September 15, 2017

E*TRADE FINANCIAL

EBSA.FiduciaryRuleExamination@dol.gov

Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11712, 11713, 11850
U.S. Department of Labor
200 Constitution Avenue NW, Suite 400
Washington, DC 20210

RE: RIN 1210-AB82
Submitted Electronically

Ladies and Gentlemen:

E*TRADE Financial Corporation ("E*TRADE") appreciates the opportunity to provide comments regarding the Department of Labor's ("Department") request for comment ("RFI") on the Extension of the Transition and Delay of Applicability Dates related to § II and § IX of the Best Interest Contract Exemption ("BICE" or "PTE 2016-01") and § VII of the Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs ("Principal Transactions Exemption" or "PTE 2016-02"), and including applicability of certain amendments to Prohibited Transaction Exemption 84-24 ("PTE 84-24") for the same period.[1]

As we have mentioned in our previous submissions, E*TRADE strongly supports the efforts to advance the best interests of our customers. We believe those efforts are best served by proceeding with the proposed extension of the transitional period delay to July 1, 2019, or some alternative measure from the completion of the Review (as defined below) and the publication of any new amendments/exemptions or indication of no changes, as well as extending the Temporary Enforcement Policy found in Field Assistance Bulletin ("FAB") No. 2017-02.

E*TRADE strongly believes some form of the delay is necessary until the Department completes and determines the impact of the Review[2] on the BICE (including the Attorney General's support for revisions to the arbitration restrictions in the BICE contract) the Principal Transactions Exemption, and the Prohibited Transaction Exemption ("PTE 84-24") relating to the redefinition of the term "fiduciary" under § 3(21) of the Employee Retirement Income Securities Act of 1974 and § 4975(e) of the Internal Revenue Code of 1986 (the "Rule" and together "Fiduciary Rule"). A delay is necessary in order to avoid potential investor confusion and harm as well as to mitigate the expenditures and resources required to implement requirements that may very well change. We agree with the Department's concern that without a delay in the applicability dates, regulated parties may incur undue expense to comply with conditions or requirements that it ultimately determines to revise or repeal.[3]

As stated in our August 17, 2017 letter, "E*TRADE has already devoted substantial resources to changes we believe are necessary to comply with the Fiduciary Rule and is continuing to work toward a fully integrated and compliant business model. However, the uncertainty surrounding the future of the Fiduciary Rule's January 1, 2018 complete set of requirements creates a speculative environment in which the firm is challenged to effectively create a compliance program requiring technological and operational controls, without knowing whether those controls will need to be modified, enhanced, or discarded at some future point based upon the Rule's examination and related RFI." E*TRADE reiterates the previous statements in our March 17, 2017 and

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[1] 82 FR 41365 ("Extension Proposal")

[2] Review refers to the review requested of the Fiduciary Rule dated February 3, 2017 (82 FR 9675) as well as the review of comments provided to the Department from its requests for information: RIN 1210-ZA27, RIN 1210-AB82, 1210-AB79 ("RFIs").

[3] Extension Proposal at 41365.

August 17, 2017 letters to the Department: "We believe a delay is necessary to help our clients fully understand and be prepared for the changes they will experience as a result of the [R]ule. We strongly believe that E*TRADE's clients will be unnecessarily confused about our retirement services if changes we implement and announce are subsequently revisited or reversed."

A delay is a practical and necessary consequence in order to permit the Department to appropriately consider the comments submitted in response to the RFIs, the Executive Branch Memo, and the Justice Department's shifting stance regarding mandatory arbitration, and to provide adequate time for technical and operational implementation, if any changes to the Rule are made as a result.

We are hopeful the Review will take into account industry changes since the Fiduciary Rule's adoption, as well as feedback provided in response to the RFIs. Furthermore, we believe the Department would benefit by working with the U.S. Securities and Exchange Commission ("SEC") as suggested by the Extension Proposal,[4] especially in light of potential collaboration with the SEC and information sharing emanating from the SEC's own request for public comments regarding standards of conduct for investment advisers and broker dealers in providing investment advice to retail investors.[5] Our hope is that the Review and collaboration will improve the Fiduciary Rule for both investors and the industry, leading to a workable fiduciary standard and consistent guidance.

In terms of the length of the delay in applicability dates, E*TRADE agrees with the proposal that "the length of the Delay should be measured from the date the Department, after finishing the reexamination, either [decides] there will be no new amendments or exemption or the date the Department publishes a new exemption or major revisions to the Fiduciary Rule and [Prohibited Transaction Exemptions]" (82 FR 168; p.41368).

We also believe that any delay should include a corresponding extension of the applicability of Field Assistance Bulletin No. 2017-02. As firms are already subject to the Impartial Conduct Standards of the Fiduciary Rule, arguably the backbone of the exemptions' conditions, we believe a corresponding extension of FAB No. 2017-02 will benefit financial services providers without harming retirement investors, while retaining enforcement powers for firms not implementing requirements in good faith.

Finally, the approval of an extension under the Extension Proposal should be expedited. Until there are definite rules and clear guidance, the financial services industry continues to incur costs associated with implementing operational measures that ultimately may have to be adjusted, and investors planning for retirement continue to face uncertainty regarding what advice may be available to them and at what cost.

Accordingly, we urge the Department to grant an additional delay of the remaining implementation of the Fiduciary Rule and an extension of the Temporary Enforcement Policy as detailed in FAB No. 2017-02.

Thank you for providing us the opportunity to provide our comments on the Extension Proposal.

Sincerely,

James E. Ballowe, Jr.

James E. Ballowe, Jr.
Senior Vice President and Senior Counsel, Brokerage
E*TRADE Financial Corporation

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[4] Extension Proposal at 41368.
[5] Id.