James D. Gallagher
Executive Vice President and General Counsel

August 16, 2017

SUBMITTED ELECTRONICALLY
https://www.regulations.gov/document?D=EBSA-2017-0004-0001

Office of Exemption Determination
Employee Benefits Security Administration
Attention: D-11933
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
Suite 400

Re: **RIN 1210-AB82**

On behalf of John Hancock Life Insurance Company (U.S.A.) (collectively referred to along with its affiliates and subsidiaries as "John Hancock")[1], this comment letter responds to the request by the U.S. Department of Labor ("Department"), Federal Registration Number (2017-14101) published on July 6, 2017, for comments on its part two of the Department's Request for Information (RFI) looking for responses on questions [2-18] being referred to as **All Other Questions**.

[1] John Hancock Life Insurance Company (U.S.A.) and its subsidiary John Hancock Life Insurance Company of New York manufacture and issue fixed and variable annuities, life insurance, and long-term care insurance that may be issued to employer pension and welfare plans. John Hancock's U.S. affiliates also include: John Hancock Retirement Plan Services LLC (recordkeeping service provider); John Hancock Trust Company LLC; John Hancock Investments (registered investment companies); John Hancock Distributors LLC (U.S. broker-dealer); John Hancock Funds, LLC (U.S. broker-dealer); John Hancock Advisers, LLC (U.S. investment adviser); Hancock Capital Investment Management LLC (U.S. investment adviser); Hancock Natural Resource Group, Inc. (U.S. investment adviser); John Hancock Investment Management Services, LLC (U.S. investment adviser); Manulife Asset Management (US) LLC (U.S. investment adviser); John Hancock Personal Financial Services LLC (U.S. investment adviser); and Signator Investors, Inc. (U.S. broker-dealer and investment adviser).

200 Bloor Street East,
Toronto, Ontario, M4W 1E5
416 926-6302

I. Introduction

As we have stated in previous comments, John Hancock shares the Department's focus on and concerns regarding American retirement readiness and financial literacy. We support the goal of imposing a general fiduciary standard[2] on all parties that provide investment advice to retirement investors, ensuring that conflicts of interest are fully disclosed to investors and minimized where possible. We believe the Department's Rule and PTEs 2016-01 and 84-24 represent a substantive attempt to realize those goals.

We appreciate and agree with the Department's decision to extend the transition period for the rule from January 1, 2018 to July 1, 2019, as indicated by the August 9 filing of the Notice of Administrative Action in Thrivent Financial for Lutherans v. Acosta [16-cv-03289-SRN-DTS, District of Minnesota]. This extension will allow the needed additional time for full implementation of all of the requirements of PTE 2016-01 and will also give the Department time to coordinate standard of care regulation with other regulators.

We are responding only to certain questions in the RFI. The lack of a response to any particular question should not be understood as a statement that the question is irrelevant or that the rule does not require any changes in connection with the subject of that particular question. It is merely that we have limited our answers to those questions where we believe we can offer substantial information derived from our efforts to prepare for the rule and the related prohibited transaction exemptions.

[2] As used throughout this comment letter, John Hancock defines "fiduciary standard" to mean the adviser acts in the best interest of the client, based on the investment objectives, risk tolerance, financial circumstances and needs the client discloses to the adviser at the time the services are provided, subject to the intent expressed by Congress in Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

II. All Other Questions

[3] *Do the Rule and PTEs appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest? Do they effectively allow Advisers to provide a wide range of products that can meet each investor's particular needs?*

[4] *To what extent do the incremental costs of the additional exemption conditions exceed the associated benefits and what are those costs and benefits? Are there better alternative approaches?*

[5] *What is the likely impact on Advisers' and firms' compliance incentives if the Department eliminated or substantially altered the contract requirement for IRAs? What should be changed? Does compliance with the Impartial Conduct Standards need to be otherwise incentivized in the absence of the warranty requirement and, if so, how?*

