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Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Suite 400
Washington, DC 20210
Attention: D-11712, 11713, 11850

Re: Extension of Transition Period and Delay of Applicability Dates; Best Interest Contract Exemption (PTE 2016–01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02); Prohibited Transaction Exemption 84–24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84–24)
RIN 1210-AB82

Dear Sir or Madam,

We at AXA[1] ("AXA US") appreciate the opportunity to provide comments to the Department of Labor (the "Department") in response to the Department's proposal to extend the special transition period and applicability dates for certain provisions of prohibited transaction exemptions ("PTEs") related to the final rule entitled Definition of the Term "Fiduciary;" Conflict of Interest Rule – Retirement Investment Advice and its associated PTEs (collectively, the "Rule"). Specifically, the Department has proposed a delay of the applicability of certain aspects of the Best Interest Contract Exemption, the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs, and certain amendments to PTE 84-24 ("Delay Proposal") currently scheduled to take effect January 1, 2018 ("Applicability Date").

[1] "AXA US" is the brand name of AXA Equitable Financial Services, LLC and its family of companies, including AXA Equitable Life Insurance Company (NY, NY), MONY Life Insurance Company of America (AZ stock company, administrative office: Jersey City, NJ), AXA Advisors, LLC (NY, NY) and AXA Distributors, LLC (NY, NY).

As one of the country's leading life insurance and retirement savings companies with nearly 2.5 million customers nationwide, AXA US is well-positioned to understand the wide-ranging consequences of the Rule and commends the Department's thoughtful consideration regarding the necessity of this delay. As discussed in further detail below, we fully support a delay of the Applicability Date and favor a tiered approach to a delay as described by the Department in the Delay Proposal. Specifically, we urge the Department to issue a rule delaying the Applicability Date until the later of July 1, 2019 or twelve months after the issuance of a final rule amending or revising the Rule. Such a tiered approach to a delay is necessary in order to (i) ensure that the Department has adequate time to coordinate with other regulators to develop a harmonized standard of care across the retirement services marketplace; and (ii) allow industry participants sufficient time to comply with the final version of the Rule (whether revised or not) and minimize disruption to retirement savers.[2]

If the Department feels that a tiered approach is not feasible (or if it is inclined to adopt a tiered approach based on a formulation using the earlier, rather than the later of two dates), we request that it instead proceed with a delay that simply ends a specified period after the occurrence of a specific event: twelve months after the issuance of a final rule amending or revising the Rule. While this option has the drawback of not providing firms with certainty regarding the earliest potential date of compliance, it would nonetheless, still allow for sufficient time for regulatory coordination and for firms to comply with any changes to the Rule.

A. A delay with a tiered approach will provide the Department with sufficient time to work with other regulators to develop a harmonized regulatory framework

The Department has indicated a clear intent to coordinate with the Securities and Exchange Commission ("SEC") on any changes to the Rule. However, the Department recognizes that the current Applicability Date does not permit the Department to engage in such coordination. Moreover, the Department appreciates that it has not yet completed its reexamination of the Rule as mandated by the President and also that it needs time to adequately review the substantial amount of comments and data received in response to its recent Request for Information ("RFI"). A delay of sufficient duration is therefore necessary in order to allow the Department time to complete its internal review of the Rule and then engage with the SEC and other regulators to ensure the development of a harmonized standard of care that would apply across the industry.

As we have previously stated,[3] it is critical that the Department work closely with the SEC and the National Association of Insurance Commissioners ("NAIC") to craft a uniform standard

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[2] With respect to the suggestion of conditioning a delay upon a showing of steps taken to harness recent innovations, such an approach is neither workable nor fair. Not only would it be operationally impracticable, it would create immense uncertainty as to the applicability of the delay as to each firm, thereby causing confusion throughout the industry and for retirement savers.

[3] *See, e.g.*, our letter of July 21, 2017.

of care that would apply to all retirement services providers but would not disrupt the marketplace by burdening those providers with the unnecessary and costly compliance requirements and liability risks of the Rule. A harmonized standard of care promulgated jointly by the Department and the SEC and replicated by the NAIC at the state level would help address the substantial uncertainty generated by the Rule in its current form, which creates a bifurcated system of regulation that forces compliance with inconsistent standards.[4] A delay triggered by the issuance of a final rule – rather than a date certain which is less than two years away – will allow the Department to effectively engage with the SEC and other interested regulators in order to develop a comprehensive and workable uniform standard.

