

July 20, 2017

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

Attn: RIN 1210-AB82

Email to: EBSA.FiduciaryRuleExamination@dol.gov.

DALBAR appreciates the opportunity to comment on the Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions ("RFI").

DALBAR Background

DALBAR has a 40-year history and is recognized by industry and government as an independent third party expert in the business of providing evaluations, ratings and due diligence. DALBAR certifications are recognized as a mark of excellence in the financial community for advice services, communications, electronic and telephone services.

DALBAR was also a pioneer in developing processes to audit the advice arrangement exemption of the Pension Protection Act and is a leading independent expert, providing the required services.

Response

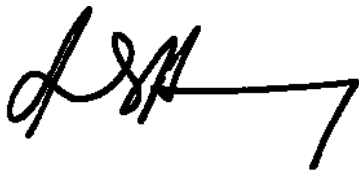
The following response is in answer to item 3 of the RFI, which asks:

3. Do the Rule and PTEs appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest? Do they effectively allow Advisers to provide a wide range of products that can meet each investor's particular needs?

It is our view that a large section of the financial services industry and the economy is marginalized by the Rule as it stands today, giving rise to the need for another exemption that addresses the role of sales professionals who are not bona fide advisers, but qualify as such under the existing rules.

The proposed exemption enables the continued expansion of retirement investing to meet the growing public need.

Thank you for your consideration of these comments in developing the final regulations.

A handwritten signature in black ink, appearing to read "LS Harvey", with a long horizontal line extending to the right.

Louis S. Harvey
President and CEO

SALES PROFESSIONAL EXEMPTION

Introduction

The Sales Professional is an essential part of capital formation which drives economic growth and ultimately provides retirement funding through the capital appreciation that is derived. This essential role is not recognized by the current Rule and PTEs, which instead treat the role of the Sales Professional and Advice Professional in the same way by virtue of the fact that they are both compensated for making recommendations to Retirement Investors.

The effect is to curtail the sales activities that are required for capital formation and appreciation, both of which are essential for retirement funding. The reduction in sales is caused by the burdens imposed on making recommendations which are entirely appropriate for Advice Professionals but detrimental to effective sales outreach to new clients and new sources of capital. Recommendations are the “introductory samples” of the sales process which are prohibited without an appropriate exemption.

Burdens to effective sales include the need to comply with best interest standards, warranties and contracts in sales presentations and proposals. The Sales Professional is not likely to be successful by reaching out to prospective clients with no product to offer. Under currently available PTEs, Sales Professionals are required to learn about each prospect before making a recommendation. Such a process is time consuming and the prospective client is generally unwilling to share personal information until after the Sales Professional’s offer has been accepted!

The purpose of the Sales Professional Exemption is to make it economically and practically viable for professionals to continue to offer products and services (“Sales Professionals”) to Retirement Investors without being subject to regulations designed for those whose profession is to advise investors (“Advice Professionals”). Current regulations preclude the *choice* of using a Sales Professional or an Advice Professional since there is no distinction made between them.

With this proposed exemption, it is essential for Retirement Investors to understand the difference between dealing with a Sales professional and an Advice Professional. This clarity begins with eliminating overlapping and ambiguous titles. Retirement Investors must know the distinction between the recommendation of an Advice Professional and the proposal of a Sales Professional.

The proposed exemption requires that these distinctions are clearly made.

The Economics of Choice

Maintaining the investor’s choice requires that the choice be clearly presented and that the viability of both the sales and advice professional is maintained.... Younger investors with small balances show little interest in professional advice and prefer to simply select a product in which they can accumulate wealth. They prefer to use a Sales Professional. As balances grow, interest in an Advice Professional increases. The transition from Sales Professional to Advice Professional puts a finite limit on the duration of the average relationship and is borne out by the average age and retention of the clients for each class of professional. There is also a large proportion of investors who never seek an Advice Professional and prefer to remain self-sufficient.

