

September 5, 2017

The Honorable Alexander Acosta
Secretary of Labor
Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Acosta:

I am writing in regard to the Department of Labor's ("the Department") recent proposal to further delay partial applicability of the fiduciary rule from January 1, 2018 to July 1, 2019 (RIN 1210-AB82).¹ Such a delay would endanger billions of dollars in Americans' hard-earned retirement savings,² and, if you enact the delay, it would ignore the preparation and positive outlook on the rule that many financial services and insurance companies have repeatedly expressed.

The fiduciary rule's requirement that retirement investment advisers adhere to "impartial conduct standards," and thus give advice that it is in the best interest of their clients, went into effect on June 9, 2017, following your initial two-month delay.³ The rule's "phased implementation period" is scheduled to end on January 1, 2018, when the Department will begin enforcing all parts of the rule, including the Best Interest Contract ("BIC") Exemption.

Following President Trump's directive to "examine the Fiduciary Duty Rule" in February,⁴ I wrote to then-Acting Secretary of Labor Edward Hugler to share with him letters I had received from more than 20 financial services and insurance companies regarding many companies' support for the fiduciary rule's goals and agreement that more should be done to ensure that retirement investment advisers prioritize the interests of their clients. Many of those companies informed me that they were prepared to comply with the rule and that they had already made significant investments to do so. Many companies also said they had even introduced new innovations, lowered fees, and made other improvements for their customers in anticipation of

¹ "Extension of Transition Period and Delay of Applicability Dates." 29 CFR Part 2550. Employee Benefits Security Administration. *Department of Labor* (Aug. 31, 2017). Online at: <https://www.gpo.gov/fdsys/pkg/FR-2017-08-31/pdf/2017-18520.pdf>.

² Shierholz, H. "Another fiduciary rule delay would cost retirement savers \$10.9 billion over 30 years." *Economic Policy Institute* (Aug. 10, 2017). Online at: <http://www.epi.org/publication/another-fiduciary-rule-delay-would-cost-retirement-savers-10-9-billion-over-30-years/>.

³ Canary, J. J. "Field Assistance Bulletin No. 2017-02." Employee Benefits Security Administration. *U.S. Department of Labor* (May 22, 2017). Online at: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2017-02>.

⁴ Presidential Memorandum on Fiduciary Duty Rule. *The White House* (Feb. 3, 2017). <https://www.whitehouse.gov/the-press-office/2017/02/03/presidential-memorandum-fiduciary-duty-rule>.

the adoption of the rule.⁵ And tens of thousands of Americans agreed that, after years of study and public debate of the rule,⁶ it was time for implementation. After the rule's first delay was proposed this year, the Department received 178,000 comments in support of the rule, and only 15,000 opposing it.⁷

In May, you wrote in *The Wall Street Journal* that you “found no principled legal basis to change the June 9 date.” You also wrote that “[t]rust in Americans’ ability to decide what is best for them and their families leads us to the conclusion that we should seek public comment on how to revise this rule.”⁸ On August 9, however, the Department indicated in a court filing that it would further delay full implementation of the rule to July 1, 2019—more than two years after its original applicability date.⁹ And just last week, the Department published a proposal to enact this delay in the *Federal Register*.¹⁰

Financial service and insurance industry lobbyists have pushed hard for these delays. They loudly opposed the rule from day one, arguing—with little evidence—that it would be extremely disruptive to retirement investment advisers’ businesses and their ability to serve their clients.¹¹ As they agitated for delays, these lobbyists claimed that the rule would create “major—and in some cases insurmountable—obstacles” for advisers and that the rule “has already resulted in dislocations and disruptions of retirement services.”¹²

Now that the rule is partially in effect, my staff reviewed the fiscal year 2017 second-quarter earnings calls (all of which took place after the impartial conduct standards went into effect on June 9, 2017) for several dozen financial service companies. As you know, publicly traded companies are required by law to accurately share all information pertaining to material matters affecting their business models or stock valuations.¹³ Of course, the same requirements do not

⁵ Warren, E. [Letter to Acting Secretary of Labor Edward Hugler]. *United States Senate* (Feb. 7, 2017). Online at: https://www.warren.senate.gov/files/documents/2017-2-7_Warren_Ltr_to_DOL.pdf.

