



October 27, 2008

Sent via Electronic Mail

Mr. Robert Doyle
Director, Office of Regulatory Interpretation
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Doyle,

On behalf of SIFMA, I am writing to address two issues raised during the public hearing on the proposed regulation and class exemption relating to investment advice on Tuesday, October 21.

The first issue relates to the elements of disclosure that a fiduciary advisor would be required to provide to plan participants. One witness at the hearing suggested that the terms of an advisor's contractual arrangements with third parties who are either certifying a model or auditing the arrangement should be an element of disclosure. This suggestion was apparently prompted by the witness' view that these experts might be inclined to overlook bias in the model or violations of the exemption. SIFMA believes the proposed materiality standards included in the exemption are more than sufficient to protect against bias in selecting service providers who certify models or carry out audits of advice programs. We find it difficult to believe that an expert that meets the "non-affiliation" test would jeopardize its good name, reputation, and standing by somehow acting in the interest of the fiduciary advisor. If the Department believes that additional disclosure would be helpful, SIFMA suggests that the firms or individuals who provide certification and audit services be required to certify as follows: "the service provider's judgment has not been affected by the payment of any fee or other compensation by the fiduciary advisor." A statement such as this one would serve as a final reminder of the seriousness of the duties undertaken by the auditor or expert.

The second issue that we urge the Department to address relates to the definition of a pattern or practice. Currently, the Department has the authority to revoke an exemption at any time; we know of no other class exemption which makes the exemption unavailable upon the occurrence of a subjective condition and in our view, this provision is unadministrable. To provide more certainty, the Department should make clear that this provision applies only to intentional misconduct rather than an inadvertent mistake. Second, the Department should make clear that an individual advisor found in violation of the

exemption could be barred from providing advice. The firm as a whole should not lose the benefit of the exemption unless violations are pervasive, were brought to the attention of the compliance or legal department of the firm, and went unaddressed by the senior legal officer of the firm.

Please do not hesitate to contact me if you have any questions about these issues. We look forward to working with the Department to implement these important provisions.

Sincerely,

A handwritten signature in black ink, reading "Liz Varley". The signature is written in a cursive, flowing style.

Liz Varley
Managing Director, Government Affairs