August 7, 2017

Via Electronic Filing

Office of Exemption Determinations
EBSA (Attention: D -11933)
U.S. Department of Labor
200 Constitution Avenue N.W., Suite 400
Washington, D.C. 20210

Re: Response to Department's Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210–AB82)

Ladies and Gentlemen:

The Investment Adviser Association (the "IAA")[1] appreciates the opportunity to respond to the Department of Labor's Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions ("RFI"). We ask that the Department consider this RFI response in conjunction with the comments submitted by IAA on April 17, 2017 in response to the request of Department of Labor ("DOL" or "Department") for comment related to the President's Memorandum dated February 3, 2017 ("Presidential Memorandum"), and the IAA's prior comment letters to the Department regarding the fiduciary status of registered investment advisers.[2]

As we have stated in our prior comment letters and in our conversations with the staff of the Employee Benefit Security Administration, the IAA strongly supports the fiduciary standard. We have long advocated that financial professionals providing investment advice to clients about securities be required to act as fiduciaries in the best interest of their clients. However, as we have stated in the past, we believe that the Department's final investment advice regulation ("Fiduciary Rule") and related exemptions, particularly the Best Interest Contract Exemption ("BIC Exemption"), will have significant, unwarranted–and, in some cases, unintended–consequences for retirement investors and for advisers who are already fiduciaries for purposes of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the Internal Revenue Code of 1986, as amended ("Code").

The IAA's members are investment advisers registered with the SEC, and, as such are fiduciaries under the Investment Advisers Act of 1940. SEC-registered investment advisers are subject to a robust fiduciary standard that applies to all adviser clients, whether or not such

[1] The IAA is a not-for-profit association that represents the interests of investment adviser firms that are registered with the Securities and Exchange Commission. The IAA's membership consists of more than 600 firms that collectively manage approximately $20 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, private funds, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org. The term "investment adviser" or "adviser" throughout our comments refers to SEC-registered investment advisers.

[2] *See* Letter from Kathy D. Ireland, IAA Associate General Counsel, to Department of Labor (July 21, 2015).

clients are "plans" under ERISA or the Code or are individuals who participate in such plans or Individual Retirement Accounts ("IRAs"). In addition, virtually all of the IAA's members are discretionary investment managers and, in that capacity, are already fiduciaries under ERISA and subject to prohibited transaction provisions of the Code with respect to their ongoing relationships with their retirement plan and IRA clients. IAA members see first-hand the need for high-quality fiduciary advice and are committed to the fiduciary standard and to acting in the best interest of clients.

Even with respect to firms that are already fiduciaries, however, the Department has drafted and interpreted the Fiduciary Rule in a manner that impedes investors' access to important information about financial services and imposes unnecessary burdens. Under the Rule, an investment adviser who shares basic information with a prospective client about the adviser's services could be viewed as a fiduciary before the client makes a hiring decision. Notably, the Department has not provided a workable approach for investment adviser firms that are seeking to establish a discretionary fiduciary relationship with retirement investors. Such an approach is necessary to allow investors to have meaningful access to information about investment professionals who, like IAA members, are already subject to the fiduciary requirements of the Advisers Act and ERISA and the prohibited transaction provisions of the Code once the client relationship has been established. Therefore, the IAA appreciates that the Department issued this RFI, as it suggests the Department's willingness to consider constructive input and to improve the Fiduciary Rule and related exemptions.

Executive Summary

We respectfully request that the Department address our concerns in three specific areas:

1) The Investment Advice Definition;

2) The Independent Fiduciary Exception; and

3) The "Level Fee" Streamlined Best Interest Contract Exemption.

As we have stated repeatedly, the Department should not treat an investment adviser as a fiduciary *before* it enters into a relationship with a client. The Fiduciary Rule definition itself should be revised to recognize the fundamental distinction between the marketing/hiring process and actual investment advice. The IAA suggests that the Department accomplish this goal by revising the definition to (1) include a meaningful "hire me" exception for marketing of products and services and (2) specifically exclude from the investment advice definition pre-contract marketing discussions where a registered investment adviser will act as a discretionary fiduciary once the investor and adviser enter into a formal arrangement.

