



July 19, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
United States Department of Labor
200 Constitution Avenue NW, Suite 400
Washington, D.C. 20210

Attn: D-11933

VIA EMAIL: EBSA.FiduciaryRuleExamination@dol.gov

Re: RIN 1210-AB82
Comments in response to delay in January 1, 2018 Applicability Date

Dear Sir or Madam:

I write on behalf of Madison Avenue Securities, LLC (“Madison”), a broker-dealer and registered investment adviser based in San Diego, California, in order to respond to the Department of Labor’s (“DOL” or “Department”) Request for Information (“RFI”) Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (“Rule”), as published in the Federal Register on July 6, 2017 (82 FR 31278). These comments only address question one in the Department’s RFI: Whether the January 1, 2018 Applicability Date (“Applicability Date”) should be extended.

Madison supports a delay in the Applicability Date for the following reasons.

- A. The Department has not completed its review of the entire Rule as mandated by the Presidential Memorandum dated February 3, 2017 (“Memorandum”);
- B. The SEC is now actively pursuing a comprehensive fiduciary standard rule;
- C. The Department dramatically underestimated the amount of time needed fully to develop and test new technology needed to comply with the Rule; and
- D. The Department has created additional risks to both retirement investors and firms serving them by implementing a rule that lacks any real clarity and guidance.

I will address these reasons in turn.

- A. The Applicability Date should be delayed for a reasonable time after the Department has completed its review as mandated by the Memorandum.**

In granting the delay from the original applicability date of April 10, 2017 to June 9, 2017, as noted above, the Department required compliance with the Impartial Conduct Standards during the transition period to the full Applicability Date of January 1, 2018. Madison has spent an enormous amount of time and effort to comply with the Impartial Conduct Standards as required on June 9, 2017. Planning is already underway to train our representatives for the major changes coming on January 1, 2018. But with the potential for modifications to the Rule following the mandated review, it is imperative that the Department delay the Applicability Date for a reasonable time to ensure that any modifications can be implemented in a timely and satisfactory manner. Once the Presidentially mandated review has been completed and the final language of the Rule is determined, it will still take time for us to implement the

required changes. The Department should give us that time in order to best serve clients and our independent advisors.

B. Since the SEC is now actively pursuing a comprehensive fiduciary standard rule, the Department should wait for that action in order to avoid confusion and a needless waste of resources.

Securities and Exchange Commission (SEC) Chairman Jay Clayton made his first major public speech¹ on July 12, 2017. In it, he addressed the potential for a comprehensive SEC fiduciary standard to supersede the Rule and cover all investment transactions.

“There is a lot of work to do, and this issue is complex,” said Chairman Clayton. “That should not deter us, and we are moving forward.” He also noted that any action the SEC takes “will need to be carefully constructed, so it provides appropriate and meaningful protections but does not result in Main Street investors being deprived of affordable investment advice or products.” Chairman Clayton also expressed the hope that the SEC “can act in concert with our colleagues at the Department of Labor in a way that best serves the long-term interests of Mr. and Ms. 401(k).”

Chairman Clayton stressed that the SEC welcomes and needs public comment and noted that he had issued a statement to that effect in June. “The Commission had last solicited information on this issue four years ago. Suffice it to say a lot has happened since then. Robust public comment can help us evaluate potential regulatory actions in light of current market activities and risks. I encourage the public to send us feedback and any data that may be helpful to us.”

Obviously, once this new standard is in place, Madison will need to take further action to make sure we are in full compliance with it. Work done in the meantime with respect to the DOL Rule is thus unnecessary, confusing and wasteful. A reasonable delay will allow these matters to be sorted out and an appropriate and comprehensive result achieved.

C. The Applicability Date should be delayed for a reasonable time because the Department dramatically underestimated the amount of time required to develop and test new systems for compliance with the Rule.

Pursuant to the Rule, the Department originally concluded that 12 months was a reasonable amount of time to build out the technology systems required for compliance. By delaying the Applicability Date to January 1, 2018, the Department recognized that the original timetable was extremely aggressive and unworkable, despite the best efforts of many in the industry, including Madison.

Much of the technology needed to comply with the Rule is not yet available, even in beta format, despite promises to the contrary. Moreover, developing compliant systems and building out the technology adequately is nearly impossible given the lack of clarity or guidance from the Department with respect to the Rule’s particulars. It is imperative that a reasonable time be provided to finalize the technology once the mandated review and all modifications, exemptions, and the like, have been clarified and finalized.

D. The Applicability Date should be delayed for a reasonable time because the risks associated with implementing a partially developed Rule far outweigh any additional costs.

The risks associated with implementing a partially developed Rule with uncertain procedural requirements and outstanding questions, especially with the added prospect of comprehensive SEC

¹ <https://www.sec.gov/news/speech/remarks-economic-club-new-york>

regulation, will harm the very retirement investors the Rule seeks to protect. The Impartial Conduct Standards the Department put into effect on June 9, 2017 provide the transitional safeguards needed to protect retirement investors while the Department completes its mandated review and the SEC deliberates. A rushed implementation will cause unnecessary market disruptions and confusion for retirement investors, registered representatives, investment adviser representatives, and firms alike.

Since the Impartial Conduct Standards are already in place, retirement investors are protected from conflicted advice. Any additional delay in the Applicability Date will actually benefit these retirement investors. Compliance costs with respect to the Rule will ultimately be reflected in the cost of products and services available to the retirement investors. If firms and representatives are constantly incurring costs to comply with the ever-changing Rule, those costs will ultimately be passed on to the retirement investors, harming the very constituency the Rule seeks to protect.

We appreciate the opportunity to provide these comments and respectfully request that the Department delay the January 1, 2018 Applicability date for a reasonable time after 1) the Department has completed its mandated review of the Rule; 2) the Department has modified or rescinded any provisions of the Rule and/or the exemptions or proposed exemptions; and 3) the SEC has acted on a comprehensive fiduciary standard. Such a delay is also necessary to i) allow sufficient time to build or modify systems and processes for compliance with any modifications to the Rule and ii) to communicate with existing clients well in advance so a meaningful delay can avoid investor confusion by the eliminating the need for our firm and financial advisors to send multiple communications reflecting changing requirements.

Please feel free to contact me with any questions, comments, or concerns.

Sincerely,

Madison Avenue Securities, LLC

A handwritten signature in black ink that reads "Wayne Talleur". The signature is written in a cursive style and is followed by a long, horizontal, slightly wavy line that extends across the width of the signature.

Wayne Talleur
President & CEO