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***Via Webform to:*** https://www.sec.gov/cgi-bin/ruling-comments

U.S. Securities and Exchange Commission
100 F Street, NE
Washington DC 20549-1090
Attn: Mr. Brent J. Fields, Secretary

**Re: Standards of Conduct for Investment Advisers and Broker-Dealers**

Dear Mr. Fields:

Thank you for the opportunity to respond to Securities and Exchange Commission ("SEC") Chairman Jay Clayton's request for public comment on the standards of conduct for investment advisers and broker-dealers (the "Request").[1] We appreciate the SEC's attention to this important issue, particularly given recent regulatory action by the Department of Labor (the "Department"). For the reasons set forth below, we believe that the SEC should develop a best interest standard for broker-dealers ("BDs") that is based on the "Impartial Conduct Standards" articulated by the Department and further should work with the Department to ensure that the SEC or the Financial Industry Regulatory Authority ("FINRA") are the authorities responsible for creating appropriate rules and enforcement of such best interest standard (which would apply to both retirement and non-retirement brokerage accounts of BDs). Investment Advisers would continue to be governed by the standards of the Investment Advisers Act of 1940 ("Advisers Act"). In this regard, we agree strongly with the comments contained in the letter submitted to the SEC by SIFMA.

**Background**

UBS AG, a subsidiary of UBS Group AG, operates three main lines of businesses in the United States – its Wealth Management Americas business primarily operated through UBS Financial Services Inc. ("UBSFS"), its investment banking business primarily operated through UBS Securities LLC ("UBS Sec LLC"), and its global asset management business primarily operated through UBS Asset Management (Americas) Inc. ("UBS" is used throughout in reference to the UBS business in the United States.) UBSFS is dually registered as a broker-dealer and an investment adviser and is one of the largest securities firms in the United States. As of December 31, 2016, Wealth Management Americas (which, as noted, primarily operates through UBSFS) had invested assets totaling over $1 trillion and close to 15,000 employees - including a network of approximately 7,000 financial advisors.

[1] Public Statement by Chairman Jay Clayton, *Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers* (June 1, 2017) available at https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31.

UBS Sec LLC is a registered broker-dealer and a member of FINRA, the New York Stock Exchange, Inc., NASDAQ, and other principal exchanges. In addition, UBS Sec LLC provides a full range of investment banking services and is a registered futures commission merchant, a member of certain major United States and foreign commodity exchanges and a primary dealer in United States Government securities.

**Comments**

UBS has long supported the SEC's creation of a uniform best interest standard of care for BDs providing personalized investment advice to retail clients.[2] As SIFMA noted in its comment letter, the SEC has been studying the issue of a uniform standard of care for over 7 years without engaging in its rulemaking authority under Section 913 of the Dodd-Frank Act. We agree with SIFMA's conclusion that the SEC has not acted to create a uniform standard for BDs and Investment Advisers ("IAs") because it is simply impractical and unworkable to create a uniform standard that is "no less stringent than" the Advisers Act standard[3] that would also preserve the important distinctions between IAs and BDs.

During the period the SEC has been studying the issue, the Department intervened with a standard of conduct of its own. As a result, financial institutions like UBS are now subject to three different standards of conduct for their accounts at the Federal level: (1) the Advisers Act standard for advisory accounts; (2) the BD suitability standard for BD accounts; and (3) a fiduciary standard under the Department's Fiduciary Rule for retirement accounts regardless of whether they are BD or IA accounts.

The securities industry's concerns about the burdens of multiple and ever increasing standards and regulators have proven to be well founded as the State of Nevada recently instituted its own fiduciary standard for BDs applicable to both retirement and non-retirement accounts. Without a preemptive Federal standard, we are concerned that an increasing number of states will enact their own (and different) fiduciary requirements and standards of conduct for BDs. This would significantly raise compliance costs and complicate training efforts. Consequently, it could lead to higher costs for clients and could prompt some BDs to reduce services in certain states.

We believe that the Department last year used a flawed regulatory impact analysis to provide the basis of support for the Fiduciary Rule. That analysis ignored the rule's potentially serious negative consequences for retirement savers, including diminished access to investment advice, increased costs of services, and more limited choices of

[2] Letter of Robert J. McCann CEO, UBS Wealth Management Americas to U.S. Department of Labor dated February 3, 2011 commenting on the 2010 proposed fiduciary rule. https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32/00156.pdf.

However, UBS believes that the articulation of a uniform standard of care in connection with personalized advice to a retail client needs to avoid imposing the standards and 75 years of interpretations under the Advisers Act onto BDs with respect to brokerage accounts.

[3] Dodd Frank Act Section 913.

investment products and fee alternatives for retirement investors. As directed by the President,[4] the Department is currently engaged in a review of the Fiduciary Rule that must include an updated economic and legal analysis that examines its potential negative impact.

