Once again, thank you for taking the time to be here and please enjoy the rest of today's program.