TRANSAMERICA®

November 20, 2017

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

Attn: Mr. Brent J. Fields, Secretary

Re: Request for Information on Standards of Conduct for Investment Advisers and Broker-Dealers

Dear Mr. Fields:

The Transamerica companies ("Transamerica")[1] are pleased to provide comments on Chairman Clayton's request for Public Comments from Retail Investors and Other Interested Parties on Standards of Conduct for Investment Advisers and Broker-Dealers (the "Request"), which was on June 1, 2017, by the Securities and Exchange Commission (the "Commission").

Transamerica will focus the majority of its comments on the sale of variable annuity products, which are governed by both state and federal regulation. Annuities play a unique role in today's marketplace by helping individuals save for retirement and manage their savings to last their lifetime, especially individuals who have limited resources. An annuity enables the retirement saver to transfer longevity risk—the risk he or she will live longer than expected to an insurer. It also transfers investment risk – by guaranteeing a minimal return to the insurer.

In providing these comments, Transamerica has reviewed and incorporates by reference the letters provided by the American Council of Life Insurers ("ACLI"), Davis & Harman, the Financial Services Roundtable and the Financial Services Institute.

Transamerica supports the Commission's efforts to advance a workable framework for creating a harmonized standard of conduct for broker-dealers and investment advisers that would be applicable when providing personalized investment advice to customers, regardless of whether the advice is provided with respect to retirement or non-retirement ("retail") accounts. Transamerica further supports the Commission's efforts to coordinate with the Department of Labor (the "Department") on developing a workable investment advice standard that applies to the totality of the customer relationship. Given the Commission's role as a primary regulator of brokerage and advisory accounts, it is uniquely positioned to ensure a workable standard that serves all retail investors, while at the same time avoiding further confusion and inconsistency.

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[1] Transamerica markets life insurance, annuities, retirement plans, and supplemental health insurance, as well as mutual funds and related investment products. Transamerica products and services are designed to help Americans protect against financial risk, build financial security and create meaningful retirements. Currently, Transamerica is among the ten largest distributors in the U.S. of variable annuities. Transamerica provides services and products through life insurance agents, broker-dealers, banks, wholesalers, and direct marketing channels as well as through the workplace. Transamerica has 269,776 licensed producers in the United States. In 2016, Transamerica paid $6.9 billion in benefits to its policyholders.

In its support of the Commission's efforts to develop a harmonized standard of conduct for broker dealers and registered investment advisers, and to coordinate with the Department in so doing, Transamerica respectfully requests that the Commission consider the following as more fully explained in this letter:

- Harm to consumer and capital markets impact resulting from the DOL Rule
- Rules to manage conflicts of interest should not limit choice or disrupt business models
- Harmonization of standards is needed to avoid confusion by the investor
- A harmonized standard of care should recognize the differences between products and services, including sales activity.
- Harmonization of state insurance regulations with FINRA rules on variable annuity sales
- Need to engage FINRA and harmonize FINRA rules on arbitration with those of CFPB and administration position on the DOL Rule.

Harm to Consumer and Capital Markets Impact Resulting from the DOL Rule.
Transamerica has consistently expressed the concern that the Department's Conflict of Interest Rule (the "DOL Rule") will result in the very harm to consumers against which it is purported to protect. The DOL Rule will likely also have significant effects on retail investors and entities regulated by the SEC, as well as on the broader capital markets. By reducing the availability of and choice in advice, as well as increasing the cost of retirement services and products, the DOL Rule promises to, and has already reduced the retirement savings of Americans that are invested in the capital markets.