At the same time, professionals will not take on unprofitable business, thus making services unavailable or so costly that it becomes imprudent for investors in such segments. The economic analysis of the investor’s choice over a 25 year period is illustrated in the following table:

Initial Assets	Investor Choice	Asset Growth	Costs of Doing Business	Typical Compensation	Years to Break Even
\$1,000	Sales Professional	\$2,625	\$250	\$170	NEVER
	Advice Professional	\$2,008	\$9,115	\$557	NEVER
\$10,000	Sales Professional	\$26,250	\$250	\$1,705	1 Year
	Advice Professional	\$20,077	\$9,115	\$5,569	NEVER
\$100,000	Sales Professional	\$266,326	\$5,432	\$16,271	1 Year
	Advice Professional	\$219,285	\$18,480	\$46,260	3 Years
\$1 million	Sales Professional	\$2,778,036	\$20,230	\$138,179	1 Year
	Advice Professional	\$2,388,918	\$37,959	\$360,319	2 Years

Source: DALBAR Economic Analysis of Fee versus Commission

The analysis shows that:

- Over 25 years, Investors earn more with the Sales Professional, due to lower cost (assuming no differential in investment returns).
- Investors who start with \$1,000 and make no additions are never profitable for the Sales Professional.
- Investors who start with \$10,000 and make no additions are never profitable for Advice Professionals but are profitable for Sales Professionals.

Differences between Sales Professionals and Advice Professionals

Sales professionals are not compensated for advising Retirement Investors, but instead offer products and services that are available for purchase. Sales professionals target Retirement Investors with specific products and services and invite the investors to select their offering. This differs greatly from an adviser who is engaged by the Retirement Investor to make recommendations that are in the investor’s best interest.

Adviser regulations negate the role of the Sales Professional in several essential ways:

- The Sales Professional has no agreement or obligation to the Retirement Investor in conducting sales activities.
- The Sales Professional is compensated for procuring the client while the adviser is compensated for the services defined in an agreement. Sales Professional compensation rewards the sales effort and is typically paid at the start of the point of sale. Adviser compensation is typically ongoing and rewards the ongoing services being provided.
- The Sales Professional represents one or more products and/or service providers while the adviser represents the interests of the Retirement Investor. Sales Professionals primarily rely on sales agreements with product and/or service providers while advisers rely on agreements with Retirement Investors.

The proposed exemption separates the role of the Sales Professional to permit the funding of selling activities to continue. Instead of relying on a non-existent contract arrangement for enforcement, the proposed exemption defines a written sales proposal, sales practices, disclosures and requires an independent annual audit.

The Need for Sales Professionals

This selling activity is essential for the continued growth of solutions to meet the retirement needs of the public. Without sales activities there would be little improvement in the readiness of workers for retirement. Consider that over 90% of investors initially learned about investing directly or indirectly from a Sales Professional. It can be argued that without Sales Professionals, the investment industry would be one-tenth the size and would only provide one-tenth the capital for economic growth! Encumbering the role of Sales Professionals could have a devastating effect on long term wealth and the economy as a whole.

The Sales Professional Exemption is designed to restore that role, using the Best Interest Contract Exemption (“BICE”) and ERISA 408(g) Annual Audit as a framework for protection of Retirement Investors.

Summary

Changes Noted

The following section presents the proposed Sales Professional Exemption which uses the Best Interest Contract language as a template, with changes underlined and omissions noted.

Added Provisions

- Definition of a new class: The Sales Professional [Section VIII(a)]
 - The Sales Professional differs from the Adviser in that the Adviser has an agreement with a client while the Sales Professional has an agreement with product and/or service providers.
- Definition of Sales Activities as a class of fiduciary acts [Section VIII(r)]
 - Sales Activities occur with no agreement with the client and are compensated only after the client purchases a product or service.
- Sales Professionals are prohibited from describing themselves as adviser (or other similar term) to eliminate confusion in the public with Advice Professionals [Section II(c)(3)].
 - This prohibition is intended the address the massive confusion and false expectations that exists in the public today where an individual uses the title of “advisor” or “counsellor” but does not provide advice or counsel.
- Definition of new standards: Sales Standards [Section II(c)]
 - Sales Standards describe the prerequisites, policies, procedures and disclosures that govern Sales Activities.
- Definition of a new document: The Sales Proposal [Section II(e)]
 - The Sales Proposal is the overarching offering document related to the products and/or services being sold.
- Requirement for independent auditor: Derived from ERISA 408(g) [Section II(d)]
 - The independent audit is conducted annually to ensure compliance with the Sales Professional Exemption.

