MAPLEWOOD
INVESTMENT ADVISORS

Sent via E-mail to EBSA.FiduciaryRuleExamination@dol.gov

March 3, 2017

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

Re: RIN 1210-AB79

Ladies and Gentlemen:

Maplewood Investment Advisors, Inc. ("MPLW") appreciates the opportunity to provide the U.S. Department of Labor ("DOL") with comments on the proposed 60-day delay of the fiduciary rule.

MPLW is an independent, Dallas-based, full-service brokerage firm that offers personalized investment expertise to both individual and institutional clients. Our financial advisors work closely with our clients to understand their financial needs, help them define their financial goals, and assist them in creating savings and investment solutions to help them save for a secure retirement. Our clients range from young families just starting to prepare for retirement to retirees who have successfully saved for a secure retirement. We have never imposed account minimums for transaction services nor established separate service options, such as call centers, for clients with more modest resources.

MPLW supports the application of a best interest standard of care. We have always sought and will continue to seek, to act in our clients' best interest. MPLW agrees that retirement investors should be able to rely on investment professionals and financial institutions to act in their best interests when providing investment advice.

However, the fiduciary standard under the Employment Retirement Income Security Act of 1974 ("ERISA") brings with it extraordinary complexity due to ERISA's prohibited transaction rules and duties of prudence and loyalty, and any changes must be carefully crafted to avoid detrimental outcomes. We are concerned that the final rules could (1) increase the cost to investors to gain access to retirement advice; (2) impact an increase in litigation, (3) favor a passive investment strategy for all investors rather than allowing investors to make their own investment decisions or rely upon the professional judgement of experienced financial advisors; and (4) adversely affect the ability of Americans to gain access to retirement products, services, and advice.

In this regard, we offer the following comments in the hope that the DOL endeavors to protect IRA owners, plans, and participants through a best interest standard that does not harm those investors through the unintended consequences described herein:

1. A review of varies studies submitted by industry representatives reveal several common themes:

    a. Retirement investors save more money when they have the services of a financial advisor.
    b. Those investors are better diversified.
    c. Their performance is not significantly different if advised for a fee or commission.
    d. The cost of implementing the DOL final rules is significant.

    These studies highlight the need for average retirement investors to have as an option a commission based retirement account rather than being forced to "go it alone," or pay fees for services they don't want or need. Under the DOL's final rules, when combined with the likelihood that a large number of retirement investors will lose access to advice, aggregate costs to investors will be well beyond any benefit that could be derived from such rules. This in addition to the start-up costs to firms, as well as ongoing costs will ultimately be borne by investors.

2. The DOL should eliminate the state law and class action enforcement regime encouraged by the warranty requirements.

    The warranty requirements included in the BICE do not provide any additional substantive protections for retirement investors and would significantly limit the amount and type of advice available to them. By requiring the best interest standard be included in the contract or acknowledgment between the advisor and the retirement investor, the DOL has provided an effective avenue for redress if the advisor fails to satisfy the best interest standard.

    In contrast, the warranty provision appears to exist solely to expose advisors and financial institutions to additional claims for technical violations that are completely unrelated to whether the advisor satisfied the best interest standard.

3. It is risky to dictate to retirement savers which investments are best for them by favoring a narrow class of investments that may be appropriate for some but may not be right for most investors. Passive funds are not necessarily the most suitable investments for all investors or the entire portfolio of a single investor. Indeed, Index funds are "low cost," because they are "low service." While some investors may not wish to pay for active management services, we believe along with many others that active management can be an essential part of a diversified portfolio. In our view, an exemption discouraging such an option is not in the interest of plan participants and IRA owners. Also, low-cost index funds do not address all of the potential needs of a customer such as the protection from downside and longevity risk. It is plan fiduciaries and IRA owners with the help of their financial professionals (not the DOL) who should decide which investments are prudent and appropriate for them.

4. While we support consumer protections for retirement investors, after careful analysis, we conclude that without significant changes, the final rules will not achieve the right balance between providing consumer protections and ensuring IRA owners and plan participants continue to have access to the quality products, services, and advice they need. In their current form, the final rules could have the undesired effect of producing adverse consequences for American retirement savers, including a significant reduction in the availability of information, products, and services that they need to achieve secure retirement outcomes.

   The final rules redefine "investment advice" far too broadly, applying ERISA or ERISA-like standards in a vast range of circumstances was never intended by Congress. In doing so, the DOL appears to be inconsistent with the charge of the U.S. Securities Exchange Commission ("SEC") under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") to review the appropriateness of extending or establishing fiduciary standards beyond investment advisers.

   The DOL's new and amended prohibited transaction exemptions that seemingly represent an effort to mandate level pricing for all products designed for individual savers and small businesses, are apparently based on an assumption that cost is the sole measure of value for all retirement products. Those exemptions do not reflect the economics of providing financial services to all segments of the marketplace. Rather than enhancing retirement security, the final rules will likely cause consumers to either lose access to helpful information, valuable advice, and investment choices or ultimately bear the costs of implementing the onerous and unnecessary conditions of the exemptions. Individuals should not have to fend for themselves as investment managers. Most retirement investors need help. Our peers and we are in the business to provide that help, and we do it well. We know that from our customers.

Financial Institutions need time to effectively implement the final rules. Significant time and resources are required to design, build, test and roll out the systems and software on a scale that the extensive conditions of the final rules require. In fact, considerable resources have already been expended to merely understand the elements, conditions, and implications of the final rules. Technology enhancements, while extraordinarily significant, are only one of many far-reaching tasks that are required to implement the final rules.

We do not believe the applicability date and implementation period is reasonable. We recommend the DOL review, revise and/or rescind the final rules. In MPLW's view, therefore, it is imperative that the DOL extend the applicability date for the final rules.

MPLW appreciates that opportunity to submit comments on the DOL's proposed 60-day delay of the fiduciary rule. Should the DOL have any questions or wish to discuss our comments on the final rules, please contact Laurie Moore, Vice President, Chief Compliance Officer, at lmoore@maplewoodinvestments.com or 214-234-2531.

Sincerely,

Cynthia E. Besek
Senior Vice President