We further believe that the SEC, the agency with the requisite understanding of and experience regulating the financial markets, is best positioned to articulate a best interest standard of conduct for BDs. For these reasons, we are heartened by Secretary of Labor Alexander Acosta's statements seeking cooperation with the SEC as the Department begins its examination of the rule and its impact. As such, we support SIFMA's suggestion that the two agencies collaborate to develop a workable standard of conduct that is based on the Department's principles-based Impartial Conduct Standards and that applies to both retirement and non-retirement brokerage accounts. To that end, we, like SIFMA, encourage the SEC to urge the Department to delay the January 1, 2018 applicability date for the remaining conditions of the Rule by no less than an additional twenty-four months to allow sufficient time for the Department to conduct its mandated examination of the rule and for the SEC and the Department to succeed in this effort.

We believe that because of the extensive examination, oversight and enforcement processes that are currently exercised by the SEC and FINRA, there is no need for a private right of action under the standard to be developed, and that such existing processes are fully sufficient to properly enforce the new standard of conduct. With these processes already in place, there is no need for incentivizing further private litigation, which would be duplicative, unnecessary and burdensome and would inevitably lead to increased costs and reduced choices for investors in both their retirement and non-retirement accounts.

We believe that the SEC and the Department should jointly develop a best interest standard that is based on the Department's most recent articulations of the Impartial Conduct Standards set forth in the Department's FAQs for the Transition Period issued May 2017.[5] Under this principles-based articulation:

- [T]he impartial conduct standards require fiduciaries to adhere to basic fiduciary norms and standards of fair dealing. In particular, fiduciaries' investment recommendations must be "prudent, loyal and free from material misrepresentations"...and fiduciaries must not receive more than reasonable compensation for their services;
- [E]ven if a fiduciary adviser recommends proprietary products or investments that generate commissions or other payments that vary with the investment recommended, the adviser can meet the impartial conduct standards by ensuring that the recommendations are prudent; based upon the customer's financial

[4] Presidential Memorandum on Fiduciary Duty Rule (February 3, 2017), available at https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule.

[5] DOL, Conflicts of Interest FAQs (Transition Period), FAQ 1 (May 2017), available at https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-transition-period.pdf.

interests, rather than the adviser's competing financial interests in the transaction; the communications are free from material misrepresentations; and the associated fees and charges are reasonable; and

- Of course, to the extent the adviser limits recommendations to proprietary products or receives compensation that varies with the product recommended, the adviser should be candid about the compensation and the limits on investments.

Notably, this articulation of the Impartial Conduct Standards omits the following language contained in the Department's Best Interest Contract ("BIC") exemption: "without regard to the financial or other interest of the advisor, financial institution or any affiliate, related entity or other party" from the Fiduciary Rule. BDs have found this language troubling given the frequently varying commissions they charge or compensation they receive for different products in brokerage accounts and the different advisory fees that are charged for varying programs in advisory accounts. Although the Department purported to be using existing ERISA standards in the Fiduciary Rule, this troubling language is not found in ERISA or in any of the regulations previously issued thereunder. We believe that a financial advisor operating in a transaction based or varying fee compensation model would find it difficult to defend itself against allegations that it did not live up to that standard, particularly when those claiming they did not are operating with the benefit of hindsight. This is likely (along with the additional complexities of the Department's BIC and Principal Trading ("PT") exemptions) to lead to a limited menu of investment options in brokerage retirement accounts and/or an increase in costs in such accounts or result in customers being told they must either move to advisory fee-based accounts or to execution-only call centers where they would receive no advice whatsoever. We believe that, as long as the advisor is providing advice that is prudent, loyal and in the client's best interest, there is simply no need to add language that is bound to be the subject of litigation for years to come and lead to a change in business models that have served investors well for many decades.

The development of a uniform standard by the SEC and the Department would still leave open what kind of a prohibited transaction exemption would be needed to permit the continuation of the BD model using transaction based compensation. If the new uniform standard results in BD clients receiving prudent advice in their best interest, paying reasonable fees and receiving information that is free from material misrepresentations, there is simply no need for the additional burdensome conditions of the BIC or PT exemptions. We do not believe that the addition of a private right of action and potential class action liability through the warranties and best interest contract provisions of the BIC exemption will benefit anyone other than the plaintiff's bar. Unlike the existing SEC and FINRA securities examination and enforcement approach, that enforcement approach will do nothing to ensure that bad actors that do not act in their clients' best interest are disciplined or removed from the industry where appropriate. Accordingly, our view is that the existing examination and enforcement regime of the SEC and FINRA will be most protective of clients.

In order to affect a coordinated approach by the SEC and the Department, we believe that an appropriate prohibited transaction exemption issued by the Department for variable compensation received based on a recommendation, including a recommendation for a principal trade and a recommendation of a product of the financial institution or an affiliate, would be subject to the following conditions:

- Meeting the new standards of conduct and the accompanying rules and regulations issued by the SEC (which, as stated above, would be based on the Department's Impartial Conduct Standards); and
- Providing a disclosure document (similar to a Form ADV), that would include the compensation that may be received from clients and from third parties, material conflicts of interest, and the types of compensation for the various products and services available.

We appreciate the opportunity to respond to Chairman Clayton's request and hope that the SEC finds these comments useful. We would be pleased to discuss them with the SEC at your convenience.

Very truly yours,

Jason Chandler
Group Managing Director
Head of Investment Platforms and Solutions
Wealth Management Americas

Michael Crowl
Group Managing Director
General Counsel – UBS Group Americas and Wealth Management Americas