The Independent Fiduciary Exception should be improved both in scope and in ease of implementation. The IAA suggests that the Department adopt the "qualified purchaser" definition for ERISA plan fiduciaries and IRA holders other than financial institutions to better align the exception with existing standards of investment sophistication utilized under Federal securities law. In addition, the Department should further streamline the exception to make it less cumbersome in practice, and should clarify that intra-company conversations are not investment advice.

Recognizing that many on-going advisory relationships are structured to avoid fee conflicts, the Department included a streamlined exemption for "Level Fee" fiduciaries within the Best Interest Contract Exemption. In reviewing the Best Interest Contract Exemption, the Department should adjust the Level Fee definition to ensure that this streamlined exemption is workable. In addition, as the Department makes changes to the Best Interest Contract Exemption, it must be careful not to add requirements for advisers intending to rely on the streamlined exemption. Any changes to the streamlined exemption should reduce - not increase - burdens on advisers.

I. "Investment Advice" Definition

The investment advice definition in the Fiduciary Rule is extremely broad, and covers virtually any information directed to any ERISA plan, plan fiduciary, participant, beneficiary, IRA or IRA holder regarding investments, investment policies, strategies, portfolio composition, asset management or rollovers and distributions. The breadth of the definition stems primarily from the fact that a communication will be viewed as a recommendation under the Rule if, in context, it would reasonably be viewed as a "suggestion" related to investments. This aspect of the Rule precludes any meaningful distinction between marketing of investment-related services and fiduciary advice. IAA suggests that the Department can achieve its consumer protection aims, while still providing retirement investors with access to meaningful information in making their important hiring decisions, by (1) improving the portion of the investment advice definition that permits advisers to market their services, and (2) excluding discretionary asset managers – those who are seeking to establish an on-going fiduciary relationship with plans and IRAs – from coverage under the rule during pre-contract conversations prior to establishing the client relationship. These comments are discussed in detail below.

A. Improved "Hire Me" Exclusion

An adviser should be able to market its services to prospective investors without becoming a fiduciary under ERISA and the Code. The preamble to the final Fiduciary Rule explains that "a person or firm can tout the quality of his, her, or its own advisory or investment management services or those of any other person known by the investor to be, or fairly identified by the adviser as, an affiliate, without triggering fiduciary obligations" (commonly known as the "Hire Me" exception).[3] Therefore, the Department changed its proposed definition of investment advice to make clear that only a recommendation of "other" persons to provide

[3] 81 Fed. Reg. at 20,968.

advice or management services is investment advice. As a result, recommending one's self or an affiliate is not, by itself, a fiduciary recommendation.

We strongly agree that a "Hire Me" exclusion is wholly appropriate to permit advisers to engage "in the normal activity of marketing" themselves as a potential fiduciary to be selected by a plan fiduciary or IRA owner. However, the preamble suggests that DOL views the "Hire Me" exception too narrowly. Thus, if the communication involves a suggestion "that the investor pull money out of a plan or invest in a particular fund, that advice is given in a fiduciary capacity even if part of a presentation in which the adviser is also recommending that the person enter into an advisory relationship."[4] This qualification arguably could be interpreted to mean that the adviser may not suggest to the investor how the adviser may invest the assets of the account if the adviser was hired. Such an interpretation effectively eviscerates the "Hire Me" exclusion. The reality of the adviser selection process is that an adviser *must* demonstrate how the adviser will invest the assets in order to distinguish itself from the other advisers the investor may be considering. As described more fully below, a prospective client typically affirmatively seeks and benefits from the information flowing from an adviser's ability to make comparisons between the adviser's offerings or proposed strategy and the client's existing investments.

The approach taken by the Department in crafting the rule has the unfortunate and unnecessary result of limiting the information that retirement investors will be able to obtain from investment professionals. Thus, the IAA urges the Department to make clear that advisers may fully describe their services, products, and proposed strategies to prospective clients without becoming a fiduciary during that pre-contract window.

