

August , 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11933
U.S. Department of Labor
200 Constitution Avenue, NW. Ste 400
Washington, DC 20210

Re: Fiduciary Rule Request for Information, RIN 1210-AB82

Via electronic delivery to EBSA.FiduciaryRuleExamination@dol.gov.

Dear Sir or Madam;

TAG Resources is one of the country's leading providers of Plan Administrator fiduciary services and bundled "aggregated plan services," under which we provide the start-up and small plan markets fiduciary expertise which may otherwise be unavailable to them. As much as 40% of the companies utilizing our programs are start-up plans, which would otherwise have significant difficulty in obtaining well priced services, investments, and professional fiduciary management for their plans without this arrangement.

We provide expert level fiduciary and administrative support which may otherwise be unavailable to such small employers while, providing access to well-priced investments with a large selection of investment fund families typically available only to larger plans. We open up the availability of enhanced participant financial services to all companies, no matter the demographic.

Summary of Comment

The small plan (i.e., typically under \$15M) and start up employer market for retirement plans is unique in that access to a substantial portion of that market is through insurance professionals whose services generally do not include the promotion of retirement plan products. These are typically professionals who are providing traditional risk or wealth management and related services, such as property casualty insurance or individual life insurance to the company's owners. Approximately one-third of our referrals are from these professionals. This market is substantial, with over 2,000 insurance agents (not registered investment advisers or associated with a broker dealer) having access to employers of the type where retirement plan coverage is the weakest. Large financial service vendors simply do not have the incentive nor the capacity to reach this end of the marketplace.

In response to the demands of the fiduciary rule, large financial service companies, in particular insurance companies, have effectively abandoned these professionals. In both the qualified plan market and the IRA market place, insurers now require that insurance agents selling their non-registered products to retirement plans and IRAs (such as variable, non-registered group annuity products and individual indexed annuities) place their business through broker dealers. The insurers look to the broker dealer, not themselves, for the bulk of the compliance with the fiduciary rule requirements. However, their business typically does not justify the expense of becoming registered and maintain that registration. We are seeking relief for this portion of the marketplace.

It is easy to marginalize this marketplace sector, where any individual producer may only cover a handful of employers who want retirement plans. Yet it provides crucial access to the most underserved class of employers. Virtually every employer has a wide variety of insurance needs and it is natural to turn to their existing, trusted relationships to seek assistance in setting up a plan. It is to this specific requirement that we propose some additional information with regard to the RFI #17 proposal from the DOL.

Request for Information Number 17:

Communications with Independent Fiduciaries with Financial Expertise

Transactions with independent fiduciaries with financial expertise.

The Fiduciary Rule's demand for increased transparency and elimination of conflicts within the retirement industry represents a significant and material response to the concerns of the average retiree. A strong and stable retirement system for the nation requires that prospective retirees have the greatest possible access to coverage within a regulated marketplace.

The DOL inserted certain exceptions into the Fiduciary Rule which preserve the industry's ability to deliver a diverse range of investment products to the public through a transparent process, free from conflicts that, in the past, did not always ensure the benefit of the individual investor. One particular exception that we believe is vital to achieving the goals of investor protection and increased coverage, is the component which allows transactions with independent fiduciaries with financial expertise. This "seller's exception" allows communications that might otherwise trigger fiduciary status if the plan fiduciary receiving the communication is in a category presumed to be sophisticated about financial matters.

We believe that the seller's exception logically contemplates the realities of the retirement investment marketplace and provides for experienced ERISA 3(16) plan administrators, contractually delegated as such to act on behalf of plan sponsors, to engage with non-fiduciaries in arm length transactions related to investment management. The expert 3(16) plan administrator--as defined by the DOL Fiduciary Rule as one who manages over \$50M in assets --who has assumed the duties and responsibilities of the plan sponsor, understands the market segment and dynamics. A

particular exception that should be spelled out is a turn-key retirement plan solution which has 3(16) and 3(38) fiduciaries “baked in” as meeting the intent of the Fiduciary Rule – that being **experts running the retirement plan**. When a “casual” advisor (i.e., the non-retirement plan type who typically is wealth-management centric) recommends a plan with 3(16) fiduciary who in turn is monitoring the 3(38) fiduciary then we believe the financial advisor is able to shift the fiduciary status to these “retirement experts” and should not be held in a fiduciary capacity. This arrangement insures that plan sponsors have the broadest possible access to retirement planning products and that all transactions consummated on behalf of the plan ensure the benefit of the plan and the participants.

We believe the TAG Resources LLC model of 3(16) fiduciary plan administration and our monitoring of the 3(38) investment manager comports with the substantive and procedural aims of the “Seller’s Exception.” Accordingly, we advocate an interpretation of the “Seller’s Exception” that excepts from the definition of “fiduciary advice” communications related to the arm’s length sale of investment securities between non-fiduciary FAs and a 3(16) fiduciary who manages the 3(38) investment manager, contractually operating as plan sponsor, with “management” or “control” over, or otherwise holding \$50 Million of assets, including those of the plan, and thereby not triggering a fiduciary status requirement for FA sellers not being compensated by the plan.

Sincerely,



DERREN P. BURRELL
Chief Operating Officer
TAG Resources, LLC