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Via email to EBSA.FiduciaryRuleExamination@dol.gov.

Office of Exemption Determinations
Attention: D-11712 11713 11850
Employee Benefit Security Administration
U.S. Department of Labor
200 Constitution Avenue, N.W. , Suite 400
Washington D.C. 20210

Re: RIN 1210-AB82
Proposed Extension of Transition Period and Delay of Applicability Dates: Best Interest Contract Exemption (PTE 2016-01); Class Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02); Prohibited Transaction Exemption 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters (PTE 84-24)

Dear Sir or Madam:

This letter responds on behalf of T. Rowe Price Associates, Inc. and affiliates (“T. Rowe Price”)¹ to the proposed extension of the transition period and delay of certain exemptions listed above. We appreciate the Department’s diligence in seeking public input on the proposed extensions and we welcome a chance to provide our perspective.

Delay is Appropriate. As noted in our August 7, 2017 letter in response to the Department’s recent Request for Information published on July 6, 2017, the Fiduciary Advice Rule is final and applicable, but the rulemaking process is far from complete. We share the Department’s concern that

¹ T. Rowe Price Associates, Inc. serves as investment adviser to the T. Rowe Price family of mutual funds (“Price Mutual Funds”) and collective trusts maintained by its affiliate, T. Rowe Price Trust Company. T. Rowe Price is known for its commitment to active investment management relying upon fundamental research and a disciplined investment process. The Price Mutual Funds, which are distributed by T. Rowe Price Investment Services, Inc., a registered broker-dealer, have delivered strong, long-term investment performance at reasonable cost. (As of December 31, 2016, over 86% of Price Mutual Funds outperformed their 10-year Lipper average, and over 75% of all share classes of Price Mutual Funds (excluding funds used in insurance products) outperformed their Lipper average for the 1-, 3-, 5- and 10-year periods on a cumulative total return basis. As of that same date, over 79% of the Price Mutual Funds for individual investors had expense ratios below their Lipper category average.) Through mutual funds and commingled trusts, as well as its sub-advisory and separate account management services, T. Rowe Price serves institutions—including both large and small business retirement plans—and individuals. Additionally, T. Rowe Price provides direct services to individuals and plan participants through its retail and plan recordkeeping businesses. T. Rowe Price assets under management (“AUM”) totaled almost \$811 billion as of December 31, 2016, of which 69% were held in retirement related accounts, including ERISA-governed plans and IRAs.

Extending the transition period and delaying full applicability of the cited exemptions is the only appropriate course of action until the Department has completed its review of the questions posed by the February 3, 2017 Presidential Memorandum. That memorandum, as well as the Department's own Request for Information and its expressed commitment to coordinate with the Securities and Exchange Commission ("SEC"),² suggests that there may be a revision to the Fiduciary Advice Rule as well as accompanying exemptions. The Department correctly acknowledges that the outcome of this reexamination cannot be known until it is complete. Until then, firms should not be asked to expend time and money on actions that ultimately prove to be unneeded, either because specific conduct is determined not to be fiduciary in nature, or because exemption conditions have changed. It is particularly appropriate to delay the detailed conditions in the Best Interest Contract Exemption that impact advice recipients, such as the requirement to establish a contract or to acknowledge fiduciary status. Such documents or disclosures might ultimately prove unnecessary or wrong, creating confusion for the very population the Fiduciary Advice rulemaking was intended to protect.

A Streamlined Product-Specific Exemption Is Not Advisable At This Time. The Department has expressed its intention to issue a new streamlined exemption in the "near future" to address "recent innovations in the financial services industry." Our earlier letters have noted the marketplace disruption created by the Fiduciary Advice Rule's fundamental change in the way firms and advisers interact with their customers and are compensated for advice, and the products that certain firms are willing to offer their retirement customers.³ While certain product innovations such as so-called "clean shares" may be promising, it is too early for the Department to understand the full role that these products will play in the ultimate delivery of investment management and advice to retirement investors.⁴ For this reason, declaring an early "winner" through a streamlined exemption is premature. Before taking such a step, the Department would benefit from industry input on the specifics of clean shares in operation, as well as the expertise of the SEC, the regulator with domain expertise in requirements that attach to clean shares. Proceeding to promulgate such an exemption without that domain expertise and industry context might result in unintentional mismatches between the regulatory exemption and the needs of the marketplace—both advice providers and advice recipients. We urge the Department to focus its resources on the task of completing the work required by the Presidential Memorandum, and reserve any new exemptions until that work is complete and public.