B. Exclusion for Discretionary Managers

The Fiduciary Rule should exclude pre-contract discussions by any person who will be a discretionary fiduciary after entering into a contractual arrangement with a client. Specifically, any person who will be a fiduciary as defined in section 3(21)(A)(i)[5] of ERISA or Code section 4975(e)(3)(A) should be excluded from the Fiduciary Rule, which is intended to interpret ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B). Since the law was passed, DOL and courts interpreting ERISA have noted the distinction between investment advice and investment discretion. The Fiduciary Rule blurs this distinction because under the rule, marketing discretionary fiduciary services is investment advice. This is clearly not what was intended

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[4] *Id.*

[5] ERISA section 3(21)(A) contains three distinct fiduciary definitions. Section 3(21)(A)(i) identifies as a fiduciary a person who "exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets." Section 4975(e)(3)(A) of the Code mirrors this definition. In contrast, section 3(21)(A)(ii) of ERISA and section 4975(e)(3)(B) of the Code identify as a fiduciary a person who, "renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so." Often, discretionary fiduciaries described under ERISA section 3(21)(A)(i) act as "investment managers" under ERISA section 3(38).

when the statute was drafted. In order to address this overbreadth, a full exclusion is warranted for these discretionary fiduciaries.

1) The Adviser is Subject to a Fiduciary Standard once the Arrangement is Established

Once the client and the investment adviser enter into an investment management arrangement to provide discretionary management services, the adviser is subject to the Advisers Act fiduciary standard, the ERISA fiduciary standard if managing the assets of an ERISA-covered plan, and the Code's prohibited transaction provisions applicable to fiduciaries if managing the assets of an ERISA-covered plan or IRA. There is little or no incentive for a discretionary adviser to make improper suggestions in marketing conversations about how the adviser will invest the prospective client's assets once hired.

During the adviser selection process, clients usually consider the services of multiple potential advisers. In so doing, they seek critical information about the adviser, its capabilities, fees, investment strategies, and, importantly, how the adviser envisions managing their portfolio if hired. In order to answer these questions and provide important information, an adviser will seek preliminary information from an investor to get a sense of the investor's goals, financial situation, current investments, and guidelines. The adviser will then present how it may invest the prospective client's account assets once hired. This exchange of information allows investors to knowledgeably evaluate and distinguish the services of potential advisers. However, once the investor makes a selection and the adviser and investor enter into a contract, the adviser will be in the best position to determine how it will invest the account assets based on agreed-upon investment guidelines and will do so pursuant to its fiduciary duty. This circumstance is similar to a person hiring a surgeon to reconstruct an injured knee. The person will interview a number of surgeons to determine their level of expertise and experience and to determine how they will perform the surgery under the circumstances then known to the surgeon. During this "interview" process, each surgeon's role is to fully explain the process that he or she will use based on the available information, thus allowing the patient / consumer to make the best decision possible. The adviser has a similar role in providing information to the investor to make an informed hiring decision. Importantly, the adviser will be implementing the investment strategy identified to the client during the pre-contract conversation in accordance with the strict requirements of the Advisers Act, ERISA and the Code (just as the surgeon once hired will treat a patient in accordance with required medical standards). Thus, the client will be fully protected in the actual implementation of the investment advice.

2) Strong Protections under the Investment Advisers Act of 1940

In connection with the adviser selection process, the client already has protections under federal law. Registered investment advisers are required by the Securities and Exchange Commission ("SEC") to provide substantial disclosures in the Form ADV, and to provide the ADV to each investor before entering into an advisory agreement. Investors are further protected by the Advisers Act and rules and guidance thereunder, which are designed to ensure that marketing communications are clear, presented fairly, and are not misleading. And, as we have noted, investment advisers' fee arrangements are straightforward and fully disclosed upfront. In our view, the Department has not demonstrated any deficiencies in the information provided in the ADV that would be resolved through DOL regulation of pre-contract marketing/hiring conversations.

In question number eleven of the RFI, the Department asks whether "[i]f the Securities and Exchange Commission or other regulators were to adopt updated standards of conduct applicable to the provision of investment advice to retail investors could a streamlined exemption or other change be developed for advisers that comply with or are subject to those standards?" The phrasing of this question is unfortunate because it appears to assume that the SEC's standards as currently written are inadequate and therefore must be updated before the Department would be willing to recognize compliance with those standards as sufficient for compliance with its own exemptions. We do not believe these assumptions are accurate with respect to SEC-registered investment advisers, all of which are already fiduciaries. The Advisers Act and the SEC's regulatory and enforcement efforts thereunder connected to the marketing of discretionary investment management services are – today - protective of investors' interests. Indeed, we expect the SEC would have a similar view. Therefore, we strongly encourage the Department to continue to leverage the SEC's technical expertise as the Department evaluates what changes should be made in connection with the Fiduciary Rule and related exemptions.

