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September 24, 2015

VIA EMAIL - [e-ORI@dol.gov](mailto:e-ORI@dol.gov)

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Conflict of Interest Rule, Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Re: RIN 1210-AB32

To Whom It May Concern:

On April 20, 2015, the US Department of Labor (the “DOL”) published its proposed amendment to regulations defining “investment advice” for the purpose of determining who is a fiduciary, as well as related proposed prohibited transaction exemptions and amendments to existing prohibited transaction exemptions (collectively, the “Fiduciary Re-Proposal”). Farmers Insurance (“Farmers”) and Farmers Financial Solutions, LLC (“FFS”) submitted a comment letter on July 21, 2015 and Joe Wimpee, a Farmers Agent and registered representative of FFS, provided testimony to the DOL on August 12, 2015. As conveyed in our comment letter and testimony, we believe that our existing business model satisfies the DOL’s expressed goals of ensuring that recommendations to retirement account holders are made in the best interest of the customer and are free from conflicts of interest. Included in this comment letter are specific comments to the Fiduciary Re-Proposal, in light of our unique business model. Further, we believe that the amendments requested in this comment letter are necessary in order to permit us to continue to provide Retirement Solutions (as defined below) services to working class and middle income individuals, as well as small businesses, in accordance with the Farmers model.

### **Farmers’ Business**

Farmers is an insurance company that offers property-casualty insurance products to individuals and businesses. Farmers’ and its agents’ primary mission is to provide each customer with insurance products suited to the customer’s particular needs (“Insurance Services”). Secondly, and ancillary to its Insurance Services, Farmers and its agents assist the customer in building on the foundation of insurance protection to create emergency savings, college savings and retirement savings, including savings in traditional and Roth individual retirement accounts (“IRAs”) and other tax-qualified retirement accounts (“Retirement Solutions”). The combination of loss protection through Insurance Services, savings and market-based returns leads to the accumulation of wealth.

## **Farmers Financial Solutions (FFS)**

FFS is a registered broker dealer, owned by Farmers Insurance Exchanges, through which Farmers offers its Retirement Solutions services. While Farmers has approximately 14,000 exclusive insurance agents, about 5,400 of these agents are registered representatives of FFS. The financial products FFS has available to its customers in connection with its Retirement Solutions include mutual funds, fixed and variable annuities, variable universal life insurance, and 529 college savings plans. Generally, none of the investment or insurance products available to FFS customers in connection with Retirement Solutions are sponsored or managed by Farmers, FFS or any of their respective affiliates.<sup>1</sup>

No registered representative of FFS has discretionary authority to acquire or dispose of any investment on behalf of a customer. Each customer of our Retirement Solutions services is required to complete an information form which contains certain disclosures, including information regarding direct and indirect compensation received by FFS, and requests certain acknowledgements from the customer. Currently, FFS customers are not asked or required to submit to mandatory arbitration as a dispute resolution mechanism.

## **The Typical Customer of Farmers and FFS**

The majority of our customers are working class and middle income individuals. The remainder of our customers are small businesses. Such customers typically have limited investable assets and are not often served by traditional investment advisers, broker dealers and wealth management companies.

## **Current Value Add Services to Customers**

As noted above, Farmers' primary line of business is to provide customers with Insurance Services. The relationship established through the provision of Insurance Services enables the Farmers agent to develop an understanding of a customer's financial needs, financial goals, investment horizon and risk tolerance. As our customers are typically working class and middle income individuals, they often do not have adequate access to information and education about investment products that will enable them to achieve savings and retirement goals. Furthermore, such customers frequently do not have access to, or cannot afford, a financial adviser. FFS was created to add value to customers of Farmers Insurance Services in an effort to deepen the relationship between the agent and his or her customers. Accordingly, the bulk of the income of a Farmers agent who is also a registered representative of FFS is generated by insurance commissions from the Insurance Services. Generally, only a modest percentage of an agent's annual commissions relate to Retirement Solutions.