[6] *What is the likely impact on Advisers' and firms' compliance incentives if the Department eliminated or substantially altered the warranty requirements? What should be changed? Does compliance with the Impartial Conduct Standards need to be otherwise incentivized in the absence of the warranty requirement and, if so, how?*

Response

We believe that the procedural complexities and burdens of the new PTEs outweigh the benefits and make comprehensive access to advice more difficult. We believe that the rule and PTE 2016-01 will result in harm to at least some retirement investors who own, or would like to own, an Individual Retirement Account ("IRA"). We believe this harm could be avoided if the Department were to withdraw the rule and PTE 2016-01 as to IRAs and allow the Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA") to adopt a general fiduciary standard to be applied to all retail investment accounts.

We believe that the Rule and PTEs do not appropriately balance the interests of consumers in receiving broad-based investment advice while protecting them from conflicts of interest. Instead, the Rule and PTEs appear to be having the opposite impact and are discouraging advisers from providing a wide range of products that can meet each investor's particular needs. Specifically, we would like to reiterate our concern that the uncertainty and threat of class action lawsuits/litigation resulting from the Rule appears to encourage advisers to give advice that is unnecessarily conservative and designed to avoid lawsuits rather than provide advice that is in the best interest of the client. This is apparent and evidenced by the trend within the intermediary industry to significantly scale back their product offerings and services out of concerns about their ability to satisfy the overbearing conditions of the DOL BIC exemption and in particular fear of potential resulting litigation. We have witnessed some partner firms significantly scaling back options and tools for customers saving for retirement by reducing the number of mutual funds made available to clients as investment options in IRAs, reducing or eliminating altogether the availability of mutual funds on IRA brokerage platforms, and reducing the availability of educational tools made available to clients. We have also witnessed the trend of intermediaries eliminating certain services entirely for formerly commission based, lower balance investors and favor more expensive fee-based products. The Rule has also had the impact of significantly increasing the number of "orphaned" accounts. It would appear that certain firms would rather abandon lower balance investor accounts than continue to provide services to these investors and be subject to the Rule and potential litigation risk.

The important purpose of the rule (ensuring consumers receive broad-based investment advice across the full range of financial products available to them from a qualified adviser who is able to work with them based upon their individual needs) is undermined by the structure of the rule and the exemptions. The basic structure of the rule uses compensation for, rather than features and benefits of, investment products to differentiate a product's ability to meet an individual investor's particular needs.

Due to the diversity of compensation structures available with different advisory platforms and investment products, professional advisers will be forced to undertake a labor-intensive process to review and justify the compensation structure available on every product they advise a client to consider when the advice is based solely on the individual investor's needs. This disconnect between the risks, goals and needs actually considered when properly advising a client, and the items that need to be assessed and disclosed in an exemption, by definition create substantial inefficiencies for the process.

The further misalignment created by the disparate exemptions available, including PTEs 2016-01 and 84-24, that are intended to result in the same qualitative disclosures but, are based on the form of the particular adviser's intermediary and not the quality or character of the investment advice, creates further inefficiencies in the marketplace. By allowing the BIC exemptions to cover all facets of compensation to Financial Institutions and limiting the types of compensation for independent adviser insurance agents to "commissions" under PTE 84-24 the DOL is rewarding Financial Institutions over independent adviser insurance agents. In doing so the DOL is limiting, if not eliminating, a historically significant source of truly independent advice.

Investors are entitled to expect a consistent best-interest standard of care for all investment advice that covers all their investment accounts. The investor, in seeking recourse against an adviser providing unsatisfactory service, should not need to know which state or federal agencies have jurisdiction over the adviser, and that regulatory authority should not be premised on the tax-qualification status of the plan type, product or service being recommended or the method of payment for the advice.

