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August 7, 2017

Office of Exemption Determinations
Employee Benefits Security Administration
Attn: D-11933
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: RIN 1210-AB82

Ladies and Gentlemen:

B.C. Ziegler and Company ("we" or "Ziegler") appreciates the opportunity to provide comments in response to the Request for Information (the "RFI") that the Department published in the Federal Register on July 6, 2017. In particular, we would like to 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 organizations.[1]

Since the June 9 applicability date of the Rule, Ziegler has had to stop offering the 501(c)(3) bonds to retirement plan investors for the reasons outlined below. Since that time, approximately 3,000 IRA investors have lost access to this investment option as a result of the Rule. We have received extensive feedback from retirement plan investors who very much valued the access to these bonds and who are very disappointed with this development. It is also important to note that these investors are generally the middle-class, non-high-net worth investors that the Rule purports to protect.

[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 has been reduced now that retirement investors may no longer purchase the bonds.

Two of the questions in the RFI are of particular relevance to 501(c)(3) bonds. Specifically:

- Relevant to question #12 in the RFI, Ziegler respectfully requests a revision to the Principal Transaction Exemption to enable its use for the 501(c)(3) bonds

- Relevant to question #18 in the RFI, we believe that the disruption in the availability of 501(c)(3) bonds to retirement investors is best addressed by providing additional relief through a prohibited transaction exemption. This could take the form of a revision to the Principal Transaction Exemption (as referenced above) or in the form of an individual or class exemption specifically, applicable to Ziegler specifically or 501(c)(3) bonds as a class.

<u>Overview of 501(c)(3) Bond Products</u>

Underwriting

Ziegler is an industry leader in the 501(c)(3) bond industry, having served 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 through our taxable bond underwritings. 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 currently sold to non-retirement investors through Ziegler's Wealth Management Division. Prior to the Rule's June 9 applicability date, the bonds were also sold 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.

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[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.

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, 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 previously applicable regulations, Ziegler financial advisors could 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 plan investors and receive compensation that varies based on the recommendation made. Under the prior regulations, the advisors would not be fiduciaries and could thus receive such variable compensation without having run 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 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 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 underwriting 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 potentially be ways to get comfort on those requirements.

Thus, we respectfully request either (a) a revision to the Principal Transaction Exemption to remove the restriction on purchasing Debt Securities underwritten by the adviser or an affiliate of the adviser and to remove the requirement for registration of Debt Securities in instances such as

[3] As an aside, due to this variable compensation, the 501(c)(3) bonds were never permitted in advisory accounts over which Ziegler is a discretionary fiduciary.

this one where there is a federal statute and policy providing an exemption from registration or (b) issuing either an individual or class prohibited transaction exemption specifically applicable to Ziegler or 501(c)(3) bonds as a class.

Of course, Ziegler and its advisors have taken on obligations as fiduciaries as of the June 9 applicability date. And if the Principal Transaction Exemption or a new 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 advisors firmly believe 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 have been denied access to them and their investment strategies have been disrupted. Ziegler has been required to eliminate this offering, undermining our ability to serve our clients. Thus, the Rule has eliminated access to an investment that fits the needs and preferences of many retirement investor clients. These have been difficult and frustrating conversations for advisors who have had to explain to clients why government regulation intended to protect investors and increase access to advice has instead had the opposite effect.

Thank you on behalf of both Ziegler and the thousands of Ziegler customers who have enjoyed a more secure retirement due to these bonds. Ziegler would be delighted to have the opportunity to discuss this matter with the Department or to provide any additional information that would be helpful in the Department's consideration. Please contact Angelique A. David at adavid@ziegler.com or 312-596-1625.

Sincerely yours,

Thomas R. Paprocki
Chief Executive Officer