



July 21, 2017

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

RE: RIN 1210-AB82  
*Submitted Electronically*

Ladies and Gentlemen:

E\*TRADE Financial Corporation ("E\*TRADE") appreciates the opportunity to provide comments regarding the Department of Labor's ("Department") request for additional comment ("RFI") on its rule broadening the meaning of an investment advice fiduciary and related exemptions. While we strongly believe in supporting the efforts to advance the best interests of our customers, executing the nuances of this regulation as it continues to shift requires additional time and an extension of Temporary Enforcement Policy found in Field Assistance Bulletin ("FAB") 2017-02. Accordingly, we urge the Department to delay the January 1, 2018 applicability date of the provisions in the Best Interest Contract Exemption ("BIC"), the Principal Transaction Class Exemption, and Prohibited Transaction Exemption 84-24 relating to the redefinition of the term "fiduciary" under § 3(21) of the Employee Retirement Income Securities Act of 1974 and § 4975(e) of the Internal Revenue Code of 1986 (the "Rule" and together "Fiduciary Rule") that are not currently in effect. Moving forward, barring additional time, the ambiguity surrounding the Rule and related exemptions is likely to confuse and potentially harm investors.

E\*TRADE has already devoted substantial resources to changes we believe are necessary to comply with the Fiduciary Rule and is continuing to work toward a fully integrated and compliant business model. However, the uncertainty surrounding the future of the Rule's January 1, 2018 complete set of requirements creates a speculative environment in which the firm is challenged to effectively create a compliance program requiring technological and operational controls, without knowing whether those controls will need to be modified, enhanced, or discarded at some future point based upon the Rule's examination and related RFI. E\*TRADE reiterates the previous statements in our March 17, 2017 letter to the Department: "We believe a delay is necessary to help our clients fully understand and be prepared for the changes they will experience as a result of the [R]ule. We strongly believe that E\*TRADE's clients will be unnecessarily confused about our retirement services if changes we implement and announce are subsequently revisited or reversed ...." A delay is a practical and necessary consequence to permit the Department to appropriately consider the comments submitted in response to the RFI and, if any changes to the Rule are made as a result, provide for their implementation.

In order to properly adjust certain services or offerings for alignment with the current iteration of the Fiduciary Rule, E\*TRADE must know if the Rule or related exemptions will change or have different interpretations directly related to the RFI. Regardless of any good faith compliance efforts, only once the RFI responses are vetted and the Department issues its conclusions, will E\*TRADE be able to make an informed decision to accurately and efficiently assess the impact on our specific business model and execute any necessary changes to our firm's systems and offerings. Large scale systemic change is not fast, requires accurate information, and is often governed at least in part by other securities laws. In order to meet the current full compliance deadline, some changes need to be implemented immediately to have a working and compliant system in place by January 1, 2018.

One example that underscores the necessity of a delay is in the area of cash sweep. The RFI specifically seeks comments regarding the possibility of a special rule for cash sweep services. Currently, many in the industry are considering and implementing changes to their cash sweep programs as a result of the Rule. Rule 15c3-3 under the Securities Exchange Act of 1934 requires thirty (30) days' advance notice to customers when there is a change in their cash sweep offering. Many firms address this disclosure requirement through statement communications. As a result, in order to meet the current January 1, 2018 deadline, firms realistically would have to communicate changes in third quarter statement mailings and arguably finalize decisions by August or early September and would do so without the benefit of any learning from the RFI process.

This is an example of one of many operational items implicated by the Rule and the many potential changes that could need to be made in response to the RFI. It is also our opinion that extension of the applicability of Field Assistance Bulletin No. 2017-02 should accompany any delay of the January 1, 2018 deadline. As firms are already subject to the impartial conduct standards, the backbone of the exemptions' conditions, we believe that an extension will benefit financial services providers and retirement investors by permitting a more efficient and thoughtful implementation of any other components of the Rule deemed necessary following the RFI review.

Accordingly, we urge the Department to grant an additional delay of the remaining implementation of the Rule and an extension of the Temporary Enforcement Policy as detailed in FAB No. 2017-02.

Thank you for providing us the opportunity to provide our comments based upon the Request for Information.

Sincerely,



James E. Ballowe, Jr.  
Senior Vice President and Senior Counsel, Brokerage  
E\*TRADE Financial Corporation