The detrimental impact of the DOL Rule is not theoretical. Both the industry and the public have experienced the negative impact of the Rule in real time, as documented by comment letters submitted by Transamerica and others to the Department. As an example, in its comment letter to the Department dated April 17, 2017, Transamerica noted a significant erosion in sales of variable annuity products beginning in the second half of 2015 (subsequent to the re-proposal of the Rule) which accelerated throughout 2016. Assets held within variable annuities are invested in mutual funds, equities and other securities. This dynamic occurred as advisers began to assess the risks to their business associated with operating under the DOL Rule and as Transamerica distribution partners began to announce changes to their advice models precipitated in reaction to their assessment. In 2016, Transamerica annuity sales fell by approximately four billion dollars which represented a 50% reduction from the previous year. This figure translates into approximately 35,000 contracts. Stated differently, 35,000 fewer Americans that were not counseled to consider a solution that would provide them with guaranteed income in their retirement. While we do not suggest that 100% of this erosion in sales is as a result of the promulgation of the DOL Rule, we also cannot ignore the corollary between the announcement of the DOL Rule as re-proposed in 2015 (and subsequently presented in final form in 2016) and the precipitous drop-off in sales of variable annuities. Transamerica's experience in this regard is entirely consistent with that of the industry. In addition, since the partial implementation of the DOL Rule on June 9 of this year, Transamerica received dissociation requests for eighty-four annuity contracts (orphaned by the advisor and firm). The reason provided for the action on each request was the DOL Rule. By comparison, in 2016 Transamerica received dissociation notices for three accounts, none of which listed the DOL Rule as a reason for the request. These repercussions are particularly stark when one considers that prior to the proposal in 2015, Transamerica had experienced eight consecutive years of year over year double digit growth in its variable annuity business. While the timeline of this growth pattern in variable annuity sales suggests a number of obvious conclusions, it bears pointing out that that era of growth included the extended period of the financial crisis that began in 2008; a period in time when Americans, and Baby Boomers in particular, were exposed in dramatic fashion with the risks associated with sequence of returns in relation to their proximity to retirement age.

Rules to Manage Conflicts of Interest Should not Limit Choice or Disrupt Business Models.
Transamerica agrees that conflicts of interest have the potential for consumer harm; however, it disagrees with the Department's approach of eliminating all potential conflicts of interest by driving consumers into fee-based accounts. Instead, Transamerica urges the Commission to adopt the approach contemplated by Section 913 of the Dodd-Frank Act that emphasizes disclosure rather than disruption of business models for managing conflicts of interest.

A number of significant broker dealers through whom Transamerica distributes its products have already made public their plans to cease offering commission-based products for qualified accounts as a result of the DOL Rule's proscriptive approach to dealing with compensation arrangements that it considers ripe for conflicts of interest harmful to the consumer. Further, these broker-dealers have begun to segregate customers who do not meet their minimum balance requirements for their fee-based services and have communicated to customers their plan to offer only self-service and robo-asset allocation options... unless the customer is able (and chooses to) meet the minimum balances necessary to qualify for a relationship with an advisor. Finally, Transamerica has also been advised by many distributors of their intention (or in some cases of the outcome) to reduce their number of product offerings.

Disclosure of conflicts of interest and rules to mitigate conflicts of interest prove more effective as a way to provide consumers meaningful information regarding investment choices recommended by their financial advisor rather than eliminating investment choices altogether based solely on the means of compensation to the financial advisor.

Harmonization of Standards is Needed to Avoid Confusion by the Investor
Harmonization of standards is essential to avoid confusion by the investor. The 2008 Rand Study conducted pursuant to the Dodd Frank Act concluded that investors were confused by the regulatory status of their financial advisor. The confusion is exacerbated by the DOL Rule. Consumers looking to purchase a variable annuity from their financial advisor that will provide a steady stream of income may receive differing answers depending on whether the annuity is to be held in an IRA or in a retail brokerage account. As noted above, as a result of the DOL Rule, many broker dealers are no longer selling variable annuities in an IRA, but continue to sell variable annuities to retail investors. Variable annuity products are regulated as securities by the SEC and insurance products by the States. Variable annuity products held within retirement plans and IRAs are also regulated by the Department under ERISA. Financial professionals selling variable annuities are registered as insurance agents under state insurance law, as well broker-dealers under the securities laws. The ACLI comment letter fully details the extensive network of laws and regulations governing insurance product sales activities. The need to establish separate compliance programs and standards depending on the distribution channel to the same customer adds to the confusion and cost to the consumer. Regulation of product sales through shared distribution channels should be harmonized.

A Harmonized Standard of Care Should Recognize the Differences between Products and Services, including Sales Activity.

Transamerica supports a best interest standard of care for all financial professionals providing personalized investment advice to customers across distribution lines. However, a best interest standard of care should also recognize differences in products and services.

Regulatory standards should differentiate sales activities from advisory activities. The DOL Rule fails to recognize the difference in financial professionals' roles and provides an overly broad approach resulting in subjecting both sales and advisory activities to a fiduciary role. As Transamerica and others have commented to the Department, so doing negatively impacts the pricing and availability of services, which in turn harms consumers.

