NASSAU RE

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Sent via e-mail to *EBSA.FiduciaryRuleExamination@dol.gov*

Office of Exemption Determinations, EBSA
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue NW., Suite 400
Washington, DC 20210

RE: RIN 1210-AB82

Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions Relating to Extending the January 1, 2018 Applicability Date of Certain Provisions

Ladies and Gentlemen:

Nassau Reinsurance Group Holdings, L.P. (Nassau Re), appreciates the information gathering and review being undertaken by the U.S. Department of Labor in connection with the final rule titled "Definition of the Term 'Fiduciary;' Conflict of Interest Rule--Retirement Advice" and the related exemptions that the Department published in the *Federal Register* of April 8, 2016 ("Rule"). Certain provisions of the Rule became applicable on June 9, 2017. Nassau Re respectfully submits this response to Question 1 posed in the Department's Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions published in the *Federal Register* of July 6, 2017 ("RFI"). **In summary, and while reserving its right to separately comment on other questions in the RFI by August 7, 2017, Nassau Re strongly supports a delay in the January 1, 2018 applicability date of the Rule ("Applicability Date"), and, as described below, specifically supports this delay with respect to the remaining provisions of the Best Interest Contract Exemption and the amendments to Prohibited Transaction Exemption 84-24.** Such a delay should be promulgated to enable the Department to carry out effectively the President's direction to the Secretary of Labor for reconsideration of the Rule, to fully consider responses to the RFI, and to consult with other interested regulators, including the Securities and Exchange Commission. As described below, a delay of the Applicability Date would reduce burdens on financial services providers and would benefit retirement investors by allowing for more efficient implementation responsive to the Rule in its final form.

By memorandum dated February 3, 2017(82 *Fed. Reg.* 9675), President Trump directed the Secretary of Labor to examine the Rule to determine whether it may adversely affect the ability of Americans to gain access to retirement information and financial advice, and to prepare updated economic and legal analysis of the Rule. According to the RFI, the Department is in the process of reviewing and analyzing comments received in response to its March 2, 2017, request for comments regarding the issues raised by the Presidential memorandum. The RFI further states that the Department is also interested in receiving additional input from the public about possible additional exemption approaches or changes to the Rule, as well as the advisability of extending the January 1, 2018 Applicability Date. Since these activities have not concluded, further changes to the Rule or different exemptions could be proposed.

Phoenix Life Insurance Company and PHL Variable Insurance Company, operating subsidiaries of Nassau Re, provide life insurance and annuity products to both affluent and middle market consumers. The insurance products are distributed through independent agents and financial advisors with sales support from Saybrus Partners Inc., another Nassau Re company. The current business activities of these companies are directly affected by the Rule.

Benefits of a Delay in the Applicability Date

1. Benefit to Financial Services Providers-A delay in the Applicability Date would benefit financial services providers by reducing unnecessary disruption to and expenditures by businesses working to implement the substantial and new requirements of the Rule as these requirements may be further revised following the RFI process. Currently, in order to address a regulatory gap in the Rule that would have effectively eliminated a popular form of insurance distribution, annuities can be distributed under Prohibited Transaction Exemption 84-24 in addition to the Best Interest Contract Exemption. In March, 2017, the Department proposed that the regulatory gap resulting from the omission of insurance intermediaries under the Best Interest Contract Exemption could be addressed through a separate exemption, the Best Interest Contract Exemption for Insurance Intermediaries (82 FR 7336); however, that proposal remains pending. This exemption, or an alternative solution, must be finalized and a reasonable amount of time provided for affected entities to comply so that consumer choice in purchasing insurance products in the qualified market will be not significantly reduced. Question 17 of the RFI includes inquiries directly relevant to the Department's analysis of this form of insurance distribution. A delay of the Applicability Date is necessary so the Department can fully consider additional information solicited by the RFI about the distribution of annuity contracts.

   With the outcome of this analysis unknown, we cannot predict the possible business model changes and innovations that may be required to comply; nor can we speculate on the attendant costs and time to implement.

2. Benefit to Consumers-A delay in the Applicability Date would also benefit consumers by reducing disruption and cost to consumers that may result from hastily implemented or unnecessary business model changes. As noted above, the regulatory requirements for distribution of annuity contracts under the Best Interest Contract Exemption for Financial Intermediaries or an alternative solution are not complete. With the limited time remaining before January 1, 2018, it is unlikely that insurance manufacturers and distribution firms will be prepared to comply with a new solution and they do not have sufficient guidance as to what might be required to effectively prepare. Speculating about how best to prepare and incurring expenses under uncertain assumptions could force firms to forgo new products or to abandon business initiatives. Delaying the

Applicability Date until such time as a final plan to address the regulatory gap is in place will allow firms to effectively use their business capital potentially increasing available products and reducing costs for consumers.

Risk in Delaying the Applicability Date has been Mitigated by the Transition Period Requirements

The Department inquired whether delaying the Applicability Date carries any risk. On June 9, 2017, the revised definition of "Fiduciary" and the Rule's "Impartial Conduct Standards" became applicable. Together, these elements require significant new considerations and disclosures by individuals and firms providing investment advice to retirement investors. Any risk of delaying applicability of the remaining provisions of the Best Interest Contract Exemption and the amendments to Prohibited Transaction Exemption 84-24 while further input is collected and considered is sufficiently mitigated by these measures. Among other things, these measures require that each fiduciary recommendation be made in the retirement investor's best interest and that compensation received in connection with covered transactions be reasonable. In the case of annuities sold under PTE 84-24, the fiduciary must also provide a disclosure of compensation received due to the transaction. Accordingly, new protections for the retirement investor are currently in effect.

For the reasons set forth above, Nassau Re respectfully urges the U.S. Department of Labor to delay the Applicability Date.

Sincerely,

Kostas Cheliotis
General Counsel and Chief Operating Officer
Nassau Reinsurance Group Holdings, L.P.