



VIA Regulations.gov

March 13, 2017

Luisa Grillo-Chope
Office of Regulations & Interpretations
Employee Benefits Security Administration
United States Department of Labor
200 Constitution Avenue NW, Room N-5655
Washington, D.C. 20210

Re: Definition of Term Fiduciary; Conflict of Interest Rule-Retirement Invest – Proposed Rule on Extension of Applicability Date (RIN 1210-AB79)

Dear Ms. Grillo-Chope:

On April 8, 2016, the Employee Benefits Security Administration of the U.S. Department of Labor (“DOL” or the “Department”), published in the Federal Register a final rule entitled: Definition of the Term “Fiduciary;” Conflict of Interest Rule—Retirement Investment Advice¹ (“Fiduciary Rule”). The Fiduciary Rule has an applicability date of April 10, 2017, which requires the final rule and accompanying exemptions to come into full force by that date, thereby imposing a significant regulatory burden on the channels utilized by certain members of the Small Business Investor Alliance (“SBIA”) to distribute their investment opportunities to retirement investors.

SBIA is the premier organization of investors in the lower middle market and middle market. SBIA represents and advocates on behalf of Business Development Companies (“BDCs”), Small Business Investment Companies (“SBICs”), traditional private equity funds, and investors in those funds. We currently are the primary trade association of BDCs, representing most of the industry, including the largest number of non-traded BDCs. SBIA advocates on behalf of these members to ensure a healthy market, balancing the need for investor protection and capital formation.

The implementation of the best interest contract (“BIC”) exemption from the Fiduciary Rule on April 10, 2017, and related broker-dealer processes surrounding the implementation of the BIC, will result in significant impacts on our members. In particular, a number of members of SBIA are the sponsors of non-traded BDCs, which are sold through an independent broker dealer network on a commission basis. The

¹ Definition of the Term “Fiduciary;” Conflict of Interest Rule – Retirement Investment Advice, 81 Fed. Reg. 20946-210002 (April 8, 2016).

Fiduciary Rule and accompanying BIC exemption have made it much more difficult for these members to distribute this valuable investment to retirement investors. Non-traded BDCs are particularly attractive to retirement investors because of the dividend income they provide, the lack of market volatility impacting the investment, and the exposure to an alternative asset class. SBIA commented on the proposed BIC² in 2015, which resulted in some helpful changes for our members in the final rule (including allowing them to continue to sell their products in retirement accounts), but continued to include many harmful provisions that have resulted in limited investor choice. As a result of the Fiduciary Rule and BIC exemption, many broker-dealers have imposed more restrictive requirements on non-traded BDC sponsors, disrupting the traditional sales channels for these investments, as well as limited investor choice.

Given the unintended impact on the ability of our members to distribute their investments to retirement investors, SBIA supports an extended delay of implementation on the Fiduciary Rule and its accompanying exemptions, including the BIC, of 60 days or more. The DOL should utilize this time period to reassess the rule to ensure it is best crafted to ensure retirement investors can access the investments they need to have a diversified portfolio, and eliminate costly and unnecessary barriers to investor choice. This review will ensure that the Fiduciary Rule and BIC are best crafted to provide investor protection with the least harm to investor choice in their retirement accounts.

Sincerely,

A handwritten signature in dark ink, reading "Brett A. Palmer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Brett Palmer
President
Small Business Investor Alliance (SBIA)

² Proposed Best Interest Contract Exemption, 80 Fed. Reg. 21960 -21989 (April 20, 2015).