CAPITAL GROUP℠

333 South Hope Street
Los Angeles, California 90071-1406

thecapitalgroup.com

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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, DC 20210

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11712
U.S. Department of Labor
200 Constitution Avenue N.W.
Washington, DC 20210

Re: **RIN 1210-AB32; Conflicts of Interest Rule**
ZRIN 1210-ZA25; Proposed Class Exemption

Dear Sir or Madam:

The Capital Group Companies is pleased to provide supplemental comments on the Department of Labor's proposed conflicts of interest rule and best interest contract exemption. Capital submitted a detailed comment letter dated July 20, 2015 and testified at the Department's hearing on the proposal on August 12, 2015.

Capital's comment letter and testimony focused on the need for additional guidance on the treatment of pre-existing IRA investors who are currently serviced by registered representatives of broker-dealers. Specifically, we suggested including a grandfather rule for hold recommendations on pre-existing commissionable investments, such as mutual funds that pay 12b-1 fees to broker-dealers. Without a grandfather rule, we believe the proposal will unnecessarily disturb millions of existing brokerage relationships by requiring either compliance with the best interest contract exemption or conversion of the relationship to a fee-based advisory solution.

At the hearing, a Department representative asked whether a grandfather rule for hold recommendations is needed if the final rule treats a recommendation to move from a pre-existing commissionable account to a fee-based account as fiduciary investment advice. The implication was that such a rule would create a level playing field because advisors would ordinarily have to comply with the best interest contract exemption for transitions to fee-based programs as well as continuations of pre-existing commissionable arrangements.

As we indicated at the hearing, we remain convinced that a grandfather rule for hold recommendations is necessary to prevent investors from losing access to their current advisor. Many financial advisors have indicated that they do not plan to offer an ongoing commissionable program for IRA investors after the new rules are finalized. Thus, without a grandfather rule, investors who do not meet the relevant threshold for their advisor's fee-based advisory program will lose access to their financial advisor despite in many instances having pre-paid for advice through an upfront commission. Requiring compliance with the best interest contract exemption for transitions will only increase the need for a grandfather rule by arguably making it harder for existing advisors to continue to service their pre-existing clients.

We agree, however, that there needs to be clear guidance on the standard that applies to fee-based transitions. Regardless of the details of the final best interest contact exemption, it is clear that the new rules will provide a tailwind for fee-based programs. But, as proposed, the applicable standard of conduct for transitions from commissions to fee-based advice is simply not clear. The proposal treats the recommendation of an investment advisor as a fiduciary recommendation, if the recommending advisor is receiving compensation. As reflected in comments and at the hearing, many have read this provision to apply equally to an advisor's recommendation of its own or an affiliate's advisory services. But this interpretation is inconsistent with existing Department regulations which were not withdrawn or modified in the proposal.[1]

We appreciate the clarifying approach suggested by the Department at the hearing, namely that a "hire me" recommendation would be treated as non-fiduciary selling activity but a recommendation to transition from a commissionable account to a fee-based program would be conflicted fiduciary investment advice, requiring compliance with the terms of an exemption. We agree that selling one's own advisory services should not be considered fiduciary investment advice. Retail investors are capable of understanding that an advisor is not providing impartial investment advice in recommending that the investor hire the advisor. That said, we recognize that a recommendation to transition from a commissionable arrangement to a fee-based arrangement is qualitatively different because the advisor has a pre-existing relationship with the investor and the recommendation inherently involves an express or implied sell recommendation that terminates the commissionable relationship.

It is important, however, that the Department tailor the best interest contract exemption to fee-based transitions. Thus, the exemption should clearly apply to fee-based transitions and its disclosure requirements should be well-suited to such transitions, for example, by focusing on a comparison of the fees and services associated with the existing and proposed compensation arrangements.

[1] See DOL Reg. section 2550.408b-2(f), Example 1 (treating a fiduciary advisor's recommendation of its own additional portfolio evaluation services as a non-fiduciary recommendation).

