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Via Electronic Delivery

July 22, 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

Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11712 and D-11713
U.S. Department of Labor
200 Constitution Avenue NW., Suite 400
Washington DC 20210

Re: RIN 1210-AB32: Definition of the Term “Fiduciary”; Conflict of Interest Rule-
Retirement Investment Advice; ZRIN: 1210-ZA25: Proposed Best Interest Contract
Exemption; ZRIN: 1210-ZA25: Proposed Class Exemption for Principal Transactions in
Certain Debt Securities between Investment Advice Fiduciaries and Employee Benefit
Plans and IRAs

Ladies and Gentleman:

Thomson Reuters appreciates the opportunity to comment on the Department of Labor’s Definition of the Term “Fiduciary” Proposal (“the proposal”) and related exemptions including the proposed Best Interest Contract exemption (“the proposed BIC exemption”) and the proposed principal transaction exemptive relief (“proposed PTE relief”). Through BETA Systems, Thomson Reuters¹ offers a complete suite of products that enable retail and institutional brokers to manage the daily tasks of their front, middle and back office operations. With more than 30 years of industry knowledge and hands-on experience, we partner with some nineteen clearing firms and over 300 introducing broker-dealers to address brokerage processing requirements. As a service provider, Thomson Reuters would like to offer an implementation perspective on the proposal.

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Significant Complexity Associated with Impact Assessment

Given the breadth and complexity of the proposal, significant business analysis is required in order to perform the impact assessment that will guide firms in their response to the proposal. Given that firms have multiple options to consider, business decisions are required to determine how impacted accounts would be serviced under the proposal. For example, firms could transition impacted accounts to an investment education model, they could look to set up accounts based on the proposed BIC exemption or consider operating under other models (e.g., in accordance with Advisory Opinion 2001-09A). As part of the impact assessment, firms are defining requirements, performing cost/benefit analysis, and evaluating multiple implementation approaches. As a service provider, we are dependent on our clients completing impact assessments to fully define the functionality required to comply and implement adequate supervisory and oversight processes. Given the myriad of open questions for our clients, detailed analysis of impacts to our system is difficult to complete at this time.

Several questions must be addressed as part of the impact assessments including the following:

Account Identification/Impact

1. What are the requirements for existing accounts that fall under the scope of the proposal both on and after the effective date of the rule and fall outside of Section VII of the BIC exemption?
2. What are the relevant attributes of accounts in scope (e.g., client or self-directed)? Are these attributes captured in systems today?
3. To what extent do existing account identifiers allow firms to identify accounts in scope?
4. Are existing identifiers being used consistently within a firm and across firms?
5. What impact will additional sub-categorization of accounts have on ongoing maintenance and reconciliation?
6. To what extent does the cost of compliance outweigh the benefit associated with offering impacted accounts?
7. How would the proposal and exemptions be applied to accounts that are transferred into a firm after rule effective date? What about positions that are accumulated through a step-in/step-out?
8. How will unsolicited activity within an account be addressed?

Understanding Fees/Workflow

9. What are the different sources of revenue associated with impacted accounts (e.g., revenue sharing, mutual fund fees, rebates, etc.)?
10. What changes are necessary to aggregate fees that are applied and retained in different systems?
11. How will multiple client experiences need to be supported?

Support for Exemptions

12. What would be the parameters of a streamlined BIC exemption, if offered? What would be the impact on the cost of compliance?
13. How will firms provide forward-looking cost information as required by the Total Cost information requirement of the proposed BIC exemption?
14. What data is currently available to support the disclosure and recordkeeping requirements of the proposed BIC and other exemptions? What additional data is required to support the proposal and related exemptions? How will that data be sourced, managed, delivered?
15. How will accounts that currently hold securities not included in the proposed BIC exemption definition of “Assets,” including common investments such as options and over the counter (“OTC”) equity securities, transition out of those holdings or to alternate compensation structures?
16. How will the securities covered by the proposed PTE relief be identified?
17. Will firms avail themselves of the aspect of the proposed PTE relief that allows for charging interest on fails in certain circumstances? What system support will be required to support this functionality?

While firms are still in the process of completing impact assessments, it is clear that the analysis is complex and dependent on factors that may not be fully understood at this time. We do believe that preliminary conclusions can be drawn about implementation as discussed in more detail below.

