



VIA ELECTRONIC MAIL ([e-ORI@dol.gov](mailto:e-ORI@dol.gov))

July 20, 2015

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

RE: Department of Labor Definition of the Term Fiduciary and Retirement Investment Advice Conflict of Interest Rule Proposal

Dear Sir or Madam:

Ladenburg Thalmann & Co. Inc. (Ladenburg) appreciates the opportunity to comment on the Department of Labor (DOL)'s proposed rule regarding retirement investment advice conflict of interest and the definition of the term fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA). **Ladenburg supports a carefully-crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients.** This standard of care should make it easier for investors to receive high-quality, individualized investment advice from a trusted advisor. New regulations should provide retail investors with a clear and easy to understand standard of care that is applicable to the entirety of the client's relationship with a trusted advisor.

#### **About Ladenburg**

Ladenburg, established in 1876 and a New York Stock Exchange member firm since 1879, is a full-service broker-dealer based in New York. Ladenburg is a wholly-owned subsidiary of Ladenburg Thalmann Financial Services Inc. Ladenburg services both retail and institutional clients. Among other things, Ladenburg offers its clients investment banking and capital markets products and services, proprietary equity research and a fixed-income trading desk.

#### **Support for a Carefully-Crafted, Universal Fiduciary Standard of Care**

We believe that there should be a uniform fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients. Additionally, a uniform fiduciary standard of care should be applicable to all financial advice provided to retail clients, not just advice regarding Plans and IRAs. Professionals should be required to do the following:

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MEMBER: NYSE, NYSE MKT, FINRA AND SIPC

- Act in the best interest of the client;
- Provide advice with skill, care, and diligence based upon the individual needs of the client; and
- Disclose material conflicts of interest, avoid them when possible, and obtain informed client consent to act when conflicts cannot be reasonably avoided

### General Concerns

The proposed rule will make it harder and more costly for clients to receive high-quality, individualized investment advice from a trusted advisor.

- Compliance with the rule, as proposed, will cause Ladenburg to bear considerable initial and ongoing expense to comply with the disclosure requirements of the Best Interest Contract Exemption (BICE). This increased cost will likely result in registered representatives reducing or eliminating services to clients with small account balances.
- As proposed, the grandfathering provision requires a registered representative to meet the BICE requirement prior to providing additional advice to an existing Plan and IRA client. This may cause harm to existing clients. For example, in recent weeks the market has been experiencing unusual volatility due to issues in Greece. Our registered representatives have been contacted by phone by existing clients with questions regarding allocations and holdings in their portfolios. Our registered representatives were able to provide timely recommendations during those phone calls. As proposed under the grandfathering provision of the BICE, a registered representative will not be able to provide this same timely advice to a client. Rather, the registered representative will have to wait to provide the advice until such time as a contract has been delivered to the client and executed. During periods of higher volatility, this delay will cause clients to bear losses to which they would not have otherwise been exposed.
- By not including certain products, such as Real Estate Investment Trusts and Business Development Companies in the definition of "Asset," the proposed rule will limit client access to products that provide for greater portfolio diversification. This limitation will expose clients to increased portfolio volatility. These products may be in the best interest of the client; however, a registered representative may not be able to recommend them because they are not included as defined "Assets" in the proposed rule.
- The proposed rule will create confusion for retail investors and make it harder for them to understand the standard of care applicable to their relationship with a trusted registered representative. Under our current regulatory structure, retail investors have to understand two standards of care: (1) the suitability standard under FINRA rules governing BDs; and (2) the fiduciary standard under rules governing RIAs. Under the proposed rule, retail investors will have to understand multiple standards of care which will vary, not only by service, but by the account type as well. In the example below, a client has five different accounts, each subject to different, sometimes multiple, standards of care. Additionally, the fact that certain accounts are subject to BICE, whereas other accounts are not will create confusion for the client as to why a best interest standard is applicable to certain accounts and not applicable to others. A uniform

fiduciary standard of care applicable to all accounts will not create this level of complexity and confusion.

Single Client with Multiple Accounts Example

1. Commission based IRA account - subject to ERISA fiduciary, BICE, and FINRA suitability;
2. A commission based individual account - subject to FINRA suitability;
3. A discretionary advisory IRA account - subject to ERISA fiduciary, PTE 86-128, and RIA fiduciary;
4. Non-discretionary advisory IRA – subject to ERISA fiduciary, BICE, and RIA fiduciary; and
5. Discretionary advisory individual account – subject to RIA fiduciary.

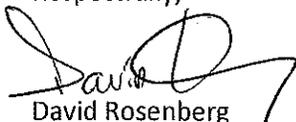
If the Department moves forward with a proposal that is applicable only to Plans and IRAs, BICE should not be limited only to non-discretionary advice arrangements. If firms are able to meet the requirements of BICE for non-discretionary advice, those same disclosures, policies and procedures, compensation models, etc. should be able to be applied equally to discretionary advice. This step alone will decrease the complexity and confusion for retail investors, and will reduce compliance costs for firms, and ultimately, cost to clients for personalized investment advice.

Support for Alternative Uniform Fiduciary Standard Proposed by Financial Services Institute

Ladenburg fully supports the alternative uniform fiduciary standard proposed in the Financial Services Institute's comment letter on this matter. We believe that this alternative uniform fiduciary standard, which will be applicable to all investment professionals and all types of accounts, makes it easier for investors to receive high-quality, individualized investment advice from a trusted advisor, and provides retail investors with a clear and easy to understand standard of care.

Thank you for considering Ladenburg's comments. Should you have any questions, please contact us at (212) 409-2000.

Respectfully,



David Rosenberg  
Co-President and Chief Executive Officer



Peter H. Blum  
Co-President and Chief Executive Officer