

July 21, 2017

Via Email: 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: Request for Information (RIN 1210-AB82)

Dear Sirs:

This will respond to your request for information as set forth in the Federal Register Notice dated July 6, 2017 with respect to the recently adopted Fiduciary Rule.

We represent several private investment funds sponsored by firms registered as investment advisers under the Investment Advisers Act of 1940, as amended and as commodity pool operators and commodity trading advisors under the Commodity Exchange Act, as amended (collectively, our “Manager Clients”). These Manager Clients are the investment managers to their private investment funds and also in many instances manage the assets of clients on a discretionary basis through managed accounts. For the reasons set forth below, it is our view that the Transition Period (as defined in the Fiduciary Rule) should be extended beyond the December 31, 2017 date. It is our intention to comment in a subsequent letter on the substance of the BIC Exemption as it applies to these Manager Clients.

In order to comply with the Fiduciary Rule, our Manager Clients wishing to render “investment advice” (as contemplated in the Fiduciary Rule) to Retirement Investors have taken appropriate steps to avail themselves of either the “Independent Fiduciary Safe Harbor” or the so-called “BIC Exemption.” This letter addresses the concerns of our Manager Clients that are unable to comply with the Independent Fiduciary Safe Harbor because many of their investors and clients are Individual Retirement Accounts (IRAs) or similar accounts which typically do not retain independent fiduciaries. These Manager Clients thus must rely on the BIC Exemption in order to be in compliance with the Fiduciary Rule.

Currently, our Manager Clients are comfortable with complying with the BIC Exemption during the Transition Period because, during the Transition Period, compliance with the BIC Exemption is satisfied by adoption of and adherence to the Impartial Conduct Standards (ICS). However,

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our Manager Clients will face difficulties beginning January 1, 2018, when the Transition Period currently is scheduled to expire because at that point they will be required to comply with the full panoply of requirements of the BIC Exemption in addition to the ICS.

The requirements of the full BIC Exemption may be appropriate for investors whose Financial Advisors receive compensation in the form of, among other things, commissions, trailing commissions, sales loads, 12b-1 fees and revenue-sharing payments. However, our Manager Clients' compensation generally is in the form of fixed management fees and/or performance-based compensation. In this context, the conflicts of interest considerations are very different, detailed descriptions of these conflicts are already regulatorily required, and the fee structures generally are clearly and completely described. In addition, while the ability to use the "level fee" fiduciary provisions (commonly known as "BIC Lite") in lieu of the full BIC Exemption would alleviate many of the burdens on our Manager Clients that the full BIC requirements would impose, according to FAQ No. 19 issued by the DOL on October 27, 2016, investment managers such as our Manager Clients that sponsor and/or manage private investment funds will not be eligible to rely upon BIC Lite because private investment funds are considered to be "proprietary investment products" for which BIC Lite is not eligible. In addition, it is not clear under current guidance whether a formula-based performance fee would constitute a "level fee."

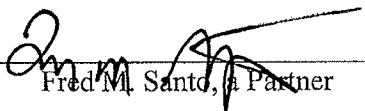
It is our view that our comments and the comments of other industry participants and professionals will raise many substantive issues that the DOL will need to consider, that will require a substantial amount of time to analyze carefully and completely, and which may require further rulemaking proposals. We intend to submit a detailed comment letter by the August 7 deadline addressing our Manager Clients' concerns about the requirements of the full BIC Exemption and our view that BIC Lite, perhaps in some modified form, should be available to our Manager Clients. Accordingly, we suggest that the DOL extend the Transition Period from its current expiration of December 31, 2017, to a date to be determined by the DOL in the future, to ensure that the DOL has adequate time to consider all of the requisite issues. Moreover, extension of the Transition Period will avoid the potential necessity for our Manager Clients prematurely to mandatorily redeem retirement investors from their private investment funds because the Manager Clients are unable to comply with the full BIC Exemption (as well as to avoid the premature liquidation of managed accounts of retirement plan clients for the same reason). We believe that this extended effective date for the end of the Transition Period should be no earlier than the fourth quarter of 2018. The extension of the Transition Period would not be contrary to the public interest because of the large number of investment professionals and

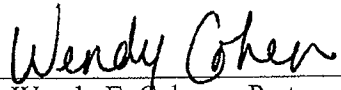
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industry participants potentially affected by the issues that we, and no doubt many others, are raising.

Respectfully Submitted,

KATTEN MUCHIN ROSENMAN LLP

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