



AOS, Inc. dba TradingBlock
Member FINRA, NFA & SIPC
P 800-494-0451
F: 312-253-0376
info@tradingblock.com

311 S. Wacker Drive, Suite 650
Chicago, IL 60606 USA

September 9, 2015

By Email and Courier

Office of Exemption Determinations
Employee Benefits Security Administration
Attention: D-11712
U.S. Department of Labor
122 C Street, NW
Suite 400
Washington DC 20001

and

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

Re: Comments regarding ZRIN: 1210-ZA25 and RIN: 1210-AB32

Ladies and Gentlemen:

AOS, Inc. (“AOS”) is a Chicago-based independent securities broker-dealer and introducing futures broker, and a state-registered investment advisor that does business under the “MoneyBlock” and “TradingBlock” brand names. We employ fifteen dedicated individuals who support nearly one hundred registered representatives and investment advisors, and nearly 6,000 customer accounts. We are currently regulated by the Securities and Exchange Commission (SEC), the Financial Industry Regulatory Authority (FINRA), the U.S. Commodity Futures Trading Commission (CFTC) the National Futures Association (NFA), and 52 state and territorial regulatory agencies.

BIC Exemption Proposal

We write this letter to underscore our concern that the BIC Exemption Proposal, if implemented as proposed, would take away the current flexibility of advisors (working on behalf of their clients) and self-directed individual investors to use exchange-traded options on securities in Employee Retirement Income Security Act of 1974 (“ERISA”) plans, as amended, such as

401(k) plans and individual retirement accounts (“IRAs”). Advisors and investors, for instance, sell covered call options (a very popular strategy) to generate increased investment income from a stock position, or use protective puts to manage investment risk.

Eliminating this flexibility would harm investors by limiting their ability to protect stock positions, manage risks and create income through the use of these products in their retirement accounts. With the decline of pensions causing an increasing number of advisors and investors to control more retirement savings, the elimination of this flexibility is troubling. AOS therefore requests that the Department amend the BIC Exemption Proposal to specifically include exchange-traded options in the definition of "Asset."

In addition to the Fiduciary Proposal, the Department proposed new exemptions to the prohibited transactions rules that apply to ERISA plans, such as 401(k) plans and IRAs. In the BIC Exemption Proposal, the Department issued a new proposed prohibited transaction class exemption entitled the "Best Interest Contract Exemption" that is intended to permit certain transactions between a fiduciary and an ERISA plan or IRA that would otherwise be prohibited. Specifically, the BIC Exemption Proposal would permit certain "Advisers," "Financial Institutions," and their affiliates and related entities to receive compensation for services provided to "Retirement Investors" in connection with a purchase, sale or holding of an "Asset" by a Plan, participant or beneficiary account, or IRA, as a result of the Adviser's and Financial Institution's advice. For this purpose, "Asset" is defined as bank deposits, CDs, shares or interests in registered investment companies (mutual funds), bank collective funds, insurance company separate accounts, exchange-traded REITs, exchange-traded funds, corporate bonds offered pursuant to a registration statement under the Securities Act of 1933, agency debt securities, U.S. Treasury securities, insurance and annuity contracts (both securities and non-securities), guaranteed investment contracts, and exchange-traded equity securities: The definition of "Asset", however, excludes exchange-traded options on securities (*e.g.* a put, call, straddle or other option to buy an equity security from or sell an equity security to another without being bound to do so).

As a result, the new prohibited transaction exemptions would not apply to exchange-traded options on securities transactions entered into by ERISA plans or IRAs with entities that are fiduciaries with respect to such plans or IRAs. Consequently, many ERISA plans and IRA accounts would no longer be able to engage in those types of transactions. AOS recommends that the Department amend the BIC Exemption Proposal to specifically include exchange-traded options in the definition of "Asset" to preserve the flexibility of advisors and investors to use these types of products in their retirement accounts.

Exchange-traded options are highly regulated products that have been traded on national securities exchanges for many years. Individual investors are significant participants in the listed options market (12% of AOS active account base is comprised of qualified accounts using options), and advisors are a growing base of participants using options on behalf of clients. Advisors and individual investors use listed (or exchange-traded) options, such as selling covered call options to increase investment income or buying protective puts in their IRAs to manage the risks with owning individual stocks or equity indices, with the goal of increasing their retirement savings.

The preamble to the BIC Exemption Proposal states that the exemption is intended to apply to "investments that are commonly purchased by plans, participant and beneficiary accounts, and IRAs." Exchange-traded options on securities clearly fall within this classification of investments that are commonly purchased by IRAs to manage risks and create income. Accordingly, AOS requests that the BIC Exemption Proposal be amended to include exchange-traded options on securities in the definition of "Asset."

Fiduciary Proposal

In the Fiduciary Proposal, the Department issued a new proposed regulation that significantly expands the types of conduct that will cause a person or entity to be considered a "fiduciary" for purposes of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, and the prohibited transaction provisions of the Internal Revenue Code of 1986, as amended. This expansion goes far beyond the types of conduct that would cause a person to be considered a fiduciary under the Investment Advisers Act of 1940 and the guidance issued thereunder by the primary regulator for investment advisers, the SEC. AOS requests that the Department clarify in the final version of any new rule that certain actions by brokers would not cause the broker to be considered a fiduciary with respect to such ERISA plans or IRAs. Specifically, AOS recommends that any final regulation make clear that, absent other fiduciary conduct, neither the screening by a broker of the owner of an IRA or plan account nor the determination by a broker that engaging in trading of exchange-traded options is appropriate for such account owner by itself rises to the level of fiduciary conduct. Further, AOS requests that the Department clarify in any final regulation that the providing of instructional models, videos and interactive education materials regarding exchange-traded options does not constitute investment advice and possibly cause the provider of such information to assume a fiduciary status.

Thank you for considering our comments. Please contact me with any questions.

Regards,

A handwritten signature in black ink, appearing to read "Paul Finnegan", with a stylized flourish at the end.

Paul Finnegan
Chief Executive Officer
AOS, Inc. dba TradingBlock and MoneyBlock