CENTER FOR CAPITAL MARKETS COMPETITIVENESS

LAS VEGAS METRO CHAMBER OF COMMERCE

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Submitted Electronically – fiduciaryduty@sos.nv.gov

Re: Comments on Proposed Regulations to be Added to Chapter 90 of the Nevada Administrative Code Regarding Fiduciary Duties of Financial Planners

Ms. Foley:

The U.S. Chamber of Commerce ("the Chamber") appreciates the opportunity to comment on the proposed regulations ("the Proposal") regarding the fiduciary duties of financial planners to be added to Chapter 90 of the Nevada Administrative Code pertaining to the revisions made by Senate Bill 383 ("SB 383") to the Nevada Revised Statutes ("NRS") Chapters 90 and 628A.

As written, we believe the Proposal's overly broad scope significantly exceeds the intent of the authorizing statute, SB 383, and would have a very negative impact on the availability and cost of financial services and advice to the residents of Nevada. We are also very concerned that the Proposal contains a number of vague, ambiguous or conflicting provisions that would create significant confusion for Nevadans and the financial professionals serving their needs. Finally, we are concerned that the Securities Division ("the Division") does not appear to have properly taken into account the effect the Proposal would have on small businesses and particularly savers with more modest account balances, or the Proposal's likely conflicts with preemptive

Federal securities and employee benefits laws. Accordingly, we respectfully offer the following comments for your consideration.

- The Proposal inappropriately limits investor choice.
- The Division should work with the SEC to develop complimentary regulations rather than proceed unilaterally and risk material conflicts.
- The scope of the Proposal dramatically exceeds the legislature's intent—rather than implementing SB 383, the Proposal seeks to legislate through regulation.
- The Proposal inappropriately imposes a duty to provide ongoing investment advice—the Episodic Fiduciary Advice Exemption likely will not apply.
- The Proposal inappropriately defines fiduciary conduct to include acts that do not involve investment recommendations.
- The Proposal establishes breaches of fiduciary duty that are incompatible with the definitions of fiduciary investment advice.
- The Division has not evaluated the impact of the Proposal on small businesses as required under Nevada Administrative Procedures.
- The Proposal, as written, is likely to face preemption challenges.

The Proposal Inappropriately Limits Investor Choice.

Put simply, the consumers of financial services are not all the same. Investors all have different needs. Some need ongoing, regular investment advice and comprehensive financial planning. Others need only episodic assistance in purchasing a particular financial product for a specific purpose.

The various types of financial professionals and the different ways in which they are compensated and regulated allow consumers to select providers that best meet their different needs. We agree that the nature of the services offered and the costs and benefits of each model should be transparent to permit informed choice. However, regulatory efforts that directly limit these choices and options by banning some models, or by imposing duties and restrictions incompatible with those models, cause harm to our members by reducing access and increasing costs.

Our experience with the U.S. Department of Labor's Fiduciary Rule ("DOL Rule") taught us that overly broad and overly proscriptive rules that do not preserve the different business models for providing financial services end up reducing access to financial services and increasing costs. The DOL Rule is a cautionary tale for regulators that illustrates very clearly the costs of overreaching—the DOL Rule made it harder for many of our members to receive financial assistance or investment advice, and increased costs for many more. Ultimately, to protect investors from the harmful effects of the DOL Rule, we and a number of other groups successfully challenged the Rule, which was vacated by the U.S. Court of Appeals for the Fifth Circuit last year.[1]

We are very concerned that the Proposal follows in the footsteps of the DOL Rule and would reduce access to valuable and necessary financial assistance for too many consumers. At a conceptual level, the Proposal appears to acknowledge that there are valid differences in service models and demonstrates some intent to preserve at least some of these differences. Unfortunately, the actual text of the Proposal is not consistent with this intent—the distinctions are so narrow, or are subject to such broad conditions that in practical effect the Proposal would result in a one-size-fits-all approach that would not serve Nevada consumers' needs. We believe the Proposal, as written, is an overly broad, overly prescriptive regulation that would make it more difficult and expensive for many Nevadans to get the type of financial assistance they need from the financial professionals of their choice.