3) Change is Necessary to Promote Investor Access to Information During the Adviser Hiring Process

If the current Fiduciary Rule as it applies to pre-contract discussions is left intact, the Department will stifle the free flow of information exchanged during the process by which the investor selects an investment manager. In the pre-contract context, the client is usually considering the services of multiple potential advisers and often benefits from granular-level comparisons of the differences. In order to best apprise the client of the different options available, advisers should have the flexibility to fully describe and distinguish their offerings. This free flow of information will best promote the interests of retirement investors by enabling them to understand and distinguish the services of various candidate advisers, and permit advisers the flexibility to be as responsive and provide as much information as they desire in pre-contractual discussions.

II. Improvements to the Independent Fiduciary Exception with Financial Expertise ("Independent Fiduciary Exception" or "IFE")

In question eighteen of the RFI, the Department asks whether any changes should be made to the IFE included in the Fiduciary Rule or whether an exemption or exemptions should be adopted to address concerns that the IFE as currently written is too narrow. As we have stated in our prior comment letters, the scope of the IFE should be expanded so as to recognize long-standing principles upon which advisers rely in gauging investor sophistication. Further, the IFE as written has proven to be cumbersome and unnecessarily difficult to implement. Therefore, we propose an alternative to the current IFE. Finally, we ask for further clarification from the Department that intra-company communications are not "investment advice" for purposes of ERISA and the Code.

A. Align the Scope of the IFE with the SEC Definition of Qualified Purchaser

In the Final Rule, the Department made a policy decision regarding which entities are sufficiently sophisticated to determine when an adviser is selling its products and services, and thus not acting in a fiduciary capacity. These entities included: (a) counter-parties with at least $50 million of assets under its control (excluding IRA owners), (b) counter-parties who are financial institutions that meet certain definitional requirements, and (c) counter-parties who are advised by these financial institutions. The Department articulated in the preamble its view that the amount of assets an investor has does not equate to investor sophistication and thus did not adopt a "qualified purchaser" or other definition found in the securities laws for purposes of applying the IFE.[6] The IAA disagrees with the Department's view and requests that the Department take this opportunity to review the many examples available in the securities law context to rethink its position.

The SEC has long-recognized that "qualified purchasers" are sophisticated "institutional" investors and, as such, they are in a position to evaluate certain investments without the protections of certain requirements of certain securities laws or components of those laws. Section 2(a)(51) of the Investment Company Act of 1940 ("Act") defines the term "qualified purchaser." As relevant here, a "qualified purchaser" includes a "natural person…who owns not less than $5,000,000 in investments"[7] and "any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments."

The "qualified purchaser" status has proven to be protective of investors while permitting appropriate participation in the capital markets by those capable of doing so. The Department has not demonstrated why the SEC's requirement that a person be a "qualified purchaser" is not protective of investors. Further, contrary to the Department's implication, we do not suggest that the Department adopt the "qualified purchaser" definition because a client is "wealthy enough to be able to afford to lose money by reason of bad advice,"[8] but rather because the SEC has recognized for decades that the amount of investments a person owns is a reasonable proxy for

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[6] 81 F.R. at 20981-2 ("The Department is not prepared to adopt the approach suggested by some commenters that the provision be expanded to include individual retail investors through an accredited or sophisticated investor test that uses wealth as a proxy for the type of investor sophistication that was the basis for the Department proposing some relationships as non-fiduciary.")

[7] SEC regulations provided that, "In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held in an individual retirement account or similar account the Investments of which are directed by and held for the benefit of such person." 17 C.F.R § 270.2a51-1(g)(4).

[8] 81 F.R. at 20982.

determining investment sophistication. Such investors have sufficient sophistication to determine that an adviser does not act as a fiduciary when it markets its services. As a result, the Department should make the IFE available if the advice recipient is a "qualified purchaser" as defined in Section 2(a)(51) of the Act.

