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Filed Electronically

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: Definition of the Term "Fiduciary" – Proposed Eighteen Month Transition Period Extension
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Proposed Eighteen Month Extension of the Transition Period and Applicability Dates for the Best Interest Contract Exemption ("PTE 2016-01"), Class Exemption for Principal Transactions ("PTE 2016-02"), and Prohibited Transaction Class Exemption 84-24 ("PTE 84-24") RIN 1210-AB82

Dear Deputy Assistant Secretary Hauser:

Groom Law Group is providing the comments set forth in this letter on behalf of a group of client companies, each of which is a major provider of annuity and insurance products to employer-sponsored plans subject to ERISA and to individual retirement accounts (the "Groom Group"). These Groom Group comments are responsive to the referenced proposal (the "Extension Proposal"), which would extend the applicability date for certain provisions of the conditions contained in PTE 2016-01; PTE 2016-02; and the 2016 amendments to PTE 84-24 by eighteen months, from January 1, 2018 until July 1, 2019.[1] The U.S. Department of Labor ("Department") adopted PTE 2016-01, PTE 2016-02, and the changes to PTE 84-24 in conjunction with the regulations "Definition of the Term 'Fiduciary'; Conflict of Interest Rule – Retirement Investment Advice", 81 Fed. Reg. 20946 (April 8, 2016) and the 2016 amendments to Prohibited Transaction Class Exemptions 75-1, 77-4, 80-83, 83-1, and 86-128 (collectively, the "Fiduciary Rule").

The Groom Group believes that creating a longer transition period (the "Transition Period") by extending the applicability date of these Fiduciary Rule provisions by eighteen months serves the interests of retirement consumers and other stakeholders for four reasons. First, it will help prevent consumer confusion while the Department engages in the review

[1] 82 Fed. Reg. 41365 (Aug. 31, 2017).

required by the Presidential Memorandum on Fiduciary Duty Rule for the Secretary of Labor (February 3, 2017), published at 82 Fed. Reg. 9675 (Feb. 7, 2017) (the "Presidential Memorandum"). Second, it will afford the Department additional time to analyze and craft possible new exemptions as well as contemplate modifications to existing exemptions. Third, it will provide the Department with time to coordinate its fiduciary efforts with the Securities Exchange Commission. Fourth, both the delay and the extension of relief under FAB 2017-02 will help create sufficient time to design and implement an orderly transition process should the Department conclude that changes to the Fiduciary Rule are warranted. As a result, the Groom Group strongly believes –

- **The Department should finalize the 18-month extension that it has proposed.**
- **The Department should not impose any additional conditions that would apply during the 18-month extension period.**
- **The Department should extend FAB 2017-02 for a concurrent time period.**

Below, we explain why, from both a qualitative and quantitative standpoint, the Extension Proposal must be made final without any new conditions.

I. Ongoing Review

On February 3, 2017, the President of the United States signed the Presidential Memorandum directing the Secretary of Labor to update the Department's original economic and legal analysis pertaining to the Fiduciary Rule, to consider that updated analysis in light of the President's stated policy objectives and, subject to certain determinations, either revise the Fiduciary Rule or rescind it altogether. The comprehensive and far-reaching nature of the re-examination ordered by the President clearly merits an extension of the Transition Period for the duration of the re-examination process. Since that time, the Department has opened two substantive comment periods where it has requested comments to address whether the Fiduciary Rule should be modified or rescinded. Since March, the Department has received more than 260,000 comments from interested parties. As a result the Department has acknowledged that "More time is needed to carefully and thoughtfully review the substantial commentary received . . ."[2] In our view, this reevaluation is likely to lead to the recognition that substantial changes to the Fiduciary Rule are necessary. As the Department has recognized, the review will "help identify any potential alternative exemptions or conditions that could reduce costs and increase benefits to all affected parties, without unduly compromising protections for retirement investors."[3]

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[2] 82 Fed. Reg. 41365, 41371 (Aug. 31, 2017).

[3] *Id.*

II. The Qualitative Benefits of an Appropriate Extension Period Justify the Costs

The Extension Proposal would benefit both the financial services industry and individual retirement consumers. In the absence of the eighteen-month extension, financial service providers, retirement plans, and individual savers would be subjected to extreme market dislocations. The pricing of investment products and services, the distribution models under which those services are delivered and the job responsibilities of thousands of financial services firm employees would be subject to severe dislocation as new requirements take effect.