The Division Should Work with the SEC to Develop Complimentary Regulations Rather than Proceed Unilaterally and Risk Material Conflicts

Fundamentally, we believe the Division would best serve Nevada consumers by working with the SEC to develop proposed regulations that complement the new Federal structure the SEC will shortly put into place. This would not result in an undue delay—final SEC regulations are coming in the near future. The SEC is working diligently on finalizing these new rules, and is very likely to complete its work in the next several months.

The SEC is actively engaged in substantive rulemaking that will apply nationally. It would benefit Nevada consumers for the Division to wait for the SEC to issue its new rules creating a best interest standard for broker-dealers and clarifying the fiduciary obligations of registered investment advisors, and then work to develop regulations coordinated with the new SEC requirements. To move forward unilaterally risks substantive conflicts that would serve no one's interest.

[1] *Chamber of Commerce of the U.S.A., et al. v. U.S. Dep't of Labor, et al.*, No. 17-10238, slip op. 46 (5th Cir. Mar. 15, 2018).

The Chamber supports strong, Federal regulation of financial services that protect investors, our members, their employees and their families while ensuring access to quality, affordable financial assistance and investment advice. That is why we offered comments supporting the Securities and Exchange Commission's ("SEC") regulatory proposals enhancing the standards applicable to broker-dealers and registered investment advisors, and providing disclosure regarding the nature of the relationship between the consumer and the financial professional.[2] We urge the Division to review these comments to understand how the SEC's proposed regulations preserve consumer choice while providing enhanced protection.

The Scope of the Proposal Dramatically Exceeds the Legislature's Intent—Rather than Implementing SB 383, the Proposal Seeks to Legislate Through Regulation

We are very concerned that the Proposal goes far beyond the statutory intent of SB 383, and inappropriately uses what was intended to be limited rulemaking authority to make broad new policies never contemplated or approved by the Legislature.

Rather than confining the Proposal to those changes necessary to implement the goals of SB 383, the Division creates a completely new and comprehensive fiduciary regime in the state. This was not what the legislature directed in passing SB 383. The legislative history of SB 383 demonstrates that the purpose and intent of the law (as described by its sponsor and other supporters during hearings) was much more limited—to expand the definition of "financial planner" under current law to include certain financial professionals that had been excluded from the prior definition. As a result of being deemed a "financial planner," an existing fiduciary standard long in place under Nevada law for financial planners would apply. The statute simply moved the line on when a financial professional of whatever kind is also deemed a financial planner—it did not call for any changes to the fiduciary standards that apply to financial planners.

[2] *See,* U.S. Chamber comment letters on SEC proposals dated August 7, 2018 and September 5, 2018, available at https://www.sec.gov/comments/s7-08-18/s70818-4184380-172570.pdf and https://www.sec.gov/comments/s7-08-18/s70818-4305975-173214.pdf (accessed on February 18, 2019).

On April 12, 2017, Sen. Aaron Ford, the sponsor of SB 383, testified before the Senate Committee on Commerce, Labor and Energy and explained that the bill "…revises the definition of 'financial planner' to remove the exclusions for broker-dealer and investment advisers, thereby making such persons subject to existing law..." that has applied a fiduciary standard to financial planners since 1993.[3]

In response to additional questions regarding the scope of the bill, Sen. Ford clarified these remarks, stating, "The definition is not expanding beyond what is already being considered for a financial planner. It is removing the exemption for broker-dealers and investment advisers...anyone giving investment advice under the current provisions of [the law] as financial planners and now broker-dealers and investment advisers are going to be required to comply…"[4] In testimony before the Assembly Committee on Commerce and Labor on May 12, 2017, Sen. Ford similarly stated that in SB 383 "I am looking to extend a protection…the determination has been made that these professionals should be held to the same standards as financial planners."[5]

In other words, the bill was intended to apply the fiduciary standards <u>already in place</u> for some financial professionals to a larger number of financial professionals—it was <u>not intended</u> to redesign and broadly expand those fiduciary standards themselves. However, that is exactly what the Proposal does—it creates a broad new regulatory framework that significantly expands the type of conduct that would be considered fiduciary, an issue not addressed in SB 383.

