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by email to EBSA.FiduciaryRuleExamination@dol.gov

Employee Benefits Security Administration
Office of Exemption Determinations
U.S. Department of Labor
200 Constitution Avenue, NW
Suite 400
Washington, DC 20210

Re: RIN 1210-AB82: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

Dear Sir or Madam:

I write on behalf of Ladenburg Thalmann & Co. Inc. (LTCI) in response to your request for information (RFI) seeking public input on the advisability of extending the January 1, 2018 applicability date for certain provisions in the Fiduciary Rule and its accompanying exemptions, including the Best Interest Contract Exemption and Prohibited Transaction Exemption 84-24.

LTCI supports a carefully-crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients. However, we do not support the Fiduciary Rule and accompanying exemptions as currently written.

LTCI supports a delay in the January 1, 2018 applicability date in order to allow the Department to conduct a detailed review of the Fiduciary Rule, its negative impact on investors' access to retirement planning services and new innovations and approaches that may alleviate many of these concerns. We believe these negative impacts can be mitigated by making the following changes:

1. Streamline the documentation and disclosure requirements of the Best Interest Contract Exemption (BICE) while eliminating its private right of action;
2. Create a single best interest standard applicable to all investors;
3. Revise and broaden the levelized compensation rules; and
4. Revise rules for IRA rollovers

1. Eliminate the private right of action and Streamline the disclosure Requirements of the Best Interest Contract Exemption (BICE)

A. Private Right of Action

The BIC Exemption's provision prohibiting financial institutions from including contractual provisions waiving a Retirement Investor's right to pursue a class action has created uncertainty regarding the true costs of the Fiduciary Rule and has been a fundamental element of the opposition to the Fiduciary Rule. This is because the private right of action creates unquantifiable financial risk for advisors and financial institutions and will not produce benefits to investors that are commensurate with its costs. This private right of action will no doubt lead to an increase in litigation, which will lead to increased costs for Financial Institutions, which will, in turn, lead to increased prices that investors and retirees must pay to gain access to retirement services.

The BICE's private right of action is an inappropriate and ineffective mechanism for enforcement that should be replaced by a means more likely to promote compliance without imposing an unmanageable burden on financial advisors and financial institutions.

B. BICE Disclosures

The BICE's disclosure obligations further increase firms' compliance costs, but their volume and complexity make them unlikely to benefit investors as intended.

A streamlined, easy-to-read, global disclosure containing information the most pertinent to investors would be much more appropriate documentation for the BICE. Experience has demonstrated that more disclosure is not necessarily better disclosure.

Firms should be required to deliver a "global" disclosure document about their services, general disclosure of forms of compensation, and material conflicts of interest at the time an account is established. The relevant disclosures should be available on a website maintained by the firm, and access to it should be deemed equivalent to delivery of the disclosures for existing clients. We propose a disclosure requirement at the outset of the account relationship containing a description of the type and scope of services to be provided, the standard of conduct applicable to the

relationship, the types of compensation that may be charged, and any material conflicts of interest.

2. Create a single best interests standard applicable to all investors

Under the Fiduciary Rule, retail investors must understand multiple standards of care which will vary, not only by service, but by the account type as well. This will likely create confusion and adversely affect investors. A client could have a number of different accounts, each subject to different, sometimes multiple, standards of care. Additionally, the fact that certain accounts are subject to the Fiduciary Rule, and even differing Prohibited Transaction Exemptions under the Fiduciary Rule, whereas other accounts are not, will create confusion for the client as to why a best interests standard is applicable to certain accounts and not applicable to others. A uniform fiduciary standard of care applicable to all accounts will not create this level of complexity and confusion.

We believe efforts to coordinate the SEC and DOL's regulatory efforts have the potential to reduce cost, preserve investor access to advice, and develop a more comprehensive Best Interests standard that will apply to financial advice rendered in connection with all of investment assets of retirement savers, not just those that are tax-qualified. We believe a delay of the Fiduciary Rule's full implementation would create an opportunity for meaningful discussions among the DOL, SEC, industry and investors about new approaches to achieve the DOL's goals without reducing investor access to retirement planning services.

3. Revise and broaden the levelized compensation rules

LTCl supports the concept of reasonable compensation, but the standard as written is too vague which creates significant compliance challenges. In addition, application of the reasonable compensation standard and related requirements often harms investors by limiting their choices and/or increasing their costs. For many investors who prefer a buy-and-hold investment strategy, a commission relationship is in their best interest due to long-term performance and reduced costs. The industry needs useful guidance on reasonable compensation in order to ensure that investors maintain access to products and services.

We support a principles-based approach to the definition of reasonable compensation while providing the necessary guidance for financial institutions to have confidence in the quality of their compliance efforts.

Additionally, as firms have worked in the months since the Fiduciary Rule was promulgated to try to comply with the vague standard, it has become

apparent that industry-wide changes must be considered, reviewed, structured, and implemented. Although the industry has worked diligently to consider how to implement these changes, more time is required for all parties in the product manufacturing and distribution chain to implement all of the necessary adjustments.

The Fiduciary Rule offers streamlined compliance requirements to Level Fee Fiduciaries due to the fact that this structure reduces conflicts of interest which reduces the need for heightened surveillance around advisor conflicts of interest. As a result, many firms have transitioned their brokerage accounts to these fee-based advisory accounts to avoid having to rely on the BICE. As discussed above, this requirement to move client accounts to a fee-based arrangement may lead to client harm. By broadening the availability of the streamlined Level Fee Fiduciary requirements, firms will be able to offer institutional share class mutual funds (also known as "clean shares"), T-shares and other product innovations to create level fee arrangements.

4. Revise rules for IRA rollovers

The rollover provisions of the Fiduciary Rule require firms and advisors to obtain specific information about the fees and expenses of clients' retirement plans prior to recommending an IRA rollover. This information is, at best, very difficult for the client, much less the advisor or financial institution, to obtain to adequately compare the costs of products across the marketplace. Retirement plan recordkeepers' privacy concerns, combined with the lack of a consistent data format across clearing firms, is an obstacle to sharing and using that data. Further, the DOL framework does not give the client the information that they really need to make a rollover decision.

The Fiduciary Rule should be revised to instead require a disclosure to clients about rollovers with a more general disclosure of the cost differences. The disclosure should focus on the major qualitative differences between IRAs and employer-sponsored plans, a broader definition of education as distinct from advice, and a carve-out for "hire me" discussions. The DOL appears to have focused almost exclusively on the fact that the cost to investors in most IRAs is higher than that charged by employer-sponsored retirement programs such as 401(k) plans. This ignores the vast qualitative difference between IRAs and employer-sponsored plans. IRAs offer a wide array of financial products, including individual equities, fixed income investments, mutual funds, fixed and variable insurance products, and numerous types of alternative investments which may help investment portfolios achieve higher overall returns with lower levels of risk by employing strategies involving non-correlated and illiquid assets. IRAs also offer a much greater level of personalized advice, which is generally not available in employer-sponsored

retirement programs. The DOL's focus on fees and expenses creates significant barriers and may lead to retirement investors approaching retirement to lose out on critical investment advice when they are most in need.

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LTCI supports a carefully-crafted, universal fiduciary standard of care that will be applicable to all professionals providing personalized investment advice to retail clients. However, we do not support the Department's Fiduciary Rule as currently written. We urge the DOL to delay the January 1, 2018 effective date to provide the time necessary to consider other options to achieve the DOL's goals while preserving investor access to retirement planning services.

Thank you for considering our comments. Should you have any questions, please contact me at 212-409-2544.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Joseph Giovanniello, Jr.