Implementation Effort to Support Proposed BIC Exemption

We question whether the proposed BIC exemption achieves its intended objective to “ease compliance costs and reduce complexity while promoting the provision of investment

advice that is in the best interest of retirement investors.”² There are many aspects of the BIC exemption where we see additional costs and complexity.

Firms are in the process of evaluating the impact of the new disclosure and data requirements. All information required to comply with the proposed BIC exemption may not be centrally available to populate the required disclosures. Firms anticipate major changes to adviser workstations and new account opening procedures in order to support point of sale and annual disclosures. Of particular concern is the requirement to provide forward-looking cost information as part of the “total cost” disclosure requirement. Also, fulfilling the data request obligation to the Department of Labor will require careful analysis of the required fields and expected output. Consistency with existing books and records, regulatory and financial reporting obligations is recommended.

Beyond disclosures, limitations in the proposed BIC exemption with respect to which asset classes are covered will also negate the effectiveness of this exemption. Most notably, options and over the counter (“OTC”) equity securities are excluded from the scope of the proposed BIC exemption. Firms are concerned about the restriction on options given the use of options in IRA portfolios for hedging purposes. Additionally, trading in OTC equity securities is conducted under FINRA rules by the same FINRA member broker-dealers that trade exchange listed equities. OTC equity securities include the American Depositary Receipts of international companies with multi-billion dollar market capitalizations that may be suitable for impacted accounts. Considering that FINRA regulates both options and OTC equity trading including standards associated with the definition of such securities (e.g., FINRA 6420(f)), we recommend expanding the definition of “Assets” to allow greater investor access and reduce implementation complexity. The limitation with respect to asset classes will require an alternate implementation approach to address those portfolios which include an options or OTC Equity Securities component. Additionally, system changes will be required to restrict assets placed into accounts covered by the proposed BIC exemption. To support these restrictions, we anticipate changes to security master, account identifier, and rules engine applications that would be unique to BIC exempted accounts. For instance, options and OTC Equity Securities would be prohibited from BIC exempted accounts although permitted for non-IRA accounts.

Implementation Effort to Support PTE Relief

The proposed PTE relief intends to address industry concerns related to the efficiencies associated with conducting principal securities transactions in debt securities.³ While we applaud the proposed principal transaction exemptions goals, we believe it is important to recognize the implementation effort that will be required to comply with the proposed PTE relief. Pre-transaction disclosures required to support the principal transaction exemption would require system changes in order to provide the mark-up/mark-down information, as inventory cost is not typically visible to registered advisers.

² 80 FR 21966

³ 80 FR 21993

Further complicating the implementation of the PTE relief is the requirement that the debt security possess no greater than a moderate credit risk which is discussed in the filing as follows: “Moderate credit risk would denote current low expectations of default risk, with an adequate capacity for payment of principal and interest. These securities have a level of creditworthiness similar to investment grade securities.”⁴ Rather than ambiguously define moderate credit risk, we recommend simply defining the term moderate credit risk as those debt securities that are investment grade based on the definition set forth in FINRA Rule 6710(h). This would facilitate automation and ensure consistency across market participants.

Similarly, the proposed PTE relief states that a debt security needs to be “sufficiently liquid that the Debt Security could be sold at or near its fair market value within a reasonably short period of time.”⁵ It is unclear how debt securities would be identified based on the proposed “sufficiently liquid” standard. We recommend an objective standard that would promote an automated identification of debt securities that are in scope for the proposed PTE relief.

It is worth noting that firms use a variety of front ends to support debt security trading. There will be both front-end and back office processing changes required to support the proposed PTE relief. One complexity associated with supporting the proposed PTE relief will be the unique attributes that will need to be applied at a security level that will only be relevant for trading in impacted accounts.

Implementation May Require Support for Multiple Workflows

One of the biggest implementation concerns associated with the proposal is its impact on the current holistic model of providing investment advice. Advisers typically provide advice across both retirement and taxable accounts using a single platform. Both advisers and clients are accustomed to a single process across all accounts. As firms explore compliance alternatives, some accounts may be suitable for alternate platforms with fewer investment selections and different fee structures. Other accounts may avail themselves of the proposed BIC exemption as a means of complying with the proposal and require new platforms or controls. Still other accounts may switch from an advice to an education model requiring other technology solutions to support an education-based workflow.

