July 21, 2017

Timothy D. Hauser
Deputy Assistant Secretary for Program Operations,
Employee Benefits Security Administration
U.S. Department of Labor

Via Electronic Submission

Re: Request for Information on Definition of Fiduciary

Dear Mr. Hauser:

Thank you for the opportunity to comment on the Rule and Exemptions.

The Leaders Group, Inc. is an S.E.C. registered broker dealer, and a member of FINRA. We serve as the broker dealer to approximately 750 independent contractor registered representatives, two thirds of which are involved in the wholesale distribution of variable life insurance. The remaining third are retail representatives selling and servicing mutual funds, annuities, equities and insurance products. We have an affiliated S.E.C. registered investment adviser and a pending state of Colorado investment adviser.

The Department has spent countless hours and put much thought and research into the Rule. We feel the rule has been crafted in a manner that will reduce conflicts of interest of financial advisers and will increase transparency to investors. We have specific comments to the questions posed in the request.

Potential Delay of January 1, 2018 Applicability Date

1. Would a delay in the January 1, 2018, applicability date of the provisions in the BIC Exemption, Principal Transactions Exemption and amendments to PTE 84-24 reduce burdens on financial services providers and benefit retirement investors by allowing for more efficient implementation responsive to recent market developments? Would such a delay carry any risk? Would a delay otherwise be advantageous to advisers or investors? What costs and benefits would be associated with such a delay?

We feel that an additional delay would not be beneficial. Financial services providers that are not prepared for January 1 compliance will postpone preparations again and still not be prepared to meet any extended applicability date. Many financial services firms, such as ours, were prepared for an April 10 applicability date, and have already spent the time and money necessary to come into compliance. The phased implementation of the rule has given product manufacturers and distributors time to establish new products and new compensation schedules. An additional delay will harm investors by not bringing the protections of the rule into play until a later date.

General Questions

2. What has the regulated community done to comply with the Rule and PTEs to date, particularly including the

period since the June 9, 2017, applicability date? Are there market innovations that the Department should be aware of beyond those discussed herein that should be considered in making changes to the Rule?

Many financial services firms were ready for the June 9th applicability date and have fully implemented the impartial conduct standards. Market innovations will continue to evolve over the next several years in response to the rule, and the Department and financial service industry will need to be able to take advantage of the innovations that will best serve the investors.

3. Do the Rule and PTEs appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest? Do they effectively allow Advisers to provide a wide range of products that can meet each investor's particular needs?

We feel it is very important to keep the exemptions that allow commission based products as well as fee based products so consumers may be served in their best interests. Fee-based products and services are not always the best, or least expensive option. Some products, such as insurance products, are not conducive to a fee-based approach because the ongoing fees may not be deducted from the insurance account without being treated as a distribution which may be taxed, or incur penalties for withdrawals. We feel that the BICE is a reasonable solution to satisfy the situations where a commission based product may be the appropriate product that is in the best interest of the consumer.

4. During the transition period from June 9, 2017, through January 1, 2018, Financial Institutions and Advisers who wish to utilize the BIC Exemption must adhere to the Impartial Conduct Standards only. Most of the questions in this RFI are intended to solicit comments on the additional exemption conditions that are currently scheduled to become applicable on January 1, 2018, such as the contract requirement for IRAs. To what extent do the incremental

costs of the additional exemption conditions exceed the associated benefits and what are those costs and benefits? Are there better alternative approaches? What are the additional costs and benefits associated with such alternative approaches?

For firms that have taken the rule seriously and are prepared, the incremental costs have already been budgeted and much has already been spent for the appropriate software and systems purchased. Best Interest Contract and disclosure templates have been available to purchase for almost a year, and consultants are available to ease the transition. We truly believe we will be better serving all of our clients, not just retirement investors, with the innovations made to be compliant with the rule.

Contract Requirement in BIC and Principal Transaction Exemptions

The contract requirement in the BIC Exemption and Principal Transactions Exemption and resulting exposure to litigation creates an added motivation for Financial Institutions and Advisers to oversee and adhere to basic fiduciary standards, and provides that IRA owners have an additional means to enforce those protections. Throughout the fiduciary rulemaking, however, commenters have been divided on the contract requirement, with many expressing concern about potential negative implications for investor costs and access to advice. As noted above, the Department is interested in the possibility of regulatory changes that could alter or eliminate contractual and warranty requirements.

