



VIA ELECTRONIC MAIL to: e-ORI@dol.gov

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Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Participant Fee Disclosure Project  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW.  
Washington, DC 20210



Subject: Final Regulation: Investment Advice – Participants and Beneficiaries

Ladies and Gentlemen:

The National Association of Personal Financial Advisors (“NAPFA”)<sup>1</sup> appreciates the opportunity to again submit comments on the Department of Labor’s Regulation regarding enhancements to 401(k) Plan Disclosures. As the leading national organization of fiduciary, fee-only personal financial advisors, NAPFA’s members often provide substantial assistance to both plan sponsors and to plan participants in the selection of investment plan options for participant-directed retirement plans.

In this correspondence, we offer the following observations with respect to the Jan. 21, 2009 Final Rule:

- The interpretation of the statute with respect to the issue of level compensation by “fiduciary advisers” could be undertaken differently and in line with ERISA’s historical strict application of the fiduciary duty of loyalty;
- Fiduciary law in general requires disclosure of all material facts; NAPFA offers suggestions on methods to enhance the disclosure regime suggested by the DOL in the Final Rule;
- NAPFA observes that fiduciary status is imposed upon advisors, including the duty to act in the client’s best interest at all times, in recognition that disclosure of material information, while helpful, is insufficient as a means of advancing public policy in favor of capital formation and the receipt by individual investors of objective advice in order that they may adequately plan for their own financial futures. NAPFA urges the Department to consider the need of plan participants for the protections provided from the receipt of truly objective advice.

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<sup>1</sup> NAPFA has more than 2,000 members across the United States. All NAPFA-Registered Financial Advisors must submit a comprehensive financial plan and undergo a thorough review of their qualifications prior to admission. NAPFA-Registered Financial Advisors all sign a Fiduciary Oath which states that the advisor will only work in good faith and with the best interests of the consumer at heart. NAPFA-Registered Financial Advisors are strictly Fee-Only, which means they do not accept commissions or any additional fees from outside sources for the recommendations they make to their clients.

**Fee-Leveling and Affiliate Compensation.** The Pension Protection Act of 2006, in the fee-leveling requirements section, is at best poorly drafted, as to the term “compensation.” NAPFA believes, given the strict adherence to the fiduciary duty of loyalty which ERISA has always commanded, that Congress intended that *compensation of affiliates must be considered in connection with the requirement that the fiduciary adviser’s compensation be level*, not just disclosed.

NAPFA does not believe, as stated in the January 21, 2009 release, that it is altogether “clear from section 408(g)(2)(A)(i) that only the fees or other compensation of the fiduciary adviser may not vary,” and hence excluding the compensation of affiliates, as concluded previously by the Department. While reasonable persons can disagree over the interpretation of language utilized in the Pension Protection Act, NAPFA notes the following:

First, the Department has not recited any legislative history in support of this interpretation. Reliance only upon the Department’s own prior rule-making efforts is insufficient authority, especially when the provisions called upon for interpretation were so recently enacted by Congress.

Second, the Department stated: “Inasmuch as a person, pursuant to section 408(g)(11)(A), can be a fiduciary adviser only if that person is a fiduciary of the plan *by virtue of providing investment advice*, an affiliate of a registered investment adviser, a bank or similar financial institution, an insurance company, or a registered broker dealer will be subject to the varying fee limitation only if that affiliate is providing investment advice to plan participants and beneficiaries.” [*Emphasis added.*] NAPFA believes another interpretation of 408(g)(11)(A) is more appropriate. Specifically, NAPFA notes this language in 408(g)(11)(A): “The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice ... by the person to the participant ... and who is – [an investment adviser, bank, insurance company, broker-dealer, or employee of one of the foregoing] [*or*] an affiliate [of an investment adviser, bank, insurance company, or broker-dealer].” Since “affiliates” – *unless they themselves possessed licensure* as an investment adviser, bank, insurance company, or broker-dealer, *would not be able under federal and state securities laws and state insurance laws to provide advice with respect to investments or insurance products*, there would be no reason to include the term “affiliate” within the definition of “fiduciary adviser” found in 408(g)(11)(A). If affiliates were so licensed, they would be an investment adviser, bank, insurance company, broker-dealer, or employee of one of the foregoing. Hence, it appears to NAPFA that Congress intended that the term “fiduciary adviser” *include affiliates* of investment advisers, banks, insurance companies, or broker-dealer firms, *unless expressly excepted by specific statutory language*. Stated differently, NAPFA believes that the more reasonable interpretation of the term “fiduciary advisor” is that the term refers not only to the individual providing the advice, but also to the firm which employs that individual, and also to the affiliates of that firm, whether under common control or otherwise. While the drafting of 408(g)(11)(A) results in this ambiguity, in the absence of future clarification by Congress NAPFA urges the Department to favor an interpretation which follows ERISA’s historical strict adherence to the fiduciary duty of loyalty.