Front office tools that support investment selection will require new configurations by product and account type to ensure that an investment is eligible to be offered to an investor. Currently, many of these tools would need to be enhanced to consider account type in determining eligibility real-time. For those firms that use a suite of tools, integration will be required to ensure that front office selection tools accurately reflect back office trading prohibitions. Establishing and managing multiple eligibility lists will pose both technical and operational challenges.

⁴ 80 FR 21995

⁵ 80 FR 22003

For firms evaluating new platforms or controls, it is important to recognize that these controls would enable both prevention of prohibited activity as well as provide the means to surveil advisers. From a service bureau perspective, we anticipate modifications unique to the accounts covered under the proposed BIC exemption, those covered under the PTE exemption as well as other accounts not availing themselves of exemptions. As mentioned earlier, account identification, securities identification and potential updates to our business rules engine will all be required. Additionally, the business logic required to determine when to apply modified functionality will modify processes from account opening, trading and order entry through to exception reporting.

Beyond establishing new controls, firms will also have to undergo a significant effort to transition clients and staff onto new platforms and educate clients on changes to service as a result of the proposal. We expect extensive training and education efforts as part of firms' implementation efforts. Additionally, repapering client accounts will be a lengthy process that may also require system changes in order to prevent account activity until all required repapering is complete.

Establishing new workflows for accounts impacted by the proposal is not a one-time effort; the ongoing maintenance and surveillance that will be required for the subset of accounts covered by the proposal are also of concern. From a service bureau perspective, we are concerned about the different approaches to compliance that may be implemented not just within a firm but across firms as well.

Consistency Across Regulators Would Rationalize Implementation

The proposal attempts to address concerns regarding the lack of harmonization across regulators. While we understand that various regulators were consulted as part of the proposal development, we question whether additional discussions are required to ensure that whatever is ultimately approved meets the needs of state regulators, the Department of Labor, FINRA, and the SEC. We are extremely concerned about the possibility of redundant or throw away work if the regulators are not working together to determine a consistent approach. The requirements of Dodd-Frank § 913 as well as recent statements by FINRA Chairman & CEO, Rick Ketchum⁶ must be addressed prior to plan approval. If a uniform standard of care is determined to be the way forward, this decision should be made prior to any implementation activities in support of the proposal. It is imperative that we look to reduce operational and regulatory complexity thereby reducing systemic risk and the cost of compliance.

Sufficient Implementation Time Required

System changes can only be determined once the rule is approved and business decisions regarding implementation approaches are finalized. This is especially the case

⁶ See Remarks from the 2015 FINRA Annual Conference, May 27, 2015. Ketchum states: "While right directionally, I have practical concerns with the Labor proposal in a number of areas."

for downstream systems including back office processing applications. If changes are made to the proposal prior to approval, those too will need to be analyzed before an implementation approach can be solidified. As a service bureau that will support account identification, security master functionality and business rule engine support, we believe the industry needs adequate time to complete their analysis so that system impact can be determined and remediation plans drafted. Without knowing how our clients plan to comply with the proposal, it will be difficult to know what system changes are required to support them in compliance.

The current eight month implementation time is inadequate and inconsistent with other major initiatives. We believe that the impact on firms and the complexity associated with the proposal exceed both the SEC's money market reform and the Department of Labor's changes to ERISA 408(b)(2) both of which offered an implementation time of roughly 24 months. While difficult to make a recommendation on implementation timing at this point, we recommend considering a minimum of 24 months with the publication of FAQs within the first three months of rule approval.

Conclusion

In light of the significant complexity associated with this proposal, we recommend the following:

- Achieve consensus across regulators before proceeding.
- Offer sufficient implementation time of at least 24 months with the release of FAQs within 3 months of plan approval.
- Address opportunities for standardization and concrete definitions in support of the proposed BIC exemption and the proposed PTE relief.

Thank you for the opportunity to comment on the proposal. If you have any questions, please do not hesitate to contact me at (312) 408-8641.

Regards,



Manisha Kimmel
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Thomson Reuters