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U.S. Department of Labor  
200 Constitution Avenue, N.W. Suite 400  
Washington, DC 20210

**Re: RIN 1210-AB82**

Ladies and Gentlemen:

We write regarding the Department of Labor's ("Department's") proposed extension of the transition period and 18-month delay of the January 1, 2018 applicability date of certain provisions of the Best Interest Contract Exemption (PTE 2016-01) and other prohibited transaction exemptions (collectively referred to as "Exemptions") related to final rule ("Rule") defining who is a "fiduciary" under section 3(21) of the Employee Retirement Income Security Act ("ERISA") and section 4975(e) of the Internal Revenue Code of 1986, as amended (the "Code").

Benjamin F. Edwards & Co. (BFE) is a full-service wealth management firm based in St. Louis, MO. We employ over 500 people and have 64 offices in 26 states. My family has been involved in the investment industry for over 130 years and I started this company in 2008. Our first branch office opened in 2009, so we are a growing firm. We are proud of the fact that, since the time we started with no clients eight years ago, we have grown and now have more than 100,000 accounts, of which about half are retirement accounts.

BFE offers our clients the opportunity to work with their advisor in either a commission-based brokerage or fee-based advisory relationship, depending on what the client believes is most appropriate, given their individual circumstances and desires. We want to ensure that our clients are able to continue to work with us in the way that is best for them.

As we discussed in our comment letter dated July 21, 2017 and more fully below, BFE believes an extension is necessary for the Department to complete its examination as ordered by the Presidential Memorandum On Fiduciary Duty Rule dated February 3, 2017 ("Presidential Memorandum"), to work more closely with the SEC in creating a more harmonized industry standard of conduct, and to allow sufficient

time for the industry to respond to any action the Department may take in regards to the Rule and Exemptions, without disrupting the products and services to which retirement investors have access today.

In particular, we believe that:

- **The Applicability Date of the Exemptions Should Be Extended.** BFE believes the Department should move expeditiously to extend the January 1, 2018 applicability date of the remaining aspects of the Exemptions, including the Best Interest Contract Exemption, Prohibited Transaction Exemption 84-24, and the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs. Delays in announcing any extension serve only to unnecessarily extend the turmoil and costs experienced by firms who are making good faith efforts to comply with anticipated new rules, and to prolong the confusion currently being experienced by clients who are uncertain as to the status of the retirement accounts.
- **Additional Time Will Be Needed *After* the Department Completes Its Review and Finalizes Any Further Revisions to the Rule and Exemptions.** BFE believes that, once the Department completes its review and updated analysis of the impact of the Rule and prohibited transaction Exemptions as directed by the Presidential Memorandum, a period of 12-18 months will be required to implement those changes *after* the date the Department publishes and finalizes any revisions to the Rule and Exemptions (or issues a statement that the Department does not intend any further changes or revisions). The additional period will be necessary for the industry to have adequate opportunity to review and seek interpretive and other guidance about any changes to the Rule or Exemptions; for the Department to work with industry to ensure an orderly implementation of any such changes; for firms such as ours to actually make anticipated adjustments to technology, product shelf, operational systems, and manpower that will be necessary to ensure compliance; for employees to be trained; and for clients to be educated.

As an illustration, the requirements associated with Section VII of the Best Interest Contract Exemption (the Exemption for Pre-Existing Transactions) are just one example of this need. Financial institutions, who are making a good faith effort to comply with the Exemption's requirements, need clarity regarding the Department's meaning and intent behind terms such as "systematic purchase program", "exchange privilege", and "rebalancing program". To address this and other concerns raised by commenters regarding the Exemption for Pre-Existing Transactions, time will be required for the Department to provide additional guidance, and once provided, financial institutions will require further time to make, communicate, and then implement corresponding adjustments and revisions to technology, operational systems, compliance procedures and employee training in order to comply.