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<sup>1</sup> An affiliate, Farmers New World Life Insurance Company, issues variable annuities which are available to customers of FFS. However, we are not seeking any relief in connection with our proprietary products.

FFS does not charge fees or receive any direct compensation from its customers in connection with providing Retirement Solutions. FFS receives indirect compensation from the investment products, and the amount of the compensation is based on the amount of assets invested. Currently, FFS shares a portion of the indirect compensation it receives with its registered representatives. The indirect compensation received by a registered representative of FFS will depend on the size of the account. Such commissions, in the aggregate, are typically a small part of the agent's overall compensation. Accordingly, the Farmers agents that are also registered representatives of FFS are not incentivized primarily by the commissions received from providing Retirement Solutions. Instead, the primary benefit of offering Retirement Solutions is to provide customers with a much needed value-add service and thereby strengthen the agent's overall customer relationship.

### **Our Goal**

Farmers and FFS strive to add value to our customers by providing Retirement Solutions services in conjunction with Insurance Services. If FFS and its registered representatives are deemed to be fiduciaries under the terms of the Fiduciary Re-Proposal, we would need to either (i) discontinue our Retirement Solutions services to our customers or (ii) charge our customers receiving Retirement Solutions a service fee in lieu of any indirect compensation we receive from the investment products.

Our goal in seeking the changes set forth in this comment letter is to keep the cost to our customers for Retirement Solutions low so that we can continue to serve working class and middle income individuals, as well as small businesses. The current commission-based structure enables us to do that. While the DOL intends to preserve flexibility to provide services under a commission-based fee structure through the Best Interest Contract Exemption ("BICE"), as currently proposed, this exemption is not an option for us. One concern, for example, relates to the disclosure requirements proposed in BICE. FFS makes available to its customers a variety of mutual funds sponsored by American Funds, BlackRock, Franklin Templeton, Principal Funds, Voya and Oppenheimer, among others. If FFS is required to compile the disclosures and maintain the website currently set forth as conditions in BICE, FFS's costs will exceed the amount that would be sustainable out of the net revenues generated by providing Retirement Solutions. Another concern is that BICE does not apply to investment advice provided to small businesses in connection with the creation of a participant-directed plan, such as a 401(k) plan.

### **Specific Comments on the Fiduciary Re-Proposal**

We understand the DOL's objective to establish strong, enforceable protections for consumers and small businesses from the potential harm presented by overreaching financial advisers pushing affiliated products. However, the Fiduciary Re-Proposal has cast a very broad net that encompasses a wide range of services offered in connection with retirement products, including services that may be offered under models, such as the Farmers model, that align the interests of the service provider to the customer. Because the Retirement Solutions services offered by FFS are ancillary to a larger Insurance Services relationship with the customer and Farmers has no affiliation with the investment products made available to the customer, FFS and its registered agents are incited to act in the best interest of the customer. Accordingly, we believe that the services offered under the Farmers model do not need to be subjected to all of the same

requirements proposed to address more conflicted service arrangements, particularly when such requirements may jeopardize our ability to continue such services. In light of the foregoing, we are proposing alternatives to the DOL which would allow us to continue to add value to our customers through Retirement Solutions without increasing the cost to our customers. We see two alternative ways to achieve this goal.

#### 1. **Create a Streamlined BICE for Ancillary Retirement Solutions**

As proposed, BICE is designed for counterparty dealings with a participant or beneficiary of an employee benefit plan subject to Title I of ERISA, the beneficial owner of an IRA or an in-house fiduciary with authority to make investment decisions on behalf of a nonparticipant directed employee benefit plan subject to Title I of ERISA with fewer than 100 participants because such counterparty dealings are not covered by the counter party carve out included in the Fiduciary Re-Proposal. The DOL explained that it believes this segment of the plan market requires heightened protections afforded by imposing fiduciary status on persons who recommend investments and transactions involving plan assets, even when such persons are acting merely as salespersons or other counterparties. To the extent such persons are deemed fiduciaries, a prohibited transaction exemption is needed to allow such persons to receive compensation from the investments and products offered or recommended to this segment of the plan market. The DOL proposed BICE as this prohibited transaction exemption.

