January 2, 2024

Via Electronic Submission

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Re: Retirement Security Rule: Definition of an Investment Advice Fiduciary (RIN 1210-AC02) and Related Exemptions (Application No. D-12094 and D-12057)

Dear Assistant Secretary Gomez,

Cboe Global Markets, Inc. ("Cboe") welcomes the opportunity to provide feedback to the Department of Labor ("Department", "DOL") on the proposed amendments to the definition of "Investment Advice Fiduciary" and related amendments to Prohibited Transaction Exemptions for Investment Advice Fiduciaries (the "Proposal"). The duties and obligations arising from the Employee Retirement Security Act of 1974 ("ERISA") regulations deserve careful examination. We encourage the DOL to consider extending the relatively short 60-day comment period in order to facilitate a more robust notice and comment period.

Cboe, through its subsidiaries, is the creator of listed options and a leader in product innovation, trading technology and investor education.[1] We write to ensure the proposed expansion of the definition of "Investment Advice Fiduciary" and related amendments do not unintentionally hinder the ability of investors to receive investment education or utilize exchange-traded options and exchange-traded futures in their retirement accounts, such as 401(k) plans and individual retirement accounts ("IRAs").

Education is vital. We are encouraged that investors are increasingly driving their own investing decisions. Whether those decisions are based on advice or recommendation or solely driven by an investor, quality educational content has never been more important and accessible to investors. In many cases, exchanges, broker-dealers, and other market participants are facilitating this knowledge sharing, and the educational content takes many forms. Cboe, for example, produces and shares product specifications and information online and holds informational sessions concerning its products. Separately, Cboe's venerated Options Institute has been serving as an educational resource for over 35 years. The Options Institute's educational programming helps investors better understand options trading, but at no point does this education resemble investment advice or recommendation, nor should it trigger fiduciary status. The same is true of Cboe's efforts to share useful information related to its products and services.

It is our understanding that it is not the intent for educational content to be in scope of this Proposal. However, if the DOL proceeds, we recommend the Department clearly and explicitly exclude educational services from the investment advice fiduciary definition to avoid unnecessarily deterring important and needed educational content. The provision of product information, instructional models, videos, interactive educational materials regarding investment tools like exchange-traded options and

[1] Cboe's U.S. subsidiaries, include, among others, four regulated options exchanges, including the largest U.S. options exchange; two regulated futures exchanges; and four U.S. stock exchanges.

futures, etc., does not constitute investment advice or recommendation and should not cause the provider of such information to assume a fiduciary status.

Exchange-traded options and futures have tremendous utility. These are important investing tools for investors that not only provide opportunities to manage risk but also the potential to meaningfully improve returns.[2] For example, an investor can purchase a protective put to hedge risk associated with a stock exposure or sell covered calls as a way to generate additional income in connection with accumulated stock holdings. These established options strategies are useful to individual investors making their own investing decisions, as well as professionals serving investors. Neither of these types of investors should be discouraged from utilizing these investment tools.

Cboe requests that any final rule make clear that granting a retirement investor (e.g., a plan, plan fiduciary, plan participant or beneficiary, IRA, IRA owner or beneficiary or IRA fiduciary) access to exchange-traded options and futures does not constitute investment advice or recommendation triggering fiduciary status. For example, a broker screening the owner of an IRA or 401k account or following FINRA and options exchange rules to allow customers to trade listed options should not cause such firms to be considered fiduciaries. We do not believe that is the intent of the Proposal, but further clarity would be helpful.

Market participants need clear boundaries between the SEC and DOL to best serve investors. Although the DOL states that the Proposal is generally consistent with the SEC's best interest and investment advisor obligations, it is fair to ask whether this Proposal is necessary given the existing, robust SEC regime. Beyond this threshold question, we believe conflicts between DOL and SEC obligations should be avoided to the greatest extent possible to reduce disincentives. Duplicative, conflicting, or unclear standards increase costs to service providers and can have a chilling effect on the provision of beneficial services. At the very least, it is incumbent on the DOL to provide as much clarity as possible as to the specific activities and arrangements that may give rise to overlapping requirements. Otherwise, providers may simply curtail helpful retiree services.

We recommend that the DOL more closely coordinate with the SEC to clearly establish that any new DOL proposal will not inadvertently restrict investor access to critical investing tools and services or duplicate or conflict with similar SEC obligations.

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Cboe appreciates the opportunity to share its views on the Proposal and welcomes the opportunity to discuss these comments further.

Sincerely,

Angelo Evangelou

Angelo Evangelou
Chief Policy Officer
Cboe Global Markets

[2] A 2014 study found that over a 5-year period, funds that used options had higher returns, lower volatility, and higher risk-adjusted returns than their peer funds that did not use options. See Goldman Sachs Research, Mutual Fund Use of Options: Public Holdings and Trends (2014); In addition, options-based funds often have lower volatility and less severe drawdowns than other funds and typically outperform the S&P 500 Index in down markets. See Keith Black and Edward Szado. Performance Analysis of Options-Based Equity Mutual Funds, Closed-End Funds, and Exchange-Traded Funds: An Update, The Journal of Wealth Management, (2018) and Markus Natter, Martin Rohleder, Dominik Schulte, and Marco Wilkens, The Benefits of Option Use by Mutual Funds, Journal of Financial Intermediation, (April 2016), Vol. 26, 142-168.