

**From:** Reynolds, Kevin  
**Sent:** Friday, April 14, 2017 1:14 PM  
**To:** FiduciaryRuleExamination - EBSA  
**Subject:** Fiduciary Rule

To whom it may concern:

On behalf of the Penn Mutual Life Insurance Company (Penn Mutual) and its wholly owned subsidiary broker-dealer, Hornor, Townsend & Kent, Inc., member FINRA/SIPC (HTK), we offer these comments on the Department of Labor's review, in order to address questions of law and policy, of the Rule defining who is a "fiduciary" under the Employee Retirement Security Act and the Internal Revenue Code of 1986, (the Rule). Penn Mutual and HTK may be referred to individually or collectively as the "Company" throughout this email.

The Company continues to maintain that revision of the Rule is necessary. The Company supports the Rule's goal of assuring that advisers act in their clients' best interests at all times; however, we believe that the current structure of the Rule could well defeat this purpose. More specifically, we refer to the Best Interest Contract (BIC) provisions of the Rule. While we appreciate the Department's efforts to simplify this aspect of the Rule between June 9<sup>th</sup> 2017 and January 1<sup>st</sup> 2018, it continues to create a burden on advisers and will weaken, rather than strengthen, the trust necessary for an effective adviser-client relationship. The burdensome disclosures required by the BIC can only raise questions for a client regarding an adviser's, or a financial institution's, motivation in providing advice to the client.

Of greater concern for the Company is the fact that the BIC will not be reviewed and enforced by knowledgeable regulators, but by the plaintiffs' bar, due to the new availability of class action lawsuits. Regulation by litigation is the worst possible enforcement of the Rule. We feel that the class action provision of the Rule will defeat the Rule's goal of acting in a client's best interest as advisers provide advice that may not be in the client's best interest, but which is the most defensible advice if they are later sued. We also believe that the threat of lawsuits will discourage advisers from joining or remaining in the financial services arena, thus reducing the number of adviser from which clients can choose. Both of these results, "defensive" advice and the reduction of client choice, are outcomes that are directly opposed to Rule goal of acting in clients' best interest.

The Company also maintains that operation of the BIC and the Prohibited Transaction Exemption ("PTE 84-24") are extremely confusing for the financial services industry. During the period of delay, it appears that PTE 84-24 remains operable, but the BIC contract does not. This is particularly relevant for the sales of Fixed Indexed Annuities (FIA), which apparently may continue to be sold under PTE 84-24 until December 31, 2017, after which they must be sold under a BIC. We have maintained, and continue to maintain, that Fixed Indexed Annuities (FIA) are products that should not be within the scope of the BIC; rather, they should continue to be governed by PTE 84-24. In that the delay has allowed for this, we request that the Department make the regulation of FIAs under PTE 84-24 permanent.

While there are numerous other aspects of the Rule we believe merit revision, we believe the BIC exception is the most troublesome and the component of the Rule that most requires revision. We urge the Department to closely analyze and simplify the BIC provisions, remove FIAs from the BIC regulation and develop a means of enforcement of the BIC other than purely litigation.

Thank you for your consideration of the Company's position.



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