LPL Financial

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July 21, 2017

Via Electronic Submission

(RIN 1210-AB82)
Office of Exemption Determinations, EBSA
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue N.W., Ste 400
Washington, DC 20210

Re: Advisability of Extension of January 1, 2018, Applicability Date

Dear Ladies and Gentlemen:

LPL Financial LLC ("LPL") appreciates the opportunity to comment on the potential extension of the January 1, 2018, applicability date of certain conditions of the Best Interest Contract ("BIC") Exemption, the Principal Transaction ("PT") Class Exemption, and Prohibited Transaction Exemption 84-24 (collectively, the "Exemptions").

As stated in our previous comment letters on the fiduciary rule and related exemptions,[1] we support the Department of Labor's (the "Department") stated intent to protect investors by requiring financial institutions[2] and financial professionals[3] who provide investment advice to retail retirement investors to comply with the impartial conduct standards. These standards, which currently apply under the Exemptions, require that financial institutions and professionals:

- Provide advice that is prudent and loyal;
- Receive no more than reasonable compensation; and
- Fairly disclose information regarding their advice, compensation and material conflicts of interest.

We believe the applicability of the impartial conduct standards under the Exemptions has already led, and will continue to lead, to meaningful changes in the financial services industry, particularly with respect to advice provided to retail retirement investors, and will help investors to achieve better investment outcomes and make informed choices about the types of financial services and professionals best suited

[1] Letters from David P. Bergers, General Counsel, LPL Financial, to Office of Regulations and Interpretations, Employee Benefits Security Administration (July 21, 2015), (Sept. 24, 2015), (March 17, 2017), and (April 17, 2017).

[2] 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.

[3] 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.

to helping them achieve their investment objectives. These developments include an increased focus on, and understanding of, prudent and loyal investment advice; reviews of compensation streams to ensure they are reasonable; and enhancing disclosures of material conflicts of interest and compensation.

However, we agree with the Department that the fiduciary rule and related exemptions must be reexamined in accordance with the President's memorandum dated February 3, 2017, and that certain changes are needed to better protect retirement investors in a less disruptive way. Moreover, because the impartial conduct standards are currently in effect and protecting investors, the Department should take the time necessary for a careful, thoughtful, and complete review and reconsideration of the rule and related exemptions.

In this regard, we appreciate Securities and Exchange Commission ("SEC") Chairman Clayton's and Secretary Acosta's renewed willingness to work together on these issues, and as we have previously stated, we believe that coordination with other financial industry regulators is critical for the efficient and consistent operation of the market for retail investors. These regulators have the requisite experience and expertise in the financial markets and in implementing significant reform thereto, to inform the Department's examination of the rule and any additional rulemakings.

Further, we believe that the Department should coordinate with the SEC in its development of a standard of care for all retail investors. Coordination among the relevant regulators will allow for a harmonized standard that would apply to personalized advice provided to retail investors, whether investing through a retirement account or non-retirement account. Doing so will result in better retirement savings and investment outcomes for all Americans, regardless of where or how they maintain their investments.

To allow time for this coordination and a thoughtful reevaluation of the fiduciary rule and related exemptions, it is critical that the Department delay the applicability of the additional conditions of the Exemptions until six months after the Department completes its review and finalizes any new regulations or regulatory amendments it deems necessary based on its review. To limit disruption and client confusion, we further suggest that the new applicability date be on a date that is at least 30 days after a quarter end to allow any required disclosures or other documents to be mailed with client quarterly statements and other mailings. We believe this delay is needed for the following reasons:

- ***Financial institutions need certainty regarding the Exemptions' requirements and applicability dates before they can move forward with developing compliant solutions.*** The Department has strongly signaled that it may make changes to the Exemptions (including amending the Exemptions or proposing new exemptions) in response to its study. As the Department knows, the conditions of the Exemptions that are currently scheduled to become applicable on January 1, 2018, (i.e., policies and procedures related to leveling differences in financial professional compensation and the website, contract, and transaction disclosures) require the development of new products and platforms to address financial professionals' compensation, as well as significant systems builds, major changes to operational processes, and long lead times for implementation and compliance.

