INCAPITAL

March 14, 2017

Via Email – EBSA.FiduciaryRuleExamination@dol.gov

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

Re: RIN 1210-AB79: Proposal to Delay the Applicability Date of the Definition of the Term "Fiduciary"

Ladies and Gentlemen:

Incapital LLC ("Incapital") appreciates this opportunity to comment on the Department of Labor's ("Department") proposed rule to extend for 60 days the applicability date of a rule defining who is a "fiduciary" under ERISA and the Internal Revenue Code of 1986 and the applicability date of related prohibited transaction exemptions ("PTEs") including the Best Interest Contract Exemption and amended prohibited transaction exemptions to address questions of law and policy (collectively, the "Fiduciary Rule").

About Incapital

Incapital is a privately owned, SEC registered broker-dealer headquartered in Chicago, Illinois. Incapital primarily serves as a "wholesale" broker-dealer, and works with issuers of new issue debt securities (including medium term corporate notes and agency securities issued by US Government sponsored enterprises and like kind issuers) and financial institutions that issue certificates of deposit and then distributes such financial instruments to registered broker-dealers and investment advisers for purchase by their retail clients. The new issue debt securities and certificates of deposit distributed by Incapital include both marked-linked and non-market linked products. Incapital is an industry leader in providing electronic trade order and aggregation capabilities as well as educational tools to broker-dealers, investment advisers and their employees with respect to such financial products. While Incapital has no retail clients, Incapital does sell products primarily geared for the retail marketplace.

To date, Incapital has itself been working diligently, and working with its issuer and broker-dealer and investment advisory clients, to implement certain disclosure, operational and legal changes to facilitate a new class of fixed income securities designed for purchase by retail retirement clients in level-fee accounts. Given the disparate manner in which each such issuer, broker-dealer and investment adviser manages it business and related operational functions, Incapital's efforts to facilitate a new class of fixed income securities designed for clients in level-fee accounts have proved challenging. Regardless of any delay in the applicability date, we believe that the Fiduciary Rule, if implemented will result in a contraction of the nature, scope and types of fixed income securities available to retail retirement clients.

Support for the Department's Proposal Seeking a 60 Day Delay

Incapital strongly supports the Department's proposal to extend by 60 days the applicability date of the Fiduciary Rule. In conjunction therewith, Incapital also supports a related 60 day extension of the second implementation date of January 1, 2018.

The President's Memorandum dated February 3, 2017, directed the Department to examine the Fiduciary Rule to determine if (1) investors will have reduced access to retirement products and financial advice, (2) if investors will be negatively impacted by disruptions within the industry, and (3) if there will be a likely increase in litigation. To that end, the Department has initiated a 45-day comment period to undertake such an examination.

We agree that, should the Department revise or rescind the Rule after the current applicability date, two major changes in the regulatory environment occurring in a relatively short period of time will cause disruption to retirement investors and produce additional and unnecessary frictional costs. Additionally, if the current applicability date is maintained, retirement investors will face harmful disruptions and reduced access to retirement products and financial advice. We believe that the Department should be afforded adequate time to undertake the analysis required by the President so that if and when the Fiduciary Rule becomes applicable, it is in final form.

Due to the Rule's requirements, financial institutions that contemplate using a PTE in order to receive commissions will be strongly incentivized to maintain comparable costs for products within a product category (ex. market-linked fixed income product category). We believe this will severely limit the nature and scope of retirement products available to retirement investors in such accounts. I Issuers of investment products, distribution firms (such as Incapital), electronic communication network providers, and broker-dealers and investment advisers selling to their retirement accounts, simply have not had the time necessary to modify their products, operational functions and disclosures to meet the detailed requirements set forth in the Fiduciary Rule. For some product lines this will result in a reduction from thousands of available options to less than ten available options. This is one area in particular where the industry needs more time to comply with the Fiduciary Rule; otherwise, retirement investors will likely be harmed.

Other Financial Institutions have announced the discontinuation of commissionable retirement products and services. For many investors who prefer a buy-and-hold investment strategy, a commission relationship is in their best interest due to long-term performance and reduced costs. For those buy and-hold investors working with a trusted advisor at one of these Financial Institutions, this means that the investor will be required to either:

1. Move to level fee-based advisory relationship with their current trusted advisor; an arrangement that increases long-term costs to the investor,
2. Move their account to another advisor who can provide commission retirement products and services, but does not have a long-term relationship with the client, or
3. Move to a self-directed account, thus losing the benefit of valuable investment advice.

These scenarios harm the investor either by increasing costs, reducing access to a trusted financial advisor and the insights and knowledge offered by such professional, or both.

Due to the fact that (1) the 45-day comment period ends after the current applicability date of the Rule, (2) the Department will need additional time to review such comments, (3) retirement investors will face reduced access to advice and products, and (4) the industry needs more time to fully comply with the Rule, Incapital fully supports the Department's proposal to delay the applicability date. Further, we believe that all aspects of the Rule should be delayed, and that a delay period of 120 - 180 days is more appropriate to allow the Department ample time to complete a full examination of the Rule.

Support for a Carefully-Crafted, Universal Fiduciary Standard of Care

Incapital supports a carefully crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients. However, we do not support the Department of Labor's Rule as currently written. We believe that a carefully-crafted universal fiduciary standard of care should make it easier for investors to receive high quality, individualized investment advice from a trusted advisor, while maintaining the ability for "Americans to make their own financial decisions" and have access to a broad scope of products suitable to the needs of each retirement customer.

Such regulation should provide retail investors with a clear and easy to understand standard of care that is applicable to the entirety of the client's relationship with a trusted advisor. Professionals should be required to do the following:

1. Act in the best interest of the client;
2. Provide advice with skill, care, and diligence based upon the individual needs of the client; and
3. Disclose material conflicts of interest, avoid them when possible, and obtain informed client consent to act when conflicts cannot be reasonably avoided.

The detailed prescriptive requirements set forth in the current Fiduciary Rule are not necessary to enforce these fundamental principles, and ultimately harm retail retirement investors by limiting their access to many investment products and professional advisors.

Thank you for considering Incapital's comments. Should you have any questions, please contact me at 312/379-3735.

Sincerely yours,

INCAPITAL LLC