



NASAA

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March 15, 2011

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Definition of Fiduciary Proposed Rule  
Room N-5655  
US Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Re: Proposed Rule: Modernization of the Definition of a Fiduciary under ERISA Release  
No. RIN 1210-AB32

To Whom It May Concern:

On behalf of the North American Securities Administrators Association (NASAA)<sup>1</sup>, I am submitting this comment letter regarding the Department of Labor's ("the DOL") proposed rule to modernize the definition of a fiduciary within the meaning of Section 3(21)(A) of the Employee Retirement Income Security Act of 1974 (ERISA) as the proposal relates to the retail brokerage industry.

Significantly, the proposal would expand fiduciary duties to certain retirement based accounts held and managed through broker-dealers.

NASAA has previously submitted comments to and met with the United States Securities & Exchange Commission ("the SEC") concerning the need for brokers and dealers to abide by a strong fiduciary duty standard of care. The regulatory community, Congress, the securities industry, and the public are all well apprised as to our position about the need for a strong fiduciary duty. We are pleased to provide comment now to the DOL about the fiduciary

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<sup>1</sup> NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

standard in the retirement plan community and we do so in a manner that is consistent with the comments and input that we have provided to the SEC concerning its Dodd Frank Act Section 913 Study and to Congress as well.

### **The changing face of American retirement**

The DOL is right – the American retirement landscape has changed since the enactment of ERISA in the 1970s. The Government Accountability Office (“the GAO”) has recognized this change and The Pension Protection Act of 2006 (“the PPA”) called for both legislative and regulatory change. The need for modernization as regards retirement is beyond debate.

Moreover, particularly since 2008, the ability of millions of Americans to save for retirement has been in a state of continual decline. There is significant concern among American workers regarding the state of Social Security. There are fewer defined benefit plans and more self-directed IRAs. There are now reverse mortgages and immediate annuities that many are increasingly turning to in order to provide the savings and investment funds that individuals simply no longer have for retirement. There is no retirement for some and many are obliged to work into the final years of their lives. Additionally, more and more Americans are finding themselves supporting senior family members who are unable to provide for themselves.

A world that is comprised of difficult choices for Americans who were already facing significant retirement challenges is the reality of today’s environment.

With Americans living longer and, in many instances, with fewer precious retirement funds available for retirement, it is absolutely essential that Americans have fundamental legal protections for the assets they *do* have in the form of fiduciary laws – such as ERISA (and the Investment Advisers Act of 1940).

The DOL must be depended upon by the average American to protect their hard earned retirement dollars. The rule proposals to enact the PPA and to modernize ERISA standards reflect the real face of American retirement. We applaud these timely updates to better address the reality of the circumstances of today’s retirement. Since Americans are changing how they are saving for retirement – the DOL is properly adjusting its rules to embrace those changes.

### **NASAA’s own legislative agenda**

The retirement plans that the DOL regulates are plans that are composed of people. When we use the term “fiduciary” and the word “plan”, it can sound remote or impersonal. The DOL’s instant rule proposal is neither. The rule is about people. People who are every day Main Street investors who need a restoration of trust and confidence in the American capital markets and the practices of the securities industry to consider investing their retirement dollars. These people deserve to have a conflict-free environment when they invest their retirement assets. NASAA unequivocally supports measures that increase investor protection, investment disclosure, and the implementation of a strong fiduciary duty standard across all retirement accounts and assets.

Our support for equalizing the rules of engagement as they apply to the investing public for all brokerage accounts has been made clear to both Wall Street and to Congress. NASAA

has also encouraged both FINRA and the SEC to embrace a strong fiduciary standard for all types of investors who receive advice from investment professionals in a broker-dealer context. It appears that the DOL is prepared to take that step forward related to the investment accounts under its jurisdiction and we applaud them for it.

### **Summary**

In sum, NASAA believes that brokers and dealers must be subject to fiduciary duty for all accounts under their domain (for both taxable and non-taxable assets). The time has come. We urge all federal regulators and Congress to create consistency across all brokerage accounts through the adoption of the fiduciary duty. We fully support the DOL's instant rule proposal and the ways that it will help to shape the future of the brokerage industry for the better of all concerned.

Please do not hesitate to contact the undersigned regarding this matter.

Sincerely,

/s/Rex A. Staples

Rex A. Staples, General Counsel  
NASAA