Regardless, in our view, the approach the Department is considering only heightens the need for a grandfather rule for hold and other similar recommendations. For your convenience, we have taken the liberty of attaching draft language incorporating the grandfather rule we propose and creating an additional carve-out from the definition of fiduciary investment advice for selling one's own advisory services. The grandfathering language is intended to create a prohibited transaction exemption for (i) hold recommendations on pre-existing assets; (ii) recommendations to continue a systematic purchase program that was in place prior to the applicability date of the new rules; and (iii) recommendations to exchange one fund for another, provided that the exchange does not trigger a new commission or otherwise increase the advisor's compensation, for example, exchange recommendations on separate account investments under a variable annuity contact or pursuant to a mutual fund family's pre-existing rights of exchange policy.

The attached language is modelled on the approach taken by the U.K. in its Retail Distribution Review (RDR), which grandfathered a similar set of investment recommendations from the RDR's general prohibition on advice resulting in commissionable compensation. To the best of our knowledge, the grandfather rule in the U.K. has facilitated an orderly transition to the new rules and has not been the source of any perceived abuse.

Finally, we wish to express our appreciation for the Department's approach to the hearing. We were heartened by the Department's openness to making appropriate changes to the best interest contract exemption. One of the themes that emerged from the hearing was that the new rules, if finalized in substantially the form proposed, could either force investors into fee-based arrangements or restrict access to advice altogether. This lack of choice would be particularly harmful to "buy and hold" investors and investors who need lifetime income products, particularly variable annuities. However, with the right changes, we are hopeful that the new rules will achieve the Department's laudable goal of creating rules that are neutral as to business model. For a helpful discussion of the issues raised by the proposal for the broker-dealer business model, we commend you to FINRA's comment letter, dated July 17, 2015.

Thank you for the opportunity to comment. Please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

Jason K. Bortz
(213) 615-4007

Michael J. Downer
(213) 486-9425

Suggested Revisions to Pre-Existing Transaction Exemption

Section VII – Exemption for Pre-Existing Transactions

(a) *In general*. ERISA and the Internal Revenue Code prohibit Advisers, Financial Institutions and their Affiliates and Related Entities from receiving variable or third-party compensation as a result of the Adviser's and Financial Institution's advice to a Plan, participant or beneficiary, or IRA owner. Some Advisers 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 Advisers 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 Advisers, Financial Institutions, and their Affiliates and Related Entities, to receive compensation, such as 12b-1 fees, in connection with the purchase, sale or holding of an Asset by a Plan, participant or beneficiary account, or an IRA, as a result of the Adviser's and Financial Institution's advice, that occurred 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)(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), shall not apply to the receipt of compensation by an Adviser, Financial Institution, and any Affiliate and Related Entity, for services provided in connection with the purchase, holding or sale of an Asset, as a result of the Adviser's and Financial Institution's advice, that was purchased, sold, or held by a Plan, participant or beneficiary account, or an IRA before the Applicability Date if:

(1) The compensation is not excluded pursuant to Section I(c) of the Best Interest Contract Exemption;

(2) The compensation is received pursuant to an agreement, arrangement or understanding that was entered into prior to the Applicability Date;

(3) The Adviser and Financial Institution do not provide additional advice to the Plan, participant or beneficiary account, or IRA regarding the purchase, sale or holding of the Asset after the Applicability Date **unless such advice is a Legacy Recommendation**; and

(4) The purchase or sale of the Asset transaction was not a non-exempt transaction pursuant to ERISA section 406 and Code section 4975 on the date it occurred.

Insert new definition to Section VIII-Definitions

(xx) "Legacy Recommendation" means investment advice that is in the Best Interest of a beneficial owner of an IRA acting on behalf of the IRA and:

(1) A hold recommendation on an Asset that was purchased before the Applicability Date;

(2) A purchase recommendation that clearly relates to a systematic purchase program established before the Applicability Date; or

(3) A recommendation to exchange investments pursuant to an exchange right or a rebalancing program that was established before the Applicability Date, provided that the recommendation does not result in the Advisor, Financial Institution, and their Affiliates and Related Entities receiving more compensation (either as a fixed dollar amount or a percentage of assets) than such persons were entitled to receive prior to the Applicability Date.

Suggested Carve-Out for "Hire Me" Recommendation

Insert new paragraph (b)(7) to Proposed Definition of "Fiduciary"

(iii) *Initial hiring recommendation*. The person recommends itself or an affiliate to provide advice described in paragraph (a)(1)(i) through (iii), provided that such person does not advise on the selling or exchanging of securities or other property in connection with such recommendation.