We believe that the majority of the costs for compliance with this new rule have already been spent and there would be no benefit from eliminating the requirements created by this rule. However, we do believe that a modification of the private right of action would be appropriate. History has shown that the regulatory structure provided by the FINRA arbitration panels and appropriate fines have served as a very adequate model to enforce rules, regulations and laws at a reasonable cost to all parties involved. The imposition of an

overhanging "class action environment" will increase the cost to all segments of the investment business and all of these costs will be passed to the investing public. This will impose the same or larger costs to the retirement savings of Americans that are supposed to be reduced by this rule.

Also, because of the additional time necessary to complete paperwork to be in compliance with the rule, and the heightened liability as a fiduciary, some investors may not be able to obtain the same level of service as they need. That is why it will be important to maintain exemptions for Robo-advisors and the ability for mutual funds to be held direct at the fund company in low cost accounts.

5. What is the likely impact on Advisers' and firms' compliance incentives if the Department eliminated or substantially altered the contract requirement for IRAs? What should be changed? Does compliance with the Impartial Conduct Standards need to be otherwise incentivized in the absence of the contract requirement and, if so, how?

Because the process is already well down the process, elimination would have minimal impact on investors. It would ease the burden on advisors to have less paperwork, but the confidence of the public has already been shaken and the imposition of the Best Interest Contract will simplify the process of disclosure and definition to help reduce the level of confusion at all levels; from public investors to their advisors and the financial institutions all the way through to the regulatory agencies. We think that regulatory oversight by the appropriate regulatory bodies for violations of the contract are a better alternative to punitive actions in the courts and will help keep the costs down for Americans saving for retirement

6. What is the likely impact on Advisers' and firms' compliance incentives if the Department eliminated or substantially altered the warranty requirements? What should be changed? Does compliance with the Impartial Conduct Standards need to be otherwise incentivized in the absence of the warranty requirement and, if so, how?

Alternative Streamlined Exemption

As noted above, the Department is also interested in receiving additional input from the public on possible additional and more streamlined exemption approaches that would better address marketplace innovations that may mitigate or even eliminate some kinds of potential advisory conflicts otherwise associated with recommendations of affected financial products innovations.

The litigation exposure is the biggest downfall to the rule and will cause errors and omissions insurance to increase, which will in turn increase the costs to investors and potentially reduce the services available. In general, class action suits do not benefit the class of clients that are represented, because the law firms take 30-50% of any settlements leaving a small amount to be divided between the numerous class members. Arbitration is a much less expensive and less complicated dispute resolution forum and arbitration forums could be mandated within the rule for the protection of investors.

7. Would mutual fund clean shares allow distributing Financial Institutions to develop policies and procedures that avoid compensation incentives to recommend one mutual fund over another? If not, why? What legal or practical impediments do Financial Institutions face in adding clean shares to their product offerings? How long is it anticipated to take for mutual fund providers to develop clean shares and for distributing Financial Institutions to offer them, including the time required to develop policies and procedures that take clean shares into account? What are the costs associated with developing and distributing clean shares? Have Financial Institutions encountered any operational difficulties with respect to the distribution of clean shares to the extent they are available? Do commenters anticipate that some mutual fund providers will proceed with T-share offerings instead of, or in addition to, clean shares? If so, why?

Clean shares are a good idea, but, they need to be sold through a brokerage account with a

clearing firm which can add additional layers of complication and cost. It is more difficult to exchange between clean shares of a given company and the reporting is not as clear for the consumer. T-shares make more sense for many smaller clients so that they do not need to pay the higher IRA custodian fees and other fees associated with a brokerage account.

8. How would advisers be compensated for selling fee-based annuities? Would all of the compensation come directly from the customer or would there also be payments from the insurance company? What regulatory filings are necessary for such annuities? Would payments vary depending on the characteristics of the annuity? How long is it anticipated to take for an insurance company to develop and offer a fee-based annuity? How would payments be structured? Would fee-based annuities differ from commission-based annuities in any way other than the compensation structure? How would the fees charged on these products compare to the fees charged on existing annuity products? Are there any other recent developments in the

design, marketing, or distribution of annuities that could facilitate compliance with the Impartial Conduct Standards?

Fee-based annuities in tax qualified accounts present a challenge. Clients would have to pay the compensation outside of the annuity, in the form of an advisory fee, in addition to their retirement savings, to preserve the tax deferred status of the annuity and avoid penalties for early withdrawal if the client is under age 59 ½. Most clients do not see the advantage of paying out of pocket rather than from the investment. Compensation paid by and disclosed by the insurance company make sense. Currently, these annuities are structured so that the client pays the fees. If these annuities are held long-term, it is very probable that the client would pay more in fees than the current structure of annuities with up-front compensation and expenses of 1-2%.

