RAYMOND JAMES®

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Delivered via Email: EBSA.FiduciaryRuleExamination@dol.gov

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

Re: RIN 1210-AB79

Ladies and Gentlemen:

As a longtime advocate of a uniform best interest standard, Raymond James appreciates the opportunity to provide input into the Department of Labor's ("Department") Fiduciary Rule and associated Prohibited Transaction Exemptions (collectively referenced as the "Rule" below), which were published in the Federal Register on April 8, 2016. Please note that we provided comments on the proposed 60-day delay for the April 10 applicability date in a letter dated March 10, 2017. What follows is our response to the Department's request for public comment on the issues raised by President Trump's February 3, 2017 memo to Acting Secretary Hugler, and generally on questions of law and policy concerning the Rule.

As stated in our March 10 letter, while we do not believe this is the Rule's intent, nor the goal of anyone involved in its creation, we are certain that applying different standards of care to different account types will create unnecessary complexity and confusion for our advisors and their clients. In addition, it has been reported that the Rule will substantially increase costs for many investors – even more than originally anticipated – while cutting off professional financial planning and investment advice services to many less-affluent savers who arguably need those services most.

We hope that our comments are helpful in pointing out why addressing the Administration's concerns is in the interest of both financial service providers and retirement investors.

First, delaying the applicability date only 60 days is insufficient for a review of the entire Rule including the Department's new definition of fiduciary, as the president's memo directs. Not only do we feel strongly that the incoming secretary of labor won't have adequate time for careful consideration of the Rule and all of its provisions, the Department's rush to implement the new definition of fiduciary and impartial conduct standards on IRAs doesn't allow for a complete assessment ahead of compliance requirements, thereby prematurely exposing firms to undue litigation.

Like effectively every major financial services firm in the country, Raymond James has spent millions of dollars preparing to comply with the Rule. If several key aspects of the Rule are not amended, we will be forced to share increased costs with clients, reduce client choice or in some cases limit services. Small investors – those often needing the greatest help to reach their retirement goals – will be the most disadvantaged. This is not merely an opinion; changes have been announced by several firms which have validated this fact.

Those are just a few consequences of the Rule we've realized as Raymond James grapples with implementation. Regrettably, we've found many aspects of the Rule unworkable.

First and foremost, while we appreciate the Department's intent to accommodate commission transactions through the Best Interest Contract Exemption (BICE), it is not possible to receive a commission and be a fiduciary as defined under the Rule without creating an unacceptable level of undue legal exposure. That will be the primary driver in reducing retirement investors' access to financial advice, information and product choice, and substantially increase the cost of retirement investing in *many* cases.

Even though Raymond James intends to allow the BICE for commission-based accounts, we have already seen a substantial increase in clients transferring from commission-based to fee-based IRAs in the last six months. While some may perceive this as a move in the right direction, for many clients – especially those with less to invest – a one-time commission may be the most cost-effective option and must be preserved.

Second, unlike fiduciary standards for other professions, the Rule extends fiduciary duty to the beginning of the client/advisor relationship. When financial advisors share their service models with consumers, they are recommending services. For the same reason the BICE cannot sufficiently manage the liability of recommending individual products, the BICE cannot sufficiently manage it for an introductory conversation. The BICE therefore has potential to profoundly reduce access to education and information for investors seeking to roll assets from an ERISA covered plan into an IRA.

These two elements of the Rule are at the heart of the questions the Administration has asked the Department to consider.

1. The Best Interest Contract Exemption is impractical as written. The Rule instead should rely upon clear, client-friendly disclosure to preserve commission-based recommendations.

We commend the Department for recognizing that fee-based solutions aren't for everyone. For many clients, especially those more likely to buy and hold, paying a onetime commission is often more economical than an ongoing asset-based fee. Because we believe choice is an important part of a

successful retirement plan, we have endeavored to employ the BICE within an acceptable degree of legal exposure. Finding that balance has been proven challenging.

Example 1: T shares create more conflicts without material benefits for clients.

The Department obviously recognizes that commissions by their very nature create perceived conflicts for advisors because the Rule specifies that differential compensation is allowable as long as there are "neutral factors."

In public comments before and after the final Rule was issued, the Department highlighted the difference in commissions paid on mutual funds (e.g., generally lower commissions on funds with a heavy fixed income allocation vs. generally higher on funds with a heavier equity allocation) as an example of a conflict that would be difficult to defend. In an attempt to reduce conflicts for advisors and comply with the "neutral factors" requirement, many mutual fund companies designed a new transaction share class of mutual funds known as T shares. T shares will pay 2.5% in upfront commission with a 0.25% annual trail on all funds regardless of their underlying asset classes.