  Without a delay, financial institutions must proceed with costly and disruptive changes for compliance with conditions that may very well change or be eliminated. Further, to reduce unwarranted costs and investor confusion, it is essential that the Department provide the delay as soon as possible. We note, as an example, that BIC contracts for existing customers may need to be finalized and mailed as early as September, if financial institutions are to be able to print and mail them to meet a January 1 compliance date.

- ***Financial institutions need more time to develop better solutions and additional products.*** The financial services industry has been working diligently toward compliance with the fiduciary rule and related exemptions and has developed, and continues to develop, innovative solutions to be able to better serve investors under the new rules. However, more time is needed for the industry to respond to the significant changes the rule and exemptions have initiated—particularly with respect to the additional conditions the Exemptions would require as of January 1, 2018.

  As an example, the recent launch of our Mutual Fund Only ("MFO") platform shows the effort we have made to create innovative solutions that comply with the rules. The MFO platform is designed to offer investors enhanced value in brokerage products, while standardizing compensation for financial professionals. [4] On the MFO platform, investors will have access to load-waived shares of over 1,500 mutual funds, providing free exchangeability across fund companies for broader choice and greater flexibility to move funds over time as investors' needs change. Moreover, our financial professionals will have standardized compensation through a uniform upfront onboarding commission, cross-fund-company exchangeability and a consistent trail. In this way, the MFO platform will help us address conflicts of interest with respect to financial professional compensation, while also providing a compelling solution for investors.

  However, the MFO platform (which is limited to mutual funds) is only one of many solutions needed in response to a change of the magnitude brought on by the new rule. Additional time would allow for the industry to provide even broader product and service choice to investors, a chief concern of the Department and of the Presidential memorandum. This would provide financial institutions with time needed to develop and launch new platforms and products, including time to make technology systems changes, to collaborate and coordinate with vendors and product sponsors, and to develop required disclosures and customer agreements.

- ***Financial institutions need time to make these changes in a way that allows advisors to better serve retirement investors.*** An extended time frame for compliance with the rule and related exemptions will result in better solutions for retirement investors.[5] We are particularly concerned that rushing solutions to meet the January 1 compliance date will not provide financial institutions with time to test their solutions with financial professionals and retirement investors and make

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[4] *See* Press Release, LPL Financial LLC, LPL Financial Announces Details and Fund Companies For Its Industry-First Mutual Fund Only Platform (July 13, 2017), https://lplfinancial.lpl.com/news-media/press-releases/lpl-financial-announces-details-for-its-mutual-fund-only-platform.html.

[5] *See, e.g.*, John P. Kotter, Leading Change: Why Transformation Efforts Fail, Harv. Bus. Rev., Mar.-Apr. 1995, at 59 (stating, regarding changes in how business is conducted to cope with a new market environment, "the change process goes through a series of phases that, in total, usually require a considerable length of time. Skipping steps creates the illusion of speed and never produces a satisfying result," "critical mistakes in any of the phases can have a devastating impact, slowing momentum and negating hard-won gains," and "after the coalition works at [the plan for the future] for 3 or 5 or even 12 months, something much better emerges through their tough analytical thinking . . . Eventually, a strategy for achieving that vision is also developed").

any needed changes before a full roll-out. We are also concerned that there is insufficient time to effectively train financial professionals or to communicate changes with investors in a way that will not be disruptive or confusing.

For the reasons set forth above, we ask you to delay the applicability of the additional conditions of the Exemptions until six months after the Department completes its review and finalizes any new regulations or regulatory amendments it deems necessary based on its review and suggest that the new applicability date be on a date that is at least 30 days after a quarter end. We encourage the Department to announce its decision on the delay as soon as possible and prior to August 1, 2017, so that resources are not unnecessarily spent on developing systems and disclosures that may change.

Thank you for considering our comments on the delay of the additional conditions of the 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. We look forward to working collaboratively with the Department to address the questions posed in its July 6, 2017 request for information regarding the rule and related exemptions.

Sincerely,

Michelle Oroschakoff

Michelle B. Oroschakoff