August 7, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
United States Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

Attn: Fiduciary Rule Examination

Re: RIN 1210-AB82

VIA EMAIL: EBSA.FiduciaryRuleExamination@dol.gov

Ladies and Gentlemen:

I write on behalf of Madison Avenue Securities, LLC ("Madison"), a San Diego, California based broker-dealer and investment adviser. We appreciate the opportunity to offer further comment on the United States Department of Labor's ("DOL" or "Department") Request for Information ("RFI") on the Department's Conflicts of Interest Rule ("Rule").

Madison has already submitted several of comment letters with respect to the Rule. Most recently, we submitted a letter dated July 19, in which we reiterated our support for a best interest standard (appropriately modified from the current Rule) as well as our view that a further delay of the Rule is the best course of action. This letter will provide some additional commentary on the other substantive questions raised in the RFI.

2. What has the regulated community done to comply with the Rule and PTEs to date, particularly including the period since the June 9, 2017, applicability date? Are there market innovations that the Department should be aware of beyond those discussed herein that should be considered in making changes to the Rule?

Madison has taken numerous preparatory steps to comply with the Rule and PTEs. Beginning soon after the final Rule was announced, we began a comprehensive review of our policies, procedures and practices to determine what compliance gaps could exist between our then–current practices and those required under the Rule and PTEs. Based upon this review, we developed a new and comprehensive process for the submission, review and implementation of business that includes representatives, back office, and supervisory personnel. Moreover, a variety of technological innovations have been implemented or are in the works so as to assist in this new process.

As part of these preparations, we have also undertaken an extensive training regimen for representatives and staff, including multiple webinars and live training events as well as frequent updates in writing and via conference call. We have also created and provided updated forms, supporting documentation (including a comprehensive best interest factfinder for use with clients), and sample disclosure forms. We have reviewed and adjusted our product shelf. We have provided specialized training for our supervising principals. Since June 9, we have continued to provide updates and ongoing training to our representatives, we have continued to revise our process and procedures based upon our experience, and we have continued to meet with and train our supervisory personnel in light of what they have seen from our representatives in light of the Rule going into effect.

The implementation of this new process has been very costly and has required substantial staffing adjustments. If and when the additional requirements of the Rule, currently set for January 1, 2018 (the "January Requirements"), go into effect, quite substantial additional changes will be required.

3. Do the Rule and PTEs appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest? Do they effectively allow Advisers to provide a wide range of products that can meet each investor's particular needs?

No. As currently drafted, the Rule and PTEs create major impediments to the ability of the consumers to receive advice on a wide range of advice, products and services. However, most of these impediments do not relate to the Impartial Conduct Standards, they relate to the January Requirements, most notably the BICE contract, Internal Revenue Code penalties and class action liability.

4. To what extent do the incremental costs of the additional exemption conditions exceed the associated benefits and what are those costs and benefits?

As we have consistently emphasized, we support a comprehensive best interest standard for financial services and support the Impartial Conduct Standards that are already in effect. However, the January Requirements go too far by creating significant new implementation and compliance costs for us with no clear benefit to consumers. These costs include the development and maintenance of new technology to process and monitor business, new systems to oversee compliance with duplicative regulatory regimes, including new disclosure and recordkeeping requirements, and the people to staff these functions. The costs include increased litigation risk and the attendant increase in insurance costs, which we anticipate will be enormous.

We further anticipate that service providers at every level of the industry will consolidate, which will likely both reduce the number of service providers (especially smaller providers) and reduce the available number of advisers to consumers, primarily those consumers with lower levels of investable assets. Increasingly homogenized advice from a decreasing number of providers is hardly in the best interest of consumers.

A variety of potential alternatives exist that would help provide the benefits the Department seeks to provide to consumers while mitigating many of these costs. These alternatives include eliminating the BICE contract requirement and relying on the Impartial Conduct Standards and coordinating with other regulatory agencies with historical subject-matter jurisdiction over the industries that the Department seeks oversight here, such as the SEC and state insurance regulators.

5. What is the likely impact on Advisers' and firms' compliance incentives if the Department eliminated or substantially altered the contract requirement for IRAs? What should be changed? Does compliance with the Impartial Conduct Standards need to be otherwise incentivized in the absence of the contract requirement and, if so, how?

