March 13, 2017

By Electronic Mail (EBSA.FiduciaryRuleExamination@dol.gov)

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:

I am President of Geneos Wealth Management, Inc. ("Geneos"), an independent financial advisory firm based on Centennial, Colorado. I appreciate the opportunity the Department of Labor ("DOL") has given Geneos and other interested parties throughout the industry to comment upon your proposed 60-day delay in the applicability date of the DOL's final rule entitled, Definition of the term "Fiduciary"; Conflict of Interest Rule-Retirement Investment Advice, 81 Fed. Reg. 20946 (April 8, 2016) [herein referred to as "Fiduciary Duty Rule"].

The current implementation date for the Fiduciary Duty Rule is April 10, 2017, which is less than a month from today. A delay of that implementation date, for a minimum of 60-days, is necessary for the following reasons:

1. As stated by President Obama, "elections have consequences." The DOL has previously acknowledged that the Fiduciary Duty Rule will impose substantial costs and burdens on financial institutions subject to the rule, many of which are small businesses like Geneos. A threshold question, however, is whether the DOL correctly quantified the regulatory costs of the Fiduciary Duty Rule, along with the rule's estimated benefits to retirement benefits. In November, President Donald Trump was elected based, in no small part, on his pledge to reduce the regulatory burdens on American business and, especially, small businesses. Upon his inauguration, President Trump has followed through on his pledge by directing a comprehensive review of federal regulations. With regard to the Fiduciary Duty Rule, the President sent a memorandum to the Secretary of Labor, dated February 3, 2017 ("February 3 Memo"), in which he directed the DOL to examine whether the rule adversely affects the ability of Americans to gain access to retirement information and financial advice. As part of that examination, the President directed the DOL to prepare an updated economic and legal analysis concerning the likely impact of the Fiduciary Duty Rule. A reasonable delay is necessary to enable the incoming president, as head of all executive department agencies, to conduct a meaningful assessment of the Fiduciary Duty Rule.

2. Review of the Fiduciary Duty Rule should be orderly. In its notice of proposed rulemaking, the DOL explained that, to act on the February 3 Memo in an orderly fashion, and without causing unnecessary disruption in the marketplace, requires an extension of at least 60 days:

   "The extension would make it possible for the Department to take additional steps (such as completing its examination, implementing any necessary additional extension(s), and proposing and implementing a

> revocation or revision of the rule) without the rule becoming applicable beforehand. In this way, advisers, investors and other stakeholders would be spared the risk and expenses of facing two major changes in the regulatory environment."

Department of Labor Notice of Proposed Rulemaking, 82 Fed. Reg. 12319, page 12320 (March 2, 2017). The DOL's first step toward an orderly review of the Fiduciary Duty Rule was to initiate a 45-day comment period with respect to the President's specific areas of concern set forth in the February 3 Memo. That 45-day comment period ends seven days after the current applicability date of the Fiduciary Duty Rule. Further, the President is entitled to have his own Secretary of Labor in place during the DOL's examination of the Fiduciary Duty Rule. According to the latest news, the confirmation hearing for the President's nominee, Alex Acosta, will not take place until the end of this month, only a couple of weeks before the rule's current implementation date. Clearly, an extension is required for the DOL to conduct a meaningful and orderly review of the Fiduciary Duty Rule, under the direction of the new Secretary of Labor.

3. A disorderly process will have a disproportionate impact on smaller firms. Larger financial institutions, like Merrill Lynch, can harness robust in-house legal and compliance resources to comply with regulatory changes, even within short time frames. However, "[o]ver 90 percent of broker-dealers (BDs), registered investment advisers (RIAs), insurance companies, agents, and consultants are small businesses according to the SBA size standards (13 CFR 121.201)." (82 Fed. Reg. 12319, at page 12322, col. 3). Many smaller firms, simply lack the compliance resources to respond, quickly, to major regulatory changes. Often, they must turn to outside professionals for help, at a substantial cost to the firm. To require financial institutions to implement the Fiduciary Duty Rule, only to have the rule be rescinded or substantially revised a few months later, would impose disproportionate burdens on smaller firms, as they need a longer lead-time to implement major regulatory changes in a cost-effective manner. In fact, most small firms will need to rely on new product offerings designed by mutual fund and annuity companies to comply with the Fiduciary Duty Rule's restrictions on differential compensation and third party payments. Those product offerings, which have been slow to market, should really be available before full implementation of the Fiduciary Duty Rule so smaller firms can incorporate those products into their business models. To limit the potential disruption to smaller firms and their clients, "good cause" exists for the DOL to make the 60-day delay effective as soon as it is published in the Federal Register.

For these reasons, more time is needed for the DOL to conduct and complete an orderly assessment of the Fiduciary Duty Rule based on the core principles set forth in the President's February 3 Memo.

We strongly support the 60-day delay and further encourage the DOL to announce and make the delay effective as soon as administratively possible.

Respectfully submitted,

Ryan Diachok

Ryan Diachok, President