9. Clean shares, T-shares, and fee-based annuities are all examples of market innovations that may mitigate or even eliminate some kinds of potential advisory conflicts otherwise associated with recommendations of affected financial products. These innovations might also increase transparency of advisory and other fees to retirement investors. Are there other innovations that hold similar potential to mitigate conflicts and increase transparency for consumers? Do these or other innovations create an opportunity for a more streamlined exemption? To what extent would the innovations address the same conflicts of interest as the Department's original rulemaking?

Level fees on annuity products could be implemented similar to T-shares that would make sense for the investor, and for the adviser. These annuities would mitigate the conflict of interest and the ongoing compensation would keep the adviser incentivized to continue serving the accounts regardless of size.

10. Could the Department base a streamlined exemption on a model set of policies and procedures, including policies and procedures suggested by firms to the Department? Are there ways to structure such a streamlined exemption that would encourage firms to provide input regarding the design of such a model set of policies and procedures? How likely would individual firms be to submit model policies and procedures suggestions to the Department? How could the Department ensure compliance with approved model policies and procedures?

Because of the diverse business models of all the firms serving as Financial Institutions, a model set of policies and procedures would have to be very principal based, and flexible. Ensuring compliance would be very difficult except by the designated examining authorities for regulated financial institutions. The Insurance intermediary exemption does not have a single examining authority to ensure compliance. This lack of a single regulatory oversight authority creates the probability of less consistent compliance and application of the rule across the spectrum of Financial Institutions. While we are sure that the individual firms would submit policies and procedures to the department if asked, there would be a wide array of suggested processes that would be more cumbersome to enfordce than the proposed rule.

Incorporation of Securities Regulation of Fiduciary Investment Advice

11. If the Securities and Exchange Commission or other regulators were to adopt updated standards of conduct applicable to the provision of investment advice to retail investors, could a streamlined exemption or other change be developed for advisers that comply with or are subject to those standards? To what extent does the existing regulatory regime for IRAs by the Securities and Exchange Commission, self-regulatory bodies (SROs) or other regulators provide consumer protections that could be incorporated into the Department's exemptions or that could serve as a basis for additional relief from the prohibited transaction rules?

If the Securities and Exchange Commission were to adopt standards of conduct equivalent to the Rule, investors would be well served. However, unregulated sales to investors, such as indexed annuities, would not fall under the rule and senior retirement investors would be unprotected. A well thought out regime that addresses all products sold as investments would best serve all investors. It is our opinion that oversight by a current securities regulatory bodies would be the most effective way to assure compliance with any advisor fiduciary standard. FINRA as an SRO, already employs examiners that can be trained for the Best Interest Rule and that would create consistent application of the rule as well as consistent expectations for the Financial Institutions charges with implementing the rule.

Principal Transactions

The Principal Transaction Exemption provides relief only for certain investments (certain debt securities, CDs and unit investment trusts) to be sold by Advisers and Financial Institutions to plans and IRAs in principal transactions and riskless principal transactions, while the BIC Exemption provides additional relief for parties to engage in riskless principal transactions without any restrictions on the types of investments involved.

12. Are there ways in which the Principal Transactions Exemption could be revised or expanded to better serve investor interests and provide market flexibility? If so, how?

We believe that there should be a single consistent application of the rule across all Financial Institutions regardless of the type of transaction.

Disclosure requirements

13. Are there ways to simplify the BIC Exemption disclosures or to focus the investor's attention on a few key issues, subject to more complete disclosure upon request? For example, would it be helpful for the Department to develop a simple up-front model disclosure that alerts the retirement investor to the fiduciary nature of the relationship, compensation structure, and potential sources of conflicts of interest, and invites the investor to obtain additional information from a designated source at the firm? The Department would welcome the submission of any model disclosures that could serve this purpose.

We feel such a disclosure would be beneficial to investors and to the industry. This has the potential to make it much easier to have a plain English disclosure that would be the same across the financial services industry. Under the current rule, each financial institution has created a separate disclosure and that adds to the confusion fo investors.

Contributions to Plans or IRAs

14. Should recommendations to make or increase contributions to a plan or IRA be expressly excluded from the definition of investment advice? Should there be an amendment to the Rule or streamlined exemption devoted to communications regarding contributions? If so, what conditions should apply to such an amendment or exemption?