The Impartial Conduct Standards make sense as is, although further guidance from the Department about how best to implement them would be most helpful. The BICE contract, on the other hand, adds layers of compliance difficulty without adding consumer benefit. Eliminating the contract requirement from the January Requirements would go a long way toward solving the problem.

6. What is the likely impact on Advisers' and firms' compliance incentives if the Department eliminated or substantially altered the warranty requirements? What should be changed? Does compliance with the Impartial Conduct Standards need to be otherwise incentivized in the absence of the warranty requirement and, if so, how?

As noted above, with some further guidance from the Department, the Impartial Conduct Standards could provide a sufficient standard for professional conduct by advisers to retirement investors that would render the contract and warranty provisions of BICE unnecessary. Consequently, we believe that the Department should eliminate the contract requirement. Firms and advisers will continue to develop their compliance standards and initiatives to comply with the ICS.

7. Would mutual fund clean shares allow distributing Financial Institutions to develop policies and procedures that avoid compensation incentives to recommend one mutual fund over another? If not, why? What legal or practical impediments do Financial Institutions face in adding clean shares to their product offerings? How long is it anticipated to take for mutual fund providers to develop clean shares and for distributing Financial Institutions to offer them, including the time required to develop policies and procedures that take clean shares into account? What are the costs associated with developing and distributing clean shares? Have Financial Institutions encountered any operational difficulties with respect to the distribution of clean shares to the extent they are available? Do commenters anticipate that some mutual fund providers will proceed with T-share offerings instead of, or in addition to, clean shares? If so, why?

We think so-called "clean shares" make sense for the industry and, from our standpoint, should be able to be made available fairly easily. However, mutual fund companies are best positioned to answer questions about creating and distributing clean shares. We expect some providers to proceed with T-shares, but only those providers can provide the reasoning for doing so.

8. How would advisers be compensated for selling fee-based annuities? Would all of the compensation come directly from the customer or would there also be payments from the insurance company? What regulatory filings are necessary for such annuities? Would payments vary depending on the characteristics of the annuity? How long is it anticipated to take for an insurance company to develop and offer a fee-based annuity? How would payments be structured? Would fee-based annuities differ from commission-based annuities in any way other than the compensation structure? How would the fees charged on these products compare to the fees charged on existing annuity products? Are there any other recent developments in the *design, marketing, or distribution of annuities that could facilitate compliance with the Impartial Conduct Standards?*

As with respect to clean shares, we believe that questions of product design are best left to product manufacturers. However, we note that the recommendation of a fee-based product in itself does not resolve the question of an adviser's conflict of interest, nor does it resolve the question of which compensation method provides the most value to the consumer or even which compensation method costs more.

9. Clean shares, T-shares, and fee-based annuities are all examples of market innovations that may mitigate or even eliminate some kinds of potential advisory conflicts otherwise associated with recommendations of affected financial products. These innovations might also increase transparency of advisory and other fees to retirement investors. Are there other innovations that hold similar potential to mitigate conflicts and increase transparency for consumers? Do these or other innovations create an opportunity for a more streamlined exemption? To what extent would the innovations address the same conflicts of interest as the Department's original rulemaking?

As noted above, we believe that questions of product innovation and design are best left to product manufacturers.

10. Could the Department base a streamlined exemption on a model set of policies and procedures, including policies and procedures suggested by firms to the Department? Are there ways to structure such a streamlined exemption that would encourage firms to provide input regarding the design of such a model set of policies and procedures? How likely would individual firms be to submit model policies and procedures suggestions to the Department? How could the Department ensure compliance with approved model policies and procedures?

We are generally supportive of any form of regulation or exemptive relief that could provide clarity and ease the administrative burden on regulated entities. Many of the advisers we work with are small business owners who, despite their good faith efforts to comply, do not have the capacity readily to develop the policies and procedures required under present rules on their own. Any assistance that the Department could provide them in establishing a reasonable level of compliance would be beneficial.

However, for a streamlined exemption to be broadly effective, the Department will have to actively engage industry-at all levels-in a way it has failed to do. The Department will have to create a balanced set of disclosures, policies, and procedures that do not create a competitive advantage to larger, more organizationally sophisticated entities over small businesses. Moreover, the drafting of such an exemption must take great care so as not to become <u>the</u> standard – making new and additional requirements – instead of <u>a</u> model. If the Department is considering such a streamlined exemption, it should delay any further applicability or implementation dates until such exemption is finalized.