Third, NAPFA respectfully disagrees with the Department’s statement in its January 21, 2009 release: “The Department further explained that, consistent with earlier guidance in this area, if the fees and compensation received by an affiliate of a fiduciary that provides investment advice do not vary or are offset against those received by the fiduciary for the provision of investment advice, no prohibited transaction would result solely by reason of providing investment advice and *thus there would be no need for a prohibited transaction exemption ...*” [*Emphasis added.*] NAPFA notes, however, that the prohibited transaction provisions of ERISA are quite broad. Additionally, NAPFA notes that the promotion of the mutual fund or other product of an affiliate of the investment adviser, bank, insurance company, or broker-dealer results not just in compensation in the form of management fees. Other tangible benefits result to the

affiliate. For example, the higher the assets under management of a fund company, the greater the increase in value for the owners of that fund company. This is a tangible benefit to the financial services conglomerate. Also, it should be noted that often employees of investment advisers, broker-dealers, insurance companies, and banks, which employees are called upon to provide advice to plan participants, are frequently granted ownership rights or warrants in those very same financial services conglomerates. While the Department may have previously dismissed as incidental the effect of any one employee's recommendations to a plan participant to invest in the mutual fund or other investment or insurance product of an affiliate company, it should be recognized that the aggregate effect of many employees recommending investment in the conglomerate's products produces substantial added value to the conglomerate's stock, and hence to the employee. As a result, it is common (as observed in enforcement actions cited in NAPFA's earlier comment letter) for managers of employees, and even their peers, to exert subtle pressure on each employee to recommend proprietary products over non-proprietary ones.

**Suggested Enhancements for Disclosures.** NAPFA has long been concerned that current disclosures provided by pooled investment vehicles, such as mutual funds, are potentially misleading to consumers. NAPFA suggests the following enhancements to the disclosures set forth in the Department's January 21, 2009 Final Rule, as an aid to plan participants:

1. **Disclosure of Conflict of Interest.** The Department provides for the following disclosure: "The role of any party that has a material affiliation or material contractual relationship with the fiduciary adviser in the development of the investment advice program, and in the selection of investment options available under the plan." Should the Department proceed to permit advice by fiduciary advisers to plan participants which permits fiduciary advisers to recommend the investment products of the fiduciary adviser's affiliate, NAPFA urges the Department to provide for a more detailed disclosure of the conflict of interest arising from such an arrangement. Consumers understand the term "conflict of interest," and its use should not be circumscribed through casual disclosures. NAPFA recommends the following enhancement to the Final Rule's disclosure language:

*The following fund choices provided under this plan are provided by [NAME OF AFFILIATE], which is affiliated with [NAME OF FIDUCIARY ADVISER FIRM]. If [NAME OF FIDUCIARY ADVISER FIRM] or its employees recommend investments in these affiliated funds, additional compensation will result to [NAME OF FIDUCIARY ADVISER FIRM] and/or its employees in the form of fund management fees paid to [NAME OF AFFILIATE] and/or an increase in value of the stock of [NAME OF AFFILIATE'S PARENT COMPANY]. Accordingly, [NAME OF AFFILIATE FIRM] and its employees possess a conflict of interest in recommending these affiliated funds to you, the advice you receive may not be unbiased, or completely objective. Accordingly, you should seek to fully understand all of the investment choices made available to you, and compare their respective costs, returns, and features, or seek advice from an independent advisor before making your choices.*

2. **Acting as a "Fiduciary Adviser."** The Department provides for the following disclosure: "The adviser is acting as a fiduciary of the plan in connection with the provision of the advice." NAPFA suggests that the following be substituted when affiliate's funds are plan choices, should the Department permit fiduciary advisers to recommend the funds of affiliates. In this way, consumers who do understand the term "fiduciary" will be less likely to be misled into a belief that they are receiving objective advice.

