OppenheimerFunds®
The Right Way
to Invest

Cynthia Lo Bessette
Executive Vice President
and General Counsel
clobessette@ofiglobal.com

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Submitted Electronically
U.S. Department of Labor
Employee Benefits Security Administration
200 Constitution Avenue NW.
Washington, DC 20210

Re: Request for Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions (RIN 1210-AB82) ("RFI")

Ladies and Gentlemen:

OppenheimerFunds, Inc., and its subsidiaries[1] (collectively, "OppenheimerFunds") appreciate this opportunity to comment on the RFI, with respect to possible additional exemption approaches or changes to the fiduciary rulemaking that the Department of Labor ("DOL") issued in 2016 ("Fiduciary Rule"). We strongly support DOL's re-examination of the Fiduciary Rule and related exemptions with a view towards making them more workable, so that retirement investors can choose the types of products and services they want, and products and services can be provided in an affordable manner.

OppenheimerFunds has participated throughout the Fiduciary Rule public comment process.[2] We feel that DOL currently has significant information and evidence from across the financial services industry demonstrating the substantial harm that the Fiduciary Rule and related exemptions have caused and will continue to cause retirement investors. In addition, we strongly endorse the suite of recommendations submitted by the Investment Company Institute ("ICI") in its substantive RFI comments.[3] In particular, we laud ICI's recommendation that DOL coordinate with the U.S. Securities and Exchange Commission ("SEC"), allowing for SEC to develop an enhanced standard of conduct for SEC-registered broker dealers, and DOL to adopt a flexible, streamlined prohibited transaction exemption ("Streamlined Exemption") that will eliminate the implementation issues associated with the "Best Interest Contract" exemption ("BIC Exemption").

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[1] OFI Global Asset Management, Inc., a direct, wholly owned subsidiary of OppenheimerFunds, Inc. ("OFI"), is a registered investment adviser, providing investment management and transfer agent services to nearly 100 registered investment companies. OFI has been in the investment advisory business since 1960, and with its subsidiaries, has more than $235 billion in assets under management.

[2] OFI submitted two comment letters to DOL following the proposed rulemaking in 2015; participated in a one-on-one meeting with senior DOL staff in 2015; and submitted two comment letters to DOL this year in support of a delay of certain aspects of the Fiduciary Rule. *See* https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00648.pdf; https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/03041.pdf; https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB79/00819.pdf; and https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB82/00268.pdf.

[3] We understand that ICI will be filing its RFI comments at around the same time that our RFI comments are filed.

However, we want to address two substantive concerns regarding the Fiduciary Rule. The first concern is the disproportionate impact of the BIC Exemption on small business retirement plans and individual retirement account ("IRA") products offered on mutual fund family platforms. We respectfully urge DOL to rescind the BIC Exemption and issue the Streamlined Exemption to avoid a large-scale contraction of these products, many of which are widely used by everyday investors and the small-business employers that help them to attain their retirement investment goals.

Our second concern relates to the so-called "independent fiduciary exception" under the Fiduciary Rule. We wish to amplify the concern expressed by numerous industry organizations and financial services firms that this exception is excessively, needlessly complex in its form, implementation and ongoing compliance, materially hindering the ability of financial institutions to conduct ordinary-course selling activities between such institutions and with plan sponsor fiduciaries. These activities are crucial to the routine, customary functioning of the retirement services industry, and should be treated as wholly separate and distinct from actual fiduciary activities with retirement investors. DOL should modify the Fiduciary Rule by issuing a simplified exception that eliminates the complexity and creates clarity and certainty.

I. The BIC Exemption should be Rescinded and Replaced with the Streamlined Exemption in Order to Avoid a Reduction in Consumer Choice, Including Small-Business and IRA Products that Serve Unique Investor Needs.

OppenheimerFunds supports the comments filed by ICI and the Securities Industry and Financial Markets Association ("SIFMA") that are critical of DOL's approach with the BIC Exemption, particularly as it relates to the exemption's impact on consumer choice. While extensive comments to DOL have already been provided on this topic, we wish to highlight the likely impact to retirement product access for everyday investors and the small-business employers that help them to save for retirement.

As an asset manager, OppenheimerFunds manufactures a range of investment products, including a suite of mutual funds spanning the asset class spectrum, and a suite of small business retirement plan and IRA products, all of which are distributed and sold to investors through unaffiliated, third party financial intermediaries. Unfortunately, the BIC Exemption contains so many onerous, unworkable conditions that fiduciary advisers and their financial intermediary firms are precluded from utilizing many of these products with their customers, due to their sheer incompatibility with the BIC Exemption's extremely rigid, overly prescriptive approach. These conditions include a complex array of requirements that mandates, among other things, a written contract; legal warranties; written policies and procedures; levelized compensation for advisers; and a litany of point-of-sale, website, and conflict of interest disclosures to consumers.

