Via Electronic Mail to EBSA.FiduciaryRuleExamination@dol.gov

July 21, 2017

Office of Exemptions Determinations
Employee Benefits Security Administration
ATTN: D-11933
U.S. Department of Labor
200 Constitution Avenue NW, Suite 400
Washington, DC 20210

Re: Department of Labor Review of Conflict of Interest Rule (RIN 1210-AB82)

Ladies and Gentlemen:

We are contacting you on behalf of Sorrento Pacific Financial, LLC (SPF). We are pleased to have the opportunity to provide comments with respect to the Department of Labor's ("Department") review of the Fiduciary Duty Rule (the "Rule") and specifically comment on whether the Rule's January 1, 2018 applicability date should be extended.

SPF is a securities broker/dealer that is registered with the United States Securities and Exchange Commission (the "SEC"), the Financial Industry Regulatory Authority ("FINRA"), the Municipal Securities Rulemaking Board, all fifty (50) states, the District of Columbia, and Puerto Rico. SPF is also a SEC Registered Investment Adviser. Through financial networking arrangements, SPF provides non-deposit investment services to the members of approximately 35 banks located throughout the United States.

As a provider of investment services, our goal is to act in the best interest of all clients and all of their investment needs, irrespective of whether we are acting on a fiduciary basis (through our Registered Investment Advisor and as of June 9, 2017 with the applicability of the Impartial Conduct Standards under the Rule, for all retirement advice) or on a suitability basis (through our broker/dealer for non-qualified accounts). Currently, in addition to employing a robust supervisory system to ensure client recommendations are prudent and potential conflicts are avoided or minimized and disclosed, we provide fee and expense information to clients at the point of sale for their review and acknowledgment. Further, SPF fully supports regulations that protect and support investors and are presently regulated and regularly examined by the SEC, FINRA and State securities and insurance regulators. However, we believe that the requirements of the Rule to become effective January 1, 2018 will make it harder to provide retirement advice to all investors since it contains overly broad definitions making compliance with its terms unmanageable, imposes burdensome disclosures, significantly increases costs, restricts investment choices and potentially jeopardizes the relationship between clients and their

financial advisor. In addition we believe that due to the increased liability to advisors under a fiduciary standard, many advisors will choose to work only with higher net worth investors where the potential for greater income may justify the additional risk they will incur. This will result in small investors not being serviced. We believe that investors will also have far fewer choices regarding investment products and services under the rule. Several national firms, including Merrill Lynch, Commonwealth and Edward Jones have stated that they will no longer offer commission-based investments to their clients. Millions of "buy and hold" investors will either be forced into fee-based accounts, or will be ignored by their brokers who can no-longer receive commissions on those accounts and will be pressured to move them to fee-based accounts.

We believe that an extension of the Rule's January 1, 2018 applicability date is necessary for the Department to thoroughly examine the Rule for adverse impacts on Americans' access to retirement investment advice and assistance, as required by the President's Memorandum. We are deeply concerned that the Rule will cause significant harm to retirement investors by restricting their access to retirement investment advice and services and subjecting firms to meritless litigation due to overly broad definitions contained in the Rule, and so we strongly support the Department in considering a further delay of the Rule and undertaking this examination.

As such, in support of extending the January 1, 2018 applicability date of the Rule, we offer the following:

- ***Prevent further harm to retirement investors.*** Registered investment advisers, broker-dealers and other financial institutions, including us, have worked hard to develop solutions that both comply with the Rule and continue to provide access to a wide variety of advice and financial products for retail retirement investors. But, as has been widely reported in the media, firms have generally found that product and service offerings must be restructured, reduced and/or limited to be able to continue to profitably service retirement investors while complying with the Rule. An extension would allow current product and service offerings to remain in place while the Department studies the Rule for its negative impacts, thereby protecting retirement investors from needless interruption of their services—which would prove to be particularly important if the Department determines, as we expect it will, that the Rule harms investors (and firms) and should be rescinded or revised.

- ***Stop needless spending on the Rule's implementation.*** We have already spent significant sums and resources on complying with the Rule. As noted above, we believe that the Department will find that the Rule harms middle-income savers and that it should be rescinded or revised. Thus, failing to extend the applicability date will result in continued expenses to implement a Rule that may ultimately be rescinded or materially

revised. These resources are better spent on developing products and services that benefit our clients, employees, and partners. The website disclosure requirements are immensely cumbersome and administratively unfeasible. The requirement will result in website disclosures that are hundreds of pages long, which will be to the benefit of no one. If firms are forced to proceed as the rule is written, the tremendous costs that result will likely be passed along to customers.

- ***Help firms develop better, compliant solutions to the Rule.*** Though we, like other firms, are working towards the January 1, 2018 applicability date, the relatively short implementation period to comply with such a substantial rule change, and need for further guidance from the DOL has been, and continues to be, challenging. And not only for investment firms. As the DOL noted in their rule delaying the initial applicability date by 60 days, investment product providers are challenged as well. At this time, mutual fund companies are still in turmoil as to what approach to take to allow their actively managed funds to be sold on a level-compensation basis. While it appeared that the introduction of a new share class, T Shares, could achieve this goal, it soon became apparent that in reality, the cost structure for T Shares, and lack of free-exchange privileges and ROA/LOI programs, would be more expensive for certain existing and new mutual fund investors. Currently, a new approach of issuing "clean shares", mutual funds with no upfront or ongoing compensation, and letting firms establish their own level-compensation schedules, is being considered. Unfortunately, the introduction of clean shares would require firms to invest in their systems to support such a process which would take additional time and money. Further, whether T Shares and/or clean shares become an option, the industry will still have conflicts and potential regulatory violations in recommending such share classes if existing share classes (e.g., A, B and C Shares) continue to exist and be available. For example, investors with substantial holdings in A Shares, would most likely be eligible for better pricing under A Share ROA programs than what would be available in a T Share or clean share offering. Until such product challenges are resolved and implemented, investors could see their access to certain products reduced or eliminated which would be a disservice based on the January 1, 2018 applicability date of the Rule.

  Further, the three sets of FAQs the Department promised it would issue in the summer of 2016 have only partially been completed, with the second set issued as recently as January 2017. Given the complexity of complying with the Rule, the broad definitions contained in the Rule (e.g., reasonable compensation) and that the issued FAQs included unexpected interpretations that require firms to reconsider their compliance plans (e.g., the investment of retirement account distributions into non-qualified investments), a meaningful extension to the January 1, 2018 applicability date is warranted. We note that such a delay is consistent with the Department's past practices, such as the delays granted

in connection with the rules requiring service providers to disclose fees under ERISA Section 408(b)(2).

We encourage the Department to provide a longer extension of time to conduct its review of the Rule and complete any new rulemaking to rescind or revise the Rule if appropriate without creating further disruption and uncertainty. We recommend the applicability date of the Rule be delayed until April 10, 2019.

More complex regulations mean more hurdles and compliance costs, and a greater likelihood of regulatory violations and/or lawsuits. Under this regulation, the smaller investor will become more expensive to serve, meaning that small investors may ultimately lose access to their advisors and disproportionately bear the costs of excessive regulation. Consequently, the DOL's Rule risks hurting the small investor and retired persons they are intending to protect.

On behalf of SPF, I thank you for considering these comments.

Sincerely,

Rick Dahl
EVP, Chief Compliance Officer
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