Key Provisions Retained

- Definition of a Retirement Investor
- Exemption for pre-existing transactions
- Transition period

Changed Provisions

- Sales Professionals are the focus of the exemption, not advisers
- Sales Proposals replace recommendations
- Sales Standards replace Impartial Conduct Standards
- Sales Professionals must disclose the cost of products or services but compensation is based on securities regulations.
- Misleading statements are subject to securities laws and regulations, not the exemption
- Required disclosures are made in Sales Proposals

Provisions Removed

- No contract is required for Sales Activities
- No level fee or bank networking provisions
- No warranties are made regarding conflicts of interests
- No special disclosures are required for proprietary products
- No exemption is required for annuities
- No requirement for ongoing monitoring
- No DoL recordkeeping and disclosures

Sales Professional Exemption

Section I – Sales Professional Exemption

(a) In general. ERISA and the Internal Revenue Code prohibit Sales Professionals to employee benefit plans (Plans) and individual retirement plans (IRAs) from receiving compensation that varies based on their investment advice. Similarly, Sales Professionals are prohibited from receiving compensation from third parties in connection with their advice. This exemption permits Sales Professionals who provide investment advice to Retirement Investors, and associated Financial Institutions, Affiliates and other Related Entities, to receive such otherwise prohibited compensation as described below.

(b) Covered transactions. This exemption permits Sales Professionals, Financial Institutions, and their Affiliates and Related Entities, to receive compensation as a result of Sales Activities as defined in Section VIII(r).

As defined in Section VIII(o) of the exemption, a Retirement Investor is: (1) A participant or beneficiary of a Plan with authority to direct the investment of assets in his or her Plan account or to take a distribution; (2) the beneficial owner of an IRA acting on behalf of the IRA; or (3) a Retail Fiduciary with respect to a Plan or IRA.

As detailed below, Financial Institutions and Sales Professionals seeking to rely on the exemption must adhere to Sales Standards in performing Sales Activities regarding retirement investments. In addition, Financial Institutions must adopt policies and procedures designed to ensure that their individual Sales Professionals adhere to the Sales Standards; disclose important information relating to costs of products or services represented by the Sales Professional; and retain records demonstrating compliance with the exemption. This document also contains a separate exemption in Section VII (Exemption for Pre-Existing Transactions).

Section II—Sales Standards, and Other Requirements

The conditions set forth in this section include certain Sales Standards that Sales Professionals and Financial Institutions must satisfy to rely on the exemption. In addition, Section II(d) and (e) requires Financial Institutions to undergo an annual audit that is designed to ensure that Sales Professionals adhere to the Sales Standards, and requires disclosure of important information about the Financial Institution. There is no contract requirement for Sales Proposals to Retirement Investors. Section II imposes the following conditions on Financial Institutions and Sales Professionals:

(a) No contract is required for the Sales Professional to submit a Sales Proposal to a Retirement Investor.

(b) Fiduciary. The Financial Institution affirmatively states in writing that it and the Sales Professionals(s) act as fiduciaries under ERISA or the Code, with respect to any Sales Proposals provided by the Financial Institution or the Sales Professional.

(c) Sales Standards. The Financial Institution affirmatively states that it and its Sales Professionals will adhere to the following standards and, they in fact, comply with the standards:

(1) All offers of products or services are made through written Sales Proposals as defined in Section II(e).

(2) Compensation is subject to regulations, limits and guidelines specified by Securities Regulators and is reasonable in relation to the services provided and the costs of providing those services.

(3) Statements by the Financial Institution and its Sales Professionals to the Retirement Investor are subject to regulations, limits and guidelines specified by Securities Regulators and under no circumstances shall the term “adviser” or other terms with similar meaning be used to describe a Sales Professional.

