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Submitted Electronically
EBSA.FiduciaryRuleExamination@dol.gov

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W., Suite 400
Washington, DC 20210

Re: RIN 1210-AB82; Extension of Transition Period and Delay of Applicability Dates

Ladies and Gentlemen:

Thank you for the opportunity to submit these comments on the proposed 18-month extension of the transition period and delay of the applicability date for the remaining conditions of the Best Interest Contract Exemption ("BIC"), Principal Trading Exemption, and PTE 84-24 ("Conditions"), issued in connection with the regulation that redefines the term "fiduciary" under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 ("ERISA") and section 4975(e)(3)(B) of the Internal Revenue Code (the regulation and accompanying prohibited transaction exemptions referred to together as the "Rule"). We appreciate the Department's proposal of a delay and concur that without such a delay regulated institutions will incur undue and material expenses to comply with requirements that ultimately the Department of Labor (the "Department") may revise or repeal.

For the reasons set forth below, we support the Department's proposal. However, we believe it would be far more beneficial to retirement investors, market participants and financial institutions if the Department finalizes the tiered approach referenced in the proposal. We therefore urge the Department to finalize a transition period and delay of the Conditions through, at a minimum, the later of (i) the 18 months currently under consideration to July 1, 2019 and (ii) 12 months after the issuance of a final new Rule or a notice published in the Federal Register that the Department does not intend to make any further changes or revisions to the Rule. This approach is consistent with our initial request for a 24-month extension.[1] In setting forth our views, we note our strong support of the comments submitted by the Securities Industry and Financial Markets Association ("SIFMA"), the Investment Company Institute ("ICI"), and the U.S. Chamber of Commerce.

[1] July 21, 2017 letter from Jason Chandler and Michael Crowl, UBS AG https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00227.pdf

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Background

UBS AG, a subsidiary of UBS Group AG, operates three main lines of businesses in the United States-its Wealth Management Americas business primarily operated through UBS Financial Services Inc. ("UBSFS"), its investment banking business primarily operated through UBS Securities LLC ("UBS Sec LLC"), and its global asset management business primarily operated through UBS Asset Management (Americas) Inc. ("UBS" is used throughout in reference to the UBS business in the United States). UBSFS is dually registered as a broker-dealer and an investment adviser and is one of the largest securities firms in the United States. As of June 30, 2017, Wealth Management Americas (which, as noted, primarily operates through UBSFS) had invested assets totaling over $1.2 trillion and close to 15,000 employees-including a network of approximately 7,000 financial advisors.

UBS Sec LLC is a registered broker-dealer and a member of the Financial Industry Regulatory Authority ("FINRA"), the New York Stock Exchange, Inc., NASDAQ, and other principal exchanges. In addition, UBS Sec LLC provides a full range of investment banking services and is a registered futures commission merchant, a member of certain major United States and foreign commodity exchanges, and a primary dealer in United States Government securities.

Retirement assets constitute a significant portion of client assets (over one million retirement accounts) in the UBS Wealth Management Americas business. Additionally, UBS provides services to ERISA plans and individual retirement accounts ("IRAs") directly or through plan asset investment vehicles.

Comments

A substantial period of delay is necessary to give the Department sufficient time to review and assess the considerable volume of evidence regarding this complex and important rule, to protect retirement investors, and to avoid the potential double-costs to regulated institutions of coming into compliance with the current Rule, only to have to make additional changes to comply with a new and revised rule. As we noted in our letters to the Department of July 21st and August 7th [2], for UBS alone, studying the various approaches to the Rule, scoping their implementation and preparing to build them into our systems and practices has already cost approximately $23 million. These costs were unavoidable even though UBS took the route of deferring business model changes that could confuse or disrupt our clients until it is clear that the Rule and its requirements are absolutely final.

Based on UBS' experience in connection with preparing for compliance with the June 9, 2017

[2] Id. August 7, 2017 letter from Jason Chandler and Michael Crowl, UBS AG; https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00597.pdf

applicability date, we believe that it will be extremely difficult for UBS or any other financial institution to comply with the existing or modified Rule without at least a 12 month period following final Department guidance to develop and implement required changes in business models and systems, policies, procedures, technology and training. We therefore support the tiered approach we refer to above.

It would be unfair to retirement investors and market participants for the Department to take final action before it has sufficient time to perform the thorough analysis of the Rule and its consequences directed by the President's Memorandum to the Department of February 3, 2017[3] . In this regard we note that the Department must consider the evidence submitted that the Rule has resulted in reduced access to products, services and financial advice and that there is a substantial cost to investors when access to financial advice is reduced.[4] This is particularly important in light of the President's direction that the Department consider whether the current Rule, "may adversely affect the ability of Americans to gain access to retirement information and financial advice."[5] In addition, the Department has not yet performed a cost-benefit analysis that considers realistic compliance costs which, as the Deloitte study commissioned by SIFMA shows, have proven to be far greater than the Department predicted. Finally, the Department needs adequate time to review the direct and indirect consequences of litigation under the BIC Exemption in light of the President's explicit directive to assess whether the Final Rule "is likely to cause an increase in litigation." Ultimately, the costs of increased litigation will likely be borne by the retirement investors the Department seeks to protect.

As the Department acknowledged in the proposal, addressing these considerations- and others-will require time. The Department must review new evidence that has been submitted, scrutinize prior evidence and assessments that warrant reconsideration, provide notice and opportunity for comment on any proposed changes to the Rule, and then review and respond to the comments that are received in preparation of a final rule.

For these reasons, we strongly encourage the Department to act as soon as possible to finalize a

[3] Presidential Memorandum on Fiduciary Duty Rule, 82 Fed. Reg. 9675 (Feb. 7, 2017)

[4] "The negative consequences outlined in detail in these submissions, including the cutbacks in products and services to retirement accounts that have occurred since April will be exacerbated if the exemptions, as finalized in April 2016, take effect on January 1, 2018. Loss of choices, loss of a financial professional to talk to, more expensive products, more limited product choices, relegation of retirement savers to the internet or call centers – these are but a few of the negative impacts on the clients the industry serves and underscores the upheaval for retirement savers in the 15- month period during which financial institutions have struggled to find workable solutions to comply with the Rule and the exemptions."
August 9, 2017 letter from Lisa Bleier, Securities Industry and Financial Markets Association;
https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00599.pdf

[5] Presidential Memorandum on Fiduciary Duty Rule, 82 Fed. Reg. 9675 (Feb. 7, 2017)

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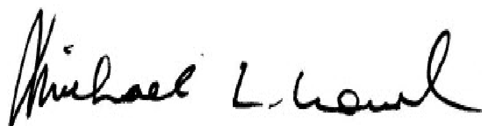
tiered delay until, at a minimum, the later of (i) July 1, 2019 or (ii) 12 months after the issuance of a final new Rule or a notice published in the Federal Register that the Department does not intend to make any further changes or revisions to the Rule. Clients should not lose access to essential services and face higher prices during an interim period of uncertainty and financial institutions should not be forced to spend time and money to comply with regulatory requirements that may be withdrawn or significantly changed or never go into effect.

We appreciate the Department's attention to this important matter, and thank you for this opportunity to comment.

Very truly yours,

Jason Chandler
Group Managing Director
Head of Investment Platforms and Solutions Wealth Management Americas



Michael Crowl
Group Managing Director
General Counsel - UBS Group Americas and Wealth Management Americas