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April 13, 2017

The Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Definition of Fiduciary Regulation
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: RIN 1210-AB79

Ladies and Gentlemen:

B.C. Ziegler and Company (“we” or “Ziegler”) appreciates the opportunity to provide comments that address the implications of the final rule redefining the term “fiduciary” and the accompanying new prohibited transaction exemptions (collectively, the “Rule”) on a product that has been very beneficial to many clients of Ziegler for decades—bonds issued by non-profit borrowers, such as churches, k-12 Schools, YMCAs and other Section 501(c)(3) community organizations¹ (collectively, “501(c)(3) bonds”).

For the reasons we will outline below, the treatment of the 501(c)(3) bonds under the Rule implicate two of the questions set forth in the President’s Memorandum to the Secretary of Labor dated February 3, 2017 (the “Memorandum”), as well as one of the questions set forth in the Department of Labor’s proposed rule dated March 2, 2017. Specifically:

- Relevant to the first question in the Memorandum, we believe that the Rule will harm investors by reducing their access to certain retirement savings offerings—namely, the 501(c)(3) bonds.

¹ Since 1913, Ziegler has been actively underwriting bond issues for these types of community institutions to acquire land and construct buildings and facilities for operations. These bonds have historically been exempt from SEC registration under Section (3)(a)(4) of the Securities Act of 1933, wherein Congress created this exemption as a matter of public policy to allow such organizations an easier access to capital. This access to capital would be reduced if the Rule denies retirement investors the ability to buy the bonds because demand for the bonds will be significantly reduced if retirement investors may no longer purchase them.

- Relevant to the second question in the Memorandum, we believe that the Rule will result in a disruption in this portion of the retirement services industry that will adversely affect investors or retirees seeking to invest in the 501(c)(3) bonds.
- Relevant to the third question in your list in the proposed delay to the applicability date of the Rule published on March 2, 2017, we can attest that, without relief, Ziegler will need to make a change to their line-up of investment products available to retirement investors in a manner that significantly undermines our ability to serve our customers' needs.

Overview of 501(c)(3) Bond Products

Underwriting

Ziegler is an industry leader in the 501(c)(3) bond industry, serving as the underwriter for taxable bond underwritings for nonprofit borrowers nationwide ranging from a church in Charlotte, North Carolina, to a school in Chicago, to a rescue mission in Los Angeles. Ziegler pioneered this method of bond finance back in 1913. We then expanded our bond financing efforts to provide funding for schools, hospitals and senior care facilities across America. In 2016, we underwrote approximately \$5 billion dollars for vital community institutions across the country. These bond underwritings provide needed capital for nonprofit organizations.

Under the terms of the underwriting agreement with issuers, Ziegler must purchase the entire principal amount of the bonds in a “firm commitment” underwriting. Others in the 501(c)(3) bond industry underwrite offerings on a “best efforts” basis, meaning that the underwriting is only legally obligated to issue those bonds for which it has buyers. Ziegler receives an underwriting discount of a certain percentage of the principal amount of the bonds purchased by investors.

Distribution and Investment Merits

The bonds are sold to investors, including retirement investors, through Ziegler’s Wealth Management Division, including to individual retirement accounts.² The financial advisors and Ziegler receive variable compensation for the advice provided regarding 501(c)(3) bonds in the form of commissions, underwriting discounts, spreads and revenue sharing.

The majority of these underwritings are taxable bonds, and as such, they can be suitable for tax-deferred accounts such as IRAs, while tax-exempt bonds may not be suitable. Investors invest in first mortgage real estate secured bonds with a fixed and competitive rate of return and diverse choice of bond maturities. While the financial advisors receive compensation in connection with the sale of the bonds, **that compensation is not paid by the investor, as the investors pay no commission nor are there any points, fees or sales loads to the investor.** This is in contrast to many other types of products that have the benefit of a prohibited transaction exemption under the Rule that charge commissions, points, fees or sales loads.

The 501(c)(3) bonds have been very popular with our clients and, for many clients, access to the bonds are a distinct “value add” provided by Ziegler as compared to other advisors. Our investors have found the bonds to be a solid investment with a relatively low default rate and relatively high yield compared to alternatives, such as corporate bonds. Many of our investors,

² The 501(c)(3) bonds can be sold through other channels as well, but we focus our comments here on the channels that present the issues under the Rule.

including IRA investors, take long-term “buy and hold” approaches to the 501(c)(3) bonds, holding bonds until maturity and then rolling proceeds into another bond. In our experience, the bonds are easy for our investors to understand and investors thus have a high degree of comfort in the product.