(d) *Annual audit*¹. (i) The Financial Institution shall, at least annually, engage an independent auditor, who has appropriate technical training or experience and proficiency, and so represents in writing to the Financial Institution, to:

(A) Conduct an audit of the sales practices for compliance with the requirements of this section; and

(B) Within 60 days following completion of the audit, issue a written report to the Financial Institution and, except with respect to an arrangement with an IRA, to each fiduciary who purchased products or services in accordance with paragraph (II) of this section, that identifies the Sales Professional, and sets forth the specific findings of the auditor regarding compliance of the arrangement with the requirements of this section.

(ii) With respect to an arrangement with an IRA, the Financial Institution:

(A) Within 30 days following receipt of the report from the auditor, as described in paragraph (d)(i)(B) of this section, shall furnish a copy of the report to the IRA beneficiary or make such report available on its website, provided that such beneficiaries are provided information, with the information required to be disclosed pursuant to paragraph (II)(e) of this section, concerning the purpose of the report, and how and where to locate the report applicable to their account; and

(B) In the event that the report of the auditor identifies noncompliance with the requirements of this section, within 30 days following receipt of the report from the auditor, shall send a copy of the report to the Department of Labor at the following address:

Investment Advice Exemption Notification,
U.S. Department of Labor,
Employee Benefits Security Administration, Room N-1513,
200 Constitution Ave., NW., Washington, DC, 20210,
or submit a copy electronically to InvAdvNotification@dol.gov.

(iii) For purposes of this paragraph (d), an auditor is considered independent if it does not have a material affiliation or material contractual relationship with the person offering the products and/or services to the Retirement Investors.

¹ Adapted from ERISA 408(g)(1)(b)(6) Annual Audit Requirement

(iv) For purposes of this paragraph (d), the auditor shall review sufficient relevant information to formulate an opinion as to whether the products and/or services offered to the Retirement Investors, pursuant thereto, during the audit period were in compliance with this section. Nothing in this paragraph shall preclude an auditor from using information obtained by sampling, as reasonably determined appropriate by the auditor during the audit period.

(e) Disclosures. Sales Proposals may identify specific products and/or services that are offered to Retirement Investors but must contain the following:

(1) The first page or cover must display the words "Sales Proposal" in a size and color that makes it the most prominent text in the entire proposal and any attachments.

(2) Starting no later than the third page of the Sales Proposal, the name of the Sales Professional, affiliated firm and product or service providers that the Sales Professional represents are disclosed. If there are a large number of providers, the ten with whom the Sales Professional does the most business may be listed with a reference to a Web site that contains the complete list.

(3) A recap of the total cost to the retirement investor of all products or services that are being proposed for the first year and for ten succeeding years (if applicable) is shown within the first three pages of the Sales Proposal.

(4) A statement is included within the first three pages of the proposal indicating the basis for the Sales Proposal and the cost of products or services. The basis for the proposal can be specific to the retirement investor or may be generic, such as "investor will accept this proposal only if he/she understands it and believes it to be in his/her best interest".

(5) ² The Sales Professional arrangement will be audited annually by an independent auditor for compliance with the requirements this exemption and related regulations; and the auditor will furnish the authorizing fiduciary a copy of that auditor's findings within 60 days of its completion of the audit.

(6) Provides contact information (telephone and email) for a representative of the Financial Institution that the Retirement Investor can use to contact the Financial Institution with any concerns about the Sales Proposal or service they have received; and, if applicable, a statement explaining that the Retirement Investor can research the Financial Institution and its Sales Professionals using FINRA's BrokerCheck database or other database maintained by a governmental agency or instrumentality, or self-regulatory organization; and

(7)

(8) The Financial Institution will not fail to satisfy this Section II(e), or violate a contractual provision based thereon, solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, provided the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission. To the extent compliance

² Adapted from ERISA 408(g)(1)(b)(6) Annual Audit Requirement

with this Section II(e) requires Sales Professionals and Financial Institutions to obtain information from entities that are not closely affiliated with them, they may rely in good faith on information and assurances from the other entities, as long as they do not know that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Sales Professional and Financial Institution is (1) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Sales Professional or Financial Institution; or (2) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Sales Professional or Financial Institution.

