RAYMOND JAMES®

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Delivered via Email: EBSA.FiduciaryRuleExamination@dol.gov

Office of Exemption Determinations, EBSA
U.S. Department of Labor
200 Constitution Avenue, N.W., Suite 400
Washington, DC 20210
Attention: D-11933

Re: RIN 1210-AB82

Ladies and Gentlemen:

As a longtime advocate of a uniform best interest standard, Raymond James appreciates the intent and objectives of the Department of Labor's ("Department") Fiduciary Rule ("Rule") and associated Prohibited Transaction Exemptions ("PTEs" or "exemptions"). There have been abuses in our industry and we understand and value the role our regulators and government agencies can play in establishing and enforcing rules to protect clients. We are also grateful for the Department's willingness to receive feedback on these rules to ensure they will have the desired outcome. To this end, the following is Raymond James' response to the Department's Request for Information ("RFI") regarding the Fiduciary Rule and Prohibited Transaction Exemptions published in the Federal Register on July 6, 2017.

Executive Summary:

1. While we appreciate the very good intentions of the Fiduciary Rule, we have already seen evidence in its first phase of implementation that there are unintended consequences, specifically reduced access to retirement advice for small IRA investors, as well as small businesses and their employees.
2. The BIC (Best Interest Contract) and other exemptions are very expensive compliance mechanisms that favor some industry participants over others. Operational and IT changes to comply with the BIC and other exemptions as written are estimated to take at least two and a half years to complete, and cost tens of millions of dollars in addition to the millions that have already been spent. More important, we see no benefits from these expenses provided to clients.
3. By citing products that may qualify for a streamlined exemption, the Department will potentially usurp judgement of clients and their advisors to choose products that best fit client needs. We see client choices being more limited with additional costs being added.
4. We believe additional time will allow for collaboration by the Department and the SEC on a single, uniform best interest standard, as well as the analysis required by the President's February 2017 memorandum to the Department. The requirements for the June 9 applicability date provided the cornerstone to ensure consumer protection during this time.

Therefore we request that the Department delay the January 1, 2018 applicability date of the exemptions for at least two years. An immediate delay will not harm retirement investors or plans and will allow the Department, in consultation with the industry and other stakeholders, to further refine the Rule and exemptions. After the delay is announced and as this review process continues, the Department should seriously consider, based on the evidence provided in this letter as well as input provided by other industry participants, whether both the Rule and exemptions should be withdrawn and re-proposed to avoid irreparable harm to the retirement advice marketplace.

1. The Fiduciary Rule that became effective June 9 is reducing access to retirement advice for small IRA investors, as well as small businesses and their employees.

Question 3 of the RFI asks whether the Rule and PTEs balance the interests of consumers in receiving investment advice while protecting them against conflicts of interest. Unfortunately, as predicted by many in their comment letters to the Department during this process, and as evidenced by the advice rules enacted in the United Kingdom several years ago, the Fiduciary Rule itself is actually reducing access to advice for small IRA investors and ERISA plans. In short, the root cause of the problem is that the Rule imposes a standard of care (and associated legal liability) that limits financial advisors' ability to tier their pricing and associated services provided to clients based upon their specific needs.

In an ERISA-based regulatory regime, an extraordinary amount of work is required to prove that an advisor acted in a client's best interest. Regardless of the size of the account or whether the account is commission or fee-based, the Rule clearly favors investment advice fiduciaries who employ a robust financial planning process at account opening. Advisors who do not have ample supporting written documentation of client meetings fear losing future best interest lawsuits under a plaintiff's bar argument of "if it isn't documented, then it never occurred." The same is true of any investment recommendation subsequently made to a client. Coupling the incremental workload required for all clients (regardless of the client's desire) and the incremental liability of the commission account business model, firms and advisors are incented to either decrease the number of clients and/or shift to a fee-based model, likely increasing the client's fees (based upon numerous industry studies) and reducing client choice. We would like to be very clear that advisors would prefer to continue servicing these small accounts, but the consequences of the Rule leave them little choice. The Department has seen concrete evidence of this outcome at other firms, including, but not limited to, the imposition of minimum account sizes for brokerage relationships, the complete elimination of brokerage as a retirement account option, and abandonment of advice on small direct mutual fund accounts.

