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**To:** [FiduciaryRuleExamination - EBSA](#)  
**Subject:** RIN 1210-AB82  
**Date:** Thursday, July 13, 2017 4:33:18 PM

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*CFS*

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July 13, 2017

Employee Benefits Security Administration  
Office of Exemption Determinations  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Suite 400

Washington, DC 20210  
Regarding

RE: RIN 1210-AB82: Request for Information  
the Fiduciary Rule and Prohibited

Transaction Exemptions

On July 6, 2017, the Department of Labor (“Department”) published a request for information (“RFI”) in connection with its examination of the final rule defining who is a “fiduciary” as a result of giving investment advice for a fee or other compensation with respect to assets of a plan or IRA (“Fiduciary Rule”). The RFI seeks public input regarding the advisability of extending the January 1, 2018 applicability date of certain provisions in the Fiduciary Rule and its accompanying exemptions, including the Best Interest Contract Exemption and Prohibited Transaction Exemption 84-24.

CFS Brokerage appreciates the opportunity to respond to the Department’s RFI. CFS supports a carefully-crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients. However, we do not support the Fiduciary Rule and accompanying exemptions as currently written. The Fiduciary Rule is likely to reduce investors’ access to certain retirement product structures and related financial advice, result in disruptions within the retirement services industry that may adversely affect investors, and cause an increase in litigation which will result in an increase in the

prices that investors and retirees must pay to gain access to retirement services.

CFS supports a delay in the January 1, 2018 applicability date in order to allow the Department to conduct a detailed review of the Fiduciary Rule, its negative impact on investors' access to retirement planning services and new innovations and approaches that may alleviate many of these concerns.

Finally, we respectfully request an extension of the comment period for the RFI in order to allow industry participants sufficient time to thoughtfully and completely respond to the important questions posed by the RFI.

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#### **Support for further delay**

<!--[if !supportLists]-->1. <!--[endif]-->**A delay in the January 1, 2018 applicability date will reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments.**

Innovations in products and services are underway that create opportunities to simplify and streamline the regulatory requirements associated with the Fiduciary Rule and better accomplish its stated goals. As the Department noted, *“this final rule's delay in the applicability of the Fiduciary Rule and PTEs might make it possible to avoid some of the cost of continuing to develop and implement T-shares, in favor of moving more directly to what might be the preferred long-term solution, namely, clean shares.”* We agree with the Department that a delay to allow for further innovation will be beneficial; however, further delay beyond January 1, 2018 is needed to give these innovations sufficient time to be operationalized. For example, American Funds, Janus and Columbia Threadneedle are reported to be the only companies to issue “clean” shares of their mutual funds thus far. Due to the sequential nature of the various intermediaries' development of the necessary trading, surveillance, commission and other systems to support their use, it is doubtful that clean shares, or other new share classes, can be fully operationalized for at least 18 – 24 months.

In addition, we believe efforts to coordinate the SEC and DOL's regulatory efforts have the potential to reduce cost, preserve investor access to advice, and develop a more comprehensive Best Interest standard that will apply to financial advice rendered in connection with all of investment assets of retirement savers, not just those that are tax-qualified. Secretary Acosta recently told members of Congress that he has asked the new SEC chair whether the SEC will work with

the DOL on reviewing the Fiduciary Rule and that Chairman Clayton has indicated a willingness to do so. We believe a delay of the Fiduciary Rule's full implementation would create an opportunity for meaningful discussions among the DOL, SEC, industry and investors about new approaches to achieve the DOL's goals without reducing investor access to retirement planning services. Simply stated, we are concerned that the cost and other impacts of full implementation of the Fiduciary Rule will have significant negative consequences for investors who benefit from and value personal retirement planning services. It is clear that the DOL, SEC, the industry and investors need more time to consider regulatory options and product innovations that may reduce costs and preserve investor access to retirement planning services while navigating any necessary changes through the Administrative Procedures Act's rulemaking process. This simply can't be completed by January 1, 2018; therefore, a delay is essential to protect investor access to retirement planning services.

## **2. Risks associated with additional delay are mitigated by existing regulatory structure and the applicability of the impartial conduct standards.**

Financial institutions' sale of retirement savings products is already heavily regulated. Broker-dealers and registered representatives are subject to comprehensive regulation and legal obligations under SEC and FINRA rules and regulations, as well as state securities laws, rules, and regulations. Registered Investment Advisers and investment advisor representatives are similarly regulated under SEC and state securities laws, rules and regulations. Under these rules, broker-dealers are required to deal fairly with their customers while investment advisers are subject to a fiduciary duty and extensive disclosure obligations. Although broker-dealers are generally not subject to a fiduciary duty under the federal securities laws, courts have found broker-dealers to have a fiduciary duty in certain circumstances.

These existing regulatory structures and access to the courts serve as an important and effective mechanism to protect retirement investors, and will remain operative should the Department choose to further delay the January 1, 2018 compliance deadline.

During the transition period from June 9, 2017, through January 1, 2018, financial institutions and financial advisors relying on the Best Interest Contract Exemption (BICE) must adhere to the Fiduciary Rule's Impartial Conduct Standards. These Impartial Conduct Standards require financial institutions and advisors to provide advice in the retirement investors' best interest, charge no more than reasonable compensation for their services and to avoid misleading statements. In order to meet these standards, firms have already implemented many changes, including,

changes to compensation structures, restrictions on the availability of certain investment products, improvements to due diligence review of products and service providers, enhancements to efforts to monitor the sales practices of affiliated financial advisors and the creation and maintenance of books and records sufficient to demonstrate compliance with the Impartial Conduct Standards. Thus, investors are already benefitting from stronger protections since the Fiduciary Rule became partly applicable on June 9, 2017.

We believe any harm to investors caused by further delay of the additional requirements is greatly reduced by the application of the Fiduciary Rule's Impartial Conduct Standards and the existing regulatory structure.

### **3. A delay will be advantageous to advisers and investors.**

A delay during the Department's review will serve to minimize market disruptions caused by the changing regulatory structure. As a result of the Fiduciary Rule, firms are reviewing investment products and compensation structures and planning revisions designed to make it easier to comply with the Fiduciary Rule. Minimum account balances in advisory accounts are being revised upwards and consumers' access to retirement planning services will be limited by these changes as investors with low account balances are being moved to different account types. These, and other efforts to comply with the Fiduciary Rule continue and will need to be finalized and communicated to investors prior to the January 1, 2018 deadline. However, a delay will allow firms to avoid communicating one set of compliance policies, account minimums and other changes to investors that will have to be revised as a result of the possible changes to the final Fiduciary Rule. It is easy to see how the average client will be confused by correspondence announcing changes to their investment products and business relationship (if the Rule becomes applicable), followed by correspondence announcing additional changes being made for yet another new regulatory scheme (if the Rule is rescinded or revised). As a result, we believe it is clear that a delay of the January 1, 2018 deadline is necessary to avoid customer confusion.

### **4. Support for a Carefully-Crafted, Universal Fiduciary Standard of Care**

CFS supports a carefully-crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients. However, we do not support the Department's Fiduciary Rule as currently written. The study of the Rule's impact required by the February 3, 2017, Presidential Memorandum, along with innovative product developments and renewed opportunity for the DOL and SEC to collaborate, provides an important opportunity to preserve investor access to these services. Therefore, we urge the DOL to delay the January 1, 2018 effective date to provide the time necessary to consider other options to achieve the DOL's goals while preserving investor

access to retirement planning services.

Thank you for considering CFS's comments. Should you have any questions, please contact me at 718 934-2410

Respectfully,

William J. Cruz, MBA

President

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