Investors are not well served or protected by multiple overlapping regulatory bodies competing with each other to impose more and more burdens on the providers of investment advice. Should an adviser recommend a diversified investment portfolio that includes bank certificates of deposit, fixed and variable annuities and mutual funds, then that adviser has to thread through the maze of compliance requirements mandated by state banking commissions, the Federal Reserve, the Office of the Comptroller of the Currency [OCC], state insurance departments and the National Association of Insurance Commissioners [NAIC], state securities departments and the North American Securities Administrators Association [NASAA], the SEC and FINRA, prior to confronting the new obligations mandated by the Department's Fiduciary Rule. Each of these state and federal agencies imposes its own licensing or credentialing and continuing education criteria on the adviser; each agency conducts examinations and investigates consumer complaints; if the adviser does not adhere to those requirements, then each agency has the ability to revoke the adviser's authority to engage in [and receive compensation for] the recommendation activity. This is significant incentive to abide by the existing rules. The adviser does not need the additional 'incentive' of exposure to class action litigation risk

to do what is best for the consumer.

The imposition of one standard on IRAs and another on other individual accounts creates compliance costs that will either be passed on to IRA investors or result in changes to the market to the detriment of those investors. Further, the possibility of class action litigation concerning IRAs will result in increased expenses for IRA investors. Both problems could be solved if the Department were to defer regulation of IRAs to the SEC and FINRA.

John Hancock supports the imposition of a reasonable fiduciary standard, including full transparency on fees and conflicts of interest and the requirement that advice be given in the best interest of the recipient, on all parties providing investment advice to individuals. Having a generally applicable standard would reduce compliance and administrative costs, resulting in savings that could be passed on to investors. And a consistent standard would avoid consumer confusion regarding the standard of care and available remedies applicable to different investment products. The Department has no jurisdiction to impose a fiduciary standard on individual accounts other than IRAs. But the SEC and FINRA do have such authority, and should be allowed to exercise it.

PTE 2016-01 prohibits contractual terms that waive the right of a retirement investor to bring or participate in a class action against their adviser. We understand that this provision is based on the Department's view that individual claims brought by investors against an adviser don't result in sufficient relief for investors harmed by an adviser's misconduct and don't provide sufficient disincentive for bad behavior on the part of advisers. We believe that the available evidence supports a different conclusion – that the arbitration system run by FINRA to handle claims by individual investors against advisers results in significant relief for investors harmed by adviser misconduct. Based on data from FINRA, for the years 2013 through 2016, between 3,345 and 3,822 complaints were filed with the FINRA arbitration system.[3] During those years, between 57% and 64% of cases were settled through direct negotiation between the parties or settled after mediation. It is true that only between 21% and 24% of complaints filed were decided by an arbitration panel, but that is because advisers typically only insist on going to arbitration (as opposed to settling) where the adviser is confident in their defense. But even though only the strongest claims in favor of the advisers go to arbitration, arbitrators still awarded damages to complainants between 38% and 42% of the time. Thus, over time, approximately 70% of all complaints filed against advisers with FINRA result in compensation to the investors harmed by adviser misconduct. If the SEC and FINRA general fiduciary standard were applied to all investment advice providers for all individual accounts, we see no reason that the FINRA arbitration system would produce results that are any different than these.

We also note that in addition to providing remedies for individuals harmed by adviser misconduct, the FINRA arbitration system provides an incentive for firms to monitor and supervise their individual representatives to avoid patterns of bad behavior. Because the FINRA arbitration system pushes consumer complaints into a single system for resolution (something that cannot be said about a private right of action in 50

[3] http://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics

different state courts), FINRA and the SEC can quickly identify firms that are attracting more than their fair share of complaints, and can investigate them to determine if the complaints are the result of systemic problems at the firm. Avoiding investigations and enforcement actions by these regulators provides a strong incentive for firms to prevent large-scale or ongoing abuses by their representatives.

We believe that SEC-imposed disgorgement is every bit as effective as Department-imposed excise taxes, and that FINRA expulsion effectively prevents further harmful actions by Advisers who do not treat the clients fairly. Investors have multiple avenues of recourse available already, whether through each agency's complaint process or arbitration [American Arbitration Association (AAA) or the FINRA process]. Further, every broker-dealer and registered investment adviser in America is heavily invested in protecting its good reputation and favorable brand name, so that they all vigorously respond to consumer complaints to maintain that public good will. We believe that these recourse avenues already in place adequately address the concern. No additional compliance incentives are needed, nor are any additional warranties needed.

