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September 15, 2017

Office of Exemption Determinations
EBSA
U.S. Department of Labor
200 Constitution Avenue NW
Suite 400
Washington, DC 20001

Attention: D-11712, 11713, 11850

Re: *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) ("Notice of Proposed Amendments")(RIN 1210-AB82)*

Ladies and Gentlemen:

Fidelity Investments[1] ("Fidelity") appreciates the opportunity to comment on the Notice of Proposed Amendments published by the Department of Labor ("Department") in the Federal Register on August 31, 2017.[2] As one of the nation's leading retirement services providers, Fidelity has a deep and long-standing commitment to working with the Department on its rulemaking in the area of investment education and advice.

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[1] Fidelity was founded in 1946 and is one of the world's largest providers of financial services. Fidelity provides recordkeeping, investment management, brokerage and custodial/trustee services to thousands of Code section 401(k),403(b) and other retirement plans covering approximately 25 million participants and beneficiaries. Fidelity is the nation's largest provider of services to individual retirement accounts ("IRA") with more than 7 million accounts under administration. Fidelity also provides brokerage, operational and administrative support, and investment products and services to thousands of third-party, unaffiliated financial services firms (including investment advisors, broker-dealers, insurance companies and third-party administrators) that may in turn provide investment advice to plans, participants and IRA owners.

[2] *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)*, 82 FR 41365 (August 31, 2017). Capitalized terms not otherwise defined have the meanings ascribed to them in the Notice of Proposed Amendments.

We strongly support a delay in the January 1 applicability date. As we stated in our letter to the Department dated July 21, 2017,[3] a delay in the January 1 applicability date would provide the Department and the Securities Exchange Commission ("SEC") an opportunity to jointly consider public comments on the experiences of investors and the regulated community in connection with the implementation of the rule and constructively determine the best path forward. As the Department has correctly noted in the Notice of Proposed Amendments, a delay would also give the Department time to honor the President's directive to re-examine the rule and would avoid obligating advice providers to incur costs to comply with conditions that may be revised, repealed or replaced (as well as avoid attendant investor confusion).

Fidelity's goal is to ensure that investment advice is provided in the investor's best interest and that the rules for investment advice allow savers continued choice and access to the products and services they need. However, the need for re-examination and revision or withdrawal of the rule is significant and real. As we have stated in our previous comment letters on the rule, we continue to believe that the Department's new framework for regulating investment advice under ERISA and the prohibited transaction provisions of the Code is misguided. Indeed, as we argued in our letter to the Department dated August 7, 2017,[4] a careful statutory analysis of ERISA shows that, despite the Department's long-standing administrative guidance, the rule is not in fact supported by the statute as applied to participants who exercise control over their accounts within the meaning of ERISA section 404(c). As the long-standing primary regulator charged with investor protection, the SEC should lead and carry forward the rulemaking on this topic through coordinated and constructive engagement with the Department to develop a workable solution that results in protections for investors and uniform standards of conduct for advisers with respect to both retirement and non-retirement accounts.

Accordingly, as stated in our July 21 letter, we urge the Department to delay the additional January 1, 2018 requirements until a reasonable period following the consideration of RFI responses and the conclusion of the re-examination directed by the President's Memorandum. The delay should be measured from the Department's announcement of requirements or conditions that will become applicable following the delay whether addressed in a final revised rule, final exemptions, or a statement that the Department will not make any further changes or revisions to the current rule and exemptions. We also believe that there is value in providing advice providers a level of certainty while the Department undertakes its review and analysis of the rule and exemptions. We support the Department's proposed delay of 18 months until July 1, 2019 as a minimum delay of the applicability date.

We also recommend that the Department extend its temporary non-enforcement policy for the duration of the delay of the applicability date. Advice providers that are working diligently and in good faith to meet their fiduciary duties and the applicable conditions of the prohibited transaction exemptions during this period of continued uncertainty will benefit far more from a policy of support and guidance than from a policy of punishment and penalty, and this in turn will benefit retirement savers.

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[3] The letter is posted on the EBSA website as Comment Letter #259.
[4] The letter is posted on the EBSA website as Comment Letter # 545.

Finally, we agree with the Department that applicability of the delay should not be conditioned on an advice provider engaging in certain behavior, such as making a promise that it will take steps to harness recent innovations in investment products and services. Such conditions would unduly pressure advice providers to engage in whatever behavior might be designated. Slanting advice in this manner, however favorably the Department or any other person might view a particular product or service or behavior, will necessarily constrain choice and options to the detriment of retirement savers. Making an advice provider's use of a specific product or service the price of avoiding the needless costs and investor confusion associated with the January 1 applicability date is not appropriate or warranted.

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We would be pleased to respond to any questions or comments regarding this letter.

Sincerely,

Ralph C. Derbyshire

cc: **United States Securities and Exchange Commission**
The Honorable Jay Clayton, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Financial Industry Regulatory Authority
Robert Cook, Chairman and Chief Executive Officer, FINRA
Robert Colby, Chief Legal Officer, FINRA