OPPENHEIMER

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Transacts Business on all Principal Exchanges

September 21, 2015

Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D11712
Suite 400
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Comments on Department of Labor's Fiduciary Definition Proposal RIN: 1210-AB32 and ZRIN: 1210-ZA25

Dear Sir or Madam:

Oppenheimer & Co. Inc. ("Oppenheimer") respectfully makes this submission in response to the United States Department of Labor's ("DOL") request for comments regarding its proposed regulation under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") that will effectively redefine the term "fiduciary" under section 3(21) of ERISA and section 4975(e) of the Internal Revenue Code of 1986, as amended (the "Code").

Oppenheimer is a leading investment bank and full-service investment firm that provides financial services and advice to high net worth investors, individuals, businesses and institutions. For over 130 years, we have provided investors with the necessary expertise and insight to meet the challenge of achieving their financial goals. Our commitment is to our clients' investment needs.

Oppenheimer supports the comments submitted by the Securities Industry and Financial Markets Association ("SIFMA") relating to the DOL's proposed regulation under ERISA. Our position is that if the DOL's proposal is approved, it would significantly impact a large portion of our clients who are attempting to plan for their future and invest for their retirement.

First, in regards to the DOL's expansion of the definition of "fiduciary" under Section 3(21) of ERISA, many conversations intending to help investors prepare for their retirement will fall within the expanded scope of providing "investment advice". Conversations that were previously designed to offer one's services would be deemed fiduciary conversations and thus, subject to the restrictions outlined in the proposal. This includes all distribution and "rollover" conversations. We concur with SIFMA that such distribution recommendations and conversations do not constitute fiduciary advice, and should remain so. It is our position that such conversations are in the best interest of plan participants, and would be discouraged if the proposed regulation is enacted, to the detriment of the retirement system as a whole.

Confusion among investors is inevitable based on the DOL's proposal. Investors want to see specific examples of products as part of a rollover discussion. However, based on the current DOL proposal, such a conversation would cross the threshold of being "educational" and instead enter into the realm of "investment advice". Such advice would require the execution of a "best interest contract". This will cause significant confusion on the part of the client as well as the advisor, who must determine at what point in the conversation does he or she need to require the client to enter into a best interest contract.

The requirement for an advisor to enter into a "best interest contract" is also impractical. A written contract with the client will make both the advisor and broker-dealer potentially liable for a breach of contract claim, thus exposing both parties to unnecessary litigation risk. It is important to note that individual participants under a 401(k) plan have legal recourse against any breach of fiduciary duty. Such recourse is mainly limited to litigation on behalf of the 401(k) plan. However, if an individual can take legal action solely on his or her behalf, such action becomes more likely. This would most certainly be the case if an individual advisor or broker dealer was required to enter into a best interest contract with each client.

Added litigation risks would arise due to the DOL's proposal that IRA clients must have the ability to bring class action lawsuits. It is Oppenheimer's position that such a requirement will incentivize plaintiffs to bring such lawsuits. A possible consequence of increased class action litigation would be large settlements, which would further encumber and discourage such client relationships.

Another concern is the "best interest" standard itself. An argument can be made that the best interest standard means that the recommendation of a product is the "best solution". However, given the volatility of financial markets today, it is more than likely than an alternative product may outperform the selected product. Thus, if the recommended product underperforms, the "best interest contract" may open the floodgates for plaintiffs to claim that the better performing product was actually in the client's best interest. This 20/20 hindsight would greatly increase legal exposure for Oppenheimer and most other firms.

An additional area of concern is the required "compensation disclosure" outlined in the DOL's proposal. Specifically, the DOL would require a firm to disclose direct and indirect compensation for a recommended product as well as any alternative products available to the client. To do so would impose an undue burden on firms and their advisors. As a result, many firms will be exposed to class action liability for failure to adhere to such onerous requirements.

Further, the enormous cost associated with complying with the "best interest contract" requirement for cost disclosures and product comparisons is substantial. To put in place the required infrastructure necessary to ensure observance of the best interest standard would require the development of technology over the course of several years at a prohibitive cost. Despite the fact that the industry shares a large amount of electronic product data already, there are no mechanisms in place to aggregate such data. Thus, a great deal of time and money will need to be expended by firms to abide by such a requirement.

To make the best interest contract a viable solution, we believe that the Securities and Exchange Commission ("SEC") should define a best interest standard across all account types in order to preserve an investors' choice. As our industry is heavily regulated, it would be wise for one governing body, such as the SEC, to provide guidance and to ward off any conflicting regulations and interpretations. Some suggestions for this definition would be disclosure of material product costs at the time the recommendation is made; regular updates on the performance of an individual product; full disclosure of material forms of compensation received by the firm and advisor; and disclosure of the terms of a product and why it is being recommended.

Further, Oppenheimer is of the opinion that the DOL's requirement for an actual "best interests" contract should be removed. In addition, the DOL should require compensation disclosures for recommended products and supplement the one, five and ten year performance/cost estimates with clear disclosure of the current and expected fees and costs.

An area of concern is what constitutes reasonable compensation under a best interest contract. The DOL proposes that advisors would be allowed to receive commissions that are "reasonable". However, the DOL fails to define the term "reasonable". Without a definition of the term reasonable, a "one size fits all" commission schedule could conceivably be applied for all products. This reduction in choice will significantly impact investors, as the client will end up having to pay more. If the industry moves to "one size fits all" pricing, advisors are likely to determine that they cannot afford to work with their smaller clients.

In conclusion, we concur with SIFMA's comments relating to the DOL's proposed regulation concerning a new definition of a "fiduciary". We believe that the DOL's proposal would create confusion for clients regarding the level and standard of care that they can expect to receive from their advisors. Further, such prohibitive restrictions will increase the risk of litigation, increase costs, reduce client choice and negatively impact the retirement system. We strongly urge the DOL to consider the comments found in this letter, the position letter of SIFMA and the written submission from the numerous firms who have stated suggestions to the DOL's proposal.

On behalf of Oppenheimer, we appreciate the opportunity to provide you with our position on this proposal.

Sincerely,
Oppenheimer & Co. Inc.

By: Dennis McNamara
Executive Vice President,
General Counsel

By: Robert Hord
Senior Vice President