



February 16, 2021

**Via Electronic Submission**

Division of Regulations, Legislation, and Interpretation  
Wage and Hour Division  
U.S. Department of Labor, Room S-3502  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: RIN1235-AA34, Independent Contractor  
Status Under the Fair Labor Standards Act

To Whom It May Concern:

The Securities Industry Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to comment on the Department of Labor’s (the “Department”) notice to delay the effective date of the revised interpretation of independent contractor status under the Fair Labor Standards Act (“FLSA”).<sup>2</sup> We support the Department allowing the final rule to become effective on March 8, 2021, as included in the Department’s final rule.<sup>3</sup>

I. The Department Finalized a Rational Test

The Department’s final rule would replace the existing six-factor “economic realities” test with a similar but streamlined test that ultimately answers whether a worker is in business for themselves or is economically dependent on the employer for work. This final rule would recognize the economic realities of financial advisors (“FAs”) affiliated with SIFMA’s members as independent contractors to enjoy the benefits of this status.

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<sup>1</sup> SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> 86 Fed Reg. 8326 (Feb. 5, 2021)

<sup>3</sup> 86 Fed Reg. 1168 (Jan. 7, 2021)

For FAs that choose this route instead of being an employee of a broker-dealer (“BD”), independent contractor status allows them to own and operate their own small business (formed as sole proprietorships, professional corporations, partnerships, LLCs, or other legal entities) and control the manner and means of its operation while operating in a highly regulated industry. Our members handle their licensing and supervision in compliance with federal and state regulations and provides the platform to effectuate and record their clients’ transactions.

Independent contractors have long been an integral part of the securities industry. Independent BDs and the nearly 150,000 individuals that affiliate with them as independent FAs serve millions of clients across the U.S., providing them tailored investment advice. Many clients are main street investors that come from modest means and benefit from FAs helping them to invest, save for retirement, pay for their children’s education, and buy insurance to cover the unexpected.

These FAs are entrepreneurs who assume the risks and seek out the rewards of entrepreneurship. They control their own profit or loss. Importantly, FAs own the relationship with their clients – the most valuable asset in the securities industry – and is an important reason that some individuals choose to be an independent contractor. If they wish to affiliate with another broker-dealer, they can take their client base with them.

We appreciate the Department’s efforts to provide clarification and certainty on independent contractor status. We look forward to engaging with you on this important effort. If you have any questions regarding our comments or require additional information, please do not hesitate to contact us at (202) 962-7300.

Respectfully submitted,

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