April 14, 2026

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-AA46, Independent Contractor Status Under the Fair Labor Standards Act, Family and Medical Leave Act, and Migrant and Seasonal Agricultural Worker Protection Act

To Whom It May Concern:

The Securities Industry Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the Department of Labor's (the "Department") notice of proposed rulemaking to revise its interpretation of independent contractor status under the Fair Labor Standards Act ("FLSA")(the "Proposal"). We support the Department's Proposal to rescind the 2024 rule and readopt the 2021 rule with modifications."[2]

I. The Value of Independent Contractors in the Securities Industry

Independent contractors have long been an integral part of the securities industry. Independent broker-dealers ("BDs") and the nearly 160,000 individuals that affiliate with them as independent financial advisors ("FAs") serve millions of clients across the U.S., with tailored investment advice. Many clients are modest to middle income investors seeking advice on retirement planning, educational funding, and other life events. Many of these FAs engage in outside business activity to protect their clients' financial well-being by offering insurance solutions and providing tax planning advice, among other services. For FAs that choose this

[1] 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). For more information, visit http://www.sifma.org.

[2] 91 Fed. Reg. 9932 (February 27, 2026).

route instead of being an employee of a BD, independent contractor status allows them to own and operate their own small business (formed as sole proprietorships, professional corporations, franchisees, partnerships, LLCs, or other legal entities) and control the manner and means of its operation. Their business bears the hallmarks of an independent contractor. They benefit from a decentralized business structure, buy or rent their own office space, employ their own staff, select and manage vendors, and are typically responsible for their own expenses and benefits.

These FAs are entrepreneurs who assume the risks and seek out the rewards of entrepreneurship. They control their own profit or loss. Compensation is traditionally based on commissions, fees, or other transaction-based consideration that is carefully recorded on their books and records and reported on the IRS Form 1099. 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.

Notably, FAs work in a highly regulated industry and are required by the securities laws to associate with a BD, which could be a firm that has a fully independent contractor business model or offers a choice between independent contractor or employee status, and be licensed with the Financial Industry Regulatory Authority ("FINRA").[3] Association with a BD is ground in important public policy. The BD handles licensing and registration of FAs with FINRA and supervises them for the protection of investors. Independent FAs contract with BDs not only to meet their regulatory obligations, but also to carry out their clients' goals. For instance, the BD offers custody of client funds, provides trade execution, and takes care of the required reporting so that the FA can focus on their clients. An affiliated FA has a written contract with the BD that clearly details his or her status as an independent contractor and specifies that he or she is not an employee of the BD. There is no potential for misunderstanding each side's role in the arrangement.

II. The Department Proposes a Rational Test

The Proposal would reinstate the streamlined "economic realities" test that ultimately answers whether a worker is in business for themselves or is economically dependent on the employer for work. To do so, the Department proposes to give greater weight to two factors: 1) the nature and degree of the worker's control over the work, and 2) the worker's opportunity for profit or loss. The proposed test and weighting of factors reflect the economic realities of SIFMA's independent BD members and their affiliated FAs, who choose to be independent contractors and enjoy all the benefits of that status. Independent FAs operate their own businesses and develop and nurture their own client relationships. Our members provide them with the opportunity to do so while helping them operate in a highly regulated industry.

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[3] Exchange Act § 15(b)(8), 15 U.S.C. § 78o(b)(8).

The control factor retains an important feature that allows FAs to work in the securities industry as independent contractors. The Department's explanation of the control factor confirms that requirements imposed on independent contractors to ensure compliance with government or other regulatory rules and regulations do not tip the scale in favor of employee status. This is important for the highly regulated securities industry, where broker-dealers supervise independent FAs to ensure compliance with policies and procedures and the securities laws. Over 30 years ago, Congress specifically recognized the unique status of worker classification in the securities industry in 1997 when it passed a "duty to supervise" safe harbor for broker-dealers under the tax laws.[4] Congress acted in response to the IRS, which at the time was looking at the term "supervision" critically, and was leaning toward classifying independent FAs as "employees" because securities regulations required broker-dealers to "supervise" them for investor protection purposes. The Proposal's inclusion of examples in the regulatory text supports this concept, especially the first example of a tractor-trailer owner and operator. This example supports the industry's position that legal and contractual requirements for FAs do not constitute control.

With respect to the permanence factor, relationships between BDs and FAs last many years in our industry. An FA may be associated with a BD the entirety of their career, and their clients and communities see this. The unique permanency of these relationships should not weigh against our industry and in favor of employee status. At any time, both parties can terminate the relationship, but their long-lasting nature evidences both parties' satisfaction.

We would also appreciate confirmation or clarification that FAs engaged in financial advice and sales utilizing a BD's platform to effect said sales are not part of the BD's "integrated production process for a good or service." In particular, where an FA independently sources clients, exercises professional judgment, bears entrepreneurial risk, and is compensated based on production attributable to the FA's own initiative, the mere use of a BD's technology, execution, supervision, or regulatory framework should not, standing alone, support a conclusion that the FA's work is integrated into the BD's production process. Clear guidance confirming that the use of a BD's platform to effect securities transactions does not, by itself, render an FA part of the BD's integrated production process would promote predictability, reduce the risk of misclassification, and better align the application of this factor with its intended purpose and with longstanding industry practice.

Finally, we support application of the FLSA analysis to the Family and Medical Leave Act and the Migrant and Seasonal Agricultural Worker Protection Act to promote clarity and uniformity.

III. Uniformity Across Circuits Improves Compliance and Understanding

By reinstating the prior federal standard to address employee status, the Department provides certainty to employers and individuals working in an independent capacity. This is particularly

[4] Section 921 of the *Taxpayer Relief Act of 1997* (PL 105-34).

important for our members who operate nationally, as well as those independent contractors who may move from one state to another. By having one set of rules to follow, both employers and their independent contractors will understand the rules that apply in their case. The benefits are substantial regarding government providing uniformity on employment laws. This is important for ensuring there are not overlapping or conflicting regimes, which make compliance more complicated. For national institutions, this ensures that they can put together a workforce that complies with a common set of standards that can be understood by all individuals working across the institution. This is particularly an issue for businesses that have national operations that serve national markets. Since our independent BDs are often conducting national operations across national markets, this is particularly true for them.

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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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