



Margaret H. Raymond

Vice President
Managing Counsel

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Via Email to: ESBA.FiduciaryRuleExamination@dol.gov

Office of Exemption Determinations
ESBA (Attention: D-11933)
U.S. Department of Labor
200 Constitution Avenue, NW
Suite 400
Washington, DC 20210

Re: RIN 1210-AB82

Dear Sir or Madam:

This letter is written on behalf of T. Rowe Price Associates, Inc. and its affiliates to express support for a delay of the full implementation of the exemptions accompanying the Fiduciary Advice Rule, 29 C.F.R. §2510.3-21. We appreciate the Department's willingness to consider extensions of the remaining exemption provisions not already applicable (such as substantial procedural requirements of the Best Interest Contract Exemption), and the opportunity to provide our perspectives.

T. Rowe Price Background. T. Rowe Price Associates, Inc. serves as investment adviser to the T. Rowe Price family of mutual funds ("Price Mutual Funds") and collective trusts maintained by its affiliate, T. Rowe Price Trust Company. Price Mutual Funds, which are distributed by T. Rowe Price Investment Services, Inc., a registered broker-dealer, are known for consistent investment process and strong investment performance at moderate cost.¹ Through mutual funds and commingled trusts, as well as its sub-advisory and separate account management services, T. Rowe Price serves institutions—including both large and small business retirement plans—and individuals. T. Rowe Price assets under management ("AUM") total almost \$811 billion as of December 31, 2016, of which 69% are held in retirement related accounts, including ERISA-governed plans and IRAs.

Overview. We believe that the Fiduciary Advice Rule and accompanying exemptions are not ready for full implementation. More importantly, we believe that the Fiduciary Advice

¹ As of December 31, 2016, over 86% of Price Mutual Funds outperformed their 10-year Lipper average, and over 75% of all share classes of Price Mutual Funds (excluding funds used in insurance products) outperformed their Lipper average for the 1-, 3-, 5- and 10-year periods on a cumulative total return basis. As of December 31, 2016 over 79% of the Price Mutual Funds for individual investors have expense ratios below their Lipper category average.

Rule is not ready for full enforcement by the Department of Labor. We urge the Department to consider extension of its temporary enforcement policy announced in Field Assistance Bulletin 2017-02 (May 22, 2017)² at the same time it evaluates the deadline for full compliance with the exemptions accompanying the Rule.

The full applicability of the Best Interest Contract Exemption is important not only to those who intend to use it, but to all industry participants as well as advice recipients. This exemption is central to how many firms will deliver advice to retirement plans and investors and, more importantly, is the exemption with the single biggest potential impact on advice recipients because of the extensive disclosures required. Implementing the full exemption in its current form will affect the marketplace for advice and its availability, and may impact retirement investors' receptivity to advice. Accordingly, we encourage delay in full implementation.

Specific Reasons for Delay. There are a number of reasons a delay in both the full applicability of exemptions *and* full enforcement is appropriate.

1. The Fiduciary Advice Rule, while final and applicable, is not yet finished as a regulatory project, and both the Rule and the exemptions may change. The Department itself has asked whether the scope of the Rule with respect to savings should be evaluated, and other questions posed in the Request for Information suggest that the Department is open to considering changes to the Rule. The Presidential Memorandum has also required that the Rule be rescinded or revised if certain factual conditions—under evaluation now by the Department—are met. Because the Rule and exemptions (including the Best Interest Contract Exemption) may change, it would be unnecessarily disruptive to the industry and the public for full implementation of exemptions and full enforcement.

2. The Secretary of Labor has announced an intention to work closely with the Securities and Exchange Commission in considering the Fiduciary Advice Rule.³ The SEC has now issued a statement seeking public comments on the standards of conduct for investment advisers and broker dealers when they provide investment advice to retail investors. Coordination suggests that the Department of Labor should await the SEC's receipt and evaluation of information.

3. The marketplace for advice and the products offered to retirement plans and investors, particularly in the broker-dealer space, are evolving in ways that were not contemplated by the Department when the Fiduciary Rule was issued in April 2016. Owing to legal uncertainties under laws governing mutual fund distribution, the industry has not been able to fully implement changes during the compressed time period the Department afforded for compliance. As a result, both broker-dealers and product manufacturers (such as mutual fund companies) have found it challenging to develop approaches to the Rule. For example, some

² In FAB 2017-02, the Department of Labor announced that it would not pursue claims against fiduciaries who are working diligently and in good faith to comply with the Rule and exemptions (as applicable), and would not treat them as being in violation of the Rule or its exemptions.