Section III—Web and Transaction-Based Disclosure

[Removed]

Section IV—Proprietary Products and Third Party Payments

[Removed]

Section V—Disclosure to the Department and Recordkeeping

[Removed]

Section VI—Exemption for Purchases and Sales, Including Insurance and Annuity Contracts

[Removed]

Section VII—Exemption for Pre-Existing Transactions

(a) *In general.* ERISA and the Internal Revenue Code prohibit Sales Professionals, Financial Institutions and their Affiliates and Related Entities from receiving compensation that varies based on their investment advice. Similarly, Sales Professionals are prohibited from receiving compensation from third parties in connection with their advice. Some Sales Professionals and Financial Institutions did not consider themselves fiduciaries within the meaning of [29 CFR 2510-3.21](#) before the applicability date of the amendment to [29 CFR 2510-3.21](#) (the Applicability Date). Other Sales Professionals and Financial Institutions entered into transactions involving Plans, participant or beneficiary accounts, or IRAs before the Applicability Date, in accordance with the terms of a prohibited transaction exemption that has since been amended. This exemption permits Sales Professionals, Financial Institutions, and their Affiliates and Related Entities, to receive compensation, such as 12b-1 fees, in connection with a Plan's, participant or beneficiary account's or IRA's purchase, sale, exchange, or holding of securities or other investment property that was acquired prior to the Applicability Date, as described and limited below.

(b) *Covered transaction.* Subject to the applicable conditions described below, the restrictions of ERISA section 406(a)(1)(A), 406(a)(1)(D), and 406(b) and the sanctions imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A), (D), (E) and (F), shall not apply to the receipt of compensation by a Sales Professional, Financial Institution, and any Affiliate and Related

Entity, as a result of investment advice (including advice to hold) provided to a Plan, participant or beneficiary or IRA owner in connection with the purchase, holding, sale, or exchange of securities or other investment property (i) that was acquired before the Applicability Date, or (ii) that was acquired pursuant to a recommendation to continue to adhere to a systematic purchase program established before the Applicability Date. This Exemption for Pre-Existing Transactions is conditioned on the following:

- (1) The compensation is received pursuant to an agreement, arrangement or understanding that was entered into prior to the Applicability Date and that has not expired or come up for renewal post-Applicability Date;
- (2) The purchase, exchange, holding or sale of the securities or other investment property was not otherwise a non-exempt prohibited transaction pursuant to ERISA section 406 and Code section 4975 on the date it occurred;
- (3) The compensation is not received in connection with the Plan's, participant or beneficiary account's or IRA's investment of additional amounts in the previously acquired investment vehicle; except that for avoidance of doubt, the exemption does apply to a recommendation to exchange investments within a mutual fund family or variable annuity contract) pursuant to an exchange privilege or rebalancing program that was established before the Applicability Date, provided that the recommendation does not result in the Sales Professional and Financial Institution, or their Affiliates or Related Entities, receiving more compensation (either as a fixed dollar amount or a percentage of assets) than they were entitled to receive prior to the Applicability Date;
- (4) The amount of the compensation paid, directly or indirectly, to the Sales Professional, Financial Institution, or their Affiliates or Related Entities in connection with the transaction is not in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and
- (5) Any Sales Proposals made after the Applicability Date by the Financial Institution or Sales Professional with respect to the securities or other investment property comply with the Sales Standards.

Section VIII—Definitions

For purposes of these exemptions:

(a) “Sales Professional” means an individual who:

(1) Performs Sales Activities and is identified by an appropriate designation or title and does not use misleading designations or titles.

(i) Appropriate designations always contain the word “Sales” that may be preceded by a defining term such as “Investment”, “Insurance” or “Retirement” and followed by a designation of status, such as “Expert”, “Manager”, “Executive”, “Specialist”, “Representative” or “Professional”.

(ii) Misleading designations that are prohibited suggest a role that is different from that of a Sales Professional such as adviser, advisor, counsellor or similar terms that imply impartial advice, fiduciary, planner or Abbreviations or acronyms that reference any of these terms.

(2) Is an employee, independent contractor, agent, or registered representative of a Financial Institution; and

(3) Satisfies the federal and state regulatory and licensing requirements of insurance, banking, and securities laws with respect to the covered transaction, as applicable.

