



EVERSHEDS
SUTHERLAND

VIA E-MAIL

August 7, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
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:

We appreciate the opportunity to respond to the request for information issued by the U.S. Department of Labor (the "Department") regarding its examination of the regulation defining the term "fiduciary" for purposes of ERISA and section 4975 of the Internal Revenue Code of 1986, as amended, and related prohibited transaction exemptions (together the "Fiduciary Rule"). The Coalition of Collective Investment Trusts (the "Coalition") is a group of fund sponsors and money managers active in the collective investment trust ("CIT") industry. With approximately 40 member companies, the Coalition collectively represents a sizeable presence in the industry. This letter represents the general views of the Coalition but not necessarily those of individual member companies.

Potential Delay of January 1, 2018 Applicability Date. The Coalition is supportive of a delay in the January 1, 2018 applicability date. The Fiduciary Rule may very well be the most significant change in the regulation of the retirement plan industry since the enactment of ERISA itself. It is essential that providers be given an adequate amount of time to ensure that they fully understand the application of the rule and that systems are in place to successfully comply. The ongoing uncertainty about the ultimate form of the Fiduciary Rule is complicating that process. Moreover, the Department and other regulators, such as the Securities and Exchange

Commission, have indicated an intent to work together to develop uniformity in standards. Investment providers will incur unnecessary and significant costs if forced to create a structure that may only be in effect for a short period of time and then recreate that structure when a new regulatory regime is in place. Ultimately, these costs would be absorbed by plans and participants.

Clarification of the Fiduciary Rule as Applied to CITs. Our member companies have faced unique challenges in their preparations for the Fiduciary Rule, as the rule and the guidance thereunder is largely focused on the sale of mutual funds and annuities to plan participants and IRA owners. CITs may accept investments only from qualified retirement plans, or other eligible investors holding retirement plan assets, in order to maintain their securities and tax exemptions. CITs are not available and cannot be marketed to IRAs or general retail investors.

As a result, a CIT's marketing and distribution efforts are more targeted than other pooled investment vehicles. They are offered directly to plans or to advisors who in turn recommend the investment to plans. Plans invest in a CIT through an agreement between the trust company and the plan fiduciary. A CIT is typically structured with several sub-accounts, each of which has a separate sub-advisor. The trustee and the sub-advisers are always fiduciaries, not because they are providing investment advice for a fee but because they have authority over the management or investment of plan assets.

In this setting, neither the trust company in promoting the CIT, nor the sub-advisers in promoting the CIT and their investment strategies, is providing investment advice to retail retirement investors. For example, to take advantage of economies of scale gained by pooling assets, a plan's investment manager might suggest that the plan execute a particular investment strategy through participation in an affiliated trust company's CIT, for which the manager is a sub-advisor, rather than executing that same strategy on an individual basis for the plan. That activity is or should be within the ambit of the "hire me" rule, and the Coalition would appreciate the Department's ratification of that analysis in future guidance. Alternatively, a more robust "seller's exception" could provide clarity on this and similar interpretive provisions.

Once again, the Coalition thanks the Department for its time and consideration of our comments.

Sincerely,



W. Mark Smith



Carol Terpstra McClarnon