It is telling that the original bill provided no new rulemaking authority to the Division at all. As the bill progressed, the Division requested the ability to issue implementing regulations. However, at no point in the debate regarding this new authority did the Division suggest that it would engage in bold rulemaking that would change the nature of fiduciary conduct, and at no point did the Legislature direct it to do so.

During the Assembly Committee debate in which the bill was amended to provide the rulemaking authority found in the final bill, the sponsors and supporters explained that its purpose was to permit the Division <u>to limit the scope of fiduciary</u>

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[3] Minutes of the Senate Committee on Commerce, Labor and Energy, Seventy-Ninth Session, April 12, 2017, pgs. 3-4.

[4] Committee Minutes at pgs. 9-10.

[5] Minutes of the Assembly Committee on Commerce and Labor, Seventy-Ninth Session, Testimony of Sen. Aaron Ford, May 12, 2017, pg. 14.

obligation, such as by designating that non-discretionary "order-taking" was not fiduciary conduct.

In response to questions regarding the purpose of the provision, Consultant Foley testified before the Assembly Committee that the provision:

> "…would give us the ability to exclude or define specific acts consistent with other federal regulations that may be adopted that also impose a fiduciary duty upon broker-dealers. I can give you a specific example. Generally, broker-dealers are often responsible for the execution of a purchaser sale of a security. If there was a situation where an investment advisor for an investor recommended a particular investment to that client and all the broker-dealer did was execute the sales transaction, that would be a potential example of where we might exclude it from the fiduciary duty standard. [emphasis added]"[6]

These comments made to the Assembly Committee suggested that the authority would be used to (1) coordinate with Federal regulations, and (2) limit the scope of fiduciary obligation. In fact, rather than coordinating with Federal agencies, the Proposal is moving forward before the SEC has completed its regulatory work. At no point did the Committee members suggest that the they intended this limited rulemaking authority to allow the Division to significantly expand the definition of fiduciary conduct to include a broad range of acts that do not include a recommendation of a security (as the Proposal does in Section 4), or to impose an ongoing duty to provide future investment advice on most financial professionals (which is the practical result of the very narrow Episodic Fiduciary Duty Exemption in Section 2 discussed separately below).

The Nevada Legislature did not intend for the Division to take it upon itself to legislate by rulemaking—the Proposal takes limited rulemaking authority granted to the Division to address narrow implementation issues and inappropriately uses it to develop a new fiduciary regime never debated or approved by the Legislature. We urge the Division to significantly reduce the scope of the Proposal to be consistent with the Legislature's clear intent.

[6] Minutes of the Assembly Committee on Commerce and Labor, Seventy-Ninth Session, Testimony of Securities Administrator Diana Foley, May 17, 2017, pg. 14.

<u>The Proposal Inappropriately Imposes a Duty to Provide Ongoing Investment Advice—the Episodic Fiduciary Advice Exemption Likely Will Not Apply</u>

Preserving different business models is essential to providing access to affordable and quality advice for a wide range of consumers with different needs. While the Proposal appears to acknowledge the role of broker-dealers and other financial professionals in providing one-time, transaction-based recommendations in the Episodic Fiduciary Duty Exemption ("EFDE") in Sec. 2, the provision is fundamentally flawed.