The scenario described above applies to advice provided to IRAs and plans. However, ERISA-covered plans, particularly small plans, face additional challenges under the Rule. Consider a typical small plan client – a small business owner who has a client relationship with a financial advisor and wishes to establish a retirement plan for his/her employees. Prior to June 9, the financial advisor and the small business owner could spend the majority of his/her time designing a plan that helped employees systematically invest money for retirement. The focus was solely on serving their interests. However, the imposition of automatic ERISA fiduciary status for any financial advisor providing recommendations to a plan causes advisors to reevaluate their current relationships with plans and determine if they can effectively serve them given the new ERISA litigation risk imposed by the Rule. While very large plans have the scale and financial ability to check all of the boxes to fully document ERISA compliance, small plans simply do not. This statement is not to imply that these plans are not, in spirit, in compliance with ERISA, but merely that many of them are not aware of all the detailed requirements imposed under such a complex statute that is based upon an extremely punitive prohibited transaction enforcement methodology. Shifting all of the complex compliance risk to a financial advisor does nothing to help the plan or plan participants. It merely causes advisors to reassess whether they can serve such clients given the new regulatory regime. Undoubtedly, as with IRAs, the risks and costs of providing advice to small plans, even when advisors are acting in good faith, will cause some advisors to cease serving many small plans. Therefore, the new fiduciary definition is constricting, rather than expanding, Americans' access to retirement savings accounts, especially those provided as a benefit to their employees by small businesses.

In summary, we have highlighted two substantial issues related to the new definition of a financial advice fiduciary under the Rule itself, irrespective of how the exemptions are constructed. The Department will hear many more outcomes in other comment letters. Changes to the Rule itself are required in order to maintain high quality financial advice accessible by all clients.

2. The BIC and other exemptions are unnecessary and expensive compliance mechanisms that favor some industry participants over others.

In Questions 2, 4, 5, 6, and 12, the Department asks what the industry has done to comply with the Rule to date, whether the BIC contract is needed to further enhance compliance with the Rule, and if changes are required to the Principal Transaction Exemption to better serve investors.

In summary, much has been done (and in many instances was already required by other regulators prior to June 9) to comply with the Impartial Conduct Standards. We would like to highlight the following:

- Training for all advisors and related branch and home office support personnel that covers the fiduciary concept and best practices to comply with the new regulation
- Education and new support procedures related to IRA rollovers
- Numerous changes to our advisory platforms that result in more level fee pricing in certain account types
- Changes to investment products to rationalize commission structures and reduce perceived conflicts
- Removal or transformation of some products on the platform to better comply with the Rule
- Implementation of technology to support the Principal Transaction Exemption
- Communication of material changes to advisors and clients

In order to support implementation of and compliance with the Rule and exemptions, the firm has spent approximately $20 million on technology, consulting, training, operations, and legal fees. These costs exclude the countless hours and associated salaries of many home office personnel and financial advisors who have dedicated, in some cases, 100% of their time over the past two years to this undertaking. This amount also excludes the addition of approximately 60 associates in operations, branch support, compliance and supervisory areas the firm has hired or plans to hire because of the Rule. The one-time costs are significant; however, the ongoing costs are also considerable. Even assuming a relatively conservative salary and benefits cost for those individuals, 60 individuals represent an additional $4 to $5 million in ongoing annual labor-related expenses solely attributable to the Rule that became effective June 9.

Imposition of a full BIC on January 1, 2018 will require even more technology, compliance and supervisory staff. We estimate that internal operational and technology changes required to comply with the BIC may take two-and-a-half years to implement. High-level projects include but are not limited to end-to-end integration to support account opening systems and processes across front, middle and back offices to handle the BIC process; numerous systems and process changes to our fee-based platform; systems and processes to handle rollover processing; ERISA plan solutions; incremental fee disclosure and transparency processes; trade documentation solutions; product selling agreement amendments; and supervision and compliance technology and associated processes. Direct technology and operations costs related to this implementation are currently estimated at $20 to $25 million of incremental spend. Legal, consulting and opportunity costs of deploying associates on this project are not included in that estimate.

In the end, all of these process updates, staff additions and product improvements are required to comply (and in many cases, simply evidence compliance) with the Rule and exemptions; however, they do little to enhance the value provided by Raymond James advisors – lasting client relationships built on trust and advice in the client's best interest. We believe Raymond James is already performing with the best interests of our clients in mind. We will continue to apply these enhancements even if the BIC contract is not required. However, layering the contract on top of it will further restrict choice and access to advice.

