

**R. Scott Henderson**  
Deputy General Counsel

July 21, 2017

<http://www.regulations.gov>  
[EBSA.FiduciaryRuleExamination@dol.gov](mailto:EBSA.FiduciaryRuleExamination@dol.gov)

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

Re: *RIN 1210-AB82*

Dear Ladies and Gentlemen,

Bank of America<sup>1</sup> appreciates the opportunity to submit this letter in response to the Department of Labor's ("DoL") Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions ("RFI"),<sup>2</sup> regarding "the advisability of extending the January 1, 2018 applicability date of certain provisions in the Best Interest Contract Exemption, the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs, and Prohibited Transaction Exemption 84-24" (the "Fundamental Exemptions"). For the reasons summarized below, Bank of America urges the DoL to extend the January 1, 2018 applicability date for full compliance with the Fundamental Exemptions until (i) the DoL has had an opportunity to complete the review mandated by the President on February 3, 2017 and make any modifications that may follow from that review and (ii) financial services firms have had a reasonable opportunity to make changes needed to comply with any new regulatory requirements.

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<sup>1</sup> Bank of America Corporation is one of the world's largest financial institutions, serving its clients with a full range of banking, investing, asset management, and other financial and risk management products and services. Bank of America Corporation and/or its affiliates are registered as both broker-dealers and investment advisers and are among the world's leading wealth management companies.

<sup>2</sup> See 82 Fed. Reg. 31278 (July 6, 2017).

As stated in our July 21, 2015 comment letter, Bank of America supports the DoL's fundamental objective: to hold advisors to a "best interest" standard when they provide personalized investment advice to IRAs and employee benefit plans.<sup>3</sup> We continue to believe that retail investors should have the benefit of a best interest standard whenever they receive personalized investment advice, whether from broker-dealers or investment advisors and for all accounts, not just IRAs. Bank of America has long supported a "harmonized" best interest standard, with consistent and clear rules for all advisors providing personalized investment advice, to all retail clients, in any account.<sup>4</sup>

On February 3, 2017, the President of the United States directed the DoL to examine whether the rule and related exemptions "may adversely affect the ability of Americans to gain access to retirement information and financial advice."<sup>5</sup> In response, the DoL, on March 2, 2017, requested comments with respect to the examination described in the President's memorandum and, on July 7, 2017, issued the RFI seeking additional input on potential changes to the fiduciary rule and additional exemption approaches.<sup>6</sup>

Although the DoL issued a brief delay of the fiduciary rule and the "impartial conduct standards" applicable to the related exemptions until June 9, 2017, other requirements of the Fundamental Exemptions currently are scheduled to become applicable on January 1, 2018.<sup>7</sup> We believe the DoL

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<sup>3</sup> Letter from R. Scott Henderson, Deputy General Counsel, Bank of America to Office of Regulations and Interpretations, U.S. Dep't of Labor (July 21, 2015) <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA25/00229.pdf>.

<sup>4</sup> Letter from R. Scott Henderson, Deputy General Counsel, Bank of America to Elizabeth M. Murphy, Sec'y, U.S. Sec. and Exch. Comm'n ("SEC") (Aug. 30, 2010) <https://www.sec.gov/comments/4-606/4606-2583.pdf> (addressing comments on File No. 4-606: Study Regarding Obligations of Brokers, Dealers, and Investment Advisers). We note that the primary "harm" to investors identified by the SEC study was confusion over different standards attached to advice from broker-dealers and investment advisors. Without close coordination among regulators, the proliferation of standards would exacerbate investor confusion.

<sup>5</sup> Fiduciary Duty Rule, 82 Fed. Reg. 9675 (Feb. 7, 2017).

<sup>6</sup> See Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice; Best Interest Contract Exemption (Prohibited Transaction Exemption 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (Prohibited Transaction Exemption 2016-02); Prohibited Transaction Exemptions 75-1, 77-4, 80-83, 83-1, 84-24 and 86-128, 82 Fed. Reg. 12,319 (Mar. 2, 2017) (inviting comments to the Presidential Memorandum); RFI, 82 Fed. Reg. 31278 (July 6, 2017) (requesting input on 17 questions in addition to delay of the January 1, 2018 applicability date for the Fundamental Exemptions).

<sup>7</sup> See 82 Fed. Reg. 16902 (April 7, 2017).

Office of Exemption Determinations

July 21, 2017

Page 3 of 3

should ensure it has sufficient time to review the large volume of comments it will likely receive, reconsider the regulatory burdens and costs of the rule and related exemptions, and make appropriate changes to existing regulations. Otherwise, financial services firms will be forced to move ahead with implementation based on rules that may change significantly, resulting in unnecessary disruption, expense, and confusion. It is also worth noting that financial services firms have been adhering to a fiduciary duty standard and complying with the “impartial conduct standards” since June 9, 2017 and that compliance will continue to benefit retail investors even if the DoL grants a delay beyond January 1, 2018 for full compliance with the Fundamental Exemptions.

Delaying the January 1, 2018 applicability date until the DoL finalizes its work and financial services firms have a reasonable opportunity to implement its requirements with certainty would permit a more effective regulation for the ultimate benefit of our clients.

Sincerely,

R. Scott Henderson