Congress, through Section 913 of Dodd-Frank, has tasked the SEC with taking the lead on reviewing standards of care in the provision of financial services by investment advisers, brokers, and dealers. The SEC and its delegated SROs have over 80 years of experience in regulating adviser sales activities and appropriately disciplining improper conduct. Consumer complaints are addressed in a timely and effective manner. SEC Chairman Jay Clayton's July 12, 2017 speech to the Economic Club of New York emphasized this point:

> *The government can bring to bear its extensive enforcement capabilities on those who try to circumvent established investor protections or otherwise engage in deceptive or manipulative acts in the markets…. The SEC shares the financial services space with many other regulatory players charged with overseeing related or overlapping industries and market participants. The Commission works alongside more than 15 U.S. federal regulatory bodies, over 50 state and territory securities regulators, the Department of Justice, state attorneys general, self-regulatory organizations ("SROs"), and non-SRO standard setting entities. We also participate in several major international bodies and cooperate with regulators in over 115 foreign jurisdictions. Coordination with, between, and among all these organizations is essential to a well-functioning regulatory environment.*

There are numerous media reports of Secretary Acosta and SEC Chair Clayton pledging cooperation and coordination between their respective agencies. We urge them to follow through on that pledge and also to incorporate the activities of NASAA and the NAIC into a single, comprehensive regulatory structure so that the agencies are not competing with and potentially contradicting each other. We urge all agencies to cooperate with each other so that the requirements are consistent. As Chairman Clayton stated:

> *We must remember that implementing regulatory change has costs. Companies spend significant resources building systems of compliance,*

hiring personnel to operate those systems, seeking legal advice concerning the design and effectiveness of those systems, and adapting the systems as regulations change. Shareholders and customers bear these costs, which is something that should not be taken lightly, lest we lose our credibility as regulators.

[7] *Would mutual fund clean shares allow distributing Financial Institutions to develop policies and procedures that avoid compensation incentives to recommend one mutual fund over another? If not, why? What legal or practical impediments do Financial Institutions face in adding clean shares to their product offerings? How long is it anticipated to take for mutual fund providers to develop clean shares and for distributing Financial Institutions to offer them, including the time required to develop policies and procedures that take clean shares into account? What are the costs associated with developing and distributing clean shares? Have Financial Institutions encountered any operational difficulties with respect to the distribution of clean shares to the extent they are available? Do commenters anticipate that some mutual fund providers will proceed with T-share offerings instead of, or in addition to, clean shares? If so, why*

Response

We believe that mutual fund clean shares would in fact allow distributing Financial Institutions to develop policies and procedures that avoid compensation incentives to recommend one mutual fund over another by permitting firms to level set their own commissions schedules regardless of the mutual fund offered. As a mutual fund provider, John Hancock Investments ("JHI") is well positioned to offer a clean share class to Financial Institutions that distribute John Hancock mutual funds. However, should the industry determine that another type of share class is necessary to conduct business going forward, after final determination to launch a new class, it could take up to 5 months to make a new class available for sale, including Board approvals and SEC filings. Also, from a practical perspective, we anticipate that there will be a significant amount of time, effort and expense on the part of Financial Institutions to be in a position to offer a clean share class.

