

Date Completed: 7/19/2015
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Comments:

I am a Direct Investments industry professional who is writing to you today with respect to the Department's proposed rule defining who is a "fiduciary" by reason of providing investment advice for a fee or other compensation (the "Conflict of Interest Rule") and the related Best Interest Contract Exemption (the "BIC Exemption"). I appreciate the opportunity to comment on this important regulatory action. My primary concern relates to the Department's definition of "Assets" in the BIC Exemption. The Department has requested comment on the proposed definition of Assets and has specifically asked that commenters who believe that additional investments should be included in the scope of the exemption provide the Department with information supporting their inclusion. Direct Investment products, such as non-listed Real Estate Investment Trusts ("REITs"), Business Development Companies ("BDCs"), energy and equipment leasing programs, and private equity offerings, are important investment vehicles for American investors trying to save for their retirement. None of these products have been addressed by the Department in the Rule or included in the BIC; this will have the impact of effectively making such investments unavailable to qualified IRA investors. I believe that direct investment products should be included as "Assets" within the "BIC" exemption either by the removal by the Department of a "legal list" of "Assets" or by the inclusion of direct investment products on the "legal list". Direct investment products are distributed by highly regulated broker-dealers, who must follow rules from the SEC, FINRA and state regulators. Furthermore, most direct investment products are subject to higher disclosure and investor qualification requirements than many other financial products. In addition, FINRA Rule 2310 imposes additional transparency requirements on broker-dealer distributed direct investment products. Most importantly though, direct investments are not only a common investment for retail investors generally, but are also a common investment for IRAs. As of 12/31/14, investors held more than \$84 billion of non-listed REIT and BDC shares in their accounts, according to DST Systems. In 2014 alone more than \$16 billion was invested in non-listed REITs and over \$5 billion invested in BDCs. For the year ended 12/31/14, approximately 41% of the non-listed REIT investments were held by IRAs and approximately 48% of the BDC investments were held by IRAs. There are almost 3 million retail accounts invested in BDCs and non-listed REITs alone. Of these retail accounts, 43% or over 1.2 million are IRAs. Non-listed REITs and BDCs serve an important purpose in portfolios because non-listed BDCs and REITs generally do not correlate with S&P 500 returns, thus providing diversification. Finally, non-listed REITs and BDCs have favorable standard deviation rates, demonstrating that there is less volatility in their share price and performance over time, another positive attribute. There is no principled reason why an IRA investor may not choose to invest in non-listed REITs or BDCs, not to mention have the option to invest in other product not currently considered "Assets" such as private equity funds and oil and gas programs. For all the reasons I mention above, I urge the Department to revise the BIC Exemption in

order to include Direct Investment products within its scope , either by doing away with a list of specific Assets or by adding Direct Investment products to that list. I appreciate your time and attention in ensuring that retirement investors are provided with the broadest array of investment options, while taking all possible measures to avoid conflicted advice. Sincerely, Robert Polley Polley Financial Group, LLC 4500 S Lakeshore Dr Suite 300 Tempe, AZ 85282