Advisor Group
IN YOUR CORNER

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By E-mail: EBSA.FiduciaryRuleExamination@dol.gov
and Certified Mail – Return Receipt Requested

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Definition of Fiduciary Regulation
U.S. Department of Labor
200 Constitution Avenue, N.W. Room N-5655
Washington, DC 20210

Re: RIN 1210-AB79; Proposal to Delay Fiduciary Rule

Ladies and Gentlemen:

Advisor Group, Inc. ("Advisor Group") appreciates this opportunity to comment on the Department of Labor's ("Department") proposal to extend the applicability date of the new rule redefining the term "fiduciary" and the prohibited transaction exemptions related to the new rule. Advisor Group offers a full range of securities and investment advisory services through our four dually registered subsidiaries - Royal Alliance Associates, Inc.; FSC Securities Corporation; SagePoint Financial, Inc.; and Woodbury Financial Services, Inc. - which have a combined total of $171.6 billion assets under their administration as of January 31, 2017. We hope our comments are helpful in pointing out why a delay is in the interest of retirement investors.

Advisor Group supports the overall goal of ensuring that persons in a position of trust be subject to fiduciary standards when providing investment advice to employee benefit plans and individual retirement accounts. However, we are deeply concerned that insufficient time has been allowed to enable firms in our position to address the monumental changes required by the new fiduciary rule in its current form. Failure to grant a delay of adequate duration and as soon as administratively feasible will have significant unintended consequences for millions of Americans saving for retirement who are subject to the rule.

<u>Ongoing Compliance Efforts</u>. Like most firms in the financial services industry, Advisor Group has spent significant time and resources revising our operations, restructuring and restricting product offerings and developing new policies, procedures and supervisory structures, in order to make the enormous shift required by the new rule. This has required lengthy and difficult negotiations with our commercial partners, such as product manufacturers and clearing firm broker dealers (those broker dealers that actually effect trades on behalf of "introducing" broker dealers such as ours), as well as our registered representatives and investment adviser representatives, to ensure that we are working in concert. This has been made even more difficult in light of the

uncertainties raised by litigation seeking to overturn the new rule, new Department guidance (e.g., recently issued FAQs, published on January 13, 2017, that have yet to be fully digested) and the President's memorandum of February 3, 2017. Furthermore, as we work with clients to satisfy the best interest standard and determine how to structure their relationships with their advisors (*e.g.*, on a commission or fee basis), balancing these decisions and compliance under the rule is a significant undertaking.

Continuing Uncertainties. Much remains to be done, and even as we plan for these changes, the foundation on which they will rest is itself in a state of flux. For example, the necessary issuance of new mutual fund share classes to comply with the requirement to levelize commissions (e.g. T-shares or modified A shares) will require us to determine whether our product offerings and operations will need to be further restructured. Each new class has the potential to vary from one mutual fund family to the next which adds to the difficulty in analyzing whether existing share classes can still be offered alongside the new ones in light of the rule. In addition, we must deal with the fact that many fund companies have suspended their development of the new share classes pending resolution of the question as to when the new fiduciary rule will become effective.

Moreover, once the fund companies have resumed their developmental activities, our clearing firms will need additional time to make the new classes available. If the new rule's applicability date is set before this occurs, our initial disclosures under the best interest contract transition rule will need to be revised and reissued which will create confusion on the part of our clients. Therefore, an additional six months beyond the current April 10, 2017 applicability date (but certainly no less than 60 days) is needed for Advisor Group and its partners to adequately address these challenges.

Need to Broaden Scope of Delay. Moreover, due to industry shifts and the aforementioned uncertainties regarding the rule itself, the scope of the delay should be expanded to include all aspects of the rule, such as the best interest standard as defined by the DOL in its rulemaking. Any extension is likely to result in additional changes, new interpretations and proposals. The issues we are being required to face need to be resolved on a consistent, integrated basis, whereas the current staggered approach to the rule's effective date contributes to piecemeal solutions and negative unintended consequences for retirement savers. No part of the new rule should be applicable until the questions raised by the President are addressed and the new Secretary of Labor determines whether rescission or revisions are required or appropriate.

We respectfully note that, in our view, the cost analysis relied on by the Department to justify the rule is significantly flawed, outdated, and based on incorrect assumptions that are inconsistent with the practices that will be permitted by the rule and its related exemptions. We will work to provide data to the Department responsive to the President's concerns and to update the

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Department's understanding of the changing products and services in this market.

Rapid Response Needed to Avoid Confusing Clients. The new rule will require Advisor Group to dramatically alter its relationship with retirement clients, and this will need to be explained in written client communications. It is very important that we avoid mixed messages that will confuse our clients. As a result of the uncertainties noted above, we have refrained from telling clients the ways in which the rule will affect the products and services available to them. **We strongly believe that clients will be bewildered, confused and uncertain if we announce changes that need to be revisited if the new rule is changed or withdrawn.** We urge you not to disrupt the retirement market in this manner.

Practically speaking, this means that all efforts should be made to announce a comprehensive and meaningful delay as soon as possible. Although the Department's recently announced temporary enforcement policy is helpful in predicting government action, it does not apply to private plaintiffs and does not address the other problems noted above. We doubt the Department wishes to put investment services firms in harm's way from potential private actions during this period.

Summary. Advisor Group strongly supports the proposed delay in the applicability date. No retirement investor's interest will be served if the fiduciary rule goes into effect before clients have certainty on the products and services that can be provided under the final rule. We respectfully urge you to grant a delay of at least 60 days, but preferably six months, as soon as possible, and it should apply to all parts of the rule and related prohibited transaction exemptions. Only with this additional time can we ensure that our clients understand and are prepared for the changes they will experience as a result of the new rule.

We thank you for your attention to this matter and invite you to reach out to the undersigned if you have any questions or comments regarding this letter. Best regards.

On behalf of Advisor Group, Inc.

Noah Sorkin
General Counsel