*The adviser is acting as a "fiduciary adviser" of the plan, as that term is defined by ERISA. ERISA permits a "fiduciary adviser" to provide advice to purchase the investment and/or insurance products of firms affiliated with the "fiduciary adviser," and hence your "fiduciary*

*adviser” may possess a conflict of interest in rendering advice to you. This may result in bias in the advice provided to you.*

3. **Enhanced Fund Fee and Cost Disclosures.** NAPFA remains concerned that the fee and cost disclosures mandated by the U.S. Securities and Exchange Commission’s rules of mutual funds and other pooled investment vehicles, and of those by insurance products regulated by state insurance commissioners, do not adequately provide for full disclosure of all material fees and costs as would be expected by a fiduciary adviser. While the Department, as the footnotes in the January 21, 2009 release indicate, is fully aware of these hidden costs and their impact, the Department does not require their disclosure. In the absence of the “adoption of the complete Total Expense Ratio with normative transparency of disclosure,”<sup>2</sup> NAPFA recommends that every fiduciary adviser, whether independent or non-independent, be required to provide the following disclosure to consumers (and be required, commensurate with the fiduciary duty of care, to analyze these hidden expenses and provide consumers with an estimate of same):

*The “annual expense ratio” of a mutual fund, ETF, variable annuity sub-account, or other pooled investment vehicle, does not include in its computation the following: (1) the impact of a front-end sales load (commission) over time; (2) the impact of any surrender or redemption fees which may be imposed should you redeem (sell) the fund’s shares prior to the expiration of the period in which surrender or redemption charges are imposed; (3) transaction costs occurring within the fund resulting from portfolio turnover, such as brokerage commissions paid by the fund for buying and selling securities within the fund, principal mark-ups and mark-downs, market impact costs, the costs incurred in connection with bid-ask spreads, and opportunity costs due to delayed or cancelled trades; and (4) the opportunity costs due to cash holdings by the fund. You should seek to become aware of these costs, which may, on a cumulative basis, exceed the fees and costs reflected in the “annual expense ratio.”*

**The Inherent Limitations of Disclosure.** While NAPFA believes that investment consumers should receive the best disclosures possible of all material facts in connection with any investment product, NAPFA notes that disclosures possess inherent limitations. In recognition of these limitations, policy makers over recent centuries have imposed fiduciary duties upon certain providers of advisory services.

Recent insights from behavioral science call into substantial doubt some cherished pro-regulatory strategies, including the view that if regulators force delivery of better disclosures and transparency to investors that such can be utilized effectively.<sup>3</sup> For example, the SEC’s emphasis on disclosure, drawn from the focus of the 1933 and 1934 Securities Acts on enhanced disclosures, results from the myth that investors carefully

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<sup>2</sup> See Haslem, John A., “The Total Expense Ratio: The Reality of Distribution Fees ‘Behind the Mutual Fund Curtain’” (January 10, 2009). Available at SSRN: <http://ssrn.com/abstract=1325612>; and Haslem, John A., “Normative Transparency of Mutual Fund Disclosure and the Case of the Expense Ratio,” *Journal of Investing*, Vol. 16, No. 4, 2007. Available at SSRN: <http://ssrn.com/abstract=1137003>.

<sup>3</sup> Only recently have calls been heard that the SEC’s emphasis on disclosure is only part of the equation for the protection for consumers, and often an inadequate one. “Two things are needed for the federal securities laws, or any disclosure-based regulatory regime, to be effective. The first is straightforward: information has to be disclosed. The second is equally straightforward, but often overlooked. That is, the users of the information – for example, investors, securities analysts, brokers, and money managers – need to use the disclosed information effectively. The federal securities laws primarily focus on the former – mandating disclosure.” Paredes, Troy A., “Blinded by the Light: Information Overload and its Consequences for Securities Regulation” (2003), available at SSRN: <http://ssrn.com/abstract=413180> or DOI: 10.2139/ssrn.413180.