If the recommendation is solely to make a contribution, or to increase or reduce a contribution, it should be exempt from the definition of investment advice. It should be

considered educational, not as an investment recommendation.

Bank Deposits and Similar Investments

Some commenters have raised questions about the compliance burden under the Rule and PTEs on small community banks that currently do not exercise any fiduciary functions for customers when their employees discuss opening IRAs or investing their IRAs in bank deposit products such as CDs. Some have also raised questions about the need for a special rule for cash sweep services. Still others have said that health savings accounts (HSAs) merit a special exclusion or streamlined exemption because they tend to be invested in shorter-term deposit products to pay qualifying health expenses.

It would be appropriate to require consistency across all Financial Institutions for disclosures and definitions of advice.

15. Should there be an amendment to the Rule or streamlined exemption for particular classes of investment transactions involving bank deposit products and HSAs? If so, what conditions should apply, and should the conditions differ from the BIC Exemption?

We do not have any comment on this question.

Grandfathering

Section VII of the BIC Exemption provides a grandfathering provision to facilitate ongoing advice with respect to investments that predated the Rule, and to enable advisers to continue to receive compensation for those investments. Some commenters thought this provision could be expanded in ways that would minimize potential disruptions associated with the transition to a fiduciary standard and facilitate ongoing advice for the benefit of investors.

16. To what extent are firms and advisers relying on the existing grandfather provision?

How has the provision affected the availability of advice to investors? Are there changes to the provision that would enhance its ability to minimize undue disruption and facilitate valuable advice?

We are relying on the grandfathering provision to continue to provide recommendations to existing customers. All existing IRA customers have received a grandfathering notice and disclosure. If the customer needs additional advice, it will fall under the prevue of the rule and all new advice will be given within the confines of the rule. This means that the customer will receive new disclosure documentation and the records surrounding any new advice will be documented to allow differentiation from previous advice.

PTE 84-24

17. If the Department provided an exemption for insurance intermediaries to serve as Financial Institutions under the BIC Exemption, would this facilitate advice regarding all types of annuities? Would it facilitate advice to expand the scope of PTE 84-24 to cover all types of annuities after the end of the transition period on January 1, 2018? What are the relative advantages and disadvantages of these two exemption approaches (i.e., expanding the definition of Financial Institution or expanding the types of annuities covered under PTE 84-24)? To what extent would the ongoing availability of PTE 84-24 for specified annuity products, such as fixed indexed annuities, give these products a competitive advantage vis-à-vis other products covered only by the BIC Exemption, such as mutual fund shares?

Insurance intermediaries are not qualified to serve as Financial Institutions in the way that Investor Adviser, Banks, Broker Dealers and Insurance Companies are. All the institutions listed in the rule are currently regulated and have designated examining authorities that can ensure policies and procedures are in place and followed. Insurance intermediaries have no such oversight, nor are they experienced in supervision or oversight. PTE 84-24 and BICE have very different requirements and we feel that investors are better served with the impartial conduct standards required under BICE than the disclosure standards

of 84-24. The only advantage to expanding the definition of Financial Institution would be to allow the insurance intermediaries to continue business as usual. Since these organizations have never been subject to a single regulatory authority, they don't have the processes or internal controls that assure compliance with fiduciary oversight. It is important that the investing public has a consistent model to eliminate the confusion of what is good, better or best.

Communications with Independent Fiduciaries with Financial Expertise

The Fiduciary Rule contains a specific exclusion for communications with independent fiduciaries with financial expertise. Specifically, a party's communications with an independent fiduciary of a plan or IRA in an arm's length transaction are excepted from the Rule if certain disclosure requirements are met and the party reasonably believes that the independent fiduciary of the plan or IRA is a bank, insurance carrier, or registered broker-dealer or investment adviser, or any other independent fiduciary who manages or controls at least $50 million. Some commenters have requested that the Department expand the scope of the exclusion.

18. To the extent changes would be helpful, what are the changes and what are the issues best addressed by changes to the Rule or by providing additional relief through a prohibited transaction exemption?

We feel that additional relief should be provided by lowering the $50 million threshold. There should also be clear guidelines as to what is and is not financial advice versus administrative and organizational advice to a plan or plan participant.

Should the Department desire any additional feedback, we would be happy to discuss the rule further.

Sincerely,

Z. Jane Riley, Chief Compliance Officer

The Leaders Group, Inc.