



Via Electronic Mail to e-ORI@dol.gov

March 17, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210
Attention: Fiduciary Rule Examination

Re: Definition of the Term "Fiduciary" and Related Prohibited Transaction Exemptions
Proposed Extension of Applicability Date (RIN 1210-AB79)

Ladies and Gentlemen:

We are contacting you on behalf of CUSO Financial Services, LP ("CFS"). We are pleased to have the opportunity to provide comments with respect Department of Labor's ("Department") proposal to extend the applicability date of the amendments to the regulation defining the term "fiduciary," and the related prohibited transaction exemptions (the "Rule").

CFS is a securities broker/dealer that is registered with the United States Securities and Exchange Commission (the "SEC"), the Financial Industry Regulatory Authority ("FINRA"), the Municipal Securities Rulemaking Board, all fifty (50) states, the District of Columbia, and Puerto Rico. CFS is also a SEC Registered Investment Adviser. Through financial networking arrangements, CFS provides non-deposit investment services to the members of approximately 180 credit unions located throughout the United States.

As a provider of investment services, our goal is to act in the best interest of all clients irrespective of our status as a fiduciary. Currently, in addition to employing a robust supervisory system to ensure client recommendations are prudent and potential conflicts are disclosed, we provide fee and expense information to clients at the point of sale for their review and acknowledgment. Further, CFS fully supports regulations that protect and support investors. However, we believe that the Proposed Regulation makes it harder to provide retirement advice to all investors since it contains overly broad definitions making compliance with its terms unmanageable, imposes burdensome disclosures, significantly increases costs, restricts investment choices and potentially jeopardizes the relationship between clients and their financial advisor.

We believe that an extension of the applicability date of at least 60 days (but more likely 180 days) is necessary for the Department to thoroughly examine the Rule for adverse impacts on Americans' access to retirement investment advice and assistance, as required by the President's Memorandum.



We are deeply concerned that the Rule will cause significant harm to retirement investors by restricting their access to retirement investment advice and services, and so we strongly support the Department in undertaking this examination.

As such, we believe, at a minimum, a 60-day (but more likely a 180-day) extension is needed to:

- ***Prevent further harm to retirement investors.*** Registered investment advisers, broker-dealers and other financial institutions, including us, have worked hard to develop solutions that both comply with the Rule and continue to provide access to a wide variety of advice and financial products for retail retirement investors. But, as has been widely reported in the media, firms have generally found that product and service offerings must be reduced and limited to be able to continue to profitably service retirement investors while complying with the Rule. The extension would allow current product and service offerings to remain in place while the Department studies the Rule for its negative impacts, thereby protecting retirement investors from needless interruption of their services—which would prove to be particularly important if the Department determines, as we expect it will, that the Rule harms investors and should be rescinded or revised.
- ***Stop needless spending on the Rule's implementation.*** We have already spent significant sums and resources on complying with the Rule. As noted above, we believe that the Department will find that the Rule harms middle-income savers and that it should be rescinded or revised. Thus, failing to extend the applicability date will result in continued expenses to implement a Rule that may ultimately be rescinded or materially revised. These resources are better spent on developing products and services that benefit our clients, employees, and shareholders.
- ***Help firms develop better, compliant solutions to the Rule.*** Though we, like other firms, are working towards an April 10th applicability date, the relatively short implementation period to comply with such a substantial rule change has been, and continues to be, challenging. The three sets of FAQs the Department promised it would issue in the summer of 2016 have only partially been completed, with the second set issued as recently as January 2017. Given the complexity of complying with the Rule and that the issued FAQs included unexpected interpretations that require firms to reconsider their compliance plans, a meaningful delay in the applicability date is warranted. We note that such a delay is consistent with the Department's past practices, such as the delays granted in connection with the rules requiring service providers to disclose fees under ERISA Section 408(b)(2).

We also encourage the Department to provide a longer extension of at least 180 days to allow time to conduct its review of the Rule and complete any new rulemaking to rescind or revise the Rule if appropriate without creating further disruption and uncertainty by requiring additional rulemakings to



gain additional extensions.¹ Moreover, to allow a fulsome reconsideration of the Rule and its impacts, and prevent customer confusion and fragmented approach to implementation, the extension should apply to all aspects of the Rule, including the definition of fiduciary and each condition of the prohibited transaction exemptions (e.g., the impartial conduct standards). Thus, the Rule, which affects a number of different statutory provisions and the prohibited transaction exemptions, were granted as a comprehensive solution, and should not be implemented piecemeal without a comprehensive study to protect retirement investors from further harm.

We stress that investors, advisors, and firms are in urgent need of certainty regarding the applicability date of the Rule. As April 10 rapidly approaches, firms will imminently need to implement changes to their solutions and offerings, amend client agreements, send disclosures required under the Rule, and communicate changes to investors.

More complex regulations mean more hurdles and compliance costs, and a greater likelihood of regulatory violations and/or lawsuits. Under this regulation, the smaller investor will become more expensive to serve, meaning that small investors may ultimately lose access to their advisors and disproportionately bear the costs of excessive regulation. Consequently, the DOL's Rule risks hurting the small investor and retired persons they are intending to protect.

We urge the DOL to expedite this rulemaking to delay the applicability date and finalize the extension as quickly as possible.

On behalf of CFS, I thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Vonk", written in a cursive style.

Peter K. Vonk
Chief Compliance Officer
pvonk@cusonet.com

¹ In considering the costs and benefits of the extension of the applicability date, it is important that the Department not start from the presumption that the costs and benefits in the regulatory impact analysis that accompanied the adoption of the Rule were reasonably estimated. Many commenters have raised significant questions about the methodology used, including the data used, interpretations of that data, and subsequent regulatory developments that reduce the relevance of that data.