Legal Issues Under the Exemptions

Under the current applicable regulations, Ziegler financial advisors may recommend the purchase of the church bonds underwritten by Ziegler in both taxable brokerage accounts as well as the brokerage accounts of IRA and other retirement plans, and receive compensation that varies based on the recommendation made. Under the current applicable regulations, the financial advisors would not be fiduciaries and can thus receive such variable compensation without running afoul of prohibited transaction rules.³

In evaluating the Rule, we determined that the financial advisors would now likely be considered fiduciaries in connection with the advice provided to retirement investors regarding the 501(c)(3) bonds. Thus, in order to continue to receive variable compensation for that advice, an exemption would be necessary.

We were concerned that the Best Interest Contract Exemption (“BIC Exemption”) may not be available because the transactions are principal transactions, and furthermore, principal transactions undertaken pursuant to a firm commitment underwriting. While there could be an argument that a “best efforts” underwriting could be tantamount to a riskless principal transaction and thus potentially covered by the BIC Exemption, we concluded that a firm commitment underwriting is not “riskless” to Ziegler because Ziegler commits to underwrite the entire issuance regardless of the interest level by purchasers. From a policy perspective, it seems perverse to us that underwritings done on a best efforts basis would have more favorable treatment under the available exemptions because the firm commitment underwritings are generally viewed as having higher credit caliber than those with best efforts underwriting. Borrowers need certainty that the bond proceeds received in an underwriting will match the funds needed. Best efforts underwritings put investors at more risk, as well, because it may jeopardize the issuer’s ability to repay the bonds.

We are also concerned that the Principal Transaction Exemption may likewise be unavailable because (a) the Principal Transaction Exemption does not cover a Debt Security that is purchased in an underwriting in which the Financial Institution (i.e., Ziegler) is an underwriter and (b) “Debt Security” is defined to only cover corporate bonds issued pursuant to a registration statement (bond issuances by 501(c)(3) organizations are exempt from registration under the Securities Act of 1933). We note, as well, the credit risk and liquidity requirements of the Principal Transaction Exemption, but believe there could be ways to get comfort on those requirements.

Of course, Ziegler and its financial advisors stand ready to take on their obligations as fiduciaries as of the applicability date. And if the BIC Exemption or the Principal Transaction Exemption (or a similar exemption) were made available to the 501(c)(3) bonds, Ziegler would stand ready to satisfy the Impartial Conduct Standards and the other requirements of those exemptions. If it was not obvious already from these comments, Ziegler and its financial advisors firmly believe

³ As an aside, due to this variable compensation, the 501(c)(3) bonds are not permitted in advisory accounts over which Ziegler is already a fiduciary under current applicable rules.

that investments in the 501(c)(3) bonds are in the best interest of certain retirement investor clients and Ziegler's compensation received for such advice is no more than reasonable.

Summary

We believe the 501(c)(3) bonds present a clear case of the Rule denying retirement plan investors access to a tried-and-true, cost-effective and desired investment product with no corresponding benefit to the retirement plan investors. Our clients who wish to invest their IRAs or other retirement accounts in the 501(c)(3) bonds will be denied access to them and their investment strategies will be disrupted. Ziegler will be required to eliminate this offering, undermining our ability to serve our clients. It is worth noting as well, that many of Ziegler's clients are the very type of middle-class, non-high-net worth investors that the Rule was intended to protect. Instead, the Rule is eliminating access to an investment that fits the needs and preferences of many such clients. These are not conversations that our financial advisors are looking forward to having with clients as it will certainly be hard to explain why government regulation, intended to protect investors and increase access to advice, will instead have the opposite effect.

The Memorandum directs the DOL to rescind or revise the Rule if it makes an affirmative determination to any of the questions in the memo. An affirmative determination is warranted for 501(c)(3) bonds because the Rule will harm investors by eliminating access to these products and will result in a disruption of this portion of the retirement services industry that will adversely affect investors or retirees. Thus, Ziegler respectfully requests such rescission or revision to address these issues.

Thank you on behalf of both Ziegler and the thousands of Ziegler clients who have enjoyed a more secure retirement due to these 501(c)(3) bonds. We would be happy to discuss any aspect of these comments with you. To discuss, please contact Ziegler's General Counsel, Angelique David, at adavid@ziegler.com or 312-596-1625.

Sincerely yours,

A handwritten signature in cursive script that reads "Thomas R. Paprocki".

Thomas R. Paprocki
Chief Executive Officer