[9] *Are there other innovations that hold similar potential to mitigate conflicts and increase transparency for consumers? Do these or other innovations create an opportunity for a more streamlined exemption? To what extent would the innovation address the same conflicts of interest as the Department's original rulemaking?*

Response

One of the most significant changes across the industry in response to the rule has been the reduction or elimination of conflicts of interest in connection with an individual adviser's compensation. For example, most of the firms that distribute our recordkeeping services to 401(k) plans have taken steps to ensure that the firms' advisers will receive the same compensation regardless of which recordkeeping platform they recommend to a plan sponsor, and that the advisers' compensation will not change based on the funds they advise the plan's fiduciary to include in the plan lineup. We believe that this change addresses one of the most common conflicts of interest, both in connection with qualified plans and in connection with IRAs. In fact, the Department's inclusion of the simplified "Level Fee Fiduciary" exemption in PTE 2016-01 constitutes recognition of the fact that meaningful conflicts of interest can be eliminated by changing advisers' compensation. Unfortunately, the current "Level Fee Fiduciary" exemption is too narrow in scope.

Broadening it would maintain protection of investors while significantly easing the administrative burden on advisers and financial institutions.

Under PTE 2016-01, an adviser cannot be a "Level Fee Fiduciary" if the compensation that will be received by the adviser's financial institution or its affiliates will vary in any way based on the particular investment recommended. This unnecessarily narrow definition increases the risk that an adviser will unwittingly fail to be a Level Fee Fiduciary, while also imposing additional compliance burdens on advisers who fail to meet it but who provide advice that is not subject to any actual conflicts of interest. The definition should be changed so that if the individual adviser will not receive any additional compensation or other consideration in connection with investments in particular funds, the adviser should be able to use the level fee BICE even if the adviser's financial institution or its affiliates may receive additional compensation in connection with such investments.

Modern financial institutions are often extraordinarily complex. For example, John Hancock is an insurance company that issues life insurance and group annuity contracts and provides recordkeeping services to defined contribution plans, with several different affiliated broker/dealers, a mutual fund complex, a trust company, and a number of registered investment advisers. Further, we enter into relationships with unrelated financial institutions to provide subadvisory services to mutual funds and collective investment trusts, and custodial services for all types of assets. And our products are sold by thousands of independent financial advisers working for hundreds of different firms. These complicated relationships mean that in many cases an individual adviser will not know that some affiliate of his or her firm will be earning additional revenue in connection with an investment. For example, a representative of an independent broker/dealer may advise an IRA client to invest in a particular John Hancock mutual fund without knowing that an investment manager affiliated with the broker/dealer firm is acting as a subadvisor for some of the assets of that mutual fund. The fact that an affiliate of the adviser's firm will benefit from the investment has no impact on the adviser's compensation and clearly does not create an incentive for that adviser to steer investments to that fund.

Even where the relationships between advisers' firms and their affiliates are evident, that affiliation does not necessarily give rise to an impermissible conflict. For example, representatives of Signator, John Hancock's affiliated broker-dealer and investment adviser, do not receive any additional compensation in any form if they advise a client to invest in a John Hancock mutual fund or ETF. Nor do they receive any additional consideration in connection with bonuses or promotions or any other aspect of employment. They have absolutely no incentive to use John Hancock funds over any other available investments. (And John Hancock funds make up only 7% of the funds available as investments to Signator's clients.) Yet even if advisers believe a John Hancock fund is the best investment for a client's IRA, the level-fee version of PTE 2016-01 is unavailable to them, and they must comply with the more burdensome version of the exemption. Paradoxically, this means that a greater burden is being imposed on firms like Signator that have worked hard over the years to remove conflicts of interest by ensuring equal treatment for all investments, regardless of affiliation, while firms that sell

only proprietary products and are therefore inherently more conflicted are able to rely on the easier version of PTE 2016-01 that is available to a Level Fee Fiduciary.

The current definition of Level Fee Fiduciary raises the prospect that an adviser will fail to qualify out of ignorance, and forces a financial institution to expend unreasonable efforts to track down every possible compensation relationship of every one of its affiliates in order to determine whether it can satisfy the definition. It also punishes firms that use a mix of proprietary and non-proprietary funds but that have taken steps to ensure that the firms' advisers have no incentive to favor the proprietary funds. Changing the definition will eliminate these burdens while still protecting retirement investors against the risk that an adviser will recommend a particular fund out of a desire to increase the adviser's own compensation.