peruse<sup>4</sup> the details of disclosure documents that regulation delivers. However, under the scrutinizing lens of stark reality, this picture gives way to an image a vast majority of investors who are unable, due to behavioral biases<sup>5</sup> and lack of knowledge of our complicated financial markets, to undertake sound investment decision-making. As stated by Professor (now SEC Commissioner) Troy A. Parades:

The federal securities laws generally assume that investors and other capital market participants are perfectly rational, from which it follows that more disclosure is always better than less. However, investors are not perfectly rational. Herbert Simon was among the first to point out that people are boundedly rational, and numerous studies have since supported Simon's claim. Simon recognized that people have limited cognitive abilities to process information. As a result, people tend to economize on cognitive effort when making decisions by adopting heuristics that simplify complicated tasks. In Simon's terms, when faced with complicated tasks, people tend to "satisfice" rather than "optimize," and might fail to search and process certain information.<sup>6</sup>

Note as well that "instead of leading investors away from their behavioral biases, financial professionals may prey upon investors' behavioral quirks ... Having placed their trust in their brokers, investors may give them substantial leeway, opening the door to opportunistic behavior by brokers, who may steer investors toward poor or inappropriate investments.<sup>7</sup> [W]hen faced with complex, difficult and affect-laden choices (and hence a strong anticipation of regret should those choices be wrong), many investors seek to shift responsibility for the investments to others. This is an opportunity – the core of the full-service brokerage business – to use trust-based selling techniques, offering advice that customers sometimes too readily accept. Once trust is induced, the ability to sell vastly more complicated, multi-attribute investment products goes up. Complex products that have become widespread in the retail sector, like equity index annuities, can only be sold by intensive, time-consuming sales effort. As a result the sales fees (and embedded incentives) are very large, creating the temptation to oversell. In the mutual fund area, the broker channel – once again, driven by generous incentives - sells funds aggressively. Recent empirical research suggests that buyers purchase funds in this channel at much higher cost but performance on average is no better, and often worse, than readily available no-load funds."<sup>8</sup> Moreover, "not only can marketers who are familiar with behavioral research manipulate consumers by taking advantage of weaknesses in human cognition, but ... competitive pressures almost guarantee that they will do so."<sup>9</sup>

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<sup>4</sup> For years it has been known that that investors do not read disclosure documents. See, generally, Homer Kripke, *The SEC and Corporate Disclosure: Regulation In Search Of A Purpose* (1979); Homer Kripke, *The Myth of the Informed Layman*, 28 *Bus.Law.* 631 (1973). See also Baruch Lev & Meiring de Villiers, *Stock Price Crashes and 10b-5 Damages: A Legal, Economic, and Policy Analysis*, 47 *Stan. L. Rev.* 7, 19 (1994) ("[M]ost investors do not read, let alone thoroughly analyze, financial statements, prospectuses, or other corporate disclosures ...."); Kenneth B. Firtel, *Note*, "Plain English: A Reappraisal of the Intended Audience of Disclosure Under the Securities Act of 1933", 72 *S. Cal. L. Rev.* 851, 870 (1999) ("[T]he average investor does not read the prospectus ....").

<sup>5</sup> For an overview of various individual investor bias such as bounded irrationality, rational ignorance, overoptimism, overconfidence, the false consensus effect, insensitivity to the source of information, the fact that oral communications trump written communications, and other heuristics and bias, see Robert Prentice, "Whither Securities Regulation? Some Behavioral Observations Regarding Proposals for its Future," 51 *Duke L. J.* 1397 (2002).

<sup>6</sup> Parades, *supra* n. 2, at p.3.

<sup>7</sup> Stephen J. Choi and A.C. Pritchard, "Behavioral Economics and the SEC" (2003), at p.18.

<sup>8</sup> Donald C. Langevoort, "The SEC, Retail Investors, and the Institutionalization of the Securities Markets" (Jan. 2009), prior version available at SSRN: <http://ssrn.com/abstract=1262322>.

<sup>9</sup> Robert Prentice, "Contract-Based Defenses In Securities Fraud Litigation: A Behavioral Analysis," 2003 *U.Ill.L.Rev.* 337, 343-4 (2003), citing Jon D. Hanson & Douglas A. Kysar, "Taking Behavioralism Seriously: The Problem of Market Manipulation," 74 *N.Y.U.L.Rev.* 630 (1999) and citing Jon D. Hanson & Douglas A. Kysar, "Taking Behavioralism Seriously: Some Evidence of Market Manipulation," 112 *Harv.L.Rev.* 1420 (1999).

