

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

RE: RIN 1210-AB79: Proposal to Delay the Applicability Date of the Definition of the Term "Fiduciary"

KMS Financial Services, Inc. ("KMS") appreciates the opportunity to comment on the Department of Labor's ("Department") proposed rule regarding the delay of the applicability date of the Definition of the Term "Fiduciary."

### **About KMS**

KMS Financial Services, Inc. is an SEC-registered securities broker-dealer, SEC-registered investment advisor, and insurance general agent based in Seattle, Washington. KMS offers financial products and services through approximately 350 licensed (registered) representatives. KMS is a wholly owned subsidiary of Ladenburg Thalmann Financial Services, Inc. (NYSE MKT: LTS, LTS PrA), which is a publicly traded, diversified financial services company based in Miami, Florida.

### **Support for Delay**

The president's memorandum dated February 3, 2017, directed the Department to examine the Definition of the Term "Fiduciary" and related Prohibited Transaction Exemptions ("Rule") to determine (1) if investors will have reduced access to retirement products and financial advice, (2) if investors will be negatively impacted by disruptions within the industry, and (3) if there will be a likely increase in litigation. To that end, the Department has initiated a 45-day comment period to undertake such an examination.

We agree with the Department that should it revise or rescind the Rule or it will cause disruption to retirement investors and produce additional and unnecessary frictional costs. Additionally, if the current applicability date is maintained, retirement investors will face harmful disruptions and reduced access to retirement products and financial advice.

In response to the Rule's requirement that compensation be level within a product category (e.g., variable annuities, fixed index annuities, or mutual funds), KMS will have to significantly reduce retirement products available to investors. This is because product sponsors have not had adequate time to modify their products to meet this requirement. For some product lines, this will result in a reduction from thousands of available options to substantially fewer available options. This is merely one example of where the industry needs more time to comply with provisions of the Rule to avoid unintentional harm to retirement investors due to unforeseen consequences of the Rule.

Other financial institutions have announced the discontinuation of commissionable retirement products and services. For investors who prefer a “buy-and-hold” investment strategy, a commission relationship is often in their best interest because of lower overall long term costs, competitive performance and ample flexibility to reposition. Under the current proposal, a buy-and-hold investor working with a trusted advisor at their preferred financial institution will be required to either:

1. Move to an advisory relationship with their current trusted advisor; a relationship that may increase long-term costs to the investor, or
2. Move their account to a new advisor who offers commission retirement products and services, but does not have a long-term relationship with the client.

Either scenario harms the investor by increasing costs or reducing access to a trusted financial advisor — or perhaps both. A substantial portion of our clients who are investing for retirement are buy-and-hold investors working with trusted advisors long term who utilize reputable (load) mutual fund companies offering competitive products and fees.

Due to the fact that (1) the 45-day comment period ends after the current applicability date of the Rule, (2) the Department will need additional time to review such comments, (3) retirement investors will face reduced access to advice and products, and (4) the industry needs more time to fully comply with the Rule, KMS fully supports the Department’s proposal to delay the applicability date. Further, we believe all aspects of the Rule should be delayed to allow the Department ample time to complete a full examination of the Rule, and that a delay period of 180 days is more appropriate.

### **Support for a Carefully Crafted, Universal Fiduciary Standard of Care**

**KMS supports a carefully crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients.**

However, we do not support the Department of Labor’s Rule as currently written and will provide comments to that effect in a separate letter. We believe the SEC should be one of the primary regulatory authorities responsible for defining and crafting a universal fiduciary standard of care. We also believe a well-crafted standard will make it easier for American investors to receive personalized, high-quality investment advice from a trusted advisor while maintaining the ability to make their own financial decisions.

Such regulation should provide retail investors with a clear and easy-to-understand standard of care that is applicable to the entirety of the client’s relationship with a trusted advisor.

Investment professionals should be required to do the following:

- Act in the best interest of the client;
- Provide advice with skill, care, and diligence based upon the individual needs of the client; and
- Disclose material conflicts of interest, avoid conflicts when possible, and obtain informed client consent to act when conflicts cannot reasonably be avoided.

Thank you for considering KMS’ comments. Should you have any questions, you may reach me at (206) 441-2885, ext. 290.

Respectfully,

***Eric S. Westberg***

Chairman & CEO

KMS Financial Services, Inc.

ext. 290 at (206) 441-2885 / (800) 578-5253

[westberg@kms.com](mailto:westberg@kms.com)

**Please note:** *Emails to and from this address are subject to archiving and review by supervisory personnel and regulatory authorities. PLEASE DO NOT RELY SOLELY ON EMAIL OR FAX to convey time-sensitive information such as securities orders or account instructions. Call KMS Operations at ext. 400.*