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February 9, 2011

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

To Whom It May Concern:

We respectfully request an opportunity for Ken Bentsen, Executive Vice President, Public Policy and Advocacy, to testify on SIFMA's behalf at the Department's March 1-2, 2011 hearing.

Mr. Bentsen's testimony will cover the following points:

- *The ability of millions of Americans to save for retirement will be adversely impacted.* Financial institutions will not be able to deliver critical investment tools, information and services, or will only be willing to do so at an added cost to IRA account holders and retirement plan participants.
- *Costs exceed benefits.* We believe that the reasons given by the Department for proposing the regulatory change pale when compared to the costs of the proposal.
- *More limited choices.* . Limited availability and decreased competition will result in higher costs and spreads and adversely impact market efficiency. Service providers and counterparties that choose to continue to provide services to, and trade with, plans and IRAs will incur a multitude of new costs, much of which will be passed on to clients.
- *Investment options will be curtailed.* Plans will be prohibited from engaging in swaps, restricted in their use of custody, lending, cash management, and futures strategies, and limited in their access to alternatives.
- *Higher costs for participant investment education.* Under the proposed regulation, the risk of failing to meet the participant education bulletin has enormous consequences, because a small discrepancy will almost certainly cause the service provider to be treated as a fiduciary under the "may consider" test.
- *Creates significant uncertainty.* The proposed regulation replaces the clarity of the current regulation with vague and ambiguous definitions which do not permit service providers to know whether, in hindsight, they will be considered fiduciaries and who will be claiming to have "considered" their advice.

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- *Inconsistent with Congressional intent.* Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") required the SEC to conduct a study on the appropriate standard of care for retail accounts and, if necessary, issue regulations implementing a uniform standard of care for investment advisers and broker-dealers, without requiring changes in the fees and commissions charged these accounts.
- *Disrupts capital markets.* Trading counterparties will be severely limited because dealers will not know whether their affiliates will be deemed fiduciaries. All of the exemptions for principal transactions prohibit transactions with anyone who is a fiduciary with respect to the assets involved in the transaction. The proposed regulation will make it impossible to determine whether market-makers are fiduciaries with respect to those assets because it requires no relationship with the plan and no mutual understanding between the parties. In addition, a futures commission merchant may not be able to provide services to plans and IRAs if it is a fiduciary with respect to the assets involved in the transaction.
- *Turns ministerial custodial valuations or pricing services into fiduciary acts.* Custodians will prohibit plans and IRAs from holding assets which cannot be valued through a third party pricing service and such pricing services may be deemed fiduciaries even with respect to plans and IRAs with respect to which they have no relationship. Custodians may be prohibited from hiring third party appraisers to take on the fiduciary duty because of the substantial expense of doing so, or because the securities laws do not permit delegation to a third party.
- *Adversely affects the economy.* At a time when the economy is making at best a fragile and halting recovery, the adverse effects on the capital markets will be significant and capital currently invested by plans and IRAs in real estate and private equity will be reduced.

Sincerely,

Lisa J. Bleier

Lisa J. Bleier
Managing Director, Government Affairs
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