Fiduciary Rule Overview

Fiduciary Rule – Under the DOL's Fiduciary Rule, which becomes applicable June 9, 2017, anyone who provides investment advice to qualified plans (*e.g.*, 401-Ks and IRAs) for compensation is a fiduciary. Advisors are barred from earning "conflicted compensation" (*i.e.*, commissions) for the sale of investment/insurance products to qualified plans, unless they qualify for an exemption.

Transition PTE 84-24

Background – Previously, the DOL had a much narrower definition as to who could be considered a fiduciary with respect to qualified plans (*e.g.*, 401-Ks and IRAs), and Prohibited Transaction Exemption (PTE) 84-24 has provided an exemption for conflicted compensation for those fiduciaries since 1977, with it being most recently revised in 2006. In April, the DOL determined that, following June 9, 2017, fiduciaries earning conflicted compensation from annuities and life insurance products would be able to rely on the 2006 version of PTE 84-24, provided they also adhere to Impartial Conduct Standards.

Impartial Conduct Standards – There are two Impartial Conduct Standards:

- **Best Interest.** The insurance agent must act in the "Best Interest" of the client "at the time of the transaction." The DOL defined "Best Interest" to be acting "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use … without regard to the financial or other interests of the [agent]." In other words, the agent needs to act with prudence on behalf of the client without any consideration of the commission or other compensation the agent may earn.
- **No Misleading Statements.** Any statements made by the insurance agent "about recommended investments, fees, Material Conflicts of Interest, and any other matters relevant to [the client's] investment decisions" cannot mislead the client. The DOL noted that if an agent fails to disclose a Material Conflict of Interest, then the insurance agent is deemed to have made a misleading statement.

2006 PTE 84-24 Requirements:

- **Reasonable Compensation.** The combined total of all compensation received by the agent in connection with the purchase cannot exceed reasonable compensation.

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- **Arms-Length Transaction.** The terms must be on "terms at least as favorable … as an arms-length transaction with an unrelated party would be."
- **Disclosure.** The following information must be provided "prior to the execution of the transaction" and "calculated to be understood by a [client] who has no special expertise in insurance or investment matters."
    - **Limitations:** Whether the agent is an affiliate of the insurance company or if the recommendations of the insurance agent are limited by any contract.
    - **Compensation.** "The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by the insurance company to the agent."
    - **Surrender Charges, etc.** "A description of any charges, fees, discounts, penalties, or adjustments which may be imposed under the recommended contract in connection with the purchase, holding, exchange, termination or sale of such contract.
    - **Signed by Client.** The client must acknowledge receipt of the information.

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