[11] *If the Securities and Exchange Commission or other regulators were to adopt updated standards of conduct applicable to the provision of investment advice to retail investors, could a streamlined exemption or other change be developed for advisers that comply with or are subject to those standards? To what extent does the existing regulatory regime for IRAs by the Securities and Exchange Commission, self-regulatory bodies (SROs) or other regulators provide consumer protections that could be incorporated into the Department's exemptions or that could serve as a basis for additional relief from the prohibited transaction rules?*

Response

We have addressed this issue above, and repeat that all regulatory bodies should coordinate amongst themselves for both consistency and the avoidance of unnecessary duplication. The NAIC is actively working on modifying its model Suitability in Annuities Transactions regulation to conform its definitions and require the same Best Interest Standard as imposed by the DOL Fiduciary Rule. SEC Chairman Jay Clayton is seeking public input on rule harmonization. It is quite likely that FINRA will respond to any SEC rulemaking by revising its Rule 2111 suitability supervisory requirements. An exemption that recognizes and accepts adherence to such revised and enhanced suitability standards would be welcomed by all advisers currently regulated by FINRA, NASAA and NAIC and their state counterparts.

[13] *Are there ways to simplify the BIC Exemption disclosures or to focus the investor's attention on a few key issues, subject to more complete disclosure upon request? For example, would it be helpful for the Department to develop a simple up-front model disclosure that alerts the retirement investor to the fiduciary nature of the relationship, compensation structure, and potential sources of conflicts of interest, and invites the investor to obtain additional information from a designated source at the firm? The Department would welcome the submission of any model disclosures that could serve this purpose.*

Response

In order to rely on PTE 2016-01, an adviser and financial institution are required to post on a publicly available website detailed information about the compensation split between the adviser and the financial institution. This information is of no value to the retirement investor, but is very important to the financial institution and the adviser. If two different advisers, associated with two different firms, are each offering advisory services for a fee of .50%, the fact that one of those firms passes on 90% of the fee to its adviser while the other passes on only 85% is of no interest to the investor. But

these types of splits are a factor on which broker-dealer firms compete in their efforts to attract and retain qualified representatives, and firms typically maintain this information on a confidential basis. Requiring them to expose this information to all of their competitors in a way that provides no actual benefit to investors is unreasonable.

We have no objection to disclosure rules that require an adviser and financial institution to disclose compensation arrangements that would have the effect of providing an incentive for an adviser to select a particular investment, or that would increase the costs being imposed on the investor. But where internal compensation arrangements don't create conflicts of interest and don't increase costs, disclosing them provides no benefit to the investor.

We would also ask the Department to clearly state that disclosures may be provided by reference to other documents that are provided or freely made available to an investor. If a registered representative of Signator advises a plan sponsor to select John Hancock as a recordkeeper, it should be sufficient for the disclosure provided to the plan sponsor to simply note that John Hancock is an affiliate of Signator and that the compensation that will be received by John Hancock is fully disclosed in the agreement between John Hancock and the plan. If the disclosure provided by the adviser to the plan is required to include information already provided to the plan elsewhere, there is a risk that the two documents will inadvertently contain inconsistent information, resulting in confusion for the investor and increased cost to the adviser and financial institution, which will have to expend significant administrative effort to safeguard against such unintended inconsistencies.

In the event the Department does not reduce the types of information that must be disclosed in connection with compensation arrangements, we urge that financial institutions and advisers be able to disclose this information to investors in writing or on websites that are open only to registered users. This would at least reduce the harm caused by these disclosures by making it more difficult for competitors to access the information.

[14] *Should recommendations to make or increase contributions to a plan or IRA be expressly excluded from the definition of investment advice? Should there be an exemption to the Rule or streamlined exemption devoted to communications regarding contributions?*

Response

Regardless of where consumers allocate their retirement savings dollars, it is inarguable that Americans are simply not saving enough for a secure retirement. All recommendations to increase retirement savings contributions should be strongly encouraged. Consistent with the FAQ guidance issued by the Department on August 4, 2017, we believe the rule should be modified to clearly state that recommendations to make or increase contributions are not advice, and that recommendations to plan sponsors on how to increase contribution rates are also not advice.