(b) "Affiliate" of an Adviser or Financial Institution means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Sales Professional or Financial Institution. For this purpose, "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(2) Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)), of the Sales Professional or Financial Institution; and

(3) Any corporation or partnership of which the Sales Professional or Financial Institution is an officer, director, or partner.

(c)

(d)

(e) "Financial Institution" means an entity that employs the Sales Professional or otherwise retains such individual as an independent contractor, agent or registered representative and that is:

(1) Registered as an investment adviser under the Investment Advisers Act of 1940 ([15 U.S.C. 80b-1 et seq.](#)) or under the laws of the state in which the Sales Professional maintains its principal office and place of business;

(2) A bank or similar financial institution supervised by the United States or a state, or a savings association (as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1));

(3) An insurance company qualified to do business under the laws of a state, provided that such insurance company:

(i) Has obtained a Certificate of Authority from the insurance commissioner of its domiciliary state which has neither been revoked nor suspended,

(ii) Has undergone and shall continue to undergo an examination by an Independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary state) by the state's insurance commissioner within the preceding 5 years, and

(iii) Is domiciled in a state whose law requires that actuarial review of reserves be conducted annually by an Independent firm of actuaries and reported to the appropriate regulatory authority;

(4) A broker or dealer registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.); or

(5) An entity that is described in the definition of Financial Institution in an individual exemption granted by the Department under ERISA section 408(a) and Code section 4975(c), after the date of this exemption, that provides relief for the receipt of compensation in connection with investment advice provided by an investment advice fiduciary, under the same conditions as this class exemption.

(f) “Independent” means a person that:

(1) Is not the Sales Professional, the Financial Institution or any Affiliate relying on the exemption;

(2) Does not have a relationship to or an interest in the Sales Professional, the Financial Institution or Affiliate that might affect the exercise of the person's best judgment in connection with transactions described in this exemption; and

(3) Does not receive or is not projected to receive within the current federal income tax year, compensation or other consideration for his or her own account from the Sales Professional, Financial Institution or Affiliate in excess of 2% of the person's annual revenues based upon its prior income tax year.

(g) “Individual Retirement Account” or “IRA” means any account or annuity described in Code section 4975(e)(1)(B) through (F), including, for example, an individual retirement account described in section 408(a) of the Code and a health savings account described in section 223(d) of the Code.

(h)

(i)

(j) “Plan” means any employee benefit plan described in section 3(3) of the Act and any plan described in section 4975(e)(1)(A) of the Code.

(k)

(l)

(m) “Related Entity” means any entity other than an Affiliate in which the Sales Professional or Financial Institution has an interest which may affect the exercise of its best judgment as a fiduciary.

(n) A “Retail Fiduciary” means a fiduciary of a Plan or IRA that is not described in section (c)(1)(i) of the Regulation (29 CFR 2510.3-21(c)(1)(i)).

(o) “Retirement Investor” means—

(1) A participant or beneficiary of a Plan subject to Title I of ERISA or described in section 4975(e)(1)(A) of the Code, with authority to direct the investment of assets in his or her Plan account or to take a distribution,

(2) The beneficial owner of an IRA acting on behalf of the IRA, or

(3) A Retail Fiduciary with respect to a Plan subject to Title I of ERISA or described in section 4975(e)(1)(A) of the Code or IRA.

(p)

(q) “Third-Party Payments” include sales charges when not paid directly by the Plan, participant or beneficiary account, or IRA; gross dealer concessions; revenue sharing payments; 12b-1 fees; distribution, solicitation or referral fees; volume-based fees; fees for seminars and educational programs; and any other compensation, consideration or financial benefit provided to the Financial Institution or an Affiliate or Related Entity by a third party as a result of a transaction involving a Plan, participant or beneficiary account, or IRA.

(r) “Sales Activities” are performed by a Sales Professionals who:

(i) Has a superior knowledge of the products and services being sold and the ability to answer objections from buyers and potential buyers.

(ii) Prospects to find new buyers and buyers from among existing clients.

