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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
United States Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Attn: Fiduciary Rule Examination

RIN 1210-AB79

Ladies and Gentlemen:

This letter is written on behalf of Advisors Excel, LLC (“Advisors Excel or AE”), a Topeka, Kansas based independent marketing organization (“IMO”). Thank you for the opportunity to comment on the United States Department of Labor’s (“DOL or Department”) proposed rule extending the applicability date (“proposed delay”) of the Department’s proposed Conflicts of Interest Rule (“Rule”).

As expressed previously in comment letters to the Rule proposal, Advisors Excel’s application for individual exemption, during an in-person meeting with DOL staff and most recently in a comment letter regarding the Proposed Best Interest Contract Exemption for Insurance Intermediaries (“IMO Exemption”), Advisors Excel wholly supports the intent of the Rule of acting in the best interest of the Retirement Investor. Advisors Excel believes acting in the best interest of the Retirement Investor is the current practice of the large majority of financial professionals, including Advisors Excel and our affiliated advisors.

For the reasons set forth below, Advisors Excel strongly supports a delay in the Rule’s applicability date, but believes a delay of at least 180 days is warranted to allow for a thorough analysis of the impact of the Rule on Retirement Investors and the financial services industry. Moreover, given the recent timing of the publication of the proposed IMO Exemption and the uncertainty regarding the Department’s resolution of comments raised regarding the exemption, Advisor’s Excel requests that the end of the transition period described in Section IX of the IMO Exemption be extended to correspond with the length of a delay in the applicability of the Rule.

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Advisors Excel believes a failure to extend the implementation date by at least 180 days will result in substantial disruptions to the insurance industry and, consequently to the services we will be able to provide retirement investors. While the industry collectively has worked diligently to prepare for the Rule's implementation, the magnitude of the changes necessary to infrastructure dictate the applicability date be extended. To provide some perspective, Advisors Excel currently contracts with approximately fifty insurance carriers. Each of these carriers maintains policies, procedures, and systems unique to their company in areas as diverse as applications, data maintenance and transfer, producer contracting, product features, paymaster issues, compensation structure, selling agreements, producer monitoring, marketing, and policies and procedures development, etc. Every one of these areas, and more, are impacted by the Rule.

In order to reasonably comply with the Rule, Advisors Excel must work with each of these carriers individually to develop compatible systems and must do so on a timeline that is simply not accommodating to the magnitude of change that is required. The stark reality is this build-out requires significant infrastructure overhauls utilizing multiple parties and systems and cannot be done correctly in the timeframe provided. As Advisors Excel explained in detail during our meeting with Department staff in late October, these systems do not currently exist, in many cases, and must be built from the ground up.

While an ill-prepared system prematurely forced into action will have devastating consequences to the industry, the impact upon Retirement Investors will be equally harmful. Given the lack of time to coordinate with insurance carriers, Advisors Excel and similarly situated IMOs will likely be forced to pare down its platform to a select few carriers with coordinated systems which eliminates carrier and product choice for the Retirement Investor working with an AE affiliated adviser.

For these same reasons, Advisors Excel does not believe it would be feasible for it comply with some elements of the Rule (e.g., the impartiality standards set forth in the exemptions) if the applicability date was delayed for others (e.g., notice and disclosure provisions) as the Department has proposed as an alternative. For example, because the IMO Exemption has been only recently proposed and yet to be finalized, an IMO would either not have impartiality standards set forth in an exemption upon which it could rely or assuming the IMO Exemption is finalized before the applicability date of the Rule, the IMO would not have sufficient time to create and implement the impartiality standards set forth in the IMO Exemption. Further, the IMO Exemption contains numerous provisions for which it does not provide transition relief including the minimum capital or insurance requirements and would be impossible to meet in less than forty days. In addition, assuming the finalized IMO Exemption includes some minimum premium (or similar) threshold, most IMOs will fail to qualify for the IMO Exemption

and would have to have sufficient time to partner with another Financial Institution to stay in business.

Further, Advisors Excel believes a 180-day delay is warranted given the Department's stated intent to examine the Rule in its entirety pursuant to the Presidential directive issued February 3rd. Failure to implement a delay during the review of the entire Rule could lead to a scenario in which the Rule becomes applicable, requiring compliance with the original provisions, and then altered requiring adherence to new standards in a short period of time. This would cause confusion for Retirement Investors and substantial disruption within the industry due to conflicting compliance standards. Advisors Excel believes the prudent approach is to delay the Rule, complete the examination per the directive and take actions deemed necessary following review to allow for additional time for implementation. This approach provides clarity to the industry and ultimately assists Retirement Investors who benefit from an industry with a clear understanding of what is required with respect to transactions.

In addition to reducing disruption, a delay would help mitigate the compliance costs being incurred by the industry. To date, Advisors Excel has spent in excess of a million dollars in an effort to comply with the Rule. This does not include the substantial amount of time invested by internal staff to develop the necessary systems for compliance or the staff members hired or potentially hired in anticipation of additional compliance requirements. Continuing to expend resources to comply with a Rule which may be altered is unnecessarily damaging to the insurance industry and Retirement Investors who ultimately will likely bear the cost of compliance through product pricing.

With respect to the potential losses incurred by Retirement Investors if a 60-day delay is implemented, it is unclear how the Department arrived at these estimates and the estimates themselves are not applicable to the insurance industry. The Department's example uses "empirical evidence that front end load mutual funds that share more of the load with distributing brokers attract more flows but perform worse". Front end load mutual funds have no applicability in the insurance industry and, therefore, should not be relied upon to paint a broad brush against a delay. While we believe that the assumptions made by the Department overstate the cost to Retirement Investors arising out of a delay, Advisors Excel believes other countervailing considerations must also be taken into account when assessing the financial impact to Retirement Investors, including but not limited to access to fewer products that have higher fees due to wasted compliance costs. Again, due to the abstract nature of the estimates provided along with the failure to account for other detrimental costs to the Retirement Investor which may result through a problematic implementation, Advisors Excel believes the prudent course of action is to delay the Rule initially for 180-days and undergo a complete evaluation of the components before applicability.

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In conclusion, Advisors Excel believes the Rule warrants an initial delay of 180 days plus longer transition relief under the IMO Exemption for implementation given the scope of fundamental changes to the insurance industry the Department is requiring; if the Department chooses to move forward with the Rule. Advisors Excel and the insurance industry have worked diligently over the last twelve months to prepare for execution but more time is necessary to ensure the Rule is properly implemented for the benefit of the Retirement Investors and the insurance industry.

Thank you for the opportunity to comment on the proposed extension of the applicability date of the Rule. The list of concerns with the Rule set forth herein is not exhaustive as we believe there are substantial issues which will arise if the Rule is implemented in its current form. We urge the Department to extend the 60-day delay to 180 days and move forward with its evaluation of the Rule in its entirety.

Sincerely,



Eric R. Keller
of PAUL HASTINGS LLP

cc: Michael Spafford