

April 17, 2017

Via Electronic Submission

(EBSA RIN 1210-AB79)

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

Re: Reconsideration of the Department of Labor Fiduciary Rule

Dear Ladies and Gentlemen:

LPL Financial LLC (“LPL”) appreciates the opportunity to comment on the Department of Labor’s (Department) reconsideration of its Definition of the Term “Fiduciary”; Conflict of Interest Rule—Retirement Investment Advice and the related prohibited transaction exemptions, including the Best Interest Contract (“BIC”) Exemption and Principal Transactions (“PT”) Exemption (together, the “Fiduciary Rule”).

As stated in the comment letters we submitted on the proposed fiduciary rule,¹ we support the Department’s stated intent to protect investors by requiring financial professionals² who provide fiduciary investment advice to retail retirement investors to comply with a fiduciary standard of care. We and our financial professionals continue to believe that our success depends upon acting in the clients’ best interests. This is because our financial professionals’ interests are closely aligned with their clients’ interests. Specifically, the better a financial professional serves his or her client, the better positioned the client will be to achieve his or her investment objectives, and the more likely the client will be to stay with the financial professional for the long term, and refer the financial professional to family and friends.

¹ Letter from David P. Bergers, General Counsel, LPL Financial to Office of Regulations and Interpretations, Employee Benefits Security Administration (July 21, 2015); Letter from David P. Bergers, General Counsel, LPL Financial to Office of Regulations and Interpretations, Employee Benefits Security Administration (Sept. 24, 2015).

² The term “financial professional” is used in this letter to refer generally to individuals who provide financial services, including investor education, financial planning, investment recommendations, trade execution, and investment advice to investors, be they registered investment advisers, registered representatives of a broker-dealer, or representatives of an insurance company, bank, or other financial institution.

We also believe it is important that financial institutions³ and financial professionals address conflicts of interest and disclose fees and compensation in a meaningful way. By doing so, financial institutions and financial professionals help investors to achieve better investment outcomes, and make informed choices about the types of financial services and financial professionals best suited to helping them achieve their investment objectives.

We appreciate the Department's efforts to consider and reflect the concerns stated in our and others' comment letters on the proposed rule in crafting a final rule that included many helpful changes. In light of the President's memorandum and the questions the Department has raised in connection with the study of the rule and exemptions that the President directed, we respectfully provide the following comments.⁴

Consistent with the questions expressed in the President's memorandum, we appreciate the Department's consideration of the conditions of the rule and the BIC Exemption and whether they establish the appropriate enforcement mechanism for ensuring that investors are well served. The BIC and PT Exemptions require financial institutions to enter into contracts with individual retirement account (IRA) clients, and provide disclosures to employee benefit plan clients, that include additional acknowledgements and (in the case of IRAs) warranties regarding the impartial conduct standards and adopting policies and procedures to comply with them. These client disclosures and contracts were specifically intended to give IRA clients the ability to assert breach of contract and other state-law claims, including through individual actions and class actions, to enforce this standard against financial institutions.

One of our key concerns with this method of enforcement is that it puts the interpretation of a newly created fiduciary standard squarely in the hands of individual courts throughout the country. Both the definition of fiduciary investment advice itself, and the standards that must be met under the exemptions, are subjective and come with limited interpretive guidance and precedent to aid in compliance. There also is limited, and in some cases contradictory guidance, as to how the newly created "impartial conduct standards" may be satisfied. The uncertainty created by the prescribed enforcement mechanism – private rights of action defined and interpreted by the courts rather than consistent enforcement by experienced regulators – will make it more difficult for advisors to serve investors with confidence that they have met the new standards. We submit that this approach has the potential to increase costs and reduce choice for retirement investors without providing them with intended benefit.⁵

³ The term "financial institution" is intended to apply generally to registered investment advisers, banks, insurance companies, registered broker-dealers, and other entities that employ financial professionals, including as independent contractors.

⁴ Memorandum on Fiduciary Duty Rule, 82 Fed. Reg. 9672 (Feb. 3, 2017); Definition of the Term Fiduciary; Extension of Applicability Date, 82 Fed. Reg. 12319 (proposed March 2, 2017).

⁵ For example, although we have chosen to continue to offer retail retirement investors both brokerage and advisory alternatives, we are aware of other firms that have determined to move away from advised brokerage models for retirement accounts, which can be often less expensive for certain buy and hold investors.

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We recognize the Department's concern that it does not have enforcement jurisdiction over IRAs and that the Internal Revenue Service historically has not focused its resources to enforce the prohibited transaction rules. However, we believe other regulators, including the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA") and the state securities regulators, through their rule-making and enforcement of the securities laws, have in the past, and will continue to protect retirement accounts, as well as taxable accounts that are just as important for Americans' financial wellbeing in retirement. In light of the above points, we encourage the Department to work with its fellow financial industry regulators to coordinate a consistent approach to enforcement, interpretation and implementation of the Fiduciary Rule, including with respect to client and customer disclosures and policies and procedures. Doing so, we believe, will reduce investor confusion and costs, promote holistic financial planning, facilitate compliance, and result in better retirement savings and investment outcomes for Americans who may not keep all of their savings in plans and IRAs.⁶

Our support for the Department's stated intention to protect investors is consistent with our long-time, public support for applying a common fiduciary standard of care to all financial professionals who provide personalized investment advice to retail clients.⁷ We believe that the standard of care can and must be adopted in a way that preserves investor choice and access to different investment advice models and products.

Thank you for considering our comments on the rule and exemptions. LPL is dedicated to ensuring that its financial professionals have the tools and resources they need to best serve their clients and to help their clients achieve their retirement goals and other investment objectives. Accordingly, we believe the Department should take this opportunity to fully consider and address the questions raised in the President's memorandum (and our suggestions as expressed above) regarding the rule and exemptions so that American investors may be best served by the results.

Sincerely,



David P. Bergers

⁶ See also, Exec. Order No. 13563, *Improving Regulation and Regulatory Review* (2011) (stating that each agency must "tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations").

⁷ Notably, in our 2010 comment letter to the SEC regarding its "Study Regarding Obligations of Brokers, Dealers and Investment Advisers" under Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, we stated, "Securities professionals providing the same service to retail customers should be held to the same standard of care and the same best practices. . . . The focus . . . should be consumer protection and enhanced transparency to the retail client." Letter from Stephanie L. Brown, Managing Director, General Counsel, LPL Financial to Elizabeth M. Murphy, Sec'y, U.S. Sec. and Exch. Comm'n (Aug. 30, 2010) (addressing comments on File No. 4-606: Study Regarding Obligations of Brokers, Dealers, and Investment Advisers).