⁶ Schoeff, M. “Historical timeline of fiduciary duty for financial advice.” *Investment News* (Apr. 5, 2016). Online at: <http://www.investmentnews.com/article/20160405/FREE/160409960/historical-timeline-of-fiduciary-duty-for-financial-advice>.

⁷ Leonhardt, M. “3 Things to Know About the Latest Fiduciary Rule Delay.” *Money* (Apr. 5, 2017). Online at: <http://time.com/money/4726817/3-things-to-know-about-the-latest-fiduciary-rule-delay/>.

⁸ Acosta, A. “Deregulators Must Follow the Law, So Regulators Will Too.” *The Wall Street Journal* (May 22, 2017). Online at: <https://www.wsj.com/articles/deregulators-must-follow-the-law-so-regulators-will-too-1495494029>.

⁹ Bernard, T. S. “Labor Dept. Seeks Delay of Consumer Protection Rule for Financial Advisers.” *The New York Times* (Aug. 9, 2017). Online at: <https://www.nytimes.com/2017/08/09/business/labor-department-fiduciary-rule.html>.

¹⁰ “Extension of Transition Period and Delay of Applicability Dates.” 29 CFR Part 2550. Employee Benefits Security Administration. *Department of Labor* (Aug. 31, 2017). Online at: <https://www.gpo.gov/fdsys/pkg/FR-2017-08-31/pdf/2017-18520.pdf>.

¹¹ Leonhardt, M. “Inside Wall Street’s Secret War on American Investors.” *Money* (Feb. 3, 2017). Online at: <http://time.com/money/4640730/wall-street-fights-fiduciary/>.

¹² “NAIFA Submits Comments on DOL’s Fiduciary Rule.” *National Association of Insurance and Financial Advisors* (accessed Aug. 18, 2017) Online at: <http://www.naifa.org/news-publications/press-room/news-releases/naifa-submits-comments-on-dol-s-proposed-fiduciary>; “SIFMA Comment Letters Critical of DOL Fiduciary Rule.” *SIFMA* (Apr. 17, 2017). Online at: <https://www.sifma.org/resources/news/sifma-comment-letters-critical-of-dol-fiduciary-rule/>.

¹³ See S.E.C. Rule 10b-5, at 17 C.F.R. 240.10b-5. Online at: <https://www.gpo.gov/fdsys/pkg/CFR-2011-title17-vol3/pdf/CFR-2011-title17-vol3-sec240-10b-5.pdf>.

apply to political advocacy or lobbying on this or any other topic. Given that discussions in these earnings calls that relate to the fiduciary rule are presumably truthful and complete accounts of companies' efforts to comply with the rule and the rule's effects on their business models and client services, I urge you take note of these comments on the fiduciary rule by financial executives to their investors as you contemplate further delays to the rule.

The comments made to investors during earnings calls reviewed by my staff make clear four things: (1) companies are well-prepared for the rule's implementation; (2) compliance with the rule is not overly burdensome; (3) the rule is consistent with their goals of putting their clients' interests first; and (4) the Administration's previous delays have caused uncertainty for the companies, and further delays would only exacerbate this uncertainty.

These statements strike a remarkable contrast with what lobbyists of the financial services and insurance industries have said in opposition to the rule in the past.¹⁴ They also directly contradict the findings of a new study, paid for by the Securities Industry and Financial Markets Association (SIFMA), one of the largest trade associations for the financial industry.¹⁵ I hope you will keep this contrast, and my letter, in mind as you read the forthcoming comments from companies and trade associations about whether to delay the January 1, 2018 implementation date and as you review the industry-funded studies they submit in conjunction with these comments.