Moreover, financial literacy efforts, while important, are known to usually be ineffective. As recently stated by Professor Lauren E. Willis, “The gulf between the literacy levels of most Americans and that required to assess the plethora of credit, insurance, and investment products sold today—and new products as they are invented tomorrow—cannot realistically be bridged. Educators would need to impart a sophisticated understanding of finance because rules of thumb are not useful for decisions about complex products in a volatile market. Further, high financial literacy can be necessary for good financial decision-making, but is not sufficient; heuristics, biases, and emotional coping mechanisms that interfere with welfare-enhancing personal finance behaviors are unlikely to be eradicated through education, particularly in a dynamic market. To the contrary, the advantage in resources with which to reach consumers that financial services firms enjoy puts firms in a better position to capitalize on decision-making biases than educators who seek to train consumers out of them.”<sup>10</sup>

Due to the knowledge gap between financial advisors and consumers, the advisor has the ability to abuse trust and power. As in medicine or law, it can take many years to acquire the requisite degree of knowledge, skill, and experience to be a competent and effective personal financial advisor. Yet it is this very expertise renders clients of personal financial advisors “vulnerable to abuse of trust and lack of care.”<sup>11</sup> Moreover, the advisory services undertaken by investment advisers are often subject to only general prescriptions, as investment advisors must be free to react to a changing market environment.<sup>12</sup> If the fiduciary does not utilize his or her greater knowledge to promote the client’s best interests, the fiduciary could usurp the delegated power, authority, or trust in advice for the fiduciary’s own benefit.

NAPFA believes it is unwise to seek exceptions to the application of fiduciary standards of conduct, or relief from the application of the fiduciary duty of loyalty. As stated so long ago by Justice Benjamin Cardozo in *Meinhard v. Salmon*:

Joint adventurers, like copartners, owe to one another, while the enterprise continues, the duty of finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm’s length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the “disintegrating erosion of particular exceptions” (*Wendt v. Fisher*, 243 N.Y. 439, 444). Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.<sup>13</sup>

Similar to Justice Cardozo’s views, ERISA’s provisions long ago adopted a strict view of fiduciary duties, which the Pension Protection Act of 2006 sought to clarify by prohibiting self-interested conduct. ERISA’s long-standing requirements for fiduciaries to act in the sole interests of the plan

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<sup>10</sup> Willis, Lauren E., “Against Financial Literacy Education,” *Iowa Law Review*, Vol. 94, 2008, at p.3; U of Penn Law School, Public Law Research Paper No. 08-10; Loyola-LA Legal Studies Paper No. 2008-13. Available at SSRN: <http://ssrn.com/abstract=1105384>. See also Lusardi, Annamaria and Mitchell, Olivia S., “Financial Literacy and Planning: Implications for Retirement Wellbeing” (2005). Michigan Retirement Research Center Research Paper No. WP 2005-108, available at SSRN: <http://ssrn.com/abstract=881847> (noting that “consumers making retirement saving decisions require substantial financial literacy, in addition to the ability and tools needed to plan and carry out retirement saving plans” and confirming “survey findings about financial literacy from Bernheim (1995, 1998), Hogarth and Hilgerth (2002), and Moore (2003), who report that most respondents do not understand financial economics concepts, particularly those relating to bonds, stocks, mutual funds, and the working of compound interest; they also report that people often fail to understand loans and interest rates.”

<sup>11</sup> Tamar Frankel, *Fiduciary Law* (Fathom Publishing, 2008), p. 30.

<sup>12</sup> *Id.* at p. 61.

