



asset management group

March 15, 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's Asset Management Group ("SIFMA AMG" or "AMG")¹ appreciates the opportunity to comment on the Department of Labor's (the "Department") proposed change to the applicability date of the Fiduciary Rule.² SIFMA AMG supports the proposed 60-day deferral of the April 10 applicability date and believes that at least 180 days in addition to the 60 days proposed will be needed to allow sufficient time to implement the Fiduciary Rule's requirements and to prevent unnecessary costs and confusion should the Department decide to amend the Fiduciary Rule.³

Asset managers and the intermediaries with whom they work have had insufficient time to implement the Fiduciary Rule. The Fiduciary Rule affects every aspect of retirement investment

¹ SIFMA AMG's members represent U.S. and multi-jurisdictional asset management firms whose combined global assets under management exceed \$34 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds. AMG's members serve as fiduciaries under the Employee Retirement Income Security Act of 1974, as amended, ("ERISA") when they act as discretionary investment managers or provide investment advice for clients that are employee benefit plans subject to ERISA, individual retirement accounts ("IRAs") and other plans subject to the Internal Revenue Code of 1986, as amended (the "Code"), and their participants and beneficiaries, as well as entities that may be deemed to constitute "plan assets" by reason of 29 CFR 2510.3-101 as amended by Section 3(42) of ERISA or otherwise (all such "employee benefit plans," "plans" and other entities deemed to constitute "plan assets" being referred to collectively as "Plans").

² By the term "Fiduciary Rule," we refer to the redefinition of the term "fiduciary" under section 3(21) of ERISA and section 4975(e) of the Code and the exemptions granted therewith.

³ While we further believe that an additional adjustment will be required of the January 2018 applicability date for portions of the best interest contract exemption, we will make that request subsequently given that this date change is less urgently required.

services, from creation of products to relationships with individual investors. AMG members have spent time working on potential changes to their products and services to meet the structural demands imposed upon Plans and brokers; however, much work remains for asset managers and the market to be ready. Asset managers and their intermediaries continue to work through interpretation of the Fiduciary Rule, including the Department's recent issuance of FAQs that still need to be digested. In addition, given the adjustments needed for mutual funds used in Plans, the Securities and Exchange Commission's Division of Investment Management recently issued guidance and no-action relief related to fee structures and disclosures, which asset managers continue to absorb and implement.⁴

Adherence to the Fiduciary Rule's April 10 applicability date would disrupt retirement savings and confuse retirement savers. Retirement savers would likely experience chaos as asset managers and brokers, with insufficient time to implement requirements, try to communicate changes to millions of clients. Retirement savers would also likely face service restrictions until the Fiduciary Rule can be implemented more fully. This disruption would occur during a crucial time for IRAs, with the 2016 contribution deadline scheduled for April 18, 2017.⁵

Given that the Department is currently assessing whether it should change the Fiduciary Rule, the additional work needed to complete implementation and the client communications should be deferred, further supporting the need for a delay. The Department has not yet completed its review of the Fiduciary Rule directed by the President.⁶ While AMG will comment subsequently on the questions presented by the Department for this review, we fully support a careful, thorough and thoughtful review of the Fiduciary Rule. Client communications ahead of potential change to the Fiduciary Rule makes the likelihood of confusion even greater, amplifying our concerns.

⁴ See SEC IM Staff letter regarding Section 22(d), *available at*: <https://www.sec.gov/divisions/investment/noaction/2017/capital-group-011117-22d.htm>

⁵ See IRS IRA Year-End Reminders, *available at*: <https://www.irs.gov/retirement-plans/ira-year-end-reminders> (“You can make 2016 IRA contributions until April 18, 2017.”)

⁶ Presidential Memorandum on the Fiduciary Duty Rule (Feb. 3, 2017), *available at*: <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>

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For these reasons, SIFMA AMG strongly urges the Department to delay the April 10 applicability date, and to do so immediately. SIFMA AMG supports the proposed 60-day deferral of the April 10 applicability date and believes that at least 180 days in addition to the 60 days proposed will be needed to allow sufficient time to implement the Fiduciary Rule's requirements and to prevent unnecessary costs and confusion should the Department decide to amend the Fiduciary Rule. Should you have any questions, please do not hesitate to contact Laura Martin (212-313-1176 / lmartin@sifma.org); Joseph Cox (212-313-1321 / jcox@sifma.org) or Steven Rabitz (212-806-6568 / srabitz@strook.com).

Respectfully submitted,



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