



**Filed Electronically**

August 6, 2020

Office of Exemption Determinations  
Employee Benefits Security Administration  
Application No. D-12011  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

RE: ZRIN 1210-ZA29  
Proposed Class Exemption  
Improving Investment Advice for Workers & Retirees

To Whom It May Concern:

Ash Brokerage, LLC (“Ash” or “Ash Brokerage”) appreciates the opportunity to submit this letter in response to the Department of Labor’s (“DOL” or the “Department”) request for comments in connection with its proposed class exemption for improving investment advice for workers and retirees (the “Proposal”).

Ash Brokerage is a brokerage general agency (“BGA”)<sup>1</sup> that is considered an insurance intermediary as described in the preamble of the Proposal. We agree with the Department’s goal of helping retirement investors receive advice that is in their best interest. Ash also believes that some regulation is needed so that retirement investors are reasonably assured of receiving such advice. The Proposal is a vast improvement over the fiduciary rule that was vacated by the Fifth Circuit. It recognizes that financial professionals are able to give best interest advice among a variety of compensation models that the vacated rule effectively eliminated. Although Ash does not support all of the Proposal, most of our disagreement is on finer points. We will let the financial service industry trade organizations address them. The purpose of our comments is solely related to the Department’s request on the role of insurance intermediaries. Ash hopes that this letter regarding intermediaries and other issues faced by insurance agents is useful.

**I. Briefly About Ash Brokerage**

Ash Brokerage has been a family-operated insurance brokerage firm since 1971. We work with approximately 80 insurance companies distributing their insurance products such as life, disability, long-term care, fixed annuities and fixed indexed annuities. Ash has grown to become the largest independently owned BGA in the United States, serving over 10,000 financial professionals annually and employing 430 people nationwide. In 2019, we placed in excess of:

- \$1.5 billion in annuity premium
- \$24.9 billion in life insurance death benefit
- \$141.1 million in premium for disability, long-term care and linked benefit

---

<sup>1</sup> Also commonly referred to as an insurance marketing organization or field marketing organization.

Ash primarily is a wholesaler that distributes insurance products on behalf of insurance carriers. Practically, however, Ash has built a service model supporting financial professionals, brokers and insurance agents (collectively “financial professionals” or “FPs”)<sup>2</sup> with their sales of insurance products for their clients. Our services for financial professionals include providing platforms of insurance products, assisting FPs with their insurance carrier appointments, developing solutions that meet the needs of FPs’ clients, processing insurance applications and underwriting, and enhancing FPs’ practices.

The financial professionals who work with Ash play an important role in protecting families’ lives and providing advice and financial planning to consumers across America. Their advice and recommendations help clients save and invest for retirement and children’s education, build retirement income streams so they do not outlive their assets, and identify protection solutions in the event of unexpected loss of life, disability or other tragedies. In 2019 alone, we assisted financial professionals with more than 35,000 American families meet retirement income and protection needs and objectives.

Our relationship with financial professionals is based on our reputation of getting the job done and trust. We do not maintain a legal relationship directly with FPs pursuant to a contract, although we do maintain contractual relationships at an institutional level with broker-dealers, banks and registered investment advisors.

Ash also has a retail component. Ash writes business directly with clients through its division, the Palladium Group. Palladium Group works with fee-only RIAs, in which the RIAs refer their clients to us for insurance purposes. The business is written by Ash or its subsidiary broker-dealer, First Palladium, LLC.

## **II. PTE 84-24 Obviates the Need for Intermediaries to be Financial Institutions**

The Proposal indicates that Prohibited Transaction Exemption 84-24 is alive and well. As such, transactions involving annuities as part of IRAs may be exempted as prohibited transactions, as long as the requirements of 84-24 are met. Accordingly, and simply, with no best interest contract needing to be executed by a Financial Institution (like under the vacated rule), the applicable exemption for annuities transactions would be 84-24 and not the exemption available under the Proposal, causing no need for intermediaries to be Financial Institutions.

