

July 21, 2015

Office of Regulations and Interpretations
Office of Exemption Determinations e-ORI@dol.gov
Employee Benefits Security Administration e-OED@dol.gov
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

RE: Definition of the Term “Fiduciary” (RIN 1210-AB32) and Best Interest Contract Exemption (ZRIN 1210-ZA25)

Dear Department Staff and Administrators,

We are writing today with respect to the Department’s proposed rule defining who is a “fiduciary” - by reason of providing investment advice for a fee or other compensation (the “Conflict of Interest Rule”) - and the related Best Interest Contract Exemption (the “BIC Exemption”). We appreciate the opportunity to reply to the Department’s request for comment on this proposed regulatory action.

First, we fully endorse the compelling comment letters submitted to the Department by the Investment Program Association (IPA), the National Association of Real Estate Investment Trusts (NAREIT), the Securities Industry Financial Markets Association (SIFMA), the Financial Industry Regulatory Authority (FINRA), the U.S. Chamber of Commerce and the Small Business Investor Alliance. All have provided well-thought and detailed assessments of the proposed rule and the negative impact it would have on investors and financial advisors, not to mention the direct investment industry’s capital formation programs. We anticipate that the Department will give their comments close study and the utmost consideration.

Hines’ perspective on the proposed rules derive from its position as one of the largest privately owned real estate companies in the world and a sponsor of a number of public and private investment funds. Of our firm’s nearly \$85 billion in assets currently under management, approximately \$8.5 billion is the result of more than \$6.1 billion in capital invested by more than 130,000 retail investors in funds that we have sponsored and managed since 2003. The remaining assets under management represents institutional investors such as public and private pension funds, sovereign wealth funds, corporations and other entities.

Our primary concern relates to the Department’s definition of “Assets” in the BIC Exemption. The Department has specifically asked for commenters who believe that additional investments should be included in the scope of the exemption to provide the Department with information supporting their inclusion. Direct investment products such as those we offer - non-listed Real Estate Investment Trusts (“NL REITs”) and Business Development Companies (“NL BDCs”) - are important investment vehicles for

Hines

American investors trying to save for, and earn income during, their retirement. None of these products have been addressed by the Department in the proposed rule or included in the BIC, which will have the impact of effectively making such investments unappealing or “off limits” to financial advisors and thus unavailable to qualified IRA investors. Like the IPA and NAREIT, our position is that there should be no list of “approved” or “legal” Assets set forth in the proposed rule, but should such list be part of the proposed rule it should include NL REITs and NL BDCs.

Of concern to Hines and other sponsors of direct investment products is the lack of criteria for what is, and is not, included in the BIC Exemption list. Not only does the list appear to be somewhat arbitrary, it does not provide for the addition of future products through a timely process (i.e. without burdensome and lengthy review and approval). As pointed out in other comment letters, this is a dynamic industry that is adapting rapidly to competition and regulatory requirements through the development and introduction of new products and features. Impeding or slowing that process would not be in the best interest of investors.

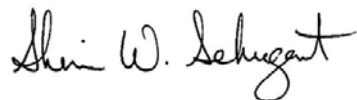
Direct investments are not only a common investment for retail investors generally, they are also a common investment for IRAs specifically. Consistent with the IPA comments that included gross numbers for the direct investment industry as a whole, IRAs represent roughly half of the invested capital in funds we sponsor and manage.

It is clear from that NL REITs and NL BDCs serve an important purpose in portfolios because non-listed BDCs and REITs generally do not correlate with S&P 500 returns, thus providing much needed – and highly recommended – portfolio diversification. In addition, NL REITs and NL BDCs have favorable standard deviation rates, demonstrating less volatility in their share prices and performance over time, another positive attribute. There is no principled reason why an IRA investor may not choose to invest in NL REITs and NL BDCs.

For all the reasons mentioned above, we urge the Department to remove the BIC Exemption list, or at a minimum to revise the BIC Exemption to include NL REITs and NL BDCs within its scope.

I appreciate your time and attention in ensuring that retirement investors are provided with the broadest array of investment options, while taking all possible measures to avoid conflicted advice.

Sincerely yours,

A handwritten signature in black ink, reading "Sherri W. Schugart". The signature is written in a cursive, flowing style.

Sherri W. Schugart
President and Chief Executive Officer
Hines Real Estate Investment Trust, Inc., Hines Global REIT, Inc., Hines Global REIT II, Inc.
& HMS Income Fund, Inc.