



BNY MELLON

July 21, 2017

EBSA.FiduciaryRuleExamination@dol.gov

The Honorable Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

**Re: Fiduciary Rule – Request for Information – Potential Delay of January 1, 2018
Applicability Date (RIN 1210-AB82)**

Dear Secretary Acosta:

The Bank of New York Mellon (“BNY Mellon”) and Pershing LLC, a BNY Mellon company, (“Pershing”) appreciate the opportunity to respond to the Department of Labor’s (the “Department”) “Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions,” published in the Federal Register on July 6, 2017 (the “RFI”), regarding the final rule defining the term “fiduciary” (the “Rule”) under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and section 4975(e) of the Internal Revenue Code, (the “Code”) the Best Interest Contract Exemption (the “BIC Exemption”), the Principal Transaction Class Exemption, and the amendments to prohibited transaction exemption 84-24 (the “Amended PTE 84-24”) issued by the Department on April 8, 2016 (collectively, the “Prohibited Transaction Exemptions” or “PTEs”).

As the financial service industry's largest provider of clearing and settlement solutions and one of the largest custodians with over \$30 trillion in assets under administration (as of March 31, 2017), we support our clients as they serve individual investors and/or retirement beneficiaries, and work to meet the demands of new regulations. We strongly urge the Department to delay the January 1, 2018 applicability date of the provisions in the BIC Exemption, the Principal Transaction Class Exemption, and Amended PTE 84-24 relating to the redefinition of the term “fiduciary” under the Rule that are not now in effect.

We believe immediate delay of the January 1, 2018 applicability date will reduce burdens on financial institutions and avoid harm to retirement investors. We also believe our firm has a unique perspective into the financial services industry as we support a broad range of services and business models. Our customers are institutions and corporations, as well as consultants and advisors who work with investors. BNY Mellon's Pershing is a business-to-business provider, offering solutions to financial institutions that provide services directly to investors. BNY Mellon's asset servicing business provides trustee and administrative services to the retirement industry. Many financial institutions subject to the Department's Rule are currently expending significant resources to implement the conditions of the PTEs that take effect on January 1, 2018, including new disclosure and recordkeeping requirements. As you are aware from your prior discussions with Pershing, Pershing has undertaken significant enhancements to support its clients' compliance with the Rule and PTEs. Similarly, BNY Mellon's asset servicing business is evaluating operational and product enhancements to support the needs of its clients. We understand many other firms are similarly designing and building new processes and the technology necessary to support them. In the examples that we have discussed, these process enhancements are extremely resource intensive, complex and importantly, could take months, if not years, to complete because they need to account for a range of individual firm compliance strategies. The Department has itself noted on several occasions that the marketplace may require substantial time to develop and more fully evolve their product platforms and service delivery models to meet all the standards of the full BIC Exemption as it is currently written.

It would appear to be counterproductive to require firms and other service providers to build processes for conditions that the Department may modify or eliminate. Importantly, the Department has indicated that it is still undertaking the review required by the President in his February 3, 2017 memo, which directed the Department to evaluate the Rule, including an assessment of how the Rule will impact the ability of retirement investors to access advice. In addition, the Department has indicated that the RFI specifically seeks public input that could form the basis of new exemptions or changes/revisions to the Rule and PTEs. In light of the possibility that the DOL will alter the Rule or the conditions of the PTEs, or create new exemptions, the January 1, 2018 applicability date must be delayed.

We believe that the Department's review of the Rule and related PTEs will ultimately result in substantial changes, since the Department has signaled an intention to coordinate with the Securities and Exchange Commission (the "SEC"). While the SEC is also requesting information related to the development of a fiduciary standard for broker dealers, the Department is demonstrating its interest in gaining greater perspective as evidenced by the numerous questions included in the RFI.

The continued investment of resources to prepare for conditions that may be substantially modified or may never take effect is not the approach the Department should cause financial

institutions to pursue. We have previously shared with you some of the concerns we have heard from the financial institutions we service. Firms have consistently expressed concern about potential disruption to their clients and the potential for confusion related to the implementation of conditions to satisfy the Rule and PTEs. Delaying those conditions while the Department conducts its review is in the best interest of retirement investors because it allows firms to fully evaluate all the options that the Department may offer with regard to Rule compliance followed by communication of potential changes which impact investors. This will prevent unnecessary product restrictions, service model constraints or confusing investor communications.

We recommend that the Department delay the January 1, 2018 applicability for a reasonable period that will allow for the time needed: (i) for the Department to complete its review and propose and finalize potential changes to the Rule and/or the exemptions and (ii) for firms to implement the processes to address all necessary requirements. It is also critically important that the Department issue such a delay as soon as possible – and preferably prior to August 1st – to prevent further expenditure of unnecessary implementation costs. We further recommend that the Department extend the information collection period for the remaining general questions in the RFI for a reasonable period beyond August 7th. The questions posed in the RFI raise a considerable number of issues, and it will take time for firms and other stakeholders to provide thoughtful and helpful responses.

Sincerely,

The Bank of New York Mellon

Pershing LLC, a BNY Mellon company