In our case, no proprietary products are made available in connection with our Retirement Solutions. Furthermore, our Retirement Solutions services are merely ancillary to our Insurance Services. Accordingly, as explained above, we believe the FFS model does not present the types of conflict of interest concerns that are targeted by the DOL. **We propose a new, streamlined BICE for ancillary Retirement Solutions (“Streamlined BICE”).** In the Streamlined BICE, the term “Retirement Investors” would include employee benefit plans and retirement accounts, including IRAs and IRA owners, plan sponsors, participants or beneficiaries. The Streamlined BICE would require a written contract between the Retirement Investor and the agent which would be entered into prior to the execution of the transaction related to the recommendation. The Streamlined BICE would include several new conditions that narrow the impacted field of advisors, though it would still include some conditions from BICE. The Streamlined BICE would serve to replace the proposed BICE for qualifying advisors. The conditions for using the Streamlined BICE are as follows:

- a. The conditions from BICE that would be included in a contract between the Retirement Investor and the agent are as follows:
  - (i) The agent agrees that he or she is acting as a fiduciary under ERISA or Section 4975 of the Internal Revenue Code, or both, with respect to the Retirement Solutions services provided to the Retirement Investor; and
  - (ii) The agent agrees to act in the Best Interest (which, as defined in terms consistent with BICE, means rendering Retirement Solutions services that reflect the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs

of the Retirement Investor, without regard to the financial or other interests of the agent or any other party) of the Retirement Investor.

- b. Additional conditions from BICE are as follows:
  - (i) The agent discloses any Material Conflicts of Interest (which, as defined in terms consistent with BICE, means any situation in which the agent has a financial interest that could affect the exercise of his or her best judgment as a fiduciary in rendering Retirement Solutions services); and
  - (ii) The agent makes no misleading statements about the assets, fees, material conflicts of interest or any other matters relevant to a Retirement Investor's investment decision.
- c. The contract would not require the Retirement Investor to agree to mandatory arbitration.
- d. The registered broker dealer providing Retirement Solutions services to Retirement Investors is part of a business enterprise that is primarily engaged in the property-casualty insurance business and the agent is an exclusive agent of such property-casualty insurance business.
- e. The registered broker dealer, its affiliates and the applicable agent do not have discretionary authority over the investment decisions of the Retirement Investor.
- f. The agent fairly informs the Retirement Investor of the existence and nature of the agent's and the broker dealer's financial interests in connection with the Retirement Solutions services.
- g. The broker dealer and the agent do not receive a fee or other compensation directly from the Retirement Investor for the provision of Retirement Solutions services.
- h. The Retirement Solutions services are merely ancillary to the Insurance Services provided to the Retirement Investor.
- i. The financial products available in connection with the Retirement Solutions services are not sponsored, issued or managed by the broker dealer or any of its affiliates.
- j. The fees received by the registered broker dealer and the agent from the Retirement Solutions provided to a Retirement Investor must be reasonable under the circumstances. The term "fees" means commissions and all other direct and indirect compensation received by the registered broker dealer and the agent in connection with providing the Retirement Solutions services to such Retirement Investor.

## 2. **Revise the Proposed Amendments to PTE 84-24**

In connection with the Fiduciary Re-Proposal, the DOL has proposed amendments to and revocations from or Prohibited Transaction Exemption 84-24 (“PTE 84-24”). The proposed revocation is to remove IRA owners from the exemptions provided by PTE 84-24 in connection with the purchases of variable annuities and mutual fund shares. The DOL indicated that exemptive relief for the compensation received in connection with such transactions should be obtained through BICE.