A Delay Should Last At Least Until July 1, 2019, and Its Length Thereafter Should Be Determined In Context. The Department has asked specifically about how best to structure the delay. T. Rowe Price supports a delay of at least 18 months (assuming the Department can conclude the full

² See Labor's Alexander Acosta and SEC's Jay Clayton Tell Lawmakers They Will Work Together on Fiduciary Rule, Investment News (June 27, 2017), <http://www.investmentnews.com/article/20170627/FREE/170629931> (last accessed 9/14/2017).

³ See Letter from T. Rowe Price dated April 17, 2017 commenting on questions posed in the February 3, 2017 Presidential Memorandum (RIN 1210-AB79) in which we noted plans by at least one prominent national brokerage firm to restrict access to mutual funds in commission-based IRA accounts, as well as the role attributed to the Fiduciary Advice Rule in industry consolidations and departures from retirement servicing.

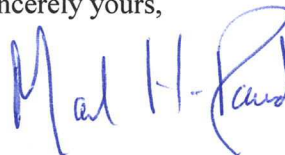
⁴ Clean shares are accompanied by regulatory uncertainty. Although the SEC has issued a no-action letter clarifying that a broker can charge its customer a commission on the sale of such shares without a fund and its distributor having to comply with Section 22(d) of the Investment Company Act of 1940, see No-Action Letter Issued to The Capital Group Companies, Inc., January 11, 2017, there is some uncertainty as to whether intermediaries may be compensated for servicing in the context of a "clean" share class or if other payments can be made for distribution and other related activities outside of the fund (although the no-action letter only appears to limit payments for distribution). Any further DOL consideration of an exemption based on clean shares or similar product structures should address these issues in coordination with the SEC.

rulemaking within that time), but also seeks further delays of a length commensurate with the additional work required for compliance by that time. Like most firms, T. Rowe will evaluate its fiduciary advice offerings in light of the Fiduciary Advice Rule, as it may emerge after further deliberation, and available exemptions. Achieving reasonable certainty as to the best use of resources in such an uncertain regulatory environment is difficult, and having a known, minimum amount of time within which to evaluate is important. For that reason, we believe that a delay to at least July 1, 2019 is critical. In the event of changes to either the Rule or accompanying exemptions, we urge the Department to adopt a realistic implementation deadline. Some of the disruption that the industry experienced immediately before June 9, 2017 is attributable to the brevity of the time allowed for compliance in the original proposal. In order to avoid disarray, the Department should be judicious in selecting an implementation period that corresponds to the magnitude of the changes that result from the regulatory process. The exact amount of time needed will best be judged in light of the outcome of the evaluation now underway.

The Department Should Extend Its Non-Enforcement Policy. In light of the uncertainty surrounding the exact parameters of the rulemaking project, and ultimate extent of fiduciary-level advice, we encourage the Department to extend its non-enforcement policy through at least July 1, 2019. While the Department has provided helpful guidance to the regulated public, there remain significant questions about the Rule and its interpretation.⁵ Uncertainty surrounding the Rule's current scope and future parameters present a textbook case for leniency in enforcement. We believe that the good faith standard in the current temporary non-enforcement policy provides the right yardstick against which to measure conduct until this entire regulatory project has completed.

We appreciate the chance to comment on the proposed delay, and hope that the views shared here will be helpful to the Department in its regulatory process.

Sincerely yours,



Margaret H. Raymond

⁵ One of those topics in particular—the extent to which an individualized savings recommendation, separate from any mention of specific investments, can be Fiduciary Advice—is extremely important to the work that T. Rowe Price does to insure that individuals and plan participants understand the importance of saving for retirement. We know how important personalized and specific guidance about savings topics are, and have shared with the Department data showing the adverse impacts on retirement savings decisions when specific suggestions and calls to action are not used. We support an interpretation of the current Rule that would allow targeted and explicit savings suggestions to retirement investors to continue as under prior law or, failing that, a revision of the Rule to remove savings topics from the ambit of fiduciary advice. While the Department's recent guidance has supported interpretations of the Rule that are helpful to firms seeking to encourage retirement savings, they do not go far enough and raise additional questions about the extent to which calls to action are generally permissible when used in connection with investment topics. This example is only one aspect of the Rule's scope that merits re-evaluation.