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Filed Electronically

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers

Dear Chairman Clayton:

Thank you for the opportunity to share our comments on the standards of conduct for investment advisers and broker-dealers. Pacific Life Insurance Company ("Pacific Life") respectfully offers the comments below to assist the Securities and Exchange Commission ("SEC or Commission") in determining how to best implement standards of conduct for investment advisers and broker-dealers in order to strengthen retirement security for American investors.

<u>Support for Reasonable and Uniform Standard of Conduct</u>

Pacific Life is committed to acting in the best interest of our customers and supports the enactment of a *reasonable* and *uniform* standard of conduct for investment advisers and broker-dealers that preserves consumer access to and choice of advice models and retirement products.

Pacific Life believes that the current Department of Labor ("DOL or Department") Fiduciary Rule ("Rule") does not achieve its stated purpose of strengthening retirement security. To the contrary, it will severely diminish retirement security for many investors by making it harder and more expensive for average Americans to obtain individualized investment advice and access guaranteed lifetime income options with their retirement assets.

For example, specific distribution partners of Pacific Life have already scaled back the retirement products they offer, limiting competition and consumer choice. Advisers associated with such partners plan to be more selective of the new investors they choose to service (i.e., those with higher amounts of assets to invest) which will limit access to retirement information and personalized advice for many. Indeed, distributors continue to identify and eliminate clients with small to modest account balances in anticipation of the added compliance costs and heightened litigation risks generated by compliance with the Rule. Thus, a significant number of existing investors could lose access to an adviser to talk to, answer questions, and who can help encourage them to save more and remain invested over time.

In addition, without coordination between other regulatory agencies (e.g., DOL, Financial Industry Regulatory Authority ("FINRA"), National Association of Insurance Commissioners ("NAIC"), and state insurance departments) in creating a uniform standard of conduct, market disruption will ultimately be born from required adherence to the inevitably different rules developed by these regulatory agencies. Pacific Life has believed from the beginning of this process that the Commission should take the lead in developing a uniform standard of conduct.

The Commission's mission statement includes the goal to protect investors, yet the DOL has created a rule that places small investors in a more precarious position than ever before. It cannot be emphasized enough that for any change to rules governing financial advisers' and broker-dealers' practices to be successful, coordination between these regulatory agencies is not an option, it is a *necessity*.

<u>Consistency, Clarity, and Coordination to Alleviate Consumer Confusion</u>

Coordination efforts should also be utilized to stem any consumer confusion that would certainly arise when multiple standards of conduct are created from various regulatory agencies and apply to a number of account types and investment products. From the consumer's perspective, how would it make sense that their investment adviser (and broker-dealer) follow differing procedures if recommending a transaction with the same underlying investment involving qualified plan or IRA assets as compared to after-tax assets? Or, at an even more granular level, why should the process be any different depending on the type of annuity product being discussed (e.g., fixed annuity contract as compared to a variable annuity contract) when the client's main goal is looking for solutions to help secure their lifetime income needs? If the end goal is to help investors save for retirement and have a secure means to live in retirement, shouldn't *all* financial professionals fall under the same standard requiring them to act in their client's best interest? We echo your support to limit consumer confusion during recent testimony before the House of Representatives' Committee on Financial Services on October 4, 2017, "You can't put one hat on when you're talking about 50 percent of your [client's] assets and another hat on when you're talking about another 50 percent… it makes no sense."

However, that is not to say that this uniform best interest standard must be labeled or identified as *fiduciary* standards to all financial professionals. If you were to ask an investor whether they would want their financial adviser to act in their best interest or, alternatively, act as a fiduciary, they will almost certainly say "best interest" even though we know this is not mutually exclusive. As an industry, we need to be more clear and concise in what roles and responsibilities investment advisers and broker-dealers have in their clients' financial planning, and it all should start with a uniform standard that consumers can comprehend and apply to all dealings they have with their adviser.

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Advances in Financial Technology

"Robo-advice" is one of several initiatives in financial technology that has been cited by both the SEC and the DOL as an *alternative* to the advice provided by financial service firms. First and foremost, to say robo-advice is an alternative would be a significant overstatement.

Put simply, robo-advice is *not* advice. It is a software that utilizes non-individualized algorithms incapable of taking a specific investor's circumstances, concerns, and needs into consideration and simply *allocates* and *manages* an investor's assets. Absent the human element that an adviser provides, this software will typically not address the ever-important issues that financial planning involves, such as general financial education for the client, someone to answer questions, calm things down during turbulent market events, and work specifically on personal goals and needs like estate and retirement planning and cash-flow management.

Additionally, at this present moment, the robo-advice marketplace seems to lack product diversity. Most solutions are based solely on model investment portfolios lacking the lifetime income options that only an annuity can provide should the client need greater certainty and the peace of mind that comes from guaranteed income. Therefore, this software is best used *in conjunction with* the adviser's expertise in the various layers of financial planning and to assist in determining the optimal "mix" of investments based on the client's individual investment risk tolerance, preference for predictable income sources, and desired target return.

Fee-Based vs. Commission-Based

There is a common misconception that a fee-based compensation model is somehow better for the consumer, in part, because it is allegedly cheaper and less likely to lead to conflicts of interest. This unfair discrimination against the commission-based compensation model is truly unfounded.