- **A Fixed "Time-Certain" Extension Alone Is Likely To Cause Further Disruption.** A fixed, time-certain delay alone that is not linked to the Department finalizing anticipated revisions to the Rule and Exemptions only serves to create an environment that will lead to further uncertainty for retirement investors and financial institutions. If the Department is unable to complete its review and analysis, and/or finalize any changes resulting from that review within the proposed 18-month time-certain period, it will be necessary to go through yet another round of comments as to the need for additional delays and will again bring financial institutions to yet another costly critical resource decision point – whether to move forward with the known current exemption requirements (where what is done may have to be undone or changed), or wait until the Department finalizes and communicates any further modifications to exemption requirements. Conversely, allowing firms to

continue operating in the best interests of our clients until such time as the conditions of the Rule and Exemptions are final and known does not create uncertainty for our clients. In fact, it is just the opposite. During the transition period, retirement investors will be assured that they are able to continue to have access to products and services to which they are accustomed, under the protections of the Impartial Conduct Standards.

- **Investor Protections During The Extended Transition Period Are Robust and Sufficient.** Investor interests will be well-protected during any extension of the applicability date. Retirement Investors are currently receiving fiduciary investment advice that is in their best interest, and will continue to receive those protections if the transition period is extended beyond the January 1, 2018 applicability date. Since June 9, 2017, the Impartial Conduct Standards have required a financial advisor to act in the best interest of the retirement investor, and to receive no more than reasonable compensation. Further, misleading statements about conflicts of interest, fees, or other matters that are relevant to an investment recommendation are prohibited. Given that the Impartial Conduct Standards are already in place and that there is an additional existing and overlapping robust infrastructure of regulations that are enforced by the SEC, FINRA, Treasury, and the IRS, not to mention the Department, investors are well protected and will continue to be well protected during any extension.
- **Extension of the Transition Period and Temporary Enforcement Policy Should Not Be Contingent Upon Specific Behaviors of Financial Institutions.** The Department should not condition the delay of the applicability date on specific behaviors, such as a financial institution's implementation of, or intent to use, certain specific product innovations. Establishing different implementation dates for some firms, but not all, will only serve to further confuse investors as to the standards that are in effect, and will deny them the ability to compare services on an evenhanded basis. Further, all financial institutions that offer products and services to retirement investors are currently required to uphold the Impartial Conduct Standards and *all* should benefit from the extension of the transition period and temporary enforcement policy, lest an uneven playing field be created. Given that the Department has indicated that it is considering the "development of additional and more streamlined exemption approaches," the details of such streamlined exemptions approaches must be known before a financial institution can determine if the exemption is one on which the financial institution will rely.

## Conclusion

In sum, BFE has been making, and will continue to make, more than a good faith effort to address the Rule and Exemptions. We have diverted a substantial portion of our firm's best talent for months – approaching years – to fundamentally change how our retirement business is done, taking them out of important roles that investors truly value. BFE has developed and made substantial changes to our policies and procedures to effect the changes required by the new Rule and Exemptions, trained our employees to do business under the changed standards, drafted client correspondence that attempts to explain the new Rule and Exemptions, and created compliance and surveillance programs to oversee implementation of the Impartial Conduct Standards, amongst a host of other efforts.

Given the scope and magnitude of effort that must yet be completed, and particularly in light of the compressed timeframe for implementation, BFE believes it would be unnecessarily disruptive and costly if the Department were to, in effect, require BFE and other financial services firms to direct the significant required resources at this juncture toward the current January 1, 2018 requirements of the Rule and

Exemptions, given that those requirements are under review for possible modification, as directed by the President.

We urge you not to continue the disruption to our clients and to the retirement marketplace. The applicability date should be delayed until the questions raised by the President are addressed and the Department determines whether rescission or revisions are required or appropriate. The revised applicability date should not be earlier than 12-18 months after the date the Department publishes a statement that no further changes or revisions will be made to the Rule and Exemptions or, should there be changes, not earlier than 12-18 months after the date the Department finalizes and publishes the changes.

Sincerely,

A handwritten signature in blue ink that reads "JAD EDWARDS". The signature is written in a cursive, slightly stylized font.

Benjamin F. Edwards, IV  
Chairman, CEO and President