³ Alexander Acosta, Secretary of Labor, "Deregulators Must follow The Law, So Regulators Will Too," Wall Street Journal Editorial, May 23, 2017 print edition.

firms announced that retirement investors seeking advice would be prohibited from commission-based accounts or would be barred from purchasing certain products, such as mutual funds and ETFs, in commission-based accounts.⁴ More recently, nascent product developments (e.g., T shares or the use of clean shares) have offered broker-dealers easier mechanisms for level and transparent pricing of advice services, but the full legal parameters for some of these products remains uncertain,⁵ and firms are not yet committed to particular approaches to advice delivery.⁶ Until the industry, with the assistance of regulators, is able to resolve availability of accounts and products previously available to retirement investors, and the mechanisms for payment for advice services, there will be disruption both to the industry and to retirement plans and investors seeking advice. In such an environment, it is important to refrain from full enforcement and full implementation of exemptions.

4. The Department continues, appropriately, to re-evaluate its interpretation of the Fiduciary Advice Rule. In a laudable effort to be helpful to the regulated community, the Department has been issuing Frequently Asked Questions to provide guidance on the Rule's application. In certain areas, uncertainty around various elements of the FAQs have themselves required further clarification from the Department,⁷ and a number of questions remain unresolved. The Department's willingness to evolve and clarify is the hallmark of a constructive regulatory process, but given the breadth and scope of the Fiduciary Advice Rule, the process needs additional time for the industry to have a clear view of the Fiduciary Advice Rule before full implementation and full enforcement occur.

We appreciate the opportunity to provide our views on delay in full implementation of exemptions and full enforcement, and we encourage an extension of the temporary enforcement policy as well as a delay in full implementation of the exemptions. In our view, such a delay

⁴ Wursthorn, M., "Brokers and Their Approach to the Delayed Fiduciary Rule," Wall Street Journal, April 18, 2017, <https://www.wsj.com/articles/brokers-and-their-approach-to-the-delayed-fiduciary-rule-1492546634> (last accessed July 3, 2017).

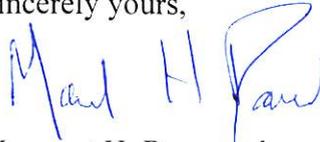
⁵ So-called "clean" shares is an example of a product that is accompanied by regulatory uncertainty. Clean shares are shares that bear no load, contingent deferred sales charge or 12b-1 fee. The SEC has issued a no action letter in which it has clarified that a broker can charge its customers a commission on the sale of such shares without violating Section 22(d) of the Investment Company Act of 1940. See No-Action Letter Issued to The Capital Group Companies, Inc., January 11, 2017. What is not clear in the SEC guidance is the extent to which clean share classes of mutual funds can compensate broker-dealer firms for sub-transfer agent activities, or the extent to which the mutual fund adviser of clean shares can share revenue for distribution and other related activities. In the absence of clarity, there may be limited development of clean share platforms by brokers.

⁶ Jamieson, D., "American Funds, Others, Back Off T Shares As B-D's Face DOL Uncertainty," Financial Advisor, June 16, 2017, <http://www.fa-mag.com/news/industry-struggles-with-mutual-fund-pay-under-dol-rule-33304.html> (last accessed July 3, 2017).

⁷ One example of this evolution can be found in the Department's approach to model delivery. Models are created by a registered investment adviser, and used by an intermediary broker-dealer or registered investment adviser to prescribe a specific portfolio to an end customer. An FAQ issued in January 2017 in interpreting the requirement that advice be delivered "for a fee" suggested that the method of invoicing was the hallmark for determining whether the model developer was providing advice to the recipient of the advice prescribed by the model, as implemented by an intermediary. (See FAQ 29, January 2017). A subsequent FAQ issued in May 2017 clarified that the determination as to whether fiduciary advice had been provided by the model developer was not dependent on the method of invoicing, but rather on the extent to which the model developer represented itself as fiduciary or tailored the model to a specific retirement plan or investor. (See FAQ 14, May 2017).

should extend until the Department, in coordination with the SEC, has concluded its work on the Request for Information and Presidential Memorandum and determined the extent to which the Rule or exemptions should be revised or rescinded.

Sincerely yours,



Margaret H. Raymond

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