With regard to further enhancing compliance via the BIC contract, given that the costs far outweigh the benefits, we ask the Department to withdraw and re-propose the BIC without a class action litigation enforcement mechanism and other onerous requirements scheduled to deploy on January 1, 2018. The imposition of class action litigation resulting from the required contractual warranties as a condition of the BIC will further increase the cost of advice, disenfranchise even more small client accounts, reduce client investment choices and deny any additional client gains. In addition, the Department of Justice has stopped defending the Department of Labor's assertion that BIC class action claims cannot be prohibited in arbitration clauses. Given that FINRA does not allow class action waivers in arbitration clauses between firms and customers, FINRA firms will still remain open to class action BIC claims, while other retirement advice providers such as insurance companies will be able to mitigate class action risk by including waivers in their arbitration agreements with customers. Therefore, the BIC construct effective January 1, 2018 favors some industry participants over others and artificially upsets the beneficial free market competition between financial service providers. Withdrawal of the contractual guarantees will remove a potential advantage for some firms over others in the marketplace. Should the Department move forward with the BIC contract, we anticipate further restrictions and reductions to IRA investment options available to clients because the class action risk will move the financial advice industry toward a more homogenized service offering. As costs rise due to increased regulation and litigation, they will be passed on to clients in the form of higher prices for services across the industry.

Finally, we would like to address the Department's question about the Principal Transaction Exemption. Given the Department's redefinition of fiduciary and general aversion to principal trades in retirement accounts, the only way Raymond James could comply with the Rule was to implement the terms of the Principal Transaction Exemption for all retirement accounts. This direction required a complicated technology build across multiple trading systems, but it was implemented in time for the June 9 deadline. Under the Principal Transaction Exemption, the Department put limitations on the types of assets that could be traded on a principal basis. In addition, when using the exemption the firm needed to consider the liquidity of assets.

Raymond James is already observing the following adverse outcomes for clients:

- Clients and advisors question why taxable municipal bonds and convertible bonds are not defined as assets that can be traded under the Principal Transaction Exemption. Prices clients pay are often better when traded principal vs. agency or riskless principal. In fact, FINRA requires trade execution per best execution rules, but the Principal Transaction Exemption forces execution of trades in assets the Department has omitted from the exemption as agent, which often does not provide best execution. Therefore, the exemption creates intractable conflict between regulations.

- Clients are unable to buy bonds from certain well-known U.S. firms on a principal basis because of low offering sizes of the debt tranches.
- The exemption imposes credit quality standards for bonds to use the exemption, but provides no flexibility in altering the credit quality allowable on a client-by-client basis. As an example, some higher-net-worth clients may want to buy lower-rated bonds on a principal basis. That particular investment may be in their best interest, but the exemption requires imposing minimum credit standards at the bond issue level – not the client level.
- Clients indicating displeasure that they can no longer buy certain syndicate new issue offerings in their retirement accounts which they and their advisors believe are in their best interest.
- The exemption poses limitations on providing foreign exchange (FX) services to DOL Rule-impacted accounts. Therefore, a more expensive external service is required to execute the business on an agency basis.

The above outcomes support our argument that this exemption requires adjustments to better serve investors. To summarize, we believe this exemption results in two key negatives: First, many new issue trades are beneficial to clients but are not permitted in retirement accounts. Second, the exemption forces some secondary trades to be executed as agent or riskless principal for clients' accounts, when an execution with the firm acting as principal would provide better pricing. As previously described above, this creates conflict between DOL and FINRA regulations.

Raymond James believes that the simplest and most effective proposal is to remove the general prohibition on principal trades and instead subject each of these types of trades to the Impartial Conduct Standards that govern all other investments. This would eliminate the need for the entire Principal Transaction Exemption. The combination of best execution standards under the established securities laws coupled with Impartial Conduct Standards provide sufficient client protection. Raymond James believes this solution would avoid substantial confusion and unintended consequences.

3. By citing products that may qualify for a streamlined exemption, the Department will potentially substitute its own judgement for that of advisors and clients in choosing products that best fit the needs of investors. As a result, client choice will be reduced and expenses borne by clients will increase.

Questions 7-10 ask whether certain product types such as mutual fund clean shares and fee-based annuities would mitigate potential conflicts associated with recommendations of financial products. The short answer is no. The products cited by the Department in some cases trade one conflict for another, at best do nothing to decrease investor costs, and at worst increase them.