In addition, retirement savers' access to investment advice and the terms and conditions under which that investment advice would be provided could change repeatedly and dramatically as changes to the Fiduciary Rule are made and new FAQs are issued. The Groom Group, therefore, agrees with the Department's assessment that:

> [a]bsent the proposed delay . . . Financial Institutions and Advisers would feel compelled to ready themselves for the provisions that become applicable on January 1, 2018, despite the possibility of alternatives on the horizon. Accordingly, the proposed delay avoids obligating financial service providers to incur costs to comply with conditions, which may be revised, repealed, or replaced, as well as attendant investor confusion.[4]

The Groom Group supports a fixed delay as opposed to a tiered delay structure because the Department has already evaluated the cost-benefit analysis of the Proposed Extension and because the Department could always propose an additional delay as July 1, 2019 approaches if it determines that additional time is needed. Right now, it is most important that the Department finalize the Proposed Extension promptly. Evaluating extensions of different lengths or with variable end points will only prolong the amount of time it takes for the Department to finalize the Proposed Extension.

III. The Quantitative Benefits of an Appropriate Extension Period Justify the Costs

We agree with the Department's analysis that even without taking into account savings that are likely to be generated through modification of the Fiduciary Rule, the Extension Proposal is justified from a quantitative standpoint.

To the extent the Department is correct that the Impartial Conduct Standards will generate savings for retirement savers, compliance with the Impartial Conduct Standards will be financially incented during the Transition Period since service providers will wish to avoid the risk of incurring prohibited transaction excise taxes and the risk of civil claims under ERISA.

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[4] *Id.*

Based on these incentives, we would expect retirement savers to obtain the full benefit, if any, of the Impartial Conduct Standards during the delay period.

While we believe the 2016 Regulatory Impact Analysis upon which the Department's numbers are based is flawed, we agree with the Department that the Extension Proposal will generate substantial savings for Financial Institutions. The ability to both avoid ongoing compliance costs during the eighteen-month period where the provisions of PTE 2016-01, PTE 2016-02, and PTE 84-24 are delayed and to invest for the eighteen-month period funds that would otherwise have been spent on start-up costs are two sources of these savings.

IV. Imposing Conditions for Reliance on the Extended Transition Period is Unworkable

We also agree with the Department that it should not impose new requirements on Financial Institutions during the Transition Period. As noted, Financial Institutions seeking prohibited transaction exemptive relief must comply with the Impartial Conduct Standards. Under the Department's 2016 Regulatory Impact Analysis, those standards were the source of investor gains. Not only would imposing additional conditions reduce the benefit of the Proposed Extension, but additional conditions would add confusion for Financial Institutions, who would be forced to change their products and services, and for retirement consumers, who would be forced to react to such changes.[5]

Any new requirements would need to be made effective prior to January 1, 2018. This rapid shift would create chaos for the financial services industry and create substantial costs as the financial services industry (1) works to understand the updated requirements and (2) rushes to develop new compliance structures. Finally, new requirements would only serve to compound the problem of "orphaned" client accounts that are no longer serviced by investment advisers as a result of the Fiduciary Rule. The middle class has already begun to lose access to investment advice because their accounts have insufficient assets to be able to support fee-based advice. Many Financial Institutions and advisors would cease providing investment advisory services to retirement consumers if conditions are imposed without sufficient lead time to develop compliance programs.

V. Non-Enforcement Guidance Should Be Extended

Failure to extend the non-enforcement policy announced in Field Assistance Bulletin 2017-02 would be problematic for retirement savers. Plan service providers are working diligently to develop policies and procedures; to require strict compliance while the guidelines

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[5] In particular, it would be impractical and unfair to require a Financial Institution to provide evidence of its business conclusions and private negotiations before the Financial Institution is fully informed of the final contours of exemptive relief that will available.

surrounding those policies and procedures are developing would cause the cascading departure of advisers from the small and medium-sized participant account market.

VI. Conclusion

For the reasons described above, the Groom Group supports the Proposed Extension as proposed. As we have stated in numerous comment letters, the Fiduciary Rule must be substantially revised before it goes fully into effect. The Department should announce that it will finalize the Extension Proposal promptly.

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We appreciate the opportunity to comment on the Extension Proposal, and we are available to discuss our comments with the Department or provide additional information.

Sincerely,

Thomas Roberts

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