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FILED ELECTRONICALLY

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W.
Suite 400
Washington, DC 20210
Attention: D-11933

Re: Request for Information (RFI) Regarding the Fiduciary Rule and Prohibited Transaction Exemptions
RIN 1210-AB82

Dear Sir or Madam,

We at AXA[1] ("AXA US") appreciate the opportunity to provide comments to the Department of Labor (the "Department") in response to the Department's request for information ("RFI") regarding its examination of the final rule defining the term "fiduciary" under the Employee Retirement Income Security Act of 1974 issued by the Department on April 8, 2016 (the "Rule"), including the Best Interest Contract Exemption (the "BIC Exemption") and the amendments to prohibited transaction exemption 84-24 ("Amended PTE 84-24").

We provide this letter specifically with respect to Question 1 in the RFI regarding the potential for a delay of the January 1, 2018, applicability date (the "Applicability Date") for certain provisions of the BIC Exemption and Amended PTE 84-24 (the "2018 Provisions").[2] In connection with its review of the Rule mandated by President Trump's February 3, 2017 Memorandum (the "Memorandum"), the Department has asked whether a delay of the Applicability Date would reduce burdens on financial services providers and benefit retirement investors by allowing for

[1] "AXA US" is the brand name of AXA Equitable Financial Services, LLC and its family of companies, including AXA Equitable Life Insurance Company (NY, NY), MONY Life Insurance Company of America (AZ stock company, administrative office: Jersey City, NJ), AXA Advisors, LLC (NY, NY) and AXA Distributors, LLC (NY, NY).
[2] AXA US will respond to the remainder of the RFI in a separate comment letter.

more time to respond efficiently to recent market developments and whether it would carry any risks or would be advantageous to advisers and investors.

In business since 1859 and as one of the country's leading life insurance and retirement savings companies with nearly 2.5 million customers nationwide, AXA US is well-positioned to understand the wide-ranging intended and potential unintended consequences of the Rule on both retirement savers and the industries that serve them. Although it is only six weeks since partial implementation of the Rule on June 9, 2017, and the Applicability Date is still several months away, many of the negative consequences of the Rule already have come to pass. Firms have reduced their product offerings or abandoned customers that do not meet newly increased criteria for minimum account balances, while sales of annuities – the main retirement product that offers consumers guaranteed lifetime income – are down sharply. Similarly, the pervasive uncertainty regarding the future of the Rule and whether the 2018 Provisions will in fact take effect hinders our ability to plan appropriately for the coming years.

Under these circumstances, there is a strong likelihood that the Department will ultimately make significant changes to the Rule. Coupled with the time needed to fairly and adequately conduct the analysis ordered by the President and potentially coordinate with other regulators regarding a consistent standard, adhering to the Applicability Date would be impracticable. Even the most optimistic timeline does not build in adequate time for implementation of any required updates to compliance procedures and administrative systems after the conclusion of the Department's review. Forcing firms to implement compliance programs without knowing whether such programs will comport with the final rule is unfair and costly for firms, and potentially confusing for clients on the receiving end of unexpected disclosures and other communications. A reasonable delay of the Applicability Date would permit the Department to make thoughtful revisions to the Rule and work with other regulatory authorities on a comprehensive and harmonized regulatory framework for the retirement savings marketplace, without being subject to the artificial time constraints imposed by the current Applicability Date. This result would be far more efficient than the current approach characterized by partial delays and multiple requests for information, which is causing the industry to move in fits and starts, while accentuating consumer confusion regarding the standard of care applicable to a given transaction.

For these reasons, as discussed more fully below, we ask that the Department delay the Applicability Date (1) to take the time necessary to coordinate with other regulatory authorities and develop a comprehensive and harmonized Rule; and (2) even if the Department does not coordinate with other regulatory authorities, to allow industry participants sufficient time to prepare for implementation following the final adoption of a revised Rule.

A. Delaying the Applicability Date will provide the Department with sufficient time to work with other regulators to develop a harmonized regulatory framework

AXA US has previously stated its firm belief that the Securities and Exchange Commission ("SEC"), in close coordination with the Department and the National Association of Insurance Commissioners ("NAIC"), should craft a uniform standard of care that would apply to all retirement services providers but would not disrupt the marketplace by burdening those providers with the unnecessary and costly compliance requirements and liability risks of the Rule. A delay of the Applicability Date will allow time for this much-needed partnership to coalesce and thoughtfully develop a regulatory framework that is consistent and harmonized across the retirement services marketplace.

A harmonized standard of care promulgated jointly by the Department and the SEC and replicated by the NAIC at the state level would help address the substantial uncertainty generated by the Rule in its current form, which creates a bifurcated system of regulation that forces us to comply with inconsistent standards. The Rule differs sharply from the SEC's best interest fiduciary standard and its recognition that sometimes the client's interest does align with the fiduciary's, and that potential conflicts of interest can be alleviated by simple and clear disclosures. In addition, state insurance and securities departments may impose their own inconsistent rules causing further confusion and disruption in the marketplace. Making sure that there are consistent federal and state rules governing transactions in the retirements services marketplace would give both retirement savers and service providers the certainty they need when participating in the retirement services marketplace and also avoid the increased compliance and litigation risks associated with conflicting regulatory regimes.

