

March 17, 2017

Submitted Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: Fiduciary Rule Examination

RE: Definition of the Term “Fiduciary” (RIN 1210-AB79)

Ladies and Gentlemen:

On behalf of the Bond Dealers of America (“BDA”), I am pleased to submit this letter in response to the Department of Labor’s proposed rule to extend the applicability date of its regulation to amend the definition of “fiduciary” under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA) by 60 days (RIN 1210-AB79). BDA is the only Washington, DC based trade association representing middle-market and regional broker-dealers active in the U.S. fixed income markets. The BDA appreciates this opportunity to provide comments on the proposed rule.

BDA supports the 60-day delay to the rule’s applicability. This is a significant rule that requires additional analysis.

BDA is supportive of the 60-day delay to the rule’s applicability date primarily because the delay provides the Department with time to assess the criteria outlined in President Trump’s February 3rd Memorandum to the Labor Department. BDA will submit additional comments during the 45-day comment period that will directly address the policy issues raised in the memorandum. Additionally, BDA member firms appreciate the Temporary Enforcement Policy published by the Labor Department on March 10th. It is our hope that a rule to delay the applicability date is approved prior to the April 10th applicability date.

While BDA supports a 60-day delay, a 180-day delay would be preferable from a compliance and customer communication standpoint. A 180-day delay would provide ample time for the Department to assess the rule’s significant investor, policy, and market

impacts. Additionally, a 180-day would also provide dealers with sufficient time for planning any necessary changes due to the new applicability date. The short period of time between the current April 10, 2017 applicability date and the proposed delayed applicability date of June 9, 2017 does present some compliance challenges that would be reduced if a longer delay was put in place.

BDA notes that the rule’s cost-benefit analysis is not based on retirement investors purchasing individual fixed-income securities.

BDA’s membership actively engages with retirement and non-retirement investors to offer a wide variety of individual fixed-income securities, including tax-free and taxable municipal bonds, corporate bonds, mortgage securities, and CDs. It is important to note, especially due to the fact that the rule was economically justified by focusing on mutual fund sales loads and fees, that when a retirement investor purchases a bond, that investor pays a commission or the dealer is compensated via a markup at the time of the transaction. Investors with brokerage accounts that buy bonds are not by charged ongoing fees on their bond transactions that reduce future investment returns, as they are with mutual funds. For this reason, the cost estimates for investors outlined in the Department’s analysis, which are based on mutual fund fees, do not apply to transactions in individual fixed-income securities. Therefore, the purported cost estimates for investor losses due to the lack of a rule during the 60-day delay period are overstated when analyzed relative to the costs of transactions in fixed-income securities.

U.S. broker-dealers are subject to a significant regulatory regime.

The broker-dealer regulatory regime is rules-based regulatory regime, as opposed the Department’s principles-based ‘fiduciary duty’ rule. As registered broker-dealers, BDA members follow the broker-dealer regulations adopted by the Financial Industry Regulatory Authority (FINRA), the Municipal Securities Rulemaking Board (MSRB), and the Securities Exchange Commission (SEC). Dealers are rigorously examined by the SEC and FINRA. Regulation and rising regulatory costs have played a large role in the consolidation of the broker-dealer industry, which has witnessed a 23 percent reduction in the number of registered broker-dealers since 2007, a trend which demonstrably reduces investor choice and competition amongst broker-dealers.

BDA wants to clarify that during the proposed 60-day delay investors will benefit from the significant protections of the rules-based broker-dealer regulatory regime. It is worth highlighting a few of the primary regulations in place that effectively mitigate conflicts of interest and ensure fair pricing and quality execution of investor transactions. These rules are vigilantly enforced.

- **FINRA 2010 on Commercial Honor and Principles of Trade**, which requires broker-dealer to observe high standards of commercial honor and just and equitable principles of trade in the course of their business interactions.
- **FINRA 2111 on the Suitability** of an investment in a recommended transaction or investment strategy, including the decision to hold a security. This rule requires the broker-dealer representative to have a reasonable basis that the transaction or strategy is suitable for the investor given the investor investment profile.
- **FINRA 2121 on Fair Prices and Commissions** requires broker-dealers to buy and sell securities to customers at fair prices and for no more than a fair commission. This rule applies to principal and agency transactions and is in place to ensure investors do not suffer from excessive mark ups or mark downs or fees related to their transactions.
- **FINRA 5310 and MSRB G-18 on Best Execution** is an order handling rule that requires, amongst other things, that dealers have a rigorous and documented process in place to ensure investor transactions take place after a diligent examination of the market for the subject security. This rule also applies to principal transactions and requires a dealer to have policies and procedures in place to ensure that when a dealer transacts in a security held in inventory, the price the investor is offered benefits from the dealer using reasonable diligence in an examination of the market for the subject security.

In conclusion, BDA members are supportive of the 60-day delay. The Department's rule is economically significant and will create major shifts in the U.S. securities markets, the market for retirement investors, and for broker-dealers. BDA believes that a delay of 60 days, or greater, is justified, especially given the significant policy issues raised by the Presidential Memorandum.

Sincerely,

A handwritten signature in blue ink that reads "Mike Nicholas". The signature is written in a cursive, flowing style.

Mike Nicholas
Chief Executive Officer