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July 21, 2017

***Via* e-mail to EBSA.FiduciaryRuleExamination@dol.gov**

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

Re: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions – Extending January 1, 2018 Applicability Date (RIN 1210-AB82)

Dear Sir or Madam:

Wells Fargo & Company, and its affiliates, ("Wells Fargo") welcomes the opportunity to respond to the U.S. Department of Labor's (the "Department") Request for Information ("RFI") and specifically the first question raised therein of whether to delay the January 1, 2018 applicability date ("Applicability Date") of the Best Interest Contract Exemption, Principal Transactions Exemption and amendments to Prohibited Transaction Exemption 84-24 from the rule defining who is a "fiduciary" (collectively, the "Rule").

As a national leader in providing retirement advice and services to millions of people of varying means and needs, we supported the core best interest concepts underlying the Rule when it was originally proposed in 2010, when it was re-proposed in 2015 and when it was issued in final form last year. And, we continue to support the goal of creating a best interest standard of care for the provision of personalized investment advice to all clients.[1] However, for the reasons discussed herein, we believe a prompt delay of the provisions of the Rule that are scheduled to become effective on January 1, 2018 is both warranted and necessary. Accordingly, we recommend the Department delay the Applicability Date and extend the current enforcement policy by a minimum of twenty-four months.

Prompt and Substantial Delay of the Applicability Date is Appropriate

The Department asks whether delaying the Applicability Date would "reduce burdens on financial services providers and benefit retirement investors…" The answer to both questions is yes. In fact, swift and decisive Departmental action to delay the Applicability Date will achieve a number of important policy objectives.

First, a prompt delay will benefit retirement investors by permitting a thoughtful reexamination of the Rule and Rule requirements without sacrificing or weakening investor

protections. Today, retirement investors receive investment advice that is subject to the impartial conduct standards that became effective on June 9, 2017. The Department itself has noted that adherence to these standards "helps ensure investment recommendations are not driven by adviser conflicts, but by the best interest of the retirement investor."[2] A delay does not remove or dilute any of these current investor protections.

However, beginning January 1, 2018, firms will be required to comply with other requirements of the Rule including the obligation to provide various lengthy notices and disclosures to clients. It is possible that these requirements may be modified and, in some cases, even eliminated. It is in no one's interest to send clients unnecessary or contingent disclosures or for financial services firms to change product offerings to comply with a rule that may change in the near future. Doing so would only cause client anxiety which could lead to disruptions in those clients taking action towards achieving their long-term retirement goals. Such a result is unacceptable for the millions of clients that we serve.

Secondly, a delay will allow the Department sufficient time to fulfill Labor Secretary Alexander Acosta's pledge to work closely with the Securities and Exchange Commission ("SEC") to leverage their "critical expertise" in developing a best interest standard.[3] The SEC is an integral player in developing a uniform best interest standard applicable to not just retirement investors but to *all* investors. We applaud SEC Chairman Jay Clayton's recent action signaling the SEC's willingness to engage on the issue.[4] However, the agencies will need additional time to thoughtfully collaborate on a rulemaking of this complexity, obtain the necessary public input (which may include public hearings) and develop recommendations that will ensure alignment and avoid conflicting standards and final rules.

Thirdly, a delay permits thorough consideration of the data and comments received from the public. In fact, in the most recent RFI, the Department indicates that a review of comments received in response to its March 2, 2017 request for comments is still underway, nearly three months after the close of the comment period.[5] This, in and of itself, should be sufficient reason to support the notion that a delay of the Applicability Date is necessary. We believe it is simply impracticable to ingest and analyze incoming public comments and data, conduct a review of changes in the marketplace since the finalization of the Rule, complete a coordinated review of the Rule, propose changes where appropriate, publish those proposed changes to the Rule, receive and review additional public input on those proposed changes, and then finalize, publish, and implement a revised Rule, all in less than six months.

