Cetera™ FINANCIAL SPECIALISTS LLC
Member FINRA/SIPC

March 10, 2017

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

Re: Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice
RIN 1210-AB32

Re: Best Interest Contract Exemption
ZRIN 1210-ZA25

Ladies and Gentlemen:

Cetera Financial Specialists is a broker-dealer affiliated with Cetera Financial Group, Inc. with more than 1,200 affiliated representatives. Our firm serves more than 200,000 retail investors, the majority of whom are middle-class families with a vital interest in saving for retirement. We appreciate the opportunity to provide these comments to the Department of Labor (the "Department") regarding the proposal to delay the applicability date of the final regulation (the "Regulation") defining the term "fiduciary" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and the Best Interest Contract Exemption (the "BICE").

Under the proposal, the applicability date of the Fiduciary Rule would be extended from April 10, 2017 to June 9, 2017 (the "Proposed Delay"). For the reasons outlined below, Cetera Financial Specialists strongly supports this proposal.

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1. **The proposed delay will provide time for the Department to review important issues of law and policy pursuant to the recently issued Presidential Memorandum.**

On February 3, 2017, President Trump issued a presidential memorandum directing the Department to examine the Fiduciary Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice. Among other things, the memorandum called for an updated economic and legal analysis concerning the likely impact of the Fiduciary Rule.

Cetera Financial Specialists is a strong proponent of a best interest standard of care for all financial professionals. Over the past several months, we have taken a number of steps to develop new advice and compensation models that we believe will more fully align our interests with those of our customers. That being said, we believe that parts of the Regulation could be better designed to protect the interests of retirement savers while assuring them the greatest amount of flexibility in gaining access to professional advice in ways that best serve their interests. We believe that significant questions of law and policy exist with respect to the Regulation, including the following:

- The Fiduciary Rule will make it harder for savers to plan for retirement by depriving them of access to comprehensive financial advice and the widest range of investment options at a reasonable price. The current rule creates an unlevel playing field by favoring certain business models and compensation methods that are inconsistent with the objectives and investing styles of many retirement savers. For example, the rule encourages compensation arrangements involving annual fees based upon the level of assets under management. Many retirement investors have small accounts or adopt "buy and hold" investing strategies that are not well-suited to a fee-based compensation approach. These clients should retain the flexibility to keep their existing arrangements with their financial advisers without the undue interference that the Fiduciary Rule will cause.
- The Fiduciary Rule expands the definition of fiduciary in a manner that is inconsistent with the statutory text of ERISA.

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- The BICE creates a private right of action for retirement investors. This will make private litigation, particularly class action litigation, the primary enforcement mechanism for alleged violations of the BICE. In the February 3 Executive Order, the President specifically directed the Department to review the terms of the Fiduciary Rule to determine if it would cause additional litigation which would raise the cost or limit the availability of financial advice to retirement investors. We submit that the private right of action in the BICE will have these effects, and should be studied in more detail before it otherwise becomes effective on April 10.
- The Fiduciary Rule inappropriately usurps the jurisdiction of the SEC, FINRA, and state insurance regulators. Retail financial advisers are currently subject to a comprehensive regime of federal, local, and SRO regulations that are designed to protect the interests of all investors. Creating a separate and possibly conflicting set of regulations covering only certain clients or account types does a disservice to all investors and financial professionals. The Fiduciary Rule is unnecessary because existing federal and state laws and rules provide comprehensive investor protection.
- The Regulatory Impact Analysis performed by the Department prior to adoption of the Fiduciary Rule overstated the benefits of the regulation and underestimated its costs, including the impact on the financial advisory industry.

Cetera Financial Specialists strongly endorses the President's decision to initiate a comprehensive review of the Fiduciary Rule. The Proposed Delay will provide time for the Department to conduct this review and take appropriate action to protect retirement investors from its potentially negative consequences.

2. The Proposed Delay will allow financial advisory firms to postpone implementation efforts until the Department decides whether to retain or revise the Fiduciary Rule.

Cetera Financial Specialists is fully committed to compliance with all applicable laws and regulations. We have made very substantial investments of time, effort, and money to comply with the Fiduciary Rule and will continue to do so unless and until the

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applicability date is officially delayed. However, in light of the Department's impending review of the Fiduciary Rule, Cetera Financial Specialists believes that the Proposed Delay is wholly appropriate so that financial advisers can at least temporarily cease these expenditures until the Department makes a final decision as to whether the Fiduciary Rule should be retained in its' current form or revised. All of the costs of compliance must be borne by someone, and will ultimately be paid by either financial advisory firms or their customers. A delay in the applicability dates serves the interest of both financial advisers and clients by limiting the amount of time and money that is spent on complying with a regulation that may be fundamentally changed prior to implementation.

3. **Even assuming that the Department does not make substantive changes to the Fiduciary Rule, the implementation timeline is inadequate and inconsistent with past practice.**

The timeline for implementation of the Fiduciary Rule significantly underestimates the amount of time that financial advisers, investment platform providers, and product sponsors will need to come into compliance. This is the most significant change to regulations covering delivery of investment advice system in 50 years, yet the Department provided a far shorter implementation period than it has typically provided for less far-reaching regulations.