(iii) Makes an effective presentation for why the product(s) and services should be purchased (“Sales Proposal”).

(iv) Closes the sale.

(v) Earns a commission.

(vi) Renders services to the client.

(vii) Assumes responsibility as a fiduciary.

Section IX—Transition Period for Exemption

(a) *In general.* ERISA and the Internal Revenue Code prohibit Sales Professionals to Plans and IRAs from receiving compensation that varies based on their investment advice. Similarly, Sales Professionals are prohibited from receiving compensation from third parties in connection with their advice. This transition period provides relief from the restrictions of ERISA section 406(a)(1)(D), and 406(b) and the sanctions imposed by Code section 4975(a) and (b) by reason of Code section 4975(c)(1)(D), (E), and (F) for the period from April 10, 2017, to January 1, 2018 (the Transition Period) for Sales Professionals, Financial Institutions, and their Affiliates and Related Entities, to receive such otherwise prohibited compensation subject to the conditions described in Section IX(d).

(b) *Covered transactions.* This provision permits Sales Professionals, Financial Institutions, and their Affiliates and Related Entities to receive compensation as a result of their provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) to a Retirement Investor, during the Transition Period.

(c) *Exclusions.* This provision does not apply if:

(1) The Plan is covered by Title I of ERISA, and (i) the Sales Professional, Financial Institution or any Affiliate is the employer of employees covered by the Plan, or (ii) the Sales Professional or Financial

Institution is a named fiduciary or plan administrator (as defined in ERISA section 3(16)(A)) with respect to the Plan, or an Affiliate thereof, that was selected to provide advice to the Plan by a fiduciary who is not Independent;

(2) The compensation is received as a result of a Principal Transaction;

(3) The compensation is received as a result of investment advice to a Retirement Investor generated solely by an interactive Web site in which computer software-based models or applications provide investment advice based on personal information each investor supplies through the Web site without any personal interaction or advice from an individual Sales Professional (i.e., “robo-advice”); or

(4) The Sales Professional has or exercises any discretionary authority or discretionary control with respect to the recommended transaction.

(d) Conditions. The provision is subject to the following conditions:

(1) The Financial Institution and Sales Professional adhere to the following standards:

(i) When providing investment advice to the Retirement Investor, the Financial Institution and the Sales Professional(s) comply with the Sales Standards.

(ii) The recommended transaction does not cause the Financial Institution, Sales Professional or their Affiliates or Related Entities to receive, directly or indirectly, compensation for their services that is in excess of reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

(3) Statements by the Financial Institution and its Sales Professionals to the Retirement Investor are subject to regulations, limits and guidelines specified by Securities Regulators.

(2) *Disclosures.* The Financial Institution provides to the Retirement Investor, prior to or at the same time as, the execution of the recommended transaction, a single written disclosure, which may cover multiple transactions or all transactions occurring within the Transition Period, that clearly and prominently:

(i) Affirmatively that the Financial Institution and the Sales Professionals(s) act as fiduciaries under ERISA or the Code, with respect to any Sales Proposals provided by the Financial Institution or the Sales Professional;

(ii) Sets forth the standards in paragraph (d)(1) of this Section and affirmatively states that it and the Sales Professional(s) adhered to such standards in preparing the Sales Proposal;

(iii)

(iv)

(v) The disclosure may be provided in person, electronically or by mail. It does not have to be repeated for any subsequent recommendations during the Transition Period.

(vi) The Financial Institution will not fail to satisfy this Section IX(d)(2) solely because it, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the required information, provided the Financial Institution discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission. To the extent compliance with this Section IX(d)(2) requires Financial Institutions to obtain information from entities that are not closely affiliated with them, they may rely in good faith on information and assurances from the other entities, as long as they do not know, or unless they should have known, that the materials are incomplete or inaccurate. This good faith reliance applies unless the entity providing the information to the Adviser and Financial Institution is (1) a person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Sales Professional or Financial Institution; or (2) any officer, director, employee, agent, registered representative, relative (as defined in ERISA section 3(15)), member of family (as defined in Code section 4975(e)(6)) of, or partner in, the Adviser or Financial Institution.