STEADFAST
companies

18100 Von Karman Avenue, Suite 500 • Irvine, CA 92612 • Phone: 949-852-0700 • www.steadfastcompanies.com

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Submitted Electronically – e-ORI@dol.gov and e-OED@dol.gov

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

**Re: Definition of the Term "Fiduciary" (RIN 1210-AB32);
Best Interest Contract Exemption (ZRIN 1210-ZA25)**

Ladies and Gentlemen:

Steadfast Companies, a sponsor of non-traded real estate investment programs including the currently-offered Steadfast Apartment REIT ("Steadfast") submits the following comments with respect to the rule proposed by the U.S. Department of Labor (the "Department") which would define who is a "fiduciary" by reason of providing investment advice for a fee or other compensation (the "Proposed Conflict of Interest Rule"[1]) and the related proposed Best Interest Contract Exemption (the "Proposed BIC Exemption"[2]). Steadfast appreciates the opportunity to comment on this important regulatory action.

Steadfast supports individual investor access to real-estate investment programs not correlated to the traded markets[3] and which historically have been available only to institutional investors. Steadfast is proud to have raised over $1 billion in the last five years from approximately 30,000 investors, through a network of over 120 broker-dealers represented by nearly 40,000 financial advisors. We anticipate raising an additional $400 million by the end of the Q1 2016. With the capital raised from two non-listed REIT offerings and a private-placement debentures offering,

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1 U.S. Department of Labor, Notice of Proposed Rulemaking, *Definition of the Term "Fiduciary"; Conflict of Interest Rule – Retirement Investment Advice*, 80 Fed. Reg. 21928 (proposed Apr. 20, 2015) (to be codified at 29 C.F.R. pt. 2550), available at: http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=28201.

2 U.S. Department of Labor, Notice of Proposed Class Exemption, *Proposed Best Interest Contract Exemption*, 80 Fed. Reg. 21960 (proposed Apr. 20, 2015) (to be codified at 29 C.F.R. pt. 2550), available at: http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=28202.

3 Asset classes that are not correlated to the traded markets generally do not move in parallel with the traded markets. This results in a type of diversification that assists in reducing risk resulting from market swings.

Steadfast-affiliated entities have invested in nearly 100 apartment communities and shopping malls throughout the United States, employing nearly 1,000 people.

Including all of its communities, Steadfast is one of the top 40 largest apartment managers in the United States, providing homes for over 22,000 households. We are honored to be a leader in providing housing for America's renters, which comprise 35% of the population. In particular, Steadfast REITs offer housing to a growing number of middle-class Americans for whom homeownership is out of reach.

Apartment REITs also provide an important market for newly-constructed communities, an industry that in 2013 generated 702,482 jobs, $30.0 billion in direct spending and $92.6 billion in economic contribution.[4] That same year, Steadfast Income REIT was one of the top acquirers of individual apartment communities in the country.

Steadfast's investment programs provide six uniquely important benefits to its investors:

(i) Access to diverse portfolios of institutional-caliber real estate assets;

(ii) Stable income that is attractive and competitive, especially on a risk-adjusted basis;

(iii) Liquidity that is commensurate with a real estate-based investment (as opposed to a traded securities investment, whose performance is driven primarily by exchange market movements);

(iv) An investment vehicle that is subject to exhaustive due diligence, unparalleled transparency and considerable state and federal regulation;

(v) Investments whose internal revenue growth historically outpaces inflation; and

(vi) An opportunity to capitalize on major demographic trends that transcend short-term economic cycles.

These attributes generally are representative of the entire asset class of publicly registered non-listed real estate investment programs. Steadfast believes that the above-referenced Department proposals threaten to eliminate access to these benefits by qualified retirement plan investors. Steadfast's primary concerns relate to two issues:

(i) the Department's apparent substitution of a "legal list" of acceptable (and presumably "worthy") assets in place of its traditional principles-based approach; and

[4] NMHC.org

(ii) the definition of "Assets" in the BIC Exemption. The Department has requested comment on the proposed definition of "Assets" and has specifically asked that commenters who believe that additional investments should be included in the scope of the exemption provide the Department with full descriptions of those products, as well as information supporting the position that the products are a "common investment for retail investors."[5]

Steadfast respectfully submits that the retreat from a principles-based approach to a "legal list" of "Assets" available to retirement investors for the purpose of the BIC Exemption will stifle product innovation and deny retirement investors the ability to access new investment categories, structures and products which may provide enhanced financial benefits and/or reduced risks. To avoid the negative consequence of this approach, the Department must have the ability and resources to regularly, continually, and timely consider and analyze new investment products for inclusion as an Asset, which may not be practicable. As a result, the Asset list process will create a category of investors who are not able to take advantage of market evolutions and improvements. Steadfast therefore believes the "Asset List" approach should be discarded in favor of a principles-based approach.