First, we urge the Division to reverse the legal assumption created by the provision. The Proposal assumes that any investment advice or fiduciary relationship automatically results in an ongoing obligation to monitor the client's investments and to provide subsequent recommendations. Only if the broker-dealer or sales representative meets all of the conditions of the EFDE will it not have an ongoing obligation. This is the contrary to the positions taken by the DOL Rule, which allowed broker dealers to disclaim or define the scope of any ongoing obligation, and the Dodd-Frank legislation, which permitted the SEC to consider a uniform fiduciary standard but prevented the SEC from imposing ongoing monitoring obligations on broker-dealers. The Division should similarly preserve episodic, transaction-based advice without attempting to impose a broader, ongoing obligation.

Second, the requirements of the EFDE, all of which must be met, are so narrow that our members believe virtually no broker-dealer would qualify in practice. This is a result of the incredibly broad scope of the conduct that disqualifies its use. Sec. 3.2. prevents a dually registered broker-dealer and Registered Investment Advisor from being eligible, despite acting in its broker-dealer capacity. Under Sec. 2.2.(b), the broker dealer cannot enter into a contract to provide investment advice and still use the EFDE. Given that investment advice includes a variety of acts that do not include recommending securities, such as providing analysis and reports to clients, a standard service agreement in which reports prepared by a broker-dealer or its affiliates may be available to clients likely would constitute a contract to provide investment advice.

In another example of the unreasonably broad limitations in the EFDE, Sec 2.2.(d) provides that the broker dealer may not have developed a "previous or concurrent" fiduciary relationship with the client. This provision appears to suggest that if a broker dealer has previously provided a report on a security to a client, the broker dealer can never again be eligible for the EFDE due to the previous relationship.

Finally, if any broker-dealer is able to meet all six of the EFDE requirements, it is only available where the client has solicited the investment advice. Thus, if the broker-dealer initiates a discussion of a particular transaction, it will result in an ongoing duty to monitor the client's investments and make proactive recommendations.

This is simply an unworkable structure that is not consistent with the broker-dealer business model, and we urge the presumption of an ongoing fiduciary obligation for broker-dealers to be eliminated from the Proposal.

The Proposal Inappropriately Defines Fiduciary Conduct to Include Acts that Do Not Involve Investment Recommendations

The Proposal provides an extremely broad definition of "investment advice" that would include activities that are not typically viewed as fiduciary conduct or fiduciary investment advice, and that do not even involve recommendations to buy, sell or hold securities. Specifically we object to the following definitions:

- *Valuation:* Sec. 4.1.(b) states that "advice…regarding the value of a security" is investment advice. Valuation should not be considered investment advice, as it does not involve a recommendation to purchase, sell or hold a security. Further, valuation should be an impartial act based on objective facts--it is fundamentally inconsistent to impose a fiduciary duty owed to one party in what should be an objective analysis. Finally, it is not clear how this provision would apply to publicly-traded securities—could quoting a recent market price be a fiduciary recommendation regarding the value of a security under this definition? We note that the final DOL Rule did not make valuation a fiduciary act despite its otherwise very broad definitions, and we urge the Division to remove this provision.

- *Providing Reports:* Sec. 4.1.(c) states that "providing analysis or reports regarding a security" is fiduciary investment advice. This incredibly broad provision would turn market research activities into fiduciary advice, despite the lack of a recommendation to buy, sell or hold the security that is the subject of the report. This would have a chilling effect on the dissemination of information vital to the functioning of a free marketplace, and would not serve the interests of Nevada consumers. We urge the Division to remove this provision.

- *Account Monitoring:* Sec. 4.1.(d) states that "providing account monitoring for the purpose of potentially recommending…" a security is fiduciary advice. It is not clear to our members what the Division means by the term "account monitoring." Further, we do not believe this standard could be administrable even with a clearer definition, as the activity is fiduciary based on the intent to "potentially" recommend a security. How would this intent be discerned and demonstrated? In our view, this provision is too vague, and does not constitute a rule that could be understood, followed, or enforced with any consistency. Moreover, oftentimes broker-dealers provide valuable monitoring services, such as tools for clients to monitor whether they are on track to reach their investment goals. Placing restrictive requirements around "account monitoring" would likely eliminate clients' access to these tools, and preclude them from receiving any advice or guidance in a brokerage account. We therefore urge the removal of "account monitoring" from the definition of fiduciary advice.

