Morgan Stanley

Morgan Stanley
2000 Westchester Avenue
Purchase, NY 10577

September 14, 2017

Office of Exemption Determinations, EBSA
Attention: D-11712, 11713, 11850
U.S. Department of Labor
200 Constitution Avenue, N.W.
Suite 400
Washington, DC 20210

RE: RIN 1210-AB82

Ladies and Gentlemen:

On behalf of Morgan Stanley Smith Barney LLC ("Morgan Stanley"), this comment letter responds to the Department of Labor's proposed amendments to the Best Interest Contract Exemption (PTE 2016-01), Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016–02) and Prohibited Transaction Exemption 84– 24 (the "Exemptions"), whereby the Department proposes to extend the special transition period under the Exemptions to July 1, 2019.

In the proposed amendments, the Department specifically requests comments on the relative benefits or harms to three different delay approaches: (1) A delay set for a time certain, such as the eighteen month delay proposed therein, (2) a delay that ends a specified period after the occurrence of a specific event, and (3) a tiered approach where the delay is set for the earlier of or the later of (a) a time certain and (b) the end of a specified period after the occurrence of a specific event. **As detailed herein, Morgan Stanley strongly urges the Department to adopt a time certain delay of at least eighteen (18) months, as stated in the proposed amendments, thereby extending the transition period under the Exemptions to July 1, 2019.**

In our July 20, 2017 submission to the Department in response to its Request for Information regarding the Fiduciary Rule (the "Rule") and Exemptions, we asked that the Department delay the January 1, 2018 applicability date of the Exemptions by at least eighteen months. As we stated in our response, and reiterate here, such a delay is prudent and necessary and in the interest of retirement investors. The alternative delay approaches offered by the Department would unfairly burden financial institutions and unnecessarily complicate communications with retail retirement investors.

A delay solely based on a specific contingent future event (e.g., the issuance of new exemptive relief) poses a host of problems for financial institutions. For instance, it is impossible to know how much lead time would be necessary and appropriate to comply with exemptions that have yet to be issued. As we have stated in previous communications with the Department, large financial institutions, especially those serving hundreds of thousands of retirement investors such as Morgan Stanley, require a substantial amount of time to train and educate their financial advisers, supervisors and support staff, and to build operational and control functions to comply with any new regulatory guidance. By enacting a time certain delay of at least eighteen months, financial institutions will be better able to plan for and implement any changes that are necessary to comply with new guidance and create or modify product and platform offerings.

A "floating timeline" as suggested by the Department also poses the risk of further confusing the retirement investors that the Rule is intended to protect. Client communications over the past year and a half have been challenging due to the seemingly changing status of the Rule and Exemptions. Conflicting media reports, and complicated applicability and effective dates have created confusion amongst retirement investors. A delay to the applicability of the Exemptions based on an unknown future event would further add to this confusion.

Lastly, the Department has stated that it is also seeking comments as to whether to extend the temporary enforcement policy it first announced on May 22, 2017. We believe that it is only logical that any extension of the transition period under the Exemptions should be accompanied by a corresponding extension of such enforcement policy. Considering the large breadth of the Rule and the relatively short time frame in which the industry has had to learn to comply with the Rule and Exemptions, we believe the Department's stated emphasis on assisting (rather than enforcing) is the appropriate approach at least through the transition period. Of course, Morgan Stanley will continue to work diligently and in good faith to meet its fiduciary duty under the Rule and meet the conditions of the Exemptions.

We thank the Department for considering these comments on the proposed amendments to the Exemptions.

Sincerely,

Anne T. Cooney

Anne T. Cooney
General Counsel of Wealth Management