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April 17, 2017

BY: E-mail to EBSA.FiduciaryRuleExamination@dol.gov
BY: Certified Mail – Return Receipt Requested

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Definition of Fiduciary Regulation
U.S. Department of Labor
200 Constitution Avenue, N.W. Room N-5655
Washington, DC 20210

Re: RIN 1210-AB79; Proposed Delay and Reconsideration of DOL Regulation Redefining the Term "Fiduciary" ("Fiduciary Rule")

Ladies and Gentlemen:

Advisor Group, Inc. appreciates this opportunity to provide comments to the U.S. Department of Labor ("Department") pursuant to its review of the Fiduciary Rule, the Best Interest Contract Exemption ("BICE"), and related prohibited transaction exemptions (collectively, the "Fiduciary Rule") as mandated by the President's February 3, 2017 Memorandum to the Department ("Presidential Memorandum"). For many decades now, the financial services firms which today comprise the Advisor Group have offered a full range of securities and investment advisory services. Our four dually-registered subsidiaries, Royal Alliance Associates, Inc., FSC Securities Corporation, SagePoint Financial, Inc. and Woodbury Financial Services, Inc. together a have in excess of $180 billion under administration. The Advisor Group network of Broker-Dealers and Investment Advisors, with nearly 5,000 affiliated Registered Representatives, serves the needs of, in addition to other retail clients, over one million qualified, retirement-related investors whose assets comprise well over $100 billion in retirement savings. Moreover, our clients are based throughout every region of the country, representing virtually every demographic amongst the general population. We are therefore confident that we are well-positioned to offer comments on the Fiduciary Rule and the many challenges and obstacles that it will certainly cause for all retirement investors. We hope our comments and insight will be instructive in demonstrating why revisions to the Fiduciary Rule are clearly in best the interest of retirement investors.

Advisor Group understands and applauds the overall goal of ensuring that persons in a position of trust be subject to fiduciary standards when providing investment advice to retirement accounts. Nonetheless, we are deeply concerned that the Fiduciary Rule is overly broad and, as presently constituted, may actually frustrate the goal of helping individuals and families striving to build their retirement savings, ensure their future income and promote their financial security. Advisor Group predicts that the failure to make material amendments to the Fiduciary Rule will result in decreased retirement security, unnecessary costs, dislocation of the financial services industry and, ultimately, harm to retirement investors.

The Presidential Memorandum's Requirements

The Presidential Memorandum requires the Department to prepare an updated economic and legal analysis of the Fiduciary Rule analyzing whether: (1) the anticipated applicability of the Fiduciary Rule is likely to harm investors by reducing access to retirement savings offerings, products, information or related financial advice; (2) the anticipated applicability of the Fiduciary Rule has resulted in dislocations in the retirement services industry that may negatively impact investors; and (3) whether the Fiduciary Rule is likely to cause an increase in litigation and an attendant increase in prices that retirement investors must pay to gain access to needed retirement services. If the answer is determined to be "yes" to any of these three questions, the Department must accordingly revise or rescind the Fiduciary Rule.

After lengthy, careful review and discussion amongst financial services executives possessing many years' experience in the securities, investment advisory and retirement planning arenas, Advisor Group believes and advocates that each of the questions in the Presidential Memorandum must be answered affirmatively.

Harm to Retirement Investors, including Harm Resulting from Industry Dislocation

The first two questions set forth in the Presidential Memorandum, anticipated harm to retirement investors resulting from the Fiduciary Rule and industry dislocation likely to adversely affect retirement investors, are related. As pointed out in the comment letter submitted by the Securities Industry and Financial Markets Association ("SIFMA") [insert date of this Letter?], the Fiduciary Rule has and will continue to limit retirement investors' access to relevant advice as well as products and services. The Fiduciary Rule's overly broad definition of "investment advice" means that many conversations between retirement investors and financial service professionals, and almost all conversations regarding specific investment products or services, will, as of June 9, 2017, be deemed to be conversations between a retirement investor and a fiduciary.

Because the Fiduciary Rule simultaneously expands liability while creating uncertainty, most financial services firms have been changing how they provide information and services to retirement investors. For the Advisor Group, these steps have included revising our operations, restructuring and restricting product offerings and developing new policies, procedures and supervisory structures. One result of these steps taken by Advisor Group and others in the industry will be a narrowing of the services and products available to retirement investors so as to minimize firm liability and avoid inadvertent and unsupervised conversations that could be viewed as fiduciary in nature.

The Fiduciary Rule's simplistic division of investment-related information given to individuals into investment education (which must be general) and potentially conflicted investment advice (which must necessarily be regulated to eliminate conflicts) means that retirement investors may find it hard to obtain reliable and specific investment information from dependable sources without paying for that information in some way. As SIFMA noted, many financial services firms limit advisory agreements to larger accounts, meaning that lower-income retirement investors maintaining smaller accounts who are otherwise willing to pay for an advisory relationship may have difficulty doing so. As noted by SIFMA, investors who do not use a financial professional for information and guidance are far less likely to have an appropriate, strategically-sound allocation of equities and equity-based mutual funds and, as a result, are likely to miss significant dollars in investment returns. As industry studies have proven, despite their best intentions, when left to their own devices, more often than not retail investors simply "get it wrong". Thus, and not at all surprisingly, over the past 30 years the average investor was able to garner less than a 3.75% return on the equity funds selected by that investor; when compared to the return for the S&P 500 for that same period of time, which exceeded 10%, individual investors' need for sound advice becomes all too clear.