On the surface, this development appears to be an improvement over existing share classes. However, data shows it will not be an advantage for many of our clients. T shares offer no breakpoints, no rights of accumulation and no free exchanges within fund families – all popular and compelling features. Consider the following comparison: Someone who owns an A share with most fund families today can buy and sell within that family at no additional charge. In addition, if that client makes a large enough purchase, he or she would pay significantly less in commissions than the headline 5% rate. Conversely, the T share owner may pay less upfront, but then would incur an additional 2.5% commission with each exchange.

Consider the potential legal exposure for an advisor who appropriately recommends A shares when the client does not use the free exchanges or rights of accumulation features. Preserving choice for clients who would benefit from one option over another would require nothing short of the following supervision:

1. Document why the share class was recommended.
2. Review the documentation for approval. If the recommendation is disapproved, require the advisor would to explain a new course of action. (This step will likely create confusion for clients.)
3. If an A share is the final recommendation, verify that the unique benefits of that share class are eventually utilized. If not, document why and prepare an alternative course of action.
4. Establish procedures to verify the appropriateness of trading frequency when a T share is the final recommendation. Otherwise, if a client trades out of one fund into another in the same family two or more times over the course of a multiple years, the advisor could be accused of inappropriately using a T share.

5. If an advisor recommended the liquidation of an A share for a client that also had T shares, ensure it was not done solely due to free exchange privileges; the T share had a greater chance of generating incremental compensation for the advisor.

Given that our clients invest approximately $10 billion in mutual funds within commission accounts annually, it is not difficult to predict the incremental cost associated with these procedures. As we work towards full compliance with the Rule, it is clear there will be undue costs for Raymond James and its stakeholders including advisors, their clients and our shareholders. To the extent the Department is worried about advisor conflict of interest, T shares trade one conflict for another. Though the advisor may no longer be enticed to recommend a higher commission equity fund over a lower commission bond fund, following the Department's theory, T shares could provide incentive for the advisor to frequently buy and sell in order to earn additional commissions. To that end, we have struggled with the following:

1. Should we offer both T shares and A shares?
2. According to a Morningstar report from late February, less than 70 of our 300+ fund families have filed for a T share. If we choose to no longer offer A shares, what about the several hundred fund families that have not filed for T shares? Eliminating them from our platform reduces client choice.
3. What about other share classes, like C shares? While C shares can be the most costly share class long term, they can sometimes be most beneficial. Eliminating C shares from the platform would be another compliance example that reduces our conflicts at the expense of client choice.
4. What about clients who transfer accounts that contain share classes we no longer offer to our firm, specifically when they wish to make incremental purchases? The Rule has potential to significantly impact best interest decisions on transfers by handcuffing advisors in order to avoid conflicts.
5. Will we treat taxable and retirement accounts the same with regard to share class offerings? What unforeseen conflicts arise by maintaining more than one investment platform, even if the underlying objectives are different?

In the end, the solution that intended to address some of the Department's concerns adds confusion and risk with little or no discernible client benefit. Moreover, compliance costs and litigation exposure will rise, and ultimately be borne by the firm and all of its stakeholders including clients. To limit litigation risks, narrowing product choices available to retirement investors is the only solution and not good public policy. Market-forced change encouraged by sound but flexible governmental policy is the only solution that serves the interests of our clients.

Example #2: Differentiating commissions based on "neutral factors" is not practical and pushes firms to recommend fee-based advisory over commission-based accounts.

Given the current structure of industry product pricing, the neutral factor requirement isn't practical. First, for packaged products like mutual funds, annuities and unit investment trusts, commissions are set by the product manufacturer. Investment firms can provide input on commissions but final pricing decisions are made at the product level.

The mutual fund T share is a perfect example of the difficulty in crafting an appropriate solution in today's regulatory environment. Once the first couple of large mutual fund families released their T share design, the rest of the mutual fund industry had to fall into line or risk creating conflict under the Rule, disregarding guidance from market forces.

Mutual funds are only part of the challenge. Financial services firms are wrestling with similar questions for every packaged product.

1. How are commissions between active and passive managed mutual funds differentiated? ETFs? Should clients be able to choose passive mutual funds in BICE-covered accounts when passive mutual funds can cost more than passive ETFs, even though the mutual fund may be a more optimal solution?
2. Does the complexity of a variable annuity justify a commission differential relative to an index annuity? If so, how much? And what about fixed annuities, which unlike variable annuities are often designed with different surrender charge periods, thereby typically leading to different holding periods?
3. Today, most variable and indexed annuities are sold with a living benefit. Since these riders add complexity to the product, must we require the insurance companies to pay additional compensation in order to comply with the "neutral factor" requirement? If so, doesn't this introduce a new conflict for advisors, since they will now earn more compensation if an optional riders is selected? If additional compensation is indeed required, then insurance companies will have to raise the cost of the riders to cover the additional cost.
4. Unit investment trusts (UITs) are typically designed with stated maturities of 15 or 24 months. Does the longer maturity justify 60% more commission in order for the advisor to receive the same amount of compensation over time, or because it's the same amount of effort to recommend either maturity, should clients pay the same commission for either maturity? If commissions are level regardless of maturity, are shorter maturity bonds a conflict?
5. Commissions on fixed income products are influenced by various factors including maturity. The free market has already determined that longer maturity products generally pay more than shorter. Will the Rule's focus on conflicts force changes to pricing mechanisms determined by the market? And like UITs, if we equalize commissions regardless of maturity, shorter maturity bonds create conflict.