Companies are "well-prepared" for the rule's implementation:

- "Regarding the Department of Labor Fiduciary Rule, Ameriprise and our advisors were well prepared for the June 9th implementation...." – Ameriprise Financial, Inc. Chairman and CEO James Michael Cracchiolo; July 26, 2017¹⁶
- "As you know, the effective date was June 9, and our implementation work is going according to plan... The early feedback we hear from advisers is, they feel well prepared for the transition and are seeing opportunities to win business based on our approach." – LPL Financial Holdings CEO, President, and Director Dan Arnold, July 27, 2017¹⁷

¹⁴ Bentsen, K. E. "DOL must delay the fiduciary rule of cause 'massive disruption'." *CNBC* (March 15, 2017). Online at: <https://www.cnn.com/2017/03/15/fiduciary-rule-must-be-delayed-says-sifma-chief-commentary.html>; Madonna, A. "Insurers uncertain about impact of Trump directive on fiduciary rule." *Reuters* (Feb. 16, 2017). Online at: <http://www.reuters.com/article/bc-finreg-insurers-fiduciary-rule-idUSKBN15V1TY>.

¹⁵ "The DOL Fiduciary Rule: A study on how financial institutions have responded and the resulting impacts on retirement investors." *Deloitte* (Aug. 9, 2017). Online at: <https://www.sifma.org/wp-content/uploads/2017/08/Deloitte-White-Paper-on-the-DOL-Fiduciary-Rule-August-2017.pdf>.

¹⁶ "Edited Transcript of AMP earnings conference call or presentation." Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 11, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-amp-earnings-conference-205531137.html>.

¹⁷ "Edited Transcript of LPLA earnings conference call or presentation." Thomson StreetEvents. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-lpla-earnings-conference-084634782.html>.

- “Our priority continues to be acting in the interest of our clients. We were well prepared for the partial implementation of the DOL rule on June 9.” – Primerica CEO and Director Glenn Williams, August 9, 2017¹⁸
- “On DOL, we saw no adverse impacts to the business of any note, following the initial June 9 change and remain on-track for a full implementation on January 1, if the Fiduciary Rule goes into effect in its current form.” –Blucora CEO John Clendening, July 27, 2017¹⁹
- “With respect to the DOL, the June 9 implementation date was very positive in the respect that people had to come forward—our distribution partners came forward with their plans. And in this respect, we’re very delighted. 90% of our distribution partners offered at least one, if not more, options for commissions and that’s very helpful.” – Lincoln Financial Corp. President, CEO, and Director Dennis Glass, August 3, 2017²⁰

Compliance with the rule is not overly burdensome:

- “The short and sweet answer to, was there any disruption, the answer seems to be no.” – Athene Holding President Bill Wheeler, August 10, 2017²¹
- “Work to comply involves modifications—not significant overhauls.” – Charles Schwab “Summer Business Update” slideshow, July 21, 2017²²
- “[T]he distributors are moving to a financial advisory model across the board and that was a direction of travel anyways. I think the DOL fiduciary rule really just sped that up.” – Invesco CEO, President, and Director Martin L. Flanagan, July 27, 2017²³
- “[W]hether DOL gets delayed or revised or we come up with some kind of industry standard that applies to all accounts and so forth, I mean this train has left the station.... I

¹⁸ “Edited Transcript of PRI earnings conference call or presentation.” Thomson Reuters. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-pri-earnings-conference-175133867.html>.

¹⁹ “Edited Transcript of BCOR earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 11, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-bcor-earnings-conference-173135038.html>.

²⁰ “Q2 2017 Earnings Call” [corrected transcript]. *Lincoln National Corp.* (Aug. 3, 2017). Online at: <https://www.lfg.com/wcs-static/pdf/2Q2017%20LNC%20Transcript.pdf>.

²¹ “Edited Transcript of ATH.N earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 14, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-ath-n-earnings-202338128.html>.

²² “The Charles Schwab Corporation (SCHW) Summer Business Update – Slideshow.” *Seeking Alpha* (July 24, 2017), slide 14. Online at: <https://seekingalpha.com/article/4089899-charles-schwab-corporation-schw-summer-business-update-slideshow?part=single>.