- *Type of Account/Fee structure:* Secs. 4.1.(e) and (f) state that providing "advice or a recommendation" about what type of account to open or what fee options are available is investment advice. We believe these should not be the basis for concluding that the provision of investment advice creates a fiduciary relationship. First, by definition, the offering of terms precedes the establishment of a fiduciary relationship. Discussing the terms of a potential relationship in which both parties seek mutual gain is inconsistent with the fiduciary obligation to act solely in the interest of the other party. In general, a fiduciary is not acting in a fiduciary capacity when negotiating the terms of its own compensation. Second, it is not clear how the Division intends a fiduciary to act in this circumstance—if an advisor only offers a fee-based account, is he or she obligated to explain all other types of account offerings that other providers might utilize as part of marketing his or her services? We urge the Division remove these provisions.

- *Additional Information/Opinions:* Sec. 4.1.(j) provides that giving a client information not in the offering documents or offering an opinion regarding a security is fiduciary investment advice. Providing factual information is not an investment recommendation regardless of whether that factual information is in the offering documents or not. Fiduciary status cannot hinge on where information is printed, or whether a financial professional responded when asked his or her informal opinion about a security. We urge the removal of these provisions as they do not relate to investment recommendations, but simply limit the ability of an advisor and client to discuss investments in a general sense.

- *Recommending an Advisor:* Sec. 4.1.(k) provides that recommending an advisor is fiduciary investment advice. We do not believe this provision is consistent with the implementation of SB 383, and creates significant ambiguity in its operation. What is the basis for the assertion that this is fiduciary conduct? What if no fee is being received for the recommendation? If a client asks a financial professional for a referral to another type of financial professional, is the recommendation always viewed as a full-throated fiduciary endorsement, or may the referral contain caveats ("I have not worked with her personally, but I've heard good things from others")? We urge the removal of this provision as it will be very difficult to administer and implement.

- *Application to Insurance Products and Producers:* Sec. 4.1.(l) provides that investment advice includes "advice or a recommendation regarding an insurance product…by comparison to a security…" This provision appears to go well beyond the regulatory authority of the Division. While some insurance products are also securities, and thus would be subject to the Division's jurisdiction, an insurance agent selling a non-security insurance product should not become subject to these securities law fiduciary standards merely because of a "comparison" to a security. We do not believe the Division can impose a securities standard on a traditional annuity transaction, for example, simply because the annuity was compared to investments in dividend-paying securities. We urge the Division to remove the reference to insurance products that are not themselves securities.

<u>The Proposal Establishes Breaches of Fiduciary Duty that are Incompatible with the Definitions of Fiduciary Investment Advice.</u>

The Proposal inadvertently lays a regulatory trap for financial professionals by broadly defining investment advice and then broadly defining fiduciary breach. For example, it is fiduciary investment advice to provide a report or analysis to a client. However, under Sec. 8.1.(a), it is a fiduciary breach to "fail to perform adequate and reasonable due diligence…prior to providing investment advice." Thus, as the Proposal appears to be written, if a financial professional hands a research report that he or she has not personally reviewed and evaluated to a client, he or she may well have breached the fiduciary duty owed the client by giving investment advice without due diligence (even though no recommendation to buy, sell or hold the security was ever made).

Similarly, it is a breach to provide investment advice under Sec. 8.1.(c) without "understanding or conveying all risks and features of the product or investment strategy; [emphasis added]." All risks and features is an unreasonably high standard to meet, as it offers no mitigating consideration of materiality. (We note that there is a materiality standard in Sec. 8.1.(f) regarding a recommendation of a proprietary product.)