B. Streamline the Implementation of the IFE

In application, the IFE has proven to be frustrating and cumbersome. To comply with the exception, advisers will often have to engage in a burdensome process involving: identifying clients by type and size; creating and reviewing legal representations; communicating to clients the need for exchange of representations; creating a system to identify changes in client status and to track notices from clients of such changes; evaluating clients' capabilities and level of understanding with respect to representations and responsibilities; and addressing situations where clients are unwilling to provide necessary information. For example, starting before June 9, financial services firms and other plan fiduciaries have been going through an unnecessary and largely meaningless process whereby they trade representation form letters on a negative consent basis. Moreover, in some cases, even after engaging in this protracted process, advisers may not even be able to engage in direct conversations with plan fiduciaries without fear of losing the exception. Therefore, we recommend that reasonable changes be made to the IFE process.

In cases where both parties are financial services firms, the firm relying upon the IFE should be entitled to assume that the other financial services firm is sophisticated and able to recognize when another financial services firm is engaged in marketing activities or when it is instead offering fiduciary recommendations. Therefore, financial services firms such as registered investment advisers should be entitled to a rebuttable presumption that another financial services firm is eligible for the IFE without being required to obtain representations to that effect. A "financial services firm" for this purpose should be a registered investment adviser, broker-dealer, insurance company, or bank as currently described in the IFE.

In addition, if the advice recipient is not a financial services firm, but is a sophisticated party under the IFE, a plain English notice of the capacity in which the financial services firm intending to rely on the IFE is acting should be sufficient. Therefore, with respect to these persons, the IFE should permit financial firms to rely on the exception without any representations from an advice recipient provided the firm discloses clearly in writing:

1) That the firm is not undertaking to provide impartial investment advice, or to give investment advice in a fiduciary capacity; and

2) The existence of the firm's financial interest in the transaction.

C. Clarify that Intra-Company Communications are not "Investment Advice"

Finally, the IAA continues to have concerns that the Fiduciary Rule and the IFE do not clearly establish that intra-company communications (including communications among affiliates and their employees) are not "investment advice" for purposes of the Fiduciary Rule. The Final Rule includes an exception for employees who in the performance of their regular duties provide investment advice to a plan's named fiduciary. This exception addresses the interaction of company employees with the named fiduciary of the plan sponsored by such employees' employer. However, this exception does not address when an employee of an affiliate has conversations with the employees of another affiliate who may act in a fiduciary capacity. In addition, with regard to communications between affiliates within the same financial institution, the IFE will not apply because the independence requirement cannot be met.

The Department partially addressed this issue in its FAQs regarding the Fiduciary Rule issued on January 13, 2017.[9] However, the guidance does not specifically address communications between employees of affiliated companies (as distinct from employees of the same company). For example, an adviser may have a conversation with its affiliated broker-dealer about the separate account management services it could provide to investors through the broker-dealer's platform of separate account managers. It is not clear whether these and other internal communications could give rise to fiduciary status. Financial firms are often structured to include separate but affiliated business organizations for regulatory and business reasons. There is no policy purpose to be served by differential treatment of internal communications based on a financial firm's organizational structure.

These changes to the IFE exemption will enhance access to investment information. We understand that a number of discretionary investment managers have decided not to market their services to smaller plans unless the IFE or other workable exclusion from the Rule is available for these activities.

III. Improve the Streamlined Best Interest Contract Exemption

The IAA appreciates the Department's attempt to create a "streamlined" Best Interest Contract Exemption ("BIC Exemption") for advisers that only receive a fee that does not vary by the adviser's investment recommendation or exercise of investment discretion, e.g. an assets-under-management fee or a flat dollar fee. However, in practice, the application of the "Level Fee Fiduciary" definition has been unnecessarily difficult, particularly in light of the fact that most of our members are already discretionary fiduciaries subject to ERISA's fiduciary duty provisions and the Code's prohibited transaction provisions. These advisers only charge a fee that does not vary by the adviser's exercise of investment discretion. Alternatively, in the case where the member or an affiliate of the member receives compensation that the Department may otherwise view as violating ERISA's or the Code's prohibited transactions provisions, the adviser complies with a prohibited transaction exemption or other DOL guidance to address the fee conflict. In these circumstances, we believe the application of the below-described streamlined exemption is appropriate.

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[9] *See* Conflict of Interest FAQs (Part II – Rule), FAQs 2 and 3 (January 2017), available at https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/faqs/coi-rules-and-exemptions-part-2.pdf.