²³ “Edited Transcript of IVZ earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-ivz-earnings-conference-124850825.html>.

don't think there's any reversal on that." – Legg Mason Head of Business Development and Executive VP Thomas Karl Hoops, June 15, 2017²⁴

- "[W]e do not believe the new rule will have a material impact on AFG's results of operations. We believe that our business model, which we adopted many years ago, positions us well in a changing regulatory environment." – American Financial Group Co-CEO, Co-President, and Director Craig Lindner, August 2, 2017²⁵
- "In terms of the fiduciary rule, as we indicated, we implemented the first installation.... And we think that that actually is going to be positive overall in terms of the impact to the business divisions.... [I]f you look at the initial rules as they were guided, assuming they stay intact, what we've indicated is, on a net basis we don't expect a large impact to our business overall." – UBS Group CEO and President of the Executive Board Sergio Ermotti, July 28, 2017²⁶

The rule is consistent with their companies' goals of putting their clients' interests first:

- "Ameriprise was rated a top performer in customer ratings based on being unbiased and putting clients' interest first, which is what the DOL fiduciary rule is all about." – Ameriprise Financial, Inc. Chairman and CEO James Michael Cracchiolo, July 26, 2017²⁷
- "[A]s we've said all along, we think that the idea of, of course, doing what's in the best interest of the customer is what's kept us in business for 100 years and it's a good idea." – Lincoln Financial Corp. President, CEO, and Director Dennis Glass, August 3, 2017²⁸
- "Our strategy is built around operating with our clients' best interests in mind, which positions us well in a fiduciary landscape." – Charles Schwab "Summer Business Update" slideshow, July 21, 2017²⁹

²⁴ "Legg Mason Inc Sell Side Analyst and Investor Call" [edited transcript]. *Thomson Reuters StreetEvents* (June 15, 2017). Online at:

<http://ir.leggmason.com/Cache/389110171.PDF?O=PDF&T=&Y=&D=&FID=389110171&iid=102761>.

²⁵ "Edited Transcript of AFG earnings conference call or presentation." Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-afg-earnings-conference-224734041.html>.

²⁶ "Edited Transcript of UBSG.VX earnings conference call or presentation." Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 13, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-ubsg-vx-earnings-160115471.html>.

²⁷ "Edited Transcript of AMP earnings conference call or presentation." Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 11, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-amp-earnings-conference-205531137.html>.

²⁸ "Q2 2017 Earnings Call" [corrected transcript]. *Lincoln National Corp.* (Aug. 3, 2017). Online at: <https://www.lfg.com/wcs-static/pdf/2Q2017%20LNC%20Transcript.pdf>.

²⁹ "The Charles Schwab Corporation (SCHW) Summer Business Update – Slideshow." *Seeking Alpha* (July 24, 2017), slide 14. Online at: <https://seekingalpha.com/article/4089899-charles-schwab-corporation-schw-summer-business-update-slideshow?part=single>.

- “We do believe the fiduciary principles are important...especially for folks of modest means. Our model resonates with policymakers on both sides. It’s pretty much on hold. And in my opinion, retirement crisis continues to get worse. So we kind of feel like the idea of fiduciary is in the mainstream right now. We think we’re going to get the benefit of that.” – Financial Engines CEO, President, and Director Lawrence Michael Raffone, August 8, 2017³⁰

Previous delays have caused great uncertainty and further delays would only exacerbate this uncertainty:

- “Uncertainties surrounding the impact and implementation of the Department of Labor fiduciary Rule as well as potential delays and possible modifications to the rule have continued to significantly affect distributors, negatively impacting industry sales in particular annuity products.” – American International Group (AIG) EVP Kevin Hogan, August 3, 2017³¹
- “[A]s that review is still pending and still underway, I think continued ambiguity regarding final outcome of the rule may still continue to have an impact on sales.” – Prudential Financial EVP and COO of U.S. Businesses Stephen Pelletier, August 3, 2017³²
- “[W]e continue to suspect that uncertainty regarding the fast-changing Department of Labor fiduciary rule may be distracting from marketing activities and playing a role in lower sales.” – American Equity Investment Life Insurance Company President Ronald Grensteiner, August 3, 2017³³
- “I do believe [growth] has been negatively impacted by some of the uncertainty around the DOL rule, which unfortunately, to a certain extent, continues... The uncertainty around DOL rule has impacted industry-wide annuity sales, variable annuities and fixed index annuities...” – Primerica CEO and Director Glenn Williams, August 9, 2017³⁴

³⁰ “Edited Transcript of FNGN earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-fngn-earnings-conference-140754361.html>.