The requirements and conditions included in the Fiduciary Rule are exceedingly complex and will require massive and expensive information technology re-design to support. Without a delay, many institutions will simply not be able to meet the Fiduciary Rule's requirements and would be forced to suspend the delivery of services to customers. A delay in the applicability date will help to avoid these unnecessary market disruptions. The following are but a few examples of negative effects that are likely to occur:

- The "reasonable compensation" element of the BICE has led many institutions to conclude that the compensation they receive in connection with sales of investment products of a given category, such as mutual funds, must be substantially identical. Mutual fund sponsors currently offer a multitude of share class options, many of which have different compensation arrangements. In

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addition, many mutual fund sponsors offer arrangements which allow investors to make cost-free exchanges among funds within a fund family, or to receive reductions in sales charges if they purchase larger dollar amounts of funds. Keeping track of these potential differences in features and compensation makes it extremely difficult for a financial institution to determine which share class may be best for a given purchaser. We are informed that, as a result, many financial advisory firms intend to either suspend sales of mutual funds to retirement accounts or restrict their mutual fund offerings to a single share class (generally Class C shares, which do not usually have an upfront sales charge but have annual 12b-1 fees of approximately 1%). Over the past several years, FINRA has stated that it believes recommendations to purchase Class C mutual fund shares are often not in the best interest of investors due to the fact that the total cost to the investor over a longer term holding period may be higher than with other share classes. Adoption of the Fiduciary Rule in its present form would create a direct conflict between it and the views of FINRA. This places financial institutions in an untenable position.

As one way to address this issue, mutual fund sponsors have been working on developing new share class structures that will fully levelize the compensation paid to financial institutions in connection with mutual fund sales. However, we are informed by fund sponsors that it will be at least several months before these new share classes can be reviewed and declared effective by the SEC. Many financial advisers have declared their intention to stop offering mutual fund shares with transaction-based compensation arrangements to retirement investors as of April 10, 2017, at least until such time as the new share classes are available. We submit that this is not in the interest of investors or anyone else, and is not what the Department intended when it adopted the Fiduciary Rule. A delay in the applicability date will allow time for this to be addressed in a way that benefits investors.

- A similar issue exists with respect to variable annuity contracts, which are purchased by many retirement investors as a way to protect against longevity risk and provide guaranteed payments during the life of the contract owner and upon their death. There are literally hundreds of variable annuity contracts that contain thousands of different combinations of features. Annuity issuers have

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been working with retail financial advisory firms to develop new contracts that will levelize transaction-based compensation, but this clearly will not be completed by April 10, 2017. We are informed that many financial advisers intend to either limit the number of variable annuity contracts they offer, or in some cases, suspend sales altogether until the new product structures are available. As with the mutual fund example mentioned above, it is not in the interest of retirement investors to limit the availability of these products.

- The Department issued two sets of guidance on the Fiduciary Rule in October 2016 and January 2017. In some instances, this new guidance has forced financial institutions to change course on initiatives that have been underway for several months. The short time between the issuance of the guidance and the current applicability dates creates even greater challenges. The new guidance also raises new questions of law and policy that should be reviewed.
- The April 10 applicability date falls approximately one week before the deadline for submission of income tax returns to the Internal Revenue Service. Tax return season is the busiest time of year for many financial professionals. The proposed delay would ease the burden on advisors and clients, allowing them to focus on tax preparation in April before turning their attention to the significant changes necessitated by the Fiduciary Rule.

The implementation timeline is also inconsistent with the Department's past practice in adopting new regulations. In a recent example, the Department granted multiple delays totaling two years for service providers to implement new regulations under Section 408(b)(2) of ERISA. The adjustments that will be required by the Fiduciary Rule are far more significant than those brought on by any regulatory change since the enactment of ERISA. The 12 month period from the effective date of the Fiduciary Rule to the first applicability date does not take into account the complexity and enormity of the effort that the financial advice industry will be required to undertake to comply with it. No matter what changes are ultimately made after further review, a delay in the applicability dates will give the financial services industry a more manageable amount of time to develop, test, and implement new systems and processes that must be implemented.

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4. A delay of at least 180 days is a more appropriate timeline.

The Department has proposed only a 60 day delay in the April 10 applicability date. We do not believe that this will allow enough time to perform the analysis that the President has directed the Department to undertake. The Department is currently awaiting the appointment and confirmation of a new Secretary of Labor and other senior personnel who will presumably have important roles in performing the review directed by the President and reaching conclusions on the many issues of law and policy that may be raised. Given that many of these individuals will not even be in office for some time, a 60 day delay places an unrealistic burden on them. A longer period will allow for a more thorough review process, and we submit that a delay of at least 180 days is more appropriate.

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Cetera Financial Specialists appreciates the opportunity to submit these comments, and for your consideration of them. We are happy to provide additional detail or assistance if you have questions.

Yours very truly,

Gregg A. Ruvoli
President & CEO

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