11. If the Securities and Exchange Commission or other regulators were to adopt updated standards of conduct applicable to the provision of investment advice to retail investors, could a streamlined exemption or other change be developed for advisers that comply with or are subject to those standards? To what extent does the existing regulatory regime for IRAs by the Securities *and Exchange Commission, self-regulatory bodies (SROs) or other regulators provide consumer protections that could be incorporated into the Department's exemptions or that could serve as a basis for additional relief from the prohibited transaction rules?*

We believe that clarity and predictability are first principals of effective regulation. The Rule and PTEs, as they currently exist, provide neither. A central aspect of the lack of clarity and unpredictability created by the Rule and PTEs involve their relationship to existing and developing standards of conduct that are applicable to investment advisers, broker-dealers, and insurance agents. In our view, the difficulties we see with the Rule, as currently drafted, are largely the result of the Department's lack of experience or expertise with respect to our business. Consequently, the Department should defer to or at least coordinate with standards set by regulators with subject-matter expertise, such as the SEC, FINRA, and state insurance commissioners.

12. Are there ways in which the Principal Transactions Exemption could be revised or expanded to better serve investor interests and provide market flexibility? If so, how?

We are not appropriately informed to offer any advice with respect to this question.

13. Are there ways to simplify the BIC Exemption disclosures or to focus the investor's attention on a few key issues, subject to more complete disclosure upon request? For example, would it be helpful for the Department to develop a simple up-front model disclosure that alerts the retirement investor to the fiduciary nature of the relationship, compensation structure, and potential sources of conflicts of interest, and invites the investor to obtain additional information from a designated source at the firm? The Department would welcome the submission of any model disclosures that could serve this purpose.

As argued above, while we agree that disclosure is a key component of the relationship between the adviser and the consumer, we do not believe that the best interest contract is necessary to further the Department's goals. As a result, we believe that a focused disclosure that provides relevant information to the consumer would be helpful.

14. Should recommendations to make or increase contributions to a plan or IRA be expressly excluded from the definition of investment advice? Should there be an amendment to the Rule or streamlined exemption devoted to communications regarding contributions? If so, what conditions should apply to such an amendment or exemption?

This question is a difficult one in that consumers obviously benefit generally from additional retirement saving; such a recommendation should not trigger the Rule and all that it encompasses. However, it is possible that some competent financial planners will recommend alternative retirement planning strategies that include reducing contributions to a plan or IRA; those sorts of recommendations should be subject to the Impartial Conduct Standards.

15. Should there be an amendment to the Rule or streamlined exemption for particular classes of investment transactions involving bank deposit products and HSAs? If so, what conditions should apply, and should the conditions differ from the BIC Exemption?

We think banks are best positioned to address these questions.

16. To what extent are firms and advisers relying on the existing grandfather provision? How has the provision affected the availability of advice to investors? Are there changes to the provision that would enhance its ability to minimize undue disruption and facilitate valuable advice?

We cannot speak for others. Since it is impossible adequately to advise existing clients individually about the Rule, we are relying on grandfathering until such time as new advice is given.

17. If the Department provided an exemption for insurance intermediaries to serve as Financial Institutions under the BIC Exemption, would this facilitate advice regarding all types of annuities? Would it facilitate advice to expand the scope of PTE 84-24 to cover all types of annuities after the end of the transition period on January 1, 2018? What are the relative advantages and disadvantages of these two exemption approaches (i.e., expanding the definition of Financial Institution or expanding the types of annuities covered under PTE 84-24)? To what extent would the ongoing availability of PTE 84-24 for specified annuity products, such as fixed indexed annuities, give these products a competitive advantage vis-à-vis other products covered only by the BIC Exemption, such as mutual fund shares?

We think insurance intermediaries and carriers are best positioned to answer these questions.

18. To the extent changes would be helpful, what are the changes and what are the issues best addressed by changes to the Rule or by providing additional relief through a prohibited transaction exemption?

At the risk of repetition and oversimplification, we think the Impartial Conduct Standards, with some clarification, are wholly appropriate but that the January Requirements, most notably the formal BICE contract, liability under the Internal Revenue Code and class action liability, should be eliminated.

We appreciate this opportunity to provide comments and feedback. Please feel free to reach out to me with any questions, comments, or concerns.

Sincerely,

MADISON AVENUE SECURITIES, LLC

Wayne T

Wayne Talleur
President & CEO