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**Filed Electronically**

Office of Exemption Determinations  
Employee Benefits Security Administration  
Attention: D-11933  
U.S. Department of Labor  
200 Constitution Avenue N.W., Suite 400  
Washington, DC 20210

Re: **RIN 1210-AB82; Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions**

Dear Sir or Madam:

We are writing in response to the Department of Labor's request for comments on a possible delay in the January 1, 2018, applicability date of the Best Interest Contract Exemption. As discussed more fully below, we believe that the applicability date should be extended to at least January 1, 2019.

As the Department is aware, a number of financial institutions are actively exploring the development of brokerage programs based on the clean shares letter issued by the SEC to our firm on January 11, 2017. Clean shares are attractive to firms in part because they potentially eliminate many of the conflicts of interest that are targeted by the Best Interest Contract exemption. They also have the virtue of enhancing transparency and placing different product types on an equal footing. There are, however, numerous business and operational steps that need to be taken to develop a clean shares solution.

Firms need to determine how they want to price a clean shares program, train their financial advisers, develop communications materials and obtain investor agreement to participate. There are also technical challenges since mutual funds typically sit on platforms or sub-accounting systems that are used to perform mutual fund-specific functions, such as aggregation to apply rights of accumulation. These systems are ordinarily not designed to account for other investments and it will take some time (perhaps 18-24 months) for systems development to catch up to clean shares which are designed to sit side-by-side with ETFs and other equity securities. Moreover, broker-dealers and their advisors are still in the process of implementing certain practices in order to ensure compliance with the elements of the fiduciary rule that went into effect on June 9, 2017. Given the challenges, most broker-dealer firms will not be able to launch a clean shares program by January 1, 2018.

A delay in the applicability date will provide financial institutions with the necessary time to develop clean shares programs and minimize disruption for retirement investors. Without a delay in the applicability date, a broker-dealer firm that believes the direction of travel is towards the clean share will be forced to either eliminate access to commissionable investment advice or make the fundamental business changes required by the Best Interest Contract Exemption in order to continue offering traditional commissionable mutual funds. Both approaches would be incredibly disruptive for investors who could have little choice but to either move to a fee-based advisory program in order to maintain access to advice or enter into a Best Interest Contract only to be transitioned into a clean shares program shortly thereafter, and would make it less likely that firms will evolve to clean shares.

The need for a delay is particularly acute if the Department develops a streamlined prohibited transaction exemption around clean shares, as the Department has suggested. It is not reasonable to expect financial institutions to make business decisions without a complete picture of the regulatory landscape. The fiduciary rule and its related exemptions pose fundamental questions about business models. Until the industry has had an opportunity to see the streamlined exemptions the Department is contemplating, it is simply not possible to make an informed judgment.

We recognize that retirement investors will not benefit from the consumer protections in the Best Interest Contract Exemption that would otherwise become applicable if the January 1, 2018 applicability date is delayed. However, retirement investors will still receive advice that comports with the impartial conduct standards and there are serious questions about whether some of the protections in the Best Interest Contract Exemption strike the right balance between preserving access to financial advice and ensuring that consumers are protected from potential conflicts. But, most importantly, we think the benefit to retirement investors from the development of clean shares programs and an orderly transition to such programs outweighs the possible harm from a delay.

Put simply, the industry and retirement investors need time and a stable regulatory landscape in order to make informed decisions. To provide the requisite time and clarity, the Department needs to delay the January 1, 2018 applicability date.

We appreciate the opportunity to comment.

Respectfully submitted,



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