One of the challenges of creating a new regulatory regime out of whole cloth (as the Proposal does) is that all of the elements need to be well-defined and fit together in a way that is administrable and enforceable. As drafted, the Proposal makes it very difficult for financial professionals to comply despite good faith efforts.

The Division Has Not Evaluated the Impact of the Proposal on Small Businesses as Required Under Nevada Administrative Procedures

The Nevada Administrative Procedure Act requires the Division to determine what effect of the Proposal would have on small businesses and to consider alternatives to reduce any negative impacts it may discover. We are very concerned that the Proposal would have a significant negative effect on small businesses in Nevada. It is not sound regulatory process to propose a new regulation, especially given the many months the Division has been developing the Proposal, without have conducted such an analysis. The purpose of the analysis is not to rubber-stamp a pre-determined policy—it is to help the Division develop a policy that takes into account the needs of small businesses before it promulgates the Proposal.

We urge the Division to release a comprehensive economic analysis of the impact of the Proposal on small businesses, both the consumers of financial services and the providers of such services. Given the significant regulatory burden that would result from attempting to comply with the Proposal, and given the way it would impose new ongoing obligations on transaction-based recommendations, we believe the effect will be great on both consumers and providers. For example, oftentimes, small business owners use investment professionals to help navigate the complexities of retirement plan options to offer to their employees. If these small business owners don't have access to this advice, it could make it more difficult for them to offer employee retirement plans.

The Chamber conducted a report in 2017 detailing the harmful effects of the DOL Rule on consumers, and especially on savers with small account balances.[7] These effects were largely due to the new restrictions on business models and compensation structures. The report examined what steps financial service providers had already taken in response to partial implementation of the DOL Rule, and what steps they were planning to take had the DOL Rule been fully implemented. These findings clearly show that the bias of the DOL fiduciary rule against transaction-based compensation was harming small consumers. Specifically:

- 92% of firms surveyed reported that the DOL Rule would have limited or restrict investment products for their customers, which could ultimately have effected some 11 million households;
- Up to 7 million individual retirement account (IRA) owners could lose access to investment advice altogether; and
- 71% of advisors would have stopped providing advice to at least some of their current small accounts due to the risk and increased costs of the rule, and 35% would have stopped serving accounts under $25,000.

We urge the Division to consider these effects as it evaluates the impact of the Proposal on small businesses.

<u>The Proposal, as Written, is Likely to Face Preemption Challenges</u>

While the Proposal in Sec. 10.2 states that it is to be "interpreted and applied in harmony with the National Securities Markets Improvement Act of 1996" ("NSMIA") we do not believe merely stating this intention will prevent significant preemption questions from arising. NSMIA preempts regulatory requirements imposed by state law on SEC-registered advisers relating to their advisory activities or services, except those provisions relating to the enforcement of anti-fraud prohibitions, notice filings, and fees permitted under the Investment Advisors Act of 1940. NSMIA was specifically passed by Congress to restrict the ability of states to add financial regulatory requirements that burdened financial professionals and

[7] "The Data is In: The Fiduciary Rule will Harm Small Retirement Savers," U.S. Chamber of Commerce, Spring 2017.

increased costs to consumers. While the Division may believe that a fiduciary standard is an anti-fraud provision, a standard of care is not automatically an anti-fraud provision—fraud is already prohibited for all financial professionals regardless of their different standards of care, and it seems debatable that courts would so broadly construe the term "fraud" given Congressional intent.

NSMIA also prohibits state entities from establishing "…capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial or operational reporting requirements for brokers, dealers, municipal securities dealers, government securities brokers, or government securities dealers <u>that differ from, or are in addition to</u>…[emphasis added]" the Federal requirements.

It is very hard to see how the Proposal would not result in new financial responsibility and record-keeping requirements for broker-dealers. The standard insurance and professional responsibility coverages for broker-dealers and registered representatives exclude fiduciary acts—it will be necessary for these entities to obtain new insurance or similar coverages, incurring a new financial responsibility.