The expense to the client in terms of actual money paid on an on-going basis, and thus, "fee-drag" on their investment return, will often be more with the fee-based compensation model. For example, annuities by nature are long-term investments, and with the fee-based compensation model, the adviser charges a certain percentage (e.g., 1%) or dollar amount each year for the management of the investment. Compare this to the commission-based compensation model, where there is typically a larger percentage charged upfront (e.g., 5-6%), and you can see that the longer term the investment, the more expensive a fee-based compensation model can be for the client.

Furthermore, conflicts of interest can arise with either type of compensation model. Any situation where a financial adviser is being paid as a result of investing a client's money can lead to motivations based, at least partially, on monetary benefit. The uniform standard should not apply differently based on compensation models as does the DOL's Rule (requires stricter standards for commission-based sales than fee-based advice). Thus, the key here should be to require uniformity and transparency across *all* compensation models and if conflicts of interest cannot be avoided, then the adviser and broker-dealer must disclose, mitigate, *and* manage this conflict.

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Lastly, implementation of fee-based compensation models may pose difficulties for the broker-dealers in today's marketplace. The vast majority of annuities today are sold through a transaction, commission-based compensation model. Due in part to the increased litigation risk and complexity of disclosure requirements as a result of the Rule, more firms feel the Rule is pushing towards *fee-based* compensation arrangements. The issue this poses is many firms (e.g., broker-dealer and banks) may not have the infrastructure today to support fee-based compensation models, which is resulting in these firms now offering fewer products and, in some instances, eliminating entire categories of products such as annuities. This cannot be understated, since annuities are the *only* products available in the marketplace providing *guaranteed* lifetime income and can help ensure retirees do not outlive their income.

<u>Concerns for DOL Fiduciary Rule and Private Remedies</u>

The Department suggests in their Request for Information dated July 6^{th} 2017 ("DOL RFI") that the contract requirement in the Best Interest Contract ("BIC") Exemption and Principal Transactions Exemption was intended to act as an "added motivation" for financial firms and their advisers to adhere to the Rule so as to avoid potential litigation. Pacific Life feels that this is not only an unnecessary "added motivation" but also a severe overstep by the Department.

The contract requirement is an unnecessary "added motivation" since oversight and enforcement already exists for ERISA and non-ERISA transactions and rests with applicable regulators. For prohibited transactions involving ERISA plan assets, these are subject to civil as well as criminal penalties under ERISA. For prohibited transactions involving non-ERISA plan assets such as IRAs, the SEC, FINRA, and state insurance departments are all significantly more experienced, and significantly better positioned, than the Department to oversee *and enforce* customer protection standards. All of the aforementioned agencies, including the Department, have a common goal in protecting investors. However, the one thing that separates the Department from the aforementioned agencies is that the Department does not inherently have a means to *enforce* regulations. This is clearly why the Department incorporated the contract requirement within the Rule.

However, the U.S. Constitution restricts federal agencies such as the Department to create new grounds for individuals to bring a private right of action, which is what the contract requirement establishes. The Department has tried to justify this on the grounds that the contract, not the Rule itself, contains the right to bring a private right of action. But this logic seems to contain a significantly large oversight. If a federal agency is allowed to create a regulation that includes a contract requirement, which inherently creates a private right of action, how is this any different than the federal agency creating a regulation that, in and of itself, creates a private right of action? How can the above-referenced Constitutional restriction be enforced, if all the federal agency needs to do as a "work-around" is to create a private right of action and incorporate a "contract requirement" within the regulation?

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<u>Balancing Practicality and Oversight to Define "Investment Advice"</u>

Finally, Pacific Life cautions the Commission to not use the Rule as a template, but rather to draft a rule that does not bear the same inherent flaws in its foundation. In addition to the issues we've already addressed in this letter, one of the core components of the Department's Rule that is inadequate is the overly broad definition of "investment advice."

The Department identified certain types of communications that they deemed to not constitute investment advice, yet, still fell short in sufficiently limiting the scope. For instance, the Rule provides a narrow carve out for investment education as a "non-fiduciary communication," however investment education will still be severely limited due merely to the fact that many educators do not view themselves, nor want to become, fiduciaries. The definition of investment education also does not treat asset allocation models and interactive investment materials with references to specific investment alternatives (e.g., risk tolerance questionnaire for IRAs that will identify a specific investment) as "education" for these purposes. With such a narrow scope to investment education, investors will lose access to many resources and tools that help them make educated decisions about their investments.

<u>Conclusion</u>

Pacific Life appreciates the Commission's desire to ensure that American retirement investors are receiving advice in their best interest. For the reasons stated above, Pacific Life supports a better solution to reach this level of consumer protection.

Pacific Life joins the American Council of Life Insurers, the Investment Company Institute, and the Insured Retirement Institute in supporting a full and comprehensive review of the Rule. In order for us to achieve our shared goal for American retirement investors to save for a secure retirement, and receive advice that is in their best interest, we firmly believe it is in everyone's best interest to get the Rule and implementation done correctly to minimize market disruption and ongoing consumer confusion.

Sincerely,

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