<sup>13</sup> *Meinhard v. Salmon*, 249 N.Y. 458, 463-4, 164 N.E. 545 (1928).



participants preserves the distinction between fiduciary relations and ordinary commercial transactions – a distinction which should be maintained. As stated by Professor Thompson:

Cardozo's view relies on the punctilio principle, a loyalty that pricks one's own possible rationalizations of self-interest with the sharp point of selflessness. Cardozo repeatedly employs absolute language: "unbending and inveterate", "uncompromising rigidity", and "relentless and supreme." For him the duty is one of self-abnegation, "preference of self is made subordinate to loyalty to others" and "thought of self was to be renounced." Such views continue to shape the modern debate.<sup>14</sup>

Long ago the U.S. Supreme Court noted that the fiduciary protections of the Investment Advisers Act of 1940 were intended by Congress to provide for the provision of investment advice from those in an "impartial and disinterested position, as free as humanly possible from the subtle influence of prejudice, conscious or unconscious ...."<sup>15</sup>

The broad proscription against "any . . . practice . . . which operates . . . as a fraud or deceit upon any client or prospective client" remained in the bill from beginning to end. And the Committee Reports indicate a desire to preserve "the personalized character of the services of investment advisers," and to eliminate conflicts of interest between the investment adviser and the clients as safeguards both to "unsophisticated investors" and to "bona fide investment counsel." The Investment Advisers Act of 1940 thus reflects a congressional recognition "of the delicate fiduciary nature of an investment advisory relationship," as well as a congressional intent to eliminate, or at least to expose, all conflicts of interest which might incline an investment adviser -- consciously or unconsciously -- to render advice which was not disinterested.<sup>16</sup>

Accordingly, NAPFA submits that Congress, in enacting ERISA and embracing strict fiduciary standards of conduct, desired that plan participants receive much more than disclosures of material information regarding investment products. Rather, Congress intended that plan participants receive, with respect to the all-important decisions consumers face with respect the important decisions of saving and investing for their future retirement needs, the protections afforded by truly objective advice from independent fiduciaries. NAPFA urges the Department to undertake rule-making in light of Congress' over-riding intent.

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<sup>14</sup> Thompson, Robert B., "The Story of Meinhard v. Salmon and Fiduciary Duty's Punctilio" (October 16, 2008). Vanderbilt Public Law Research Paper No. 08-44. Available at SSRN: <http://ssrn.com/abstract=1285705>, citing Allison Gray Anderson, "Conflict of Interest: Efficiency, Fairness, and Corporate Structure," 25 U.C.L.A. L. Rev. 738, 760 (1978) ("fiduciary duty obliges the "fiduciary to act in the best interest of his client and beneficiary and to refrain from self-interested behavior not specifically allowed by the employment contract.")

<sup>15</sup> *SEC vs. Capital Gains Research Bureau*, 375 U.S. 180 (1963).

<sup>16</sup> *Id.* It should be noted that the Court's statement, "to eliminate, or at least to expose, all conflicts of interest," was not intended by the Court to suggest that only disclosure is required of conflicts of interest (rather than seeking informed consent from the client, which consent would not be provided if the conflict of interest was not properly managed). Instead, all the trial court was asked by the SEC in the underlying case was to rule that disclosure, having not been made, violated the investment adviser's fiduciary duty. *SEC v. Capital Gains* has often been misinterpreted by those who advocate that only disclosure is required of conflicts of interest. As stated in this correspondence, fiduciary duties are imposed upon advisors in recognition of the fact that disclosure, alone, is an insufficient protection for the client when there exists such a disparity in knowledge between the financial advisor and the client.

**In Conclusion.** In today's complex financial world, most consumers are ill-equipped to understand the many complex financial concepts, much less the array of terms, utilized in the world of investing and personal finance. It is important that consumers receive advice, for even those few who read all of the disclosures provided will often react emotionally to short-term market events. As a result, consumers often tend to chase returns, buy at market peaks, and sell near market lows, all at peril to their long-term financial security.

As important as it is that consumers receive investment advice from knowledgeable advisers, it is equally important, if not more so, that American consumers in today's daunting world of financial challenges receive truly objective advice from advisers who are truly independent. Conflict-ridden advice leads to opportunism which can easily arise to the level of greed. And, as seen from the recent financial crisis, the greed of large investment banks and broker-dealer firms can lead not only to harm to each individual American through often-inappropriate recommendations involving the sale of proprietary products, but also the creation of systemic risks which affect all Americans and endangers the economic future of America itself.

The National Association of Personal Financial Advisors again thanks the Department of Labor for the opportunity to submit these additional comments. As the nation's leading organization of fiduciary, fee-only investment advisers, we are available to respond to questions or submit further comments as you may desire.

Respectfully,

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