For reasons well-covered by ICI, SIFMA, and many others in the comment letter process, at its root the BIC Exemption is causing a fundamental shift in the products and services available to retirement investors, away from commission-based products and compensation models, and towards advisory fee-based products and compensation models. As a result, the BIC Exemption threatens to foreclose a fiduciary adviser from recommending certain commission-based retirement products – owner-only 401(k) plans, SEP IRAs, SIMPLE IRAs, and traditional/Roth IRAs that are offered on mutual fund family platforms like OppenheimerFunds – that millions of everyday investors rely on for their retirement investing needs, and for whom there may be no viable or appropriate replacement. While both commission-based and fee-based models have their advantages, the commission-based model is often a more cost-effective means to receive advice, particularly for buy-and-hold investors common in the lower-balance segment of the retirement account universe.

These retirement products are relatively unique in the marketplace, offering a combination of features such as on-line contribution processing; prototype plan documents and "signature-ready" plan amendments; Roth contributions; and participant loans and hardship withdrawals. Further, these products typically charge reasonable, comparatively low account-level fees. For example, at OppenheimerFunds, the only account-level fee for participants is an annual account maintenance fee of

$30 ($0 if total retirement and non-retirement accounts equal $50,000 or more). Moreover, for those retirement investors who so desire, these products enable them to invest their savings and receive account servicing with their trusted mutual fund family of choice. For over 50 years, OppenheimerFunds has dutifully worked to earn this trust with millions of retirement accountholders.

However, we have direct knowledge from several broker-dealers that, because of the unworkability of the BIC Exemption, they will no longer be able to offer many of these commission-based retirement products that are recordkept at the mutual fund family. Unfortunately, alternative retirement products available at these broker-dealers (if the products exist at all) tend to lack some or all of these features, including the simple, reasonable fee structures described above. These features are extremely beneficial to accountholders. As a result, literally thousands of small-business employers and millions of everyday retirement investors are at risk of being forced to transition to these less desirable products, or else be abandoned by their adviser. Perhaps more likely, many of these employers would terminate their employee plans rather than face the diminished features and increased costs. Notably, robo-advice will not be an adequate substitute for these mutual fund family products and the personal servicing that the financial adviser routinely provides, as ICI has thoroughly debunked.[4]

In sum, the BIC Exemption does a significant disservice to these small-business owners and everyday investors. We urge DOL to abandon the BIC Exemption for the Streamlined Exemption, so that consumer choice for this underserved segment of the marketplace is not eviscerated.

II. The So-Called "Independent Fiduciary Exception" is Needlessly, Excessively Complex and should be Reworked.

The RFI expressly invited comment regarding whether changes are advisable for the Fiduciary Rule exception involving communications with "independent fiduciaries with financial expertise." DOL has repeatedly stated that its intent was to provide a straightforward exception that does not interfere with ordinary business activities among financial institutions. Unfortunately, our experience implementing the exception leads us to conclude that it is vastly more complex and unwieldy than is necessary. Therefore, we urge that it be substantially simplified as addressed below.

At its essence, the current exception requires a cumbersome process that has involved an exchange of written acknowledgements and representations by and between literally thousands of financial institutions and other investment professionals. The current exception necessitates that this overly burdensome process be maintained, monitored, and repeated depending on the circumstances. For its part, OppenheimerFunds estimates that implementation of the current exception alone has required the expenditure of hundreds of hours of time by a team of legal, compliance, and client-service-based employees, and is an effort which remains ongoing. Respectfully, the need for this level of resources is strong evidence that DOL's attempt at a straightforward exception with meaningful benefits to retirement investors has failed, and should be reworked.

Simply put, DOL should rework the exception so it provides a flat exclusion – advisors, broker-dealers, consultants, banks, insurance companies, and plan recordkeepers communicating with each other should be deemed to not be providing covered investment advice. This will create certainty among market participants, and avoid the need for obtaining redundant written acknowledgements and representations regarding the ability to evaluate investment risks and exercise independent judgment, as the current exception needlessly requires.

For purposes of communications with plan sponsor fiduciaries, we strongly support ICI's recommended approach, which calls for freedom for the financial institution and plan sponsor fiduciary to define the desired scope of their relationship. For example, an understanding between the financial institution and plan sponsor fiduciary that the plan sponsor fiduciary is not relying upon the financial institution for impartial advice provides optimal protection. If, on the other hand, the plan sponsor fiduciary desires

[4] *See* April 7, 2017 ICI submission to DOL, available at: https://www.ici.org/pdf/17_ici_dol_fiduciary_reexamination_ltr.pdf).

such impartial advice, the fiduciary would proceed to engage an independent fiduciary adviser. The amount of assets under control or management by the plan sponsor fiduciary should be irrelevant.

We thank DOL for considering these comments, and urge it to issue proposed changes to the Fiduciary Rule and reworked exemptions that address these concerns. If you have questions regarding these comments, please contact me at the email address above, or Matthew R. Farkas at mfarkas@ofiglobal.com.

Sincerely,

Cynthia Lo Bessette
Executive Vice President
and General Counsel
OFI Global Asset Management, Inc.

cc: Matthew R. Farkas
VP and Senior Assoc. General Counsel
OFI Global Asset Management, Inc.