B. A delay with a tiered approach will allow industry participants adequate time to comply with the Rule's final requirements

In the Delay Proposal, the Department proposes a time certain delay that would extend the Applicability Date until July 1, 2019. We recognize that the Department's objective under this approach would be to complete its review of the Rule and finalize any changes sufficiently in advance of July 1, 2019 so as to provide firms enough time to prepare for compliance. However, as discussed above, the process of crafting, proposing, revising and finalizing a harmonized rule involving multiple regulators is likely to continue well into 2018. And the Department already has stated in the Delay Proposal that it anticipates proposing a new, more streamlined exemption to the Rule based on recent innovations in the industry; the full extent and benefit of this or any other modifications to the Rule cannot be known until the Department completes its review and engages with other regulators. Thus, simply extending the Applicability Date to July 1, 2019 is likely to leave insufficient time for firms to develop the necessary policies, procedures and operational controls to comply with the revised Rule, which would cause uncertainty and disruption for both the industry and retirement savers. This result is contrary to the Department's stated goal for a delay; namely, to "avert the possibility of a costly and disorderly transition from the Impartial Conduct Standards to full compliance with the exemption conditions." The most effective way to accomplish this goal is to permit sufficient time for firms to come into compliance after any changes to the Rule are fully developed and finalized.

Our desire for a thoughtfully crafted delay stems from our experience with the compliance programs we have already implemented in response to the current version of the Rule, which required not only development of new procedures but also substantial, time consuming updates to our technology infrastructure. These types of large-scale changes are exceptionally difficult to complete in truncated time frames. Further, and of particular concern to an insurance carrier like AXA US, which sells intermediated products via captive and third-party distribution partners, not

[4] As previously noted, the Rule differs sharply from the SEC's best interest fiduciary standard and its recognition that sometimes the client's interest does align with the fiduciary's, and that potential conflicts of interest can be alleviated by simple and clear disclosures. In addition, state insurance and securities departments may impose their own inconsistent rules causing further confusion and disruption in the marketplace.

all industry participants necessarily will adopt the same compliance structure. Any delay must provide sufficient time to accommodate differing approaches to compliance by our third-party distribution partners, which will require, among other actions, updating and filing product applications and other policy forms for approval with relevant state Insurance Departments. In addition, as the Department noted when adopting the approach of partial implementation of the Rule in June of this year, partial implementation provides retirement savers with the protection of basic fiduciary norms and standards while it conducts its review; accordingly, there is no offsetting benefit to consumers by retaining the current Applicability Date.

As noted above, the proposed use of a date certain for determining the delay of the Applicability Date may in fact perpetuate the current uncertainty regarding the adequacy and applicability of compliance policies and procedures developed in response to the Rule in its current form. In contrast, a delay triggered by the issuance of a final rule would provide the Department with the flexibility to make thoughtful revisions to the Rule and work with other regulatory authorities on a comprehensive and harmonized regulatory framework for the retirement savings marketplace. In addition, the knowledge that compliance will be triggered twelve months after a final rule will dispel any uncertainty for consumers or firms regarding applicable standards. That said, a tiered approach, in which the delay ends on the later of two dates, is ideal in that it provides additional assurance to both industry and retirement savers that even if the Department completes its work well before July 1, 2019, no changes will be implemented earlier than that date. It therefore provides certainty to the industry regarding compliance timelines and to consumers that their access to retirement savings products and services will not be unduly disrupted.

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In conclusion, we urge the Department to delay the Applicability Date until the later of July 1, 2019 or the date that is twelve months after the publication of a final rule. This approach will provide the Department with the necessary time to develop a uniform standard of care for the retirement services industry in conjunction with other regulators. Moreover, it will permit industry participants sufficient time to come into compliance with the rule, obviating the need for any more partial delays or extensions of applicability dates while providing certainty to firms and retirement savers alike.

Respectfully submitted,

Dave S. Hattem