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March 10, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: RIN 1210-AB79
Conflict of Interest Rule Delay Proposal

Ladies and Gentlemen:

We are writing in regard to the proposal by the United States Department of Labor (DOL) to delay the implementation date of the Conflict of Interest Rule and related exemptions (collectively, the “Rule”). For the reasons set forth below, we fully support a delay of the Rule’s April 10, 2017, applicability date.

Kestra Financial, Inc. operates a leading financial advisor platform serving investors through both registered investment advisers (RIAs) and a broker-dealer. We strongly support a fiduciary or “best interest” standard for all investors. We believe a fiduciary standard applicable to retirement and non-retirement accounts and to both RIAs and broker-dealers best serves the investing public. However, because the DOL and the Employee Retirement Income Security Act (ERISA) only regulate qualified plans, the Rule does *not* establish a uniform best-interest standard. The Rule creates a broader fiduciary standard applicable to investors’ retirement assets, but not their non-retirement assets. Moreover, we believe the Rule will have significant negative impacts on investors based on (i) the increased compliance and litigation costs, which ultimately will be passed on to investors, and (ii) the constraints on products and services, which will reduce consumer choice and create a substantial disincentive to service small account-holders.

The Rule has already required Kestra Financial to expend substantial resources, and our company and similarly situated businesses will be required to make millions of dollars in ongoing compliance, legal, and technology investments to comply with the Rule and to mitigate the heightened risk of litigation. For example, whereas consumers and broker-dealers have long relied on an established arbitration system governed by the Financial Industry Regulatory Authority (FINRA) to resolve investor disputes, the DOL’s Best Interest Contract Exemption (BICE) – the primary exemption allowing commission-based services – prohibits customers and financial institutions from entering into agreements to resolve disputes in arbitration as part of a best interest contract.

Accordingly, use of the BICE subjects broker-dealers and other financial institutions relying on the BICE to class action litigation.

It is no secret that the costs of class action suits, even those without merit, are significant. The threat of this exposure alone will result in companies passing on additional costs to investors and reducing, if not eliminating, commission-based services (as some companies have already announced they will do) in favor of fee-based services that do not require the BICE. The Rule substantially increases the likelihood that investors will pay more for advice through ongoing investment advisory fees than they would pay on a one-time commission basis.

Equally, product choice will be constrained. In order to comply with impartial conduct standards mandated by the BICE, companies like ours will be inclined to reduce the universe of available investments in order to effectively mitigate potential conflicts of interest arising from different compensation amounts and cost structures, which our company does not control (these are set by the product manufacturers). Likewise, investment choice will be limited in order to ensure that financial institutions can comply with the numerous initial and ongoing disclosure requirements applicable to the BICE. The technology and operational capabilities necessary to meet these disclosure obligations inevitably will cause us and others to offer fewer products in order to control the costs of these efforts. The alternative is to maintain a broader investment platform, but pass on the increased costs to the consumer. Neither outcome is advantageous to the investor.

More broadly, the Rule will promote consolidation and reduce competition, again reducing consumer choice. The costs of compliance will drive small broker-dealers that cannot withstand the compliance costs or litigation risk to sell or discontinue the business. Consumers will have fewer service-providers to choose from, lose access to investment advice in an increasingly complex investment world, and experience higher costs as a result of reduced competition.

A delay is warranted so the DOL may re-evaluate the assumptions underpinning the cost-benefit analysis supporting the Rule. We respectfully submit that the compliance and litigation costs were woefully underestimated while the benefits to investors were greatly exaggerated. The DOL should take this opportunity to re-evaluate the Rule with the benefit of the information and analysis developed by the industry in the process of implementing the sophisticated compliance and operational systems necessary to comply with the Rule. The additional information available now can only help to determine whether the Rule truly serves the best interest of investors.

Lastly, the sheer complexity of the Rule, as evidenced by the hundreds of pages it took to publish it, and as further evidenced by two lengthy FAQs the DOL has already published (but which do not address numerous open questions), dictates a delay of the implementation date. Even if the DOL concludes the Rule in its current form should remain unchanged – which, as noted above, we suggest is an extremely poor outcome for investors – the timeline to compliance must be extended by many months if not years.

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Thank you again for the opportunity to comment.

Sincerely,

Kestra Financial, Inc.

By:



R. Bredt Norwood, Executive Vice President
and General Counsel

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