In situations such as ours in which no proprietary products are made available in connection with our Retirement Solutions, we urge the DOL to reinstate exemptive relief for purchases by IRA owners of variable annuities and mutual fund shares which, in each case, are not issued or offered by the agent or broker. Furthermore, we respectfully request that the definition of “Mutual Fund Commission” be expanded to include any commission or sales load paid by the non-proprietary investment company, including 12b-1 fees, revenue sharing payments, administrative fees and marketing fees. Otherwise, extensive compliance and back office procedures would need to be established to accommodate the new definition of “Mutual Fund Commission.” Similarly, the definition of “Insurance Commission” should not exclude revenue sharing payments, administrative fees and marketing fees from non-proprietary products. Given that PTE 84-24, as proposed to be amended, would require the agent or broker to act in the best interest of the Retirement Investor and would require the compensation received by the agent or broker be reasonable, the Retirement Investor is already protected with respect to fees. Excluding certain types of fees does not offer additional meaningful protection to the Retirement Investor.

The specific conditions for PTE 84-24 which would apply to insurance companies primarily engaged in the property-casualty insurance business and agents that are exclusive agent of such property-casualty insurance companies and who do not provide proprietary products in connection with Retirement Solutions would be as follows:

- a. The agent acts in the Best Interest (which, as defined in terms consistent with BICE, means rendering Retirement Solutions services that reflect the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances, and needs of the Retirement Investor, without regard to the financial or other interests of the agent or any other party) of the Retirement Investor.
- b. The agent discloses any Material Conflicts of Interest (which, as defined in terms consistent with BICE, means any situation in which the agent has a financial interest that could affect the exercise of his or her best judgment as a fiduciary in rendering Retirement Solutions services).
- c. The agent makes no misleading statements about the assets, fees, material conflicts of interest or any other matters relevant to a Retirement Investor’s investment decision.

- d. The Retirement Investor is not required to agree to mandatory arbitration.
- e. The registered broker dealer providing Retirement Solutions services to Retirement Investors is part of a business enterprise that is primarily engaged in the property-casualty insurance business and the agent is an exclusive agent of such property-casualty insurance business.
- f. The registered broker dealer, its affiliates and the applicable agent do not have discretionary authority over the investment decisions of the Retirement Investor.
- g. The agent fairly informs the Retirement Investor of the existence and nature of the agent's and the broker dealer's financial interests in connection with the Retirement Solutions services.
- h. The broker dealer and the agent do not receive a fee or other compensation directly from the Retirement Investor for the provision of Retirement Solutions services.
- i. The Retirement Solutions services are merely ancillary to the Insurance Services provided to the Retirement Investor.
- j. The financial products available in connection with the Retirement Solutions services are not sponsored, issued or managed by the broker dealer or any of its affiliates.
- k. The fees received by the registered broker dealer and the agent from the Retirement Solutions provided to a Retirement Investor must be reasonable under the circumstances. The term "fees" means commissions and all other direct and indirect compensation received by the registered broker dealer and the agent in connection with providing the Retirement Solutions to such Retirement Investor.

Again, the defined term "Retirement Investors" would include employee benefit plans and retirement accounts, including IRAs and IRA owners, plan sponsors, participants or beneficiaries. The proposed written contract between the Retirement Investor and the agent which would be entered into prior to the execution of the transaction related to the recommendation. The term "Mutual Fund Commission" would include any commission or sales load paid by the non-proprietary investment company, including 12b-1 fees, revenue sharing payments, administrative fees and marketing fees. Likewise, the term "Insurance Commission" should be defined so as not to exclude revenue sharing payments, administrative fees and marketing fees from non-proprietary products.

We would like to express our appreciation for the opportunity to comment on the Fiduciary Re-Proposal. To discuss further, please contact Matt Gannon at (202) 585-3122 or Blaire Luciano at (202) 585-3128.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John Mueting". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

John Mueting  
President of Farmers Financial Solutions