More significantly, the Proposal would require making and keeping records not currently required under Federal law. As discussed above, under the Proposal, virtually all recommendations would result in an ongoing obligation to monitor and advise clients. To do this (or to make even a one-time fiduciary recommendation if there were no ongoing monitoring obligation), the fiduciary must collect and document all relevant information about the client, collect and document all relevant information about the investments considered for recommendation, and document how the advisor took all of this relevant information into account in developing the recommendation and acting solely in the client's interest. The Proposal would also deem fiduciary advice to include acts that are not recommendations of securities, such as recommending other advisors. In making a referral to another provider, the current provider would have to collect and consider all relevant information regarding such referrals (and while the Proposal does not specify what these may be, some possible factors could be whether the recommended advisor is an affiliate, whether compensation is received for the referral, the qualifications and disciplinary history of the recommended advisor, the fees charged by recommended advisor, etc.). Such documentation, whether expressly required by the Proposal or not, is inherent in the nature of a fiduciary obligation. Whether it would be the Division, an arbitrator, or a court reviewing the actions of a broker-dealer in a dispute, the broker-dealer must create and keep such documentation in order to show its compliance with the Proposal.

Finally, even where a broker-dealer is not subject to the Proposal, records must still be kept to prove that it does not apply. Sec. 9 of the Proposal states that "a broker-dealer and sales representative shall each be presumed to owe a fiduciary duty to the client…[and each has] the burden of proving in an arbitration, civil or administrative hearing, that an exemption to the fiduciary duty exists." In other words, the Proposal would impose on all broker-dealers and sales representatives a requirement to keep records necessary to show that the Proposal would not apply.

The Proposal is silent with respect to the Employee Retirement Income Security Act ("ERISA"), but there is no reason to suspect the Division does not intend the Proposal to apply to investment advice related to ERISA plans. ERISA broadly preempts state laws that "relate to" employee benefit plans, but it does not preempt state laws regulating certain aspects of state insurance, banking and securities regulation.[8] However, the reality is there has been relatively little case law regarding the scope of ERISA's preemption and state securities law. We note, however, that remedies for violations of ERISA's requirements generally have been exclusively Federal remedies, resulting in the removal of state law claims to Federal court, while the Proposal and SB 383 would appear to provide for state law remedies against financial planners.

Conclusion

The U.S. Chamber is very concerned that the Proposal goes well-beyond mere implementation of SB 383. It represents an effort to put in place an entirely new fiduciary regime in Nevada, an outcome not intended by the Legislature. Unfortunately, the Proposal appears to repeat many of the mistakes of the DOL Rule. Like the DOL Rule, its fiduciary definitions are very broad, and would lead to confusion for consumers and providers. Like the DOL Rule, it does not preserve the different business models that serve the different needs of the Nevada's residents, but would seek to impose an ongoing advice obligation on transactional recommendations that were never intended to be ongoing relationships. Like the DOL Rule, it would be unilateral action by only one regulator in area of overlapping regulatory jurisdictions with no real coordination with other regulators, setting the stage for conflicting rules that apply simultaneously, harming consumers and providers alike.

[8] *See*, ERISA Sec. 514.

Many of these concerns may be avoided if the Division commits to coordinating and working with the SEC before proceeding any further. Final SEC regulations are coming in the near future, and the Division can avoid unnecessary litigation and conflict by waiting on those final rules and then determining how to work within them. The Division and the SEC share a common goal—protecting investors—and the Division can best achieve this shared goal by working with the Federal regulators to implement a tailored, new proposal that will better serve the needs of all Nevadans. Thank you for the opportunity to comment, and please don't hesitate to contact me with any questions or concerns.

Sincerely,

Tom Quaadman
Executive Vice President
U.S. Chamber of Commerce
Center for Capital Markets Competitiveness

Hugh Anderson
Chairman
Government Affairs Committee
Las Vegas Metro Chamber of Commerce