If the Department created exemptions for certain product types, it would substitute its own judgement for that of advisors, clients, and the market (as evidenced by the outcome of the Principal Transaction Exemption discussed earlier) in determining which products and account types are winners and losers.

The net effects are decreased product innovation, reduced client choice, increased costs and ultimately less money available for Americans' retirement.

Clean Shares

As discussed in a previous comment letter, clean shares do not mitigate what is arguably the biggest perceived conflict – not only with mutual funds, but in all commission relationships – the ability to increase trading to augment compensation. Additionally, eliminating 12b-1 fees could lead more firms to adopt a "moment in time" fiduciary approach where they operate as a fiduciary only at the time of purchase. With the absence of ongoing commissions, financial advisors would not be compensated for the time and work (or the assumption of increased regulatory and litigation risk) required to provide ongoing investment monitoring or advice to clients beyond the initial purchase transaction.

Current commission structures have developed to align with the economics of the mutual fund product, its anticipated holding period and potential returns. Under a scenario in which there is no compensation variability (the case with clean shares), it could lead to eliminating certain mutual funds altogether (e.g., short duration funds, money market funds, etc.). Level selling commissions across all asset classes would likely exceed the potential return of these types of products, thereby eliminating an essential component of an investor's overall asset allocation.

In conjunction, mutual fund companies typically offer shareowners free exchanges and transfers between the company's fund offerings and each mutual fund company or their distribution partners manage the infrastructure to support the free exchange option. For investors, free exchanges represent a valuable and important feature during periods of market volatility, as well as an option for clients interested in utilizing a dollar cost averaging or rebalancing strategy from a single fund to one or more other funds within the same mutual fund company's offerings. From our perspective, clean shares in brokerage accounts would eliminate the free exchange privilege feature – resulting in the removal of a valuable solution for clients. With clean shares, assuming all mutual fund companies develop them, broker/dealers would need to establish the necessary infrastructure to support management and administration of a free exchange model. From our perspective, it seems unlikely as distribution companies consider the potential commission revenue implications of free transactions across all mutual fund company investment options.

The most important consideration regarding clean shares is overall investor cost. While the Department focused primarily on compensation variability, overall investor costs should not be ignored. In the case of the limited amount of clean shares that have been filed, none have included a reduction in the mutual fund firms' economics, with the entirety of any presumed cost reductions borne by distributing financial institutions. Given that these fees go toward reimbursing and compensating distributing firms for important services performed on behalf of the mutual fund organizations – including statement preparation and mailing, cost basis administration and tax reporting, and shareholder servicing – it is likely that distributing firms will recoup some amount of the associated costs directly from clients, thereby increasing clients' costs of owning the mutual funds. In the end, costs will likely increase for clients with no appreciable reduction in conflicts of interest.

There are also several practical considerations regarding clean shares. First, there is no uniform definition regarding what constitutes a clean share and what restrictions are placed on them. Additionally, unless clean shares are adopted as an industry-wide solution with a critical mass of fund families utilizing clean shares for their entire fund lineups, the solution is not a practical one unless client choice is severely restricted, as utilizing one fund family's clean shares versus another fund family's A or C shares will create potential conflicts. It is also unclear how existing positions in A or C shares would or should be treated under such a scenario. Should they automatically convert to clean shares? At what cost?

A final item to consider is transparency of net returns to investors with investments in mutual funds. Under the current share class structure, investors have transparency into funds' historical returns net of all costs. This is a scenario that would not be possible under clean shares as mutual fund providers would provide only "clean" returns, which would exclude any distribution-related expenses.

T Shares

The Department also asked about T shares. We do not expect mutual fund providers will proceed with developing T share offerings and as a potential distributing firm, we do not support them. To eliminate potential conflicts, T shares cannot coexist with clean shares. In general, distributing financial institutions are unwilling to offer T shares, particularly at the required critical mass. This is due to the many items outlined earlier regarding practical implications of clean shares, namely that a uniform compensation structure without consideration to the underlying product economics and potential returns is suboptimal. Additionally, T shares exclude certain client-friendly benefits such as free exchange privileges and rights of accumulation. In sum, T shares would increase costs to investors.

