



July 20, 2017

Submitted Electronically

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11933
Suite 400
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

RE: RIN 1210-AB82 – Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

Ladies and Gentlemen:

TD Ameritrade, Inc. (“TD Ameritrade” or the “Firm”) appreciates the opportunity to comment on the Department of Labor’s (“DOL”) recent Request for Information (“RFI”) in connection with its examination of the final rule (“Rule”) defining who is a fiduciary of an employee benefit plan (“Plan”) under the Employment Retirement Income Security Act of 1974 and of an Individual Retirement Account (“IRA”) under the Internal Revenue Code. The Firm hopes our comments are helpful to the DOL as it assesses a possible delay in the January 1, 2018 applicability date of the provisions of the Best Interest Contract (“BIC”) Exemption, the Principal Transactions Exemption and amendments to PTE 84-24 while it evaluates the Rule generally and the responses it receives to the issues raised in the RFI.

In regard to the potential delay of the full applicability date, the DOL has requested answers to the following questions:

1. Would a delay in the January 1, 2018 applicability date of the provisions in the BIC Exemption, Principal Transactions Exemption and amendments to PTE 84-24 reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments?
2. Would such a delay carry any risk?
3. Would a delay otherwise be advantageous to advisers or investors?
4. What costs and benefits would be associated with such a delay?

We will respond to each of those questions below.

Introduction

TD Ameritrade is a wholly-owned subsidiary of TD Ameritrade Holding Corporation (“AMTD”). AMTD has a 42 year history of providing financial services to retail investors. AMTD, through its broker-dealer and investment advisor subsidiaries, provides brokerage and advisory services to over 7 million

funded client accounts that total more than \$880 million in assets. The Firm also provides custodial services for more than 5,000 independent registered investment advisors (“RIAs”). TD Ameritrade provides its services predominantly through the Internet, a national branch network and custodial relationships with independent RIAs. The Firm’s services appeal generally to a broad market of independent, value-conscious retail investors, traders, financial planners and institutions. TD Ameritrade shares the DOL’s desire to help retail retirement investors invest prudently. The Firm believes it is critically important to continue our approach of empowering such investors through a wide array of investment choices, education, tools and support needed to help them navigate and select the investments that are best for them and their retirement goals. While the bulk of our business is self-directed, the Rule and its related exemptions have required us to look closely at the advice-related aspects of our business and to develop appropriate responsive plans.

TD Ameritrade has diligently pursued its plans to comply with the numerous and complex elements of the Rule and its related exemptions, with a view to being ready for the scheduled January 1, 2018 applicability date. In drilling down as to our implementation details, we have been reminded of the complexity associated with being fully compliant with the Rule. That has led to our revisiting some of our initial plan details. At the same time, the RFI implies that the DOL is open to making adjustments to the Rule and its related exemptions. Consequently, it would be wasteful for Rule affected firms like ours to be locking in final implementation arrangements in the coming months when it appears the DOL may announce there will be changes in the Rule and related exemptions before year-end. This is especially problematic because many of the implementation arrangements are technology driven, requiring months of lead time and entailing significant costs. Hence, we strongly believe it is very important for the DOL to announce its determination whether to extend the January 1, 2018 applicability date at the earliest possible time. We trust the short 15 day comment period from the RFI’s publication in the Federal Register in regard to possible delay is an indication the DOL will make this announcement before September.

With that general background, we will respond to the four above questions.

Would a delay in the January 1, 2018 applicability date reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments?

The Firm believes the answer to this question is unequivocally yes. A delay by itself would reduce burdens on financial services providers and benefit retirement investors by allowing for more orderly and efficient implementation. For example, a delay would benefit retirement investors by both providing them with an improved Rule regime and giving their financial services firms an earlier opportunity to fully inform them about the changes that will directly affect them. That information will enable retirement investors to have more time to consider the changes and decide how they would like to proceed, resulting in a more orderly and efficient implementation for all concerned. In addition, a delay would enable the DOL to work with the Securities and Exchange Commission (“SEC”) or the Financial Industry Regulatory Authority (“FINRA”) to harmonize standards in regard to the same

transaction (the importance of which was recently commented on by both SEC Chairman Clayton and DOL Secretary Acosta). Should a revised Rule regime be established by the DOL, affected financial services firms clearly would need substantial additional time to implement whatever changes would be required in their revised compliance plans.

Would such a delay carry any risk?

The Firm believes the phased implementation of the Rule, with the fiduciary definition and impartial conduct standards taking effect on June 9th, coupled with the strong regulatory oversight securities firms already are subject to from both the SEC and FINRA, minimize any delay risk. They provide effective deterrents to potential inappropriate advice by financial services firms during a delay in the full applicability of the Rule and related exemptions. In choosing to do a phased implementation pursuant to its May 2017 Conflict of Interest FAQs (the “May FAQs”), the DOL already made a judgment that there are effective deterrents to inappropriate advice activity, concluding there is “significant interim protection”.

Would a delay otherwise be advantageous to advisers or investors?

The Firm believes a delay would otherwise be advantageous to both advisers and investors. In short, a roll-out of the Rule and related exemptions in their present form by the DOL on January 1, 2018 would represent an approach to the interests of both advisers and investors that would appear precipitous given the President’s current directive to review the Rule. By the nature of all the comments the DOL already has received on the Rule/exemptions, the DOL’s comments in the May FAQs, the continued Rule examination the DOL is conducting now and the complexity firms have been faced with in their attempt to meet the arbitrarily short full implementation date, the benefit to all parties concerned for the DOL to take the time necessary to get the Rule right seems obvious. Any modifications to the Rule/exemptions the DOL might think appropriate could not realistically be announced before January 1, 2018 with any expectation the January 1, 2018 applicability date could be met. It would not allow advisers the time needed to make the necessary adjustments or give retirement investors sufficient opportunity to understand the additional Rule changes. An orderly implementation of a regime as complex as that associated with the Rule is not only advantageous to advisers and investors, it is a necessity for both, and it would be much more likely if the January 2018 deadline is delayed substantially.

From the Firm’s perspective, as noted above, we encourage the DOL to work with the SEC or FINRA to harmonize standards and avoid conflicting requirements in developing a revised Rule regime. Should the preferred state come about, firm implementation almost certainly would entail further systems changes, as well as numerous revised documents, forms and other changes. All of those would need to be concluded before there could be detailed client communications. This is just one more reason a substantial delay would be advantageous for all concerned.

What costs and benefits would be associated with a delay?

The Firm believes there would be little in the way of additional costs associated with a delay. As noted above, the DOL itself has indicated the current approach to the Rule and related exemptions entails “significant interim protection” for retirement investors. In addition, securities firms like ours are subject to strong regulatory oversight by the SEC and FINRA. Given the Rule comment letters previously received by the DOL identifying numerous and significant issues, the DOL’s comments in the May FAQs, the forthcoming responses to the RFI and the DOL’s own review pursuant to the President’s Memorandum, it seems likely the DOL will conclude that at least some changes in the Rule/exemptions are in order. For financial services firms to incur additional expenses in coming months to reach full compliance with the current Rule requirements by January 1, 2018, when those requirements are likely to be modified or rescinded, would be confusing for clients and inefficient and wasteful for all concerned. In short, a prompt DOL announcement of a substantial delay before September, along with an appropriate transition period following the establishment of a new or revised Rule regime, would facilitate an orderly transition to that regime and benefit both advisers and retirement investors.

TD Ameritrade appreciates the opportunity to comment on the RFI. Please contact the undersigned at 201-369-8559 with any questions or comments you may have.

Respectfully Submitted,



Gilbert R. Ott, Jr.
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