Fourthly, a delay will allow firms the necessary time to communicate with clients in an orderly manner. For example, in order to comply with the provisions of the Rule currently scheduled to become effective on January 1, 2018, Wells Fargo must prepare and mail detailed disclosures to all retirement account holders in the next thirty to sixty days. Given the likelihood that changes to the Rule will be made, this will create unnecessary confusion for our clients.

Lastly, a delay will provide firms with the necessary time to implement process and technology changes. To comply with the Rule, firms must invest in new systems and infrastructure. For example, technology changes to our data mapping systems and archiving systems are needed to comply with the Rule requirements. These changes require significant

lead time and resources to design, build and test new systems and ensure the updates are compliant with security and governance protocols. Should the Department propose changes to the current Rule, firms will be forced to spend considerable time and money implementing compliant processes that are no longer required and restart the process from the beginning. In addition, if the Rule becomes effective before firms have a reasonable time to make these updates, firms will have to artificially constrict products and services while relying on manual processes. Thus, firms need sufficient time to effectively complete this complex work to avoid the potential for client harm.

Conclusion

Continued uncertainty in the requirements of a best interest standard will only result in unnecessary confusion and potential harm to retirement investors. Therefore, the Applicability Date should be delayed at least twenty-four months to provide the additional time necessary to allow the Department to work with the SEC and create a standard that effectively and efficiently serves the best interests of all investors. Firms and investors must have a final, workable Rule and then be provided a reasonable time afterwards to carefully review, plan for and implement the necessary requirements.

We thank the Department for this opportunity to provide feedback on delaying the Applicability Date and note that we plan on submitting additional comments on the remaining issues posed in the RFI. We restate our desire to stay engaged with the Department on this important topic and stand ready to work with the Department to achieve a workable outcome for retirement investors. If you would like to further discuss any of Wells Fargo's comments, please contact Robert J. McCarthy, Director of Regulatory Policy for Wells Fargo Advisors, at (314) 242-3193 or robert.j.mccarthy@wellsfargoadvisors.com, or Kenneth L. Pardue, Managing Director, Retirement Plans for Wells Fargo Advisors, at (314) 875-2927 or kenneth.pardue@ wellsfargoadvisors.com.

Sincerely,

David Kowach
Head of Wells Fargo Advisors
Wells Fargo & Company

[1] *See* Correspondence from Joseph Ready, Executive Vice President of Wells Fargo Institutional Retirement and Trust to the Office of Regulations and Interpretations, Employee Benefits Securities Administration ("EBSA"), Dep't of Labor, *regarding* RIN 1210-AB32, Definition of Fiduciary Proposed Rule (Feb. 3, 2011); Correspondence from David M. Carroll, Senior Executive Vice President, Wealth, Brokerage & Retirement, Wells Fargo, to John J. Canary, Director, Office of Regulations and Interpretations, Office of Exemption Determinations, EBSA, Dep't of Labor, *regarding* Comments on Proposed Conflict of Interest Rule and Related Proposals [RIN: 1210-AB32 and ZRIN: 1210-ZA25] (July 21, 2015), *available at:* https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00647.pdf and (Sept. 24, 2015), *available at:* https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/03063.pdf; Correspondence from David M. Carroll, Head of Wealth and Investment Management, Wells Fargo, to Office of Regulations and Interpretations, EBSA (March 16, 2017), *available at*; https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/00990.pdf; Correspondence from David M. Carroll, Head of Wealth and Investment Management, Wells Fargo, to Office of Regulations and Interpretations, EBSA (April 17, 2017), *available at*: https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/01378.pdf.

[2] *See* 82 FR 16902, 16903 (Apr. 7, 2017).

[3] *See* Alexander Acosta, Deregulators Must Follow the Law, So Regulators Will Too, Wall St. J. (May 23, 2017), at A19.

[4] *See* Chairman Jay Clayton, "Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers," Public Statement (June 1, 2017), *available at*: https://www.sec.gov/news/public-statement/statement-chairman-clayton-2017-05-31 (seeking feedback "on standards of conduct for investment advisers and broker-dealers.").

[5] *See* 82 Fed. Reg. 31278, 31279 (July 6, 2017).