³¹ “Edited Transcript of AIG earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 22, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-aig-earnings-conference-182745638.html>.

³² “Edited Transcript of PRU earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-pru-earnings-conference-210949383.html>.

³³ “Edited Transcript of AEL earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-ael-earnings-conference-232421809.html>.


³⁴ “Edited Transcript of PRI earnings conference call or presentation.” Thomson Reuters StreetEvents. *Yahoo! Finance* (Aug. 12, 2017). Online at: <https://finance.yahoo.com/news/edited-transcript-pri-earnings-conference-175133867.html>.

Finally, in addition to the positive steps that these CEOs have outlined in their calls with investors, a new Morningstar report has outlined a number of changes companies have made to better serve their clients under this new standard. The report finds that firms have positively responded to the rule by offering cheaper, more innovative products to their clients. Some companies have introduced new share classes, such as T shares and clean shares, which will save investors on returns and commissions as well as “benefit investors by reducing conflicts of interest and adding transparency.”³⁵ To help comply with the rule, firms are also beginning to offer innovative new products such as LPL Financial’s digital advice platform, which offers low-cost service to small investors while maintaining the involvement of a human adviser.³⁶

Contrary to the alarmist claims of their lobbyists and the conclusions of opaque industry-funded studies, the earnings calls reviewed by my staff suggest that financial firms are fully prepared to comply with the rule, have introduced products and other changes that will improve the services they offer clients, and have a positive outlook on the rule’s impact to their businesses and to their clients. I strongly urge you to carefully consider these and other companies’ communications to their investors, as well as the changes to their inventories in response to the rule, in evaluating the rule’s impact on the market for retirement investment products and note many of these companies’ eager compliance with the rule in its current form. As millions of Americans diligently save for a secure retirement, only to have their hard-earned savings squandered by conflicted advisers to the tune of \$17 billion per year, workers need you to stand in their corner and fully implement this rule as soon as possible.³⁷

Please don’t hesitate to contact my office with any questions.

Sincerely,



Elizabeth Warren
United States Senator

CC:

The Honorable Jay Clayton, Chairman Securities and Exchange Commission

³⁵ Szapiro, A. & Ellenbogen, P. “Early Evidence on the Department of Labor Conflict of Interest Rule.” *Morningstar* (Apr. 13, 2017). Online at: <http://corporate1.morningstar.com/ResearchLibrary/article/802119/early-evidence-on-the-department-of-labor-conflict-of-interest-rule/>. Clean shares are priced with a single, transparent fee and have no commissions, sales loads, or 12-(b)1 fees built in. T shares, or “transactional shares,” are priced with a low upfront sales fee and a small distribution fee, offering much lower prices than traditional A, B, and C shares. See also: Waggoner, J. “Clean shares could revolutionize the fund industry.” *InvestmentNews* (Feb. 2, 2017). Online at: <http://www.investmentnews.com/article/20170202/free/170209977/clean-shares-could-revolutionize-the-fund-industry>; “Clean Shares, T Shares Could Dominate.” *Barron’s* (May 15, 2017). Online at: <http://www.barrons.com/articles/clean-shares-t-shares-could-dominate-1494877385>.

³⁶ Zulz, E. “LPL Launching Robo-Advisor this Month.” *ThinkAdvisor* (Aug. 1, 2017). Online at: http://www.thinkadvisor.com/2017/08/01/lpl-launching-robo-advisor-this-month?page_all=1.

³⁷ “The Effects if Conflicted Investment Advice on Retirement Savings.” Council of Economic Advisers. *Executive Office of the President* (Feb. 2015). Online at: https://obamawhitehouse.archives.gov/sites/default/files/docs/cea_coi_report_final.pdf.