Securities regulation, on the other hand, does recognize the differences. The Investment Advisers Act appropriately regulates the conduct of registered investment advisers as fiduciaries when dealing with retail customers and affords the commensurate strong protections for those customers. Broker-dealers play a different role and Transamerica supports subjecting them to a best interest standard, but not a fiduciary standard. Transamerica urges the Commission in its consideration of a best interest standard for broker-dealers, to take a principles based regulatory approach provided under Section 913 of the Dodd Frank Act. Section 913 favors a disclosure approach to protecting consumers about conflicts of interest, and does not favor particular business models or fee structures. This approach would permit broker-dealers to continue to provide individual investment advice in connection with a sale, receive commissions and provide services under other arrangements appropriate to the customer's best interest.

Individual states have begun to establish their own fiduciary standards, which will intensify the complexity and confusion for retail customers. Therefore, any standard of care should preempt state laws to ensure a uniform standard of care, and minimize the possibility of customer confusion over applicable standards.

Harmonization of State Insurance Regulations with FINRA Rules on Variable Annuity Sales

As noted above, variable annuities differ from other securities products both in the manner of regulation, in their guarantees and their long-tail nature. Therefore, state and FINRA regulation of the sale of these products is warranted across distribution lines.

Federal-state regulation on sales of variable annuities serves as a model for effective harmonization.. FINRA Variable Annuity and Supervision Rule 2330 strictly governs broker dealer's sale of variable annuity contracts. Rule 2330 is more restrictive and proscriptive than FINRA's general suitability and supervision rules for other securities by requiring registered principals to review each variable annuity purchase and approve every purchase or exchanged of a deferred variable annuity. In a directly parallel regulatory action, the National Association of Insurance Commissioners ("NAIC") incorporated standards from FINRA suitability and supervisions rules in the NAIC Suitability in Annuity Transactions Model Regulation. As a result the NAIC Model Regulation ensures levels of protection for fixed annuity customers equal to those found in FINRA rules for variable annuity customers. The NAIC Model Regulation, therefore, provides a very effective means to impellent a uniform state-Federal best interest standard that may be effectuated through FINRA's suitability and supervision rules.

Need to Engage FINRA and Harmonize FINRA Rules on Arbitration with those of CFPB and Administration position on the DOL Rule.

A significant problematic aspect of the DOL Rule Best Interest Contract Exemption is its creation of a private right of action for enforcement of the DOL Rule. In lawsuits challenging the DOL Rule, the Department of Justice has said that it will not defend the DOL Rule's class-action provision. However, as long as FINRA continues to prohibit mandatory arbitration, the threat of class action remains. It is time for FINRA to reform its prohibition on mandatory arbitration in harmonization with the recent action by congress to overturn the CFPB mandatory arbitration rule and with the Department of Justice decision not to defend the DOL Rule's call action provision.

In its April 17, 2017 comment letter on the DOL Rule, Transamerica argued that reliance on state courts to enforce federal rules is misconceived and will likely result in widely disparate interpretations of the rules across the country. In addition, by relying on litigation as the manner of enforcing federal rules, the cost of advice is further increased. Plaintiff attorneys will seek consumers whose investments have lost value to serve as plaintiffs in a class action lawsuit on a contingency fee arrangement against Transamerica and the financial professionals selling the Transamerica products in the hopes of a significant award. This award would be owed to plaintiff's attorney even if the suit is settled for reasons unrelated to any breach of federal rules' requirements, such as the desire to avoid potentially millions of dollars in discovery and unwarranted unfavorable publicity.

The likely exposure to increased litigation and its inherent costs will suppress innovation and increase pricing for investment advice from manufacturers to advisers and consumers. The costs resulting from the increase threat of litigation and liability insurance will be passed onto customers through higher prices. Transamerica factors the risk of litigation into decisions about our products. Morningstar recently estimated the likely annual cost of litigation to retirement services conservatively at $70 to $150 million. According to the National Chamber of Commerce, it is expected that Errors and Omissions (E&O) insurance premiums could rise to as high as $10,000 per advisor per year. These costs will necessitate evaluating client accounts and leaving advisors with no choice but to eliminate clients with small accounts. There is as yet no consensus as to what should be considered a viable minimal account value but regardless of the balance, litigation, or the increased threat of litigation, will cause those that may need retirement advice most will be left with nowhere to turn.

Transamerica greatly appreciates your attention to our views. If any questions develop, please let us know.

Sincerely,

Dave Paulsen
Executive Vice President, Chief Distribution Officer
Transamerica