



March 17, 2017

*Via Electronic Mail to EBSA.FiduciaryRuleExamination@dol.gov*

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

Re: Definition of the Term “Fiduciary” and Related Prohibited Transaction Exemptions  
Proposed Extension of Applicability Date (RIN 1210-AB79)

Ladies and Gentlemen:

HSBC North America Holdings Inc., on behalf of itself and its subsidiaries, including HSBC Securities (USA) Inc. (collectively, “we” or “HSBC”) appreciates the opportunity to comment on the Department of Labor’s (“Department”) proposal to extend the applicability dates of the regulations defining the term “fiduciary,” the related new prohibited transaction exemptions and amendments to existing prohibited transaction exemptions (the “Rule”). This letter only addresses the proposal for which the Department requested comments within 15 days, and it does not address issues for which the Department requested comments within 45 days.

We believe that an extension of the applicability date of at least 60 days (but more likely 180 days) is necessary for the Department to thoroughly examine the Rule for adverse impacts on Americans’ access to retirement investment advice and assistance, as required by the President’s Memorandum.<sup>1</sup> This extension is necessary to prevent further harm to retirement investors, alleviate existing—and avert additional—confusion for retirement investors and the firms and advisors who serve them, allow efficient use of implementation resources, and provide the market more time to develop better solutions.

As such, we believe, at a minimum, a 60-day (but more likely a 180-day) extension is needed to:

1. ***Prevent further harm to retirement investors.*** Registered investment advisers, broker-dealers and other financial institutions, including us, have worked hard to develop solutions that both comply with the Rule and continue to provide access to a variety of financial products and advice for retail retirement investors. But, firms have generally found that product and service offerings must be reduced and limited to be able to continue to successfully service retirement investors while complying with the Rule. Perhaps they,

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<sup>1</sup> Memorandum of February 3, 2017 for the Secretary of Labor re: Fiduciary Duty Rule, 82 Fed. Reg. 9675.

like us, have concluded that this reduction of products and services is necessary to build and implement an achievable compliance framework within the bounds of this complex Rule and within the short timeframe provided. The extension would allow certain existing product and service offerings to remain in place while the Department studies the Rule for its negative impacts, thereby protecting retirement investors from needless interruption of their services, which would prove to be particularly important for existing retirement clients.

2. ***Alleviate confusion for retirement investors, and firms and advisors who serve them.*** Compelled to do so by the Rule, we, along with many other firms, are preparing to notify retirement investors of the impending changes to the products and services available to them. Because of the uncertainty regarding the Rule and the President’s Memorandum, we have, to date, withheld mailings. Indeed, the Department has acknowledged in Field Assistance Bulletin No. 2017-01 (“FAB 2017-01”) that “many financial services firms and advisers are concerned that, if the Department decides not to issue a delay, there may not be sufficient time to provide retirement investors before the April 10 applicability date with disclosures or other documents intended to comply with the transition period relief in the BIC Exemption, the independent fiduciary exception in the rule, or other disclosure provisions of the rule or the PTEs.” In some cases, clients have not been advised about the ways in which the Rule will affect the products and services available to them. Without a delay of the Rule’s applicability date, notifications are queued to be delivered to households before the April 10, 2017, applicability date. These notices will cause retirement investors to be confused and this confusion may be aggravated by the fact that many understand the President’s Memorandum to have halted the Rule already. In addition, while firms have worked to update their advisors and support staffs regarding firm strategy and offerings, and to educate them regarding the significant new legal and operational requirements, and changes to policies and procedures in light of the Rule, these efforts have been hampered by the significant uncertainty surrounding applicability dates. We ask the Department to settle this disruption by issuing an extension of applicability dates.
3. ***Allow efficient use of implementation resources.*** We have already spent large sums and significant time working towards complying with the Rule. Failing to extend the applicability date will result in continued expenditures towards implementing specifics of a Rule that may ultimately be rescinded or materially revised. These resources are better spent on developing products and services that benefit our clients, employees, and shareholders. Indeed, the Department acknowledged in its proposal to extend the applicability dates of the Rule that without the 60-day extension, “advisers, retirement investors and other stakeholders might face two major changes in the regulatory environment rather than one” and that this “could unnecessarily disrupt the marketplace, producing frictional costs that are not offset by commensurate benefits.”
4. ***Help firms develop better, compliant solutions to the Rule.*** Though we, like other firms, are working towards an April 10, 2017 applicability date, the relatively short implementation period to comply with such a substantial rule change has been, and continues to be, challenging. The three sets of FAQs the Department promised it would issue in the summer of 2016 have only partially been completed, with the second set issued

as recently as January 2017. Given the complexity of the Rule and that the issued FAQs included unexpected interpretations that require firms to reconsider their compliance strategies, a meaningful extension in the applicability dates is warranted. Further, the amount of time allotted has made technological solutions more difficult to identify, test and fully implement. We note that such an extension is consistent with the Department's past practices, such as the delays granted in connection with the rules requiring service providers to disclose fees under ERISA Section 408(b)(2).

We also encourage the Department to provide a longer extension of at least 180 days to allow time to conduct its review of the Rule and complete any new rulemaking to rescind or revise the Rule, if appropriate, without creating further disruption and uncertainty by requiring additional rulemakings to gain additional extensions.

Moreover, to allow a fulsome reconsideration of the Rule and its impacts, and prevent customer confusion and fragmented approach to implementation, the extension should apply to all aspects of the Rule, including the definition of fiduciary and each condition of the prohibited transaction exemptions (e.g., the impartial conduct standards). The Rule, which affects a number of different statutory provisions and the prohibited transaction exemptions, were granted as a comprehensive solution, and should not be implemented piecemeal without a comprehensive study to protect retirement investors from further harm. Such a piecemeal implementation would impact how and when firms train advisors on specifics of the Rule, and roll out new policies and procedures. Pulling apart the different aspects of the Rule without sufficient time to reconsider policies, procedures and training would further disrupt services.

We stress that investors, advisors, and firms are in urgent need of certainty regarding the applicability date of the Rule. As April 10 rapidly approaches, firms will imminently need to implement changes to their solutions and offerings, send disclosures required under the Rule, and communicate changes to investors. We hope that the Department will expedite this rulemaking to extend the applicability dates and finalize the extension as quickly as possible.

We appreciate the Department's issuance of FAB 2017-01, acknowledging the confusion and disruptions that are occurring and may further occur if an extension has not been finalized by April 10, 2017. We note, however, that this guidance appears limited to the Department's enforcement authority—it may not address every concern and should not be viewed as a substitute for the Department acting immediately to extend the applicability dates of the Rule. Thus, notwithstanding FAB 2017-01, it is essential that the Department finalize an extension in advance of the current April 10, 2017 applicability date.

For the forgoing reasons, we urge the Department to finalize an extension prior to April 10, 2017.

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We would be pleased to provide further information or assistance to the Department or its staff. Please contact the undersigned or Jane Knight, Associate General Counsel (212-525-8134) if we can provide any additional information.

Very truly yours,



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Mark A. Steffensen  
Senior Executive Vice President and General Counsel  
*HSBC North America Holdings Inc.*