As numerous and complex as these questions are, they pale in comparison to the main dilemma: How do we calibrate commissions among all products that can be recommended within an IRA? Some

distributors have hired outside consultants to perform time and motion studies in an attempt to rank all products against each other. Firms have yet to come up with a workable solution.

As written, the neutral factors requirement ignores the expected holding period as an aspect of setting differential commission. In our view, this simply trades one conflict for another. There will always be investments that have a shorter expected hold period. If this aspect is not considered, then advisors will always have an incentive to recommend the product with the shorter hold period, thereby increasing the likelihood of earning additional compensation. The end result is that the neutral factors requirement coupled with litigation risk compels firms to eliminate commission-based accounts as an option for retirement investors, and instead offer only fee-based accounts. Elimination of choice (especially choice critical for small investors) is something the Department made clear it was trying to avoid and that the President expressed concern for in his February 3 memo.

Example #3: Clients are already losing access to investment alternatives that help with retirement needs because of the Rule.

More than 90% of all annuity sales are commission. Due to regulatory hurdles already faced by this product, the industry will be challenged to successfully respond to the Rule. Because annuities have been categorized as a complex product requiring additional supervision by FINRA, distributors already experience unique and burdensome oversight requirements when they recommend this product. It will undoubtedly take time for the annuity industry to shift.

In addition, each state insurance department has its own supervisory and suitability requirements. If the Department's requirements are layered on top of the existing requirements, it is inevitable that many advisors will simply find it too risky, difficult and time consuming to recommend an annuity – even when they may otherwise believe guaranteed income is the best retirement solution for the client.

Uncertainty of the consequences of the Rule is already impacting annuity sales. LIMRA, an insurance industry research organization, announced that third quarter 2016 industry sales were down 11% from the previous year. Variable annuity sales were down 21% and approached their lowest level since 1998. Based on industry data, annuity sales through banks and broker/dealers in October 2016 dropped about an additional 30% in just the first month of the fourth quarter. Such a sudden drop is unprecedented in the industry and can only be explained by uncertainty created by the Rule. According to an *Investment News* article dated March 28, 2017, if the Rule goes into effect as written, LIMRA forecasts another 20-25% drop in variable annuity sales. Given the demise of the traditional pension, investors need and want more guaranteed lifetime income solutions – not less.

In summary, as evidenced by the long-standing separation of broker/dealers and investment advisors within current securities laws, it is difficult to apply a fiduciary standard to a commission transaction, especially when the rules of the road under the BICE are broad, principles based and stacked against commission-based advice. Given the current structure of the BICE, we believe that no matter our

intention to maintain product choice, legal class actions will ultimately lead many firms to move increasingly towards a fee-based only model for retirement advice.

Example #4: Companies that provide Errors and Omissions (E&O) insurance to the broker/dealer community have generally been unwilling to write policies that would cover claims related to the Rule, validating our concern for its unintended consequences.

E&O insurance protects services businesses from claims that may arise in the normal course of business, and has long been employed by the financial services industry and others. Insurance companies price risk in a market and sell insurance against that risk. However, we've yet to locate an E&O carrier that will provide liability coverage related to the Rule due to its ambiguity.

Solution: Work with the Securities and Exchange Commission (SEC) to craft a uniform best interest standard for all account types.

We continue to believe that the Department should work with the SEC to develop a uniform framework for a best interest standard across all account types. The SEC has historically supported investor protection by issuing bright-line rules that can be efficiently followed to ensure compliance. One of the fundamental issues with the Rule as written is that it ambiguously defines "best interest," then defers to the plaintiff's bar and/or state and federal courts to determine through class action lawsuits whether investment firms' practices comply. Clearly define the standard so firms can effectively comply without concern for alternative interpretations. We believe the Department and SEC together can develop a framework that will minimize client confusion and allow for more seamless and efficient industry compliance. Collaboration is in the best interest of industry participants, especially investors. We urge you to repeal the Rule and work with the SEC to craft a uniform standard.

