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July 20, 2015

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule
Room N–5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment – RIN 1210-AB32

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Notice of Proposed Rulemaking, proposing rules to define who is considered a fiduciary of an employee benefit plan under the Employee Retirement Income Security Act when providing investment advice to a plan or to plan participants or beneficiaries. As an academic conducting research in the fiduciary area, and in the area of broker-dealers and investment advisers in particular, I have followed this issue with interest.

As explained in the preamble, many investment professionals have no obligation to adhere to a fiduciary standard of conduct when providing investment advice. As non-fiduciaries, these advisers can operate under undisclosed conflicts of interest. Moreover, although there are exceptions, broker-dealers typically do not operate under a fiduciary standard of conduct, although they often hold themselves out as financial advisers, financial planners, or wealth managers. Brokers' obligations can be contrasted with investment advisers' obligations because investment advisers are considered fiduciaries to their clients under the federal securities laws. Over the past several years, my research has focused on the different obligations that attach to broker-dealers (under the Securities Exchange Act of 1934) and investment advisers (under the Investment Advisers Act of 1940).

In that regard, I attach to this comment letter several of my academic articles for your consideration. An article entitled *Selling Advice and Creating Expectations: Why Brokers Should Be Fiduciaries*, 87 WASHINGTON LAW REVIEW 707 (2012), raises questions about whether a new fiduciary standard would resolve customer confusion. It offers an alternative reason to support imposing a fiduciary obligation on brokers based on investors' reasonable expectations. An article entitled *Fiduciary Obligations of Broker-Dealers and Investment Advisers*, 55 VILLANOVA LAW REVIEW 701 (2010), analyzes differences between brokers' and advisers'

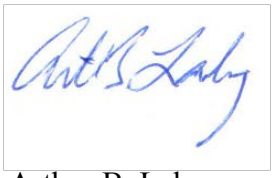
duties in the context of the debate over whether to impose a fiduciary duty on brokers who give advice to retail customers.

I have attached two other articles that provide historical background for the debate over whether to impose a fiduciary obligation on brokers. An article entitled *Reforming the Regulation of Broker-Dealers and Investment Advisers*, 65 THE BUSINESS LAWYER 395 (2010), provides an historical overview of changes in brokerage and advisory services and discusses the implications of placing a fiduciary duty on brokers. An article entitled *SEC v. Capital Gains Research Bureau and the Investment Advisers Act of 1940*, 91 BOSTON UNIVERSITY LAW REVIEW 1051 (2011), is a detailed look at the leading Supreme Court case discussing the fiduciary obligation of investment advisers.

Finally, a book chapter entitled *Harmonizing the Regulation of Financial Advisers*, in Olivia S. Mitchell and Kent Smetters (eds.), THE MARKET FOR RETIREMENT FINANCIAL ADVICE (2013), explains how the debate over imposing a fiduciary duty on brokers has migrated from the Securities and Exchange Commission to the courts, to Congress, back to the SEC, and now, of course to the Department of Labor. (I am unable to attach the book chapter to this letter.)

If you have questions or would like additional information, please feel free to contact me. I can be reached at 856 225 6272 or at alaby@rutgers.edu.

Sincerely,



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