Fee-Based Annuities

The Department asked whether products such as fee-based annuities should qualify for a streamlined exemption. The short answer is no. Such an exemption would imply that a fee-based annuity is always the better option. While it is certainly true that a fee-based annuity product will often cost less and/or offer higher rate guarantees than a commissionable annuity, once the advisory fee is factored in the fee-based annuity will often be the most expensive option over the life of the annuity contract. Typically, insurance companies assume that an annuity contract has an average life of 10 years. Therefore, an annuity that pays a commission of 5% upfront with a 0.25% annual trail would pay total compensation of 7.25% over a 10-year period. Since the trails totaling 2.25% would be paid over time, the insurance company would likely assume the present value of that commission cost is about 6.5% or 0.65% per year. This would mean that any fee-based annuity where the advisor elects to charge an advisory fee of more than 0.65% per year would generally be more costly for the client. In many cases, the higher compensation is warranted because the advisor provides numerous investment advisory services for the client, in addition to the advice related to the annuity purchase. Also, if annuities are not regularly monitored, a number of bad consequences may occur. This is true if a living and/or death benefit rider is added to the contract, which occurs on approximately 60% of the contracts issued today. However, some advisors and clients may determine that the less expensive commission solution is in the best interest of the client.

Both the fee-based and commission options can, in different scenarios, be recommended with the client's best interest in mind. However, neither option in and of itself provides such superior benefits that would encourage the Department to create a streamlined exemption. Clients and advisors must have the flexibility to define their relationships and the levels of service they would expect to receive without the artificial imposition of a streamlined exemption, which would favor one option over another.

As indicated earlier, there are major flaws in the Rule and the exemptions. We strongly support the Department withdrawing and re-proposing. A piecemeal exemption process that favors some products over others is not the answer.

4. Additional time should be granted for the promised collaboration by the Department and the SEC on a single, uniform best interest standard.

As SEC Chairman Clayton indicated in early July, the concept of merging varying standards of conduct under a single best interest standard is complicated. The varying levels of fiduciary status under the securities laws allow for the existence of tiered service models for investment advice and recommendations. Unfortunately, the uniform fiduciary standard as promulgated by the Department does not allow for the same tiering. Both Secretary of Labor Acosta and SEC Chairman Clayton have committed to work together to analyze the Rule and ensure the SEC's expertise is incorporated into the review process.

As stated in previous comment letters, our opposition to the DOL Rule is driven by a strong desire to avoid the unintended consequences that would potentially restrict certain clients from receiving objective advice on their retirement investments, limit choice, and create complexity and confusion for advisors and their clients. We believe there is evidence for those concerns and continue to advocate for a single fiduciary standard from a regulator with broader authority regardless of the type of account.

The SEC is the agency in the best position to lead the implementation of a uniform best interest standard for all client relationships. Therefore, we hold that the Rule and exemptions should be withdrawn so the Department can collaborate with the SEC to develop a uniform standard. At a minimum, the January 1, 2018 implementation date of the BIC and other exemptions should be delayed to give the SEC and the Department time to develop a better solution.

The Department should complete the examination of the Rule and exemptions as mandated in the President's February 3, 2017 executive memo. We agree with the President's direction that the Department must conclude that the Rule and exemptions empower Americans to make their own financial decisions. President Trump also called for an updated cost analysis to replace the methodology previously used by the Department, which has been heavily criticized by a number of institutions. Finally, President Trump indicated that any part of the Rule which resulted in increased litigation may not be congruent with the policies of his administration. The Rule and class action provisions of the BIC will certainly increase litigation. We request that the delay provide enough time to accomplish all of the work that needs to be performed in this analysis rather than a series of multiple short delays which in the end are harmful to the industry and clients because of the uncertainty they create. The Department itself seemed to indicate that through the regulations that became effective June 9 "much of [the consumer harm caused by conflicted advice] could be avoided through the imposition of fiduciary status and adherence to basic fiduciary norms, particularly including the Impartial Conduct Standards." Therefore, the Department can be confident that no consumer harm will result from a delay.

Again, we ultimately believe that moving towards a single, uniform best interest standard of prudence and care, with the Department collaborating with the SEC will create a much improved set of rules. Regardless we all share a common interest in helping Americans effectively save for retirement and thank you for the invitation and opportunity to provide additional feedback regarding the DOL Fiduciary Rule and its provisions.

Sincerely,

Paul C. Reilly
Chairman and CEO
Raymond James Financial