The BIC Exemption provides that "A Financial Institution and Adviser are 'Level Fee Fiduciaries' if the only fee received by the Financial Institution, the Adviser and any Affiliate in connection with advisory or investment management services to the Plan or IRA assets is a Level Fee that is disclosed in advance to the Retirement Investor."[10] The exemption further provides that "A 'Level Fee' is a fee or compensation that is provided on the basis of a fixed percentage of the value of the assets or a set fee that does not vary with the particular investment recommended, rather than a commission or other transaction-based fee."[11]

The definition of Level Fee by its terms precludes the financial institution or its affiliate from receiving compensation or other benefits that the Department views as compensation even if the receipt of such benefits does not result in a non-exempt prohibited transaction under ERISA or the Code. For example, as currently drafted, the streamlined BIC Exemption does not clearly apply to arrangements where the adviser may be relying on exemptions other than the full BIC Exemption once the adviser is hired (*e.g.*, PTE 77-4 or ERISA section 408(b)(8)) or where the adviser otherwise employs a conflict mitigation strategy that involves fee structures, waivers, offsets, or rebates as approved by the Department (including, for example, in DOL Advisory Opinion 97-15A (May 22, 1997) or consistent with ERISA Technical Release No. 86-1 (May 22, 1986) (permitting soft dollar arrangements under Section 28(e) of the Securities Exchange Act of 1934), or consistent with DOL guidance regarding performance fees, such as DOL Advisory Opinion 99-16A (Dec. 9, 1999)). There is no rational policy reason for the Department to permit these conflict mitigation strategies as consistent with fiduciary duty *during* the adviser-client relationship but not recognize their validity for the purpose of addressing pre-contract conversations *prior* to that relationship–particularly where the only "compensation" at issue is the compensation the adviser will receive *after* it is hired by the client.

Therefore, IAA recommends that the streamlined exemption should be available to registered investment advisers if the following requirements are met:

a. (i) The registered investment adviser charges to the investor's account a "level fee," i.e., a set fee that does not vary with the particular investment recommendation made by the adviser or with an exercise of investment discretion by the adviser such as an assets under management fee or a flat dollar fee or (ii) in the event that the adviser or its affiliate receives a fee in connection with the adviser's investment advice or exercise of investment discretion that does so vary, any prohibited transaction that arises in connection therewith is addressed by compliance with an exemption otherwise available under ERISA and the Code or by compliance with other DOL guidance which provides how the conflict may be addressed;

b. The registered investment adviser, acting through its employee or other investment adviser representative, complies with the Impartial Conduct Standards when providing investment advice to the investor;

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[10] BIC Exemption, Section VIII(h), 81 F.R. at 21082-3.

[11] BIC Exemption, Section VIII(h), 81 F.R. at 21083.

c. The registered investment adviser discloses to the client the fee it charges the client for investment advice or investment management and, in the case the adviser complies with other prohibited transaction exemptions or DOL guidance regarding how to mitigate fee conflicts, the adviser provides any disclosures as required by such exemptions or guidance; and

d. The registered investment adviser acknowledges its fiduciary status with regard to the provision of investment advice or provision of discretionary asset management services under ERISA and the Code, as applicable.

We believe that an exemption is appropriate under these circumstances because the BIC Exemption is designed to address conflicts that arise regularly in a transaction-based account - not in situations where the adviser need only use the BIC Exemption during the adviser selection process prior to entering the fiduciary relationship. Thus, this streamlined exemption is critically important to investment advisers and must be improved.

Finally, we strongly submit that any change made by the Department to the BIC Exemption in response to the Presidential Memorandum or any comments received from the financial services industry should not result in the requirements of the BIC Exemption or a newly created exemption being more complicated or burdensome than the current streamlined BIC Exemption as it applies to registered investment advisers.

The IAA supports the goals of the Department's Fiduciary Rule and the importance of ensuring that clients benefit from advice that is in their best interests. We appreciate the opportunity to provide our views regarding certain aspects of the Rule, and would appreciate the opportunity to meet with the Department to discuss our comments. In the meantime, please do not hesitate to contact me if we may provide additional information or clarification regarding these matters.

Respectfully submitted,

<u>-s- Karen L. Barr</u>

Karen L. Barr

President and Chief Executive Officer