2. Fiduciary status should not be extended to the "hire me" conversation in the context of a rollover conversation.

The Rule has also made it onerous for advisors whose clients seek to roll employer-sponsored retirement plans to IRAs. A 2016 Cerulli report cited "advice from a financial professional" as the top reason for IRA rollovers, which typically occur as investors leave an employer. Advisors play a critical role in retaining assets in the retirement system by helping investors prepare for the life changes inherent in retirement. Conflating distribution advice and investment recommendations makes establishing or expanding a client relationship conflicted advice requiring an exemption. The education carve out isn't sufficient protection from unnecessary liability. Client engagement involves some level of promotion in any profession. Needlessly restricting that conversation will limit investor access to investment advice before, at and after retirement.

In order to recommend rolling a 401(k) to an IRA, an advisor would have to first document that the IRA provides sufficient benefits over the 401(k) including any cost incurred in moving assets. That process would include the following or greater discovery:

1. A thorough analysis of existing 401(k) options including:
    a. Breadth and depth of investment options,
    b. Performance of each investment option including an analysis of the investment objectives and management styles, and
    c. The costs of each investment option.
2. A thorough analysis of other aspects of the plan including:
    a. Administrative costs,
    b. Loan provisions,
    c. Former employee policies and
    d. Availability of advice to plan participants.

Much of this information is not readily available. Due to privacy concerns, some third party providers require the client, advisor and plan administrator to participate in the same call. Operationally this is another impediment in the rollover process. Advisors who can't efficiently access, assess and verify the level of comparative detail required by the Rule are likely to decline the business, once again leaving investors without access to critical retirement planning advice.

If conditions are met to sufficiently satisfy the Rule's requirements, the next logical step is to provide a specific recommendation. If the conversation continues to this point, the advisor will then have to gather and analyze the following:

1. The individual's retirement and legacy goals, objectives and risk profile,
2. Existing assets and investments of the individual – even those that are at other financial institutions,
3. The individual's current and future expenses,
4. How changes in health may impact the overall financial picture, and
5. Risks that have been protected via life insurance, long term care and disability insurance.

In addition, financial institutions must create new levels of policy and supervision, further increasing the cost of doing business for everyone in the process.

We realize that the Department's first reaction might be that all of these steps should always be followed, and we don't disagree. The issue is timing. The Rule requires an advisor to take all of those steps before the client has even decided if they want the advisor's services. No other profession finds itself under such a prescriptive requirement. The advisor has to be given some freedom from liability when outlining the pros and cons of various alternatives. The Rule attempts to allow this by giving the advisor the option to keep the initial consultation purely educational. In our opinion, this is simply not

practical. Most clients will eventually ask the inevitable question: “What do you think I should do?” Under the current Rule, the only safe answer is, “I can’t answer that until after steps 1-10.”

We predict the following will occur if the “hire me” portion of the rollover process is not excluded from fiduciary duty:

1. Advisors will set minimum investment amounts. It will not be worth the time and effort to work with prospects below certain asset levels.
2. Many clients who don’t meet minimums will have no choice but to remain in their existing 401(k) plans where they will continue to get little or no advice, particularly on the critical distribution phase.
3. The decision to withdraw 401(k) balances prematurely rather than roll to an IRA – known as retirement plan leakage – is already a major problem that disproportionally affects small investors and will only grow under the Rule.
4. Most firms will move towards an “education only” rollover advice regime, which will limit the amount of retirement advice provided to clients.

Fiduciary duty should apply at the time of recommendation, once the financial advisor has been hired. There can otherwise be no substantive education ahead of distribution, which is not in retirement investors’ best interests.

The central element of the Department's studies cited when promulgating the Rule was the costs inherent in commission-based mutual funds. As we and others have pointed out, we disagree strongly with that focus and the conclusions drawn. Worse, the Department’s focus on the fees in commission-based mutual funds completely disregards the value of an advisor in supporting enhanced returns, financial literacy, coverage and leakage. The studies also do not take into account the only reasonable alternative, which involves the introduction of new account fees to offset the loss of revenue which have the real possibility of being more regressive. Absent complete repeal, to be consistent with the President's directive, we believe a new comprehensive study is warranted to take into account all of the facts, not just those cherry-picked to prove a preconceived conclusion.

As we’ve stated in previous comment letters, our opposition to the DOL rule was driven by our strong desire to avoid unintended consequences that would potentially restrict some clients from receiving objective advice on their retirement investments, limit choice and create complexity and confusion for advisors and their clients. We now believe there is strong evidence for those concerns and continue to advocate for a single fiduciary standard from a regulator with broader authority no matter the type of account.

We urge the Department to consider the issues outlined in the president's February memo in earnest -- in order to preserve choice and access for all retirement investors -- and appreciate the Department's time and consideration.

Sincerely,

Scott Stolz
Senior Vice President, Private Client Group Investment Products
Raymond James Financial