[16] *To what extent are firms and advisers relying on the existing grandfather provision? How has the provision affected the availability of advice to investors? Are there changes to the provision that would enhance its ability to minimize undue disruption and facilitate valuable advice?*

Response

The current grandfathering rule imposes the risk of becoming a fiduciary even if an adviser has not taken any action that would be considered fiduciary advice under the new rule. By stating that a new deposit into an investment would end the availability to rely on grandfathering, the Department seems to have assumed that all new deposits result from an interaction with an adviser. While that may be the case for certain types of investments, it is not at all true of variable annuities.[4] Once an adviser has helped a client purchase a variable annuity, that client may choose to circumvent the adviser by contacting the issuer of the contract directly to make new deposits or request changes in the investments held under the contract. Some broker-dealer firms are so concerned about new deposits creating unintended fiduciary liabilities that they have asked John Hancock, as an issuer of variable annuity contracts, to refuse to accept new deposits. This is clearly not in the interest of these retirement investors (and may not be permitted by the terms of the contracts issued by John Hancock). The grandfathering rule should be changed so that a non-fiduciary client will not become a fiduciary client unless and until there has been an interaction between the client and adviser that amounts to investment advice under the rule that will result in a change to the adviser's compensation.

[17] *If the Department provided an exemption for insurance intermediaries to serve as Financial Institutions under the BIC Exemption, would this facilitate advice regarding all types of annuities? Would it facilitate advice to expand the scope of PTE 84-24 to cover all types of annuities after the end of the transition period on January 1, 2018? What are the relative advantages and disadvantages of these two exemption approaches (i.e., expanding the definition of Financial Institution or expanding the types of annuities covered under PTE 84-24)? To what extent would the ongoing availability of PTE 84-24 for specified annuity products, such as fixed indexed annuities, give these products a competitive advantage vis-à-vis other products covered only by the BIC Exemption, such as mutual fund shares?*

Response

The question itself falls short of the scope of the problem it attempts to define and, as a result, evidences the substantial risk of unintended consequences. The independent "insurance intermediaries" impacted by the inability to act as a Financial Institution under the BIC are far more broad than just annuity advisers described in the question. A large segment of independent advisers are impacted by the arbitrary distinctions between the BIC and PTE 84-24 exemptions whenever they work with clients looking for permanent life insurance solutions as part of the financial protection and planning process.

The sale of registered variable products, both Annuities and Life Insurance, requires independent advisers to align with a Financial Institution in order to facilitate a

[4] By discussing the problems that the current grandfathering rule causes with variable annuities, we do not mean to suggest that there are not other types of investments affected in the same way. For example, one of the key features of a 401(k) plan is that new deposits are made on a periodic basis without any involvement by the plan's adviser.

BIC while "general account" products can be facilitated by either the PTE 84-24, through an "insurance intermediary" or a Financial Institution, or by a BIC but limited to a Financial Institution. Without the ability for insurance intermediaries to offer a BIC; the rules create an inefficient and arbitrary misalignment where an independent adviser insurance agent, providing the same advice to the same client on the same product, is limited in the available exemptions based solely upon who they bring the business to for processing. (a decision that is frequently made well AFTER engaging in a large portion of the consulting and planning with the client).

In response to whether it would "facilitate advice to expand the scope of PTE 84-24 to cover all types of annuities": it would and it would further facilitate advice to expand the scope of PTE 2016-01 to be available for all types of insurance intermediaries.