Likelihood of Increased Litigation

The Fiduciary Rule is also virtually certain to result in increased litigation. Most obviously, the contract provisions of the BICE create a new private right of action. Despite the fact that the rights of IRA owners and other non-plan retirement investors are vigilantly protected by two federal government agencies (the SEC and the IRS), various state authorities and at least one-self regulatory organization (FINRA), the Department viewed existing protections as inadequate. Advisor Group respectfully disagrees with the Department's conclusions and asserts that existing enforcement mechanisms, including arbitration by individual investors, more than adequately protect investors under existing or new rules.

Advisor Group fears that the Fiduciary Rule makes litigation far more likely due to terms and conditions that are variously overly broad and vague, with attendant exemptive provisions which are narrow or difficult to construe. Additionally, the fact the that the Fiduciary Rule eliminates the long-standing requirement that there be a mutual agreement between a retirement investor and a person before the person becomes a fiduciary will likely encourage litigation because it permits one person to impose a fiduciary status on another. Costs will increase as financial service firms struggle to police a myriad of communications with potential clients to manage the risks of an unintended fiduciary relationships. And the nature of the current Fiduciary Rule makes it highly likely that courts will be required to spend significant time and effort understanding, and ruling upon, the meaning of various technical and unclear legal provisions The expense of these legal proceedings (which will most likely be in the form of lengthy and burdensome litigation) will be felt acutely by the smaller financial services firms, resulting in their exit from the industry and in an overall increase in the prices borne by investors.

The Fiduciary Rule Should be Revised to Encourage the Free Flow of Information, Especially in the Rollover Context

Advisor Group strongly recommends that the Fiduciary Rule be revised so as to encourage a greater exchange of information between retirement investors and the financial services industry in a non-fiduciary context. Advisor Group therefore encourages the Department to expand the ability of retirement investors to get information from financial services firms that may later sell retirement products to those investors. Specifically, Advisor Group believes that there should be a "safe harbor" allowing free discussions between retirement investors considering a rollover to an IRA and financial service firms that offer or support IRA accounts. The Department correctly notes that the decision to rollover a 401(k) account into an IRA is an important one. But the Department's unfortunate strategy to closely regulate that decision means that financial service firms cannot easily provide specific and accurate information about their products and services to retirement investors at the time they most need it without running the risk of scrutiny and liability.. Current law already requires that information provided to investors be truthful and not misleading. Current law also provides that the financial services firm will be a fiduciary once a retirement investor establishes an IRA. Thus, the Department's approach is unwarranted and should be revised.

The BICE should be revised

Advisor Group also believes that the BICE should be revised. In its current form, the BICE requires unnecessary compliance steps and too narrowly regulates how financial service firms are compensated. In attempting to eliminate conflicted investment advice, the BICE requires that a financial institution identify and address every material conflict of interest, which, in the language of the BICE, is almost any conflict of interest, and, thus, is overly broad. While it is reasonable to require that financial institutions disclose conflicts and make reasonable attempts to minimize them, the current language of the BICE, particularly the warranty requirement, provides no safe harbors for financial institutions that act in reasonable, good faith to identify and address conflicts of interest. The risk for financial institutions is significant, and absent a safe harbor, exceptionally hard to manage. The Department should revise this part of the BICE.

Although the Fiduciary Rule allows "level fee" fiduciary advisors to use BICE without executing a best interest contract, the narrow definition of what constitutes a "level fee" makes this relief almost useless. The current version of the BICE provides that a fee arrangement is not level if the advisor or financial institution receives even a penny from a third party, including disclosed 12b-1 payments or sub-transfer agency fees. Moreover, the Department appears to have determined that a level fee arrangement does not exist even if the third party payments are "levelized," that is, structured to ensure that any 12b-1 or other third party payments received by the advisor or financial institution are received without regard to any investment recommendation made. Advisor Group previously provided the Department with an outline of a structure interposing a clearing broker who receives third-party payments but did not receive any response from the Department as to whether the arrangement was permissible.

The prohibition on third party payments in the level fee context means that a significant number of mutual funds and other securities and instruments that feature a 12b-1 or similar third party payment will not be available to retirement investors or considered by their advisors due to the risk that even inadvertent receipt of such payments will make the level fee provisions of the BICE unavailable. It cannot be stressed enough that Advisor Group's receipt of selected 3rd-party payments enables us to reduce the expenses and fees that are ultimately borne by retirement investors; absent these 3rd-party payments, these clients will either suffer an increase in these expenses and fees or experience a narrower menu of available products and services. In other words, the level fee provisions of the BICE

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inherently bar retirement investors from investing in certain mutual funds and other assets that were previously available to them. The requirement to levelize this compensation actually results in the elimination of valuable benefits that are currently offered to our clients: for example, Rights of Accumulation and Rights of Exchange; moreover, fee levelization may lead to the elimination of important fixed-income options offered by numerous mutual fund families. Advisor Group understands the Department's concern regarding third party payments but strongly encourages the Department to revise the BICE to treat as non-variable compensation, level and transparent structures for investment in securities and assets that feature third party payments.

Advisor Group strongly supports the goals of the Fiduciary Rule but believes the Fiduciary Rule needs significant revisions if it is to achieve those goals. In its current form, the Fiduciary Rule will, in effect, limit investment information, services, and products available to retirement investors, create disruption in the financial services industry that will likely harm retirement investors, and increase the risk of litigation. We strongly encourage the Department to revise the Fiduciary Rule, working with industry and other affected groups to do so, and leave sufficient time to allow financial institutions to implement any changes.

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We thank you for your attention to this matter and invite you to reach out to the undersigned if you have any questions or comments regarding this letter. Best regards.

On behalf of Advisor Group, Inc.

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