A uniform standard would leverage the SEC's existing, well-developed regulatory and judicial framework for enforcing standards of conduct for registered investment advisers. In addition, a harmonized standard would meet the requirements of the President's Core Principles for financial regulation[2] by being (i) efficient, by building on existing and high functioning regulatory frameworks; (ii) effective, by protecting investors while preserving their access to personalized and affordable retirement savings education and advice for all retirement savers; and (iii) appropriately tailored, by ensuring a uniform standard without burdening financial professionals with unnecessary and costly compliance obligations and liability risks.

Regulators themselves have recognized that such a joint approach is needed. Secretary Acosta acknowledged that the SEC has "critical expertise" regarding the regulation of financial professionals and should contribute as a "full participant" during the Department's review of the

[3] Presidential Executive Order on Core Principles for Regulating the United States Financial System (Feb. 3, 2017).

Rule.[3] SEC Chairman Jay Clayton publicly accepted this "invitation to engage constructively" with the Department in the review process and the SEC is currently soliciting public comments to help it "evaluate the range of potential regulatory actions."[4] And the NAIC has formed a working group to consider possible revisions to the NAIC Suitability in Annuity Transactions Model Regulation, including possible incorporation of a best interest standard into its model regulation.

If the Department concludes its review of the Rule with a decision to pursue this joint approach, it will need to coordinate closely with the SEC and the NAIC to craft a unified regulatory framework. A reasonable delay of the Applicability Date will help the Department facilitate a forum for effective engagement with the SEC and other interested regulators that will be conducive to the development of a comprehensive and workable standard.

B. Regardless of the extent of changes to the Rule that the Department proposes, the current implementation timeline does not provide adequate time for retirement services providers to comply with those changes

While we respectfully request that the Department work with other regulatory authorities to develop a comprehensive and harmonized rule, should the Department decide not to do so, and to proceed alone, we expect the Department's review of the Rule and responses to the RFI to take substantial additional time that will bring us perilously close to – if not beyond – the Applicability Date. Indeed, even if, after its review, the Department were to conclude that no changes to the Rule are necessary, we would still need a reasonable amount of time beyond January 1, 2018 to come into compliance in an efficient, cost-effective manner that will minimize disruption to our customers – particularly given that many aspects of our compliance plans are currently designed to comport with the partial implementation of the Rule effective June 9, 2017, and the overall redesign has been put on hold pending the outcome of the Department's review.

We would also need sufficient time to accommodate the broadly differing approaches to compliance of our third-party distribution partners, which will require, among other actions, updating and filing product applications and other policy forms for approval with relevant state Insurance Departments. Expecting the industry to move forward with implementation of extensive compliance procedures pending potential significant changes to the Rule – which can include the substantial cost of sending out notices to customers, systems updates, creation of training materials and revisions to forms and policies – is wasteful and unnecessary. Given the Department's previous finding that the approach of partial implementation will "provide retirement investors

[4] *See* Sec'y Alexander Acosta, *Deregulators Must Follow the Law, So Regulators Will Too*, Wall St. J., May 22, 2017.

[5] *See* Chairman Jay Clayton, SEC, *Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers*, June 1, 2017, at https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31#_edn1.

with the protection of basic fiduciary norms and standards" while it conducts the review mandated by the President,[5] there would be no incremental or offsetting benefit to consumers by proceeding with the current Applicability Date.

Finally, as we and others noted in prior comment letters regarding the Rule, the condensed implementation timeline imposed by the Department for coming into compliance with the Rule is inconsistent with prior Department practice. For instance, in contrast to the Department's 408(b)(2) regulation that afforded affected entities a full two years to implement required changes to existing rules, here the industry had to contend with a 12-month deadline for most aspects of the Rule and just 20 months to comply with the Best Interest Contract Exemption – an entirely new regulatory scheme that contemplates extensive enterprise-wide compliance and disclosure requirements. A reasonable delay of the Applicability Date will help us to ensure that we can complete our development of new compliance policies and procedures, as well as the substantial required updates to our technology infrastructure, in the most efficient and cost-effective manner possible.

* * *

In conclusion, the continued uncertainty around the Rule's final wording and provisions is already causing the extensive and unnecessary disruption to the retirement services marketplace that we previously predicted. Moreover, this uncertainty is forcing us to divert tremendous amounts of time and resources from our core objective of developing new and innovative retirement products for our customers. We look forward to the Department's thoughtful and expeditious review of the Rule, which will likely result in modification to the Rule. Accordingly, we respectfully request a delay of the Applicability Date to allow sufficient time for industry participants to prepare to comply with any changes that emerge from this process, thereby serving the interests of both retirement services providers and retirement savers. In this way, the President's directive to craft a regulation that helps Americans make informed financial choices and save for a dignified and comfortable retirement will have been fulfilled.

Respectfully submitted,

Dave S. Hattem

[6] *See* Final Rule; *Extension of Applicability Date*, 82 Fed. Reg. 16902, 16905 (Apr. 7, 2017).