Steadfast also respectfully submits that if the Department determines to proceed with an "Asset List" approach, then Public Products, (as defined and described in greater detail by the Investment Program Association's letter to the Department dated July 21, 2015), should be included in the "legal list" of Assets. This position is supported by the following facts:

- Although not liquid in the same sense as exchange-traded real estate stocks, Public Products—and non-listed real estate programs in particular—offer multiple levels of liquidity, including:
    - Share redemption plans that provide full return of investment after the fourth (typically) subscription anniversary (funded by a pool of reinvested dividends)
    - Full return of investment in the event of death or disability (funded by a pool of reinvested dividends)
    - A limited but increasingly active secondary auction market
    - Most importantly, a rapidly evolving movement toward short-term "life-cycles" for Public Products, driven by mergers, acquisitions and listings on public exchanges

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5 Proposed Conflict of Interest Rule, 80 FR 21967.

- Unlike Public Products, listed real estate stocks do not constitute a true "real estate" investment, as the performance of such investments is virtually de-coupled from the performance (revenue growth and/or capital appreciation) of their underlying real estate assets. Rather, listed REIT performance, historically, has correlated dramatically with the greater S&P 500. While 401k investors are shamefully limited to listed-REIT funds as their only "real estate" option (if at all), at least IRA investors today have the opportunity, upon roll-over, to diversify into legitimate real estate-based investments.

- Public Products are compatible with the objectives of retirement investors in that they can provide superior reliable income and inflation protection, as well as capital growth.

- Public Products provide retirement investors with access to the same strategies which are used by the nation's leading public and private pension and endowment plans in that they provide portfolio diversification into assets which have low correlations with exchange-traded financial products, thereby reducing portfolio risk and increasing risk-adjusted returns.

- Public Products have evolved from their predecessor forms and structures to provide more transparency and independent valuation discovery, enhanced governance, more investor-friendly structures and compensation provisions, greater scale and associated financial strength, efficiency, and strategic optionality, and superior professional management focus on the products' distinct asset class.

- Public Products are subject to extensive regulation at the federal and state level which goes far beyond the regulatory oversight of many products on the Department's proposed Asset List. (Steadfast, through its long-standing and active participation in the IPA, has supported the industry's evolution toward transparency under FINRA Notice 15-02.)

- Public Products have demonstrated successful investment performance and achievement of their objectives which make them appropriate for retirement investing.

- Public Products have become ubiquitous and have established themselves as integral components of investment and retirement accounts for over three million investors.

Despite these facts, none of the Public Products have been included in the Department's proposed list of Assets, and this will have the impact of effectively making these publicly registered investments unavailable to qualified IRA investors. Steadfast believes that Public Products should be included as "Assets" within the Proposed BIC Exemption either by the removal by the Department of a "legal list" of "Assets" or by the inclusion of the Public Products on the "legal list".

Public Products meet the Department's apparent requirement of commonality in the retail investment space as demonstrated above. This commonality also contributes to the overall US economy. The controls and requirements imposed upon those who distribute the Public Products and on the products themselves (e.g., NASAA and FINRA guideline requirements as to the suitability, expense limitations, related party transactions, disclosure, investor qualifications and suitability, and maximum investment amounts, and merit state reviews) provide even higher standards than regulatory standards placed on most of the investment products currently defined as "Assets" by the BIC Exemption. The suitability and maximum dollar investment thresholds imposed have the impact of lessening the possibility that unqualified investors will invest or that qualified investors will invest more than they should.

Public Products perform well, enhance diversification, and improve the risk-adjusted return from an investment portfolio by adding a product that does not correlate with the traded stock market and by adding a component of real assets. Public Products are also less volatile than many products that are currently defined as "Assets". They are more liquid and more transparent than previously, provide regular valuations determined in accordance with regulatory requirements and industry standards of independence designed to result in the disclosure of reliable values, and their lower liquidity is not inappropriate for a retirement account where the goal, unlike perhaps for a standard brokerage account, is to hold for a long period of time.

For all the reasons set forth above, Steadfast urges the Department to revise the BIC Exemption in order to include Public Products within the scope of the BIC Exemption either by doing away with a list of specific Assets or by adding the Public Products, as defined above, to that list. We appreciate your time and attention in ensuring that retirement investors are provided with the broadest array of investment options, while taking all reasonable measures to avoid conflicted advice.

Respectfully submitted,

Rodney F. Emery
Chief Executive Officer
Steadfast Companies