The relative advantages of PTE 84-24, or the BIC exemptions, is at the discretion and perception of an individual intermediary. Certain intermediaries will view the disclosure nature of PTE 84-24 to be an advantage that is worth the limitations of "commission" compensation, others will view the expansive definition of compensation available under the BIC to the worth the added process of the contract execution. In other cases, intermediaries, will view the certainty of the clearly defined roles laid out with the client under the BIC to be preferable to the potential for disparate understandings under PTE 84-24. Regardless of the preferred exemption it is clear that the ability to be consistent with respect to the disclosures and standards for a single adviser with a single client, regardless of the type of insurance product and intermediary, ensures efficiencies in the advice process and consistency with respect to client expectations and understanding of the fiduciary relationship owed to them.

[18] *To the extent changes would be helpful, what are the changes and what are the issues best addressed by changes to the Rule or by providing additional relief through a prohibited transaction exemption?*

Response

In the rule, the Department provided that certain transactions with "independent fiduciaries with financial expertise" would not give rise to fiduciary investment advice if certain conditions were met. The definition of "independent fiduciaries with financial expertise" was drawn to specifically capture broker-dealers, registered investment advisers, banks, and insurance companies, the same financial institutions and advisers that are able to rely on PTE 2016-01. Insurance agents were explicitly left out of this definition. Insurance agents should be eligible for the carve-out for communications with an independent fiduciary with financial expertise.

When an insurance agent is acting as an adviser to a plan sponsor and takes on fiduciary liability, they are doing so because they have the expertise to advise a plan, and often have significant experience doing so. For example, John Hancock works with one insurance agent adviser in California that provides services to 112 plans with over $200 million in assets. John Hancock has been working with this adviser in the small plan space for approximately 30 years, and his firm has expertise in all aspects of plan administration. The adviser's firm assists with plan design, participant education, selection of service providers, and (using tools provided by recordkeepers) the selection

and monitoring of plan investments. Once the new rule is applicable, the adviser acknowledges that he will be acting in a fiduciary capacity. John Hancock works with a second insurance agent adviser in California that provides services to 60 plans with $110 million in assets. He's been in business since 1978, keeps an Enrolled Retirement Plan Agent on staff, and works closely with outside ERISA counsel on plan issues. When dealing with ERISA-covered plans, these insurance agents have as much financial expertise as any broker-dealer or registered investment adviser. Where state securities and insurance regulators have determined that insurance agents are able to sell the types of group insurance products used to fund small employee benefit plans, John Hancock wholesalers should not have to treat them differently in order for John Hancock to avoid becoming a fiduciary to the plans they serve, and those insurance agent advisers (and their clients) deserve to have access to the entire range of tools and services that recordkeepers make available to advisers. Unfortunately, to avoid becoming fiduciaries themselves, the current rule forces recordkeepers to treat these insurance agents differently.

We ask the Department to change the portion of the definition of "independent fiduciaries with financial expertise" that includes "any independent fiduciary that holds, or has under management or control, total assets of at least $50 million." The requirement that such independent fiduciary has management or control over the assets is too narrow. There are consulting firms that work with plans that cumulatively hold billions of dollars in assets. These firms assist plan sponsors with the selection of service providers (like a recordkeeper) and may assist with the development of investment policy statements for plans. The fact that they only give advice as to these assets, and do not manage or control them, does not reduce their financial expertise.

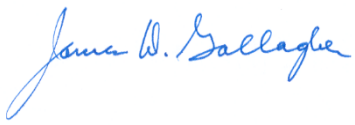
III. Summary

As we have stated in previous comments, John Hancock shares the Department's focus on and concern regarding American retirement readiness and financial literacy. We support the goal of imposing a general fiduciary standard on all parties that provide investment advice to retirement investors, ensuring that conflicts of interest are fully disclosed to investors and minimized where possible. We believe the Department's Rule and PTEs 2016-01 and 84-24 represent a substantive attempt to realize those goals.

* * *

John Hancock is committed to its customers and appreciates the opportunity to provide these comments to the Department. If the Department has any questions or would like more information regarding this letter, please contact me.

Sincerely,



James D. Gallagher
Executive Vice President and General Counsel
John Hancock Life Insurance Company (U.S.A.)