## **III. Intermediaries Should not be Financial Institutions**

Ash Brokerage does not support intermediaries being Financial Institutions, notwithstanding that Ash would benefit greatly in the marketplace if it were one. Ash believes the DOL correctly identifies the entities that should be Financial Institutions – i.e. banks, broker-dealers, investment advisors and insurance companies. Each of these businesses is designed to serve the retail consumer directly and, as a result, is regulated by state and federal governments to protect the public. Contrarily, insurance intermediaries are at their core wholesaling organizations and regulated accordingly. For BGAs wanting to take on a direct consumer relationship through independent agents, the regulatory framework is vastly lacking under state insurance laws, causing an unlevel playing field between intermediaries and other financial services firms.

---

<sup>2</sup> Approximately 90% of the financial professionals Ash works with regarding annuities are associated with a broker-dealer (“BD”), registered investment advisor (“RIA”) or bank. Only 10% of financial professionals are “independent,” holding only a life and health insurance license (hereinafter referred to as “independent agents”).

Intermediaries conducting retail level business should be equivalently regulated as the retail business of BDs, banks and RIAs. These business models must comply with a multitude of requirements aimed towards protecting investors and the capital markets in addition to fiduciary requirements under ERISA. These requirements include but are not limited to:

- State and federal privacy regulations
- Safeguarding customer information
- Capital and liquidity requirements
- Anti-money laundering regulations
- Business continuity plans
- Supervisory controls and supervision of transactions
- Advertising standards
- Compensation
- Licensing
- Outsourcing key operational functions to third parties
- Books and recordkeeping requirements
- Gifts and entertainment
- Whistleblower protection
- Requiring a chief compliance officer
- Risk management
- Regulatory reporting
- Regulator exams

Intermediaries may also be subject to a few of these requirements by virtue of doing insurance business in various states. However, the states are not consistent, nor do many have the resources to expand oversight of producer organizations. To avoid inconsistent application or no oversight at all, there needs to be a central authority responsible to ensure compliance with all rules and regulations like there are with FINRA (BDs), the SEC (RIAs) and banks (OCC).

Intermediaries may truly believe they can build compliance systems sufficient for investor protection. But, the differentiating factor between Intermediaries as Financial Institutions and other financial services firms is a central regulator. However, no such regulator exists, unless the Department wants to become it, or another regulator is delegated with the responsibility to oversee Intermediaries that become Financial Institutions. Neither of these appear to be viable options. To the extent the Department moves forward granting insurance intermediaries Financial Institution status, at a minimum it should impose (a) requirements on how Intermediaries should operate compliantly for retail business as set forth above, and (b) mechanisms on how Intermediaries will be overseen by the DOL (or another regulator).

#### **IV. Conclusion**

Ash Brokerage appreciates the opportunity to comment on the proposed class exemption as it relates to insurance intermediaries. In sum, we believe PTE 84-24 provides for an alternative exemption to the Proposal, obviating the need for intermediaries to be Financial Institutions. Notwithstanding this point, intermediaries should not be afforded Financial Institution status, because they are not regulated at the rigor of banks, broker-dealers and investment advisors. Retirement investors would not be protected the same by intermediaries as they would be by other retail financial services firms. Nonetheless, if the Department moves

Office of Exemption Determinations  
Employee Benefits Security Administration  
August 6, 2020

forward with allowing intermediaries as Financial Institutions, stronger compliance requirements and consistent oversight by a central regulator are needed.

We hope our comments are useful to the Department. Ash would welcome the opportunity to expand on its comments at the request of the Department. We are willing to provide additional information, meet with the Department, or attend a hearing at your convenience.

If you have any questions or if we can be of further assistance, please do not hesitate to contact me at 260-434-9724.

Sincerely,



Jeffrey V. Gery  
Chief Legal Officer  
Ash Brokerage, LLC