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Deadline to Comply with DOL Investment Advice Exemption Fast Approaching

Financial services firms that interact with retirement investors, such as participants and fiduciaries of ERISA-covered plans, as well as individual retirement accounts (IRAs), should take this opportunity to consider the extent to which they provide recommendations (i.e., non-discretionary investment advice) to these investors, and, if so, whether reliance on an exemption from the prohibited transaction rules is necessary. This is relevant because U.S. Department of Labor (DOL) Prohibited Transaction Exemption (PTE) 2020-02, the newest and most notable exemption available to investment advice fiduciaries, is slated to go into full effect starting on Feb. 1, 2022 (the requirements specific to rollover advice become effective on July 1, 2022).

We suggest first determining if recommendations are being provided in the first place. Some communications are not investment advice, such as marketing and investment education. But these communications can morph into advice, as defined under ERISA, as they become more tailored to the investor and as specific products, services or accounts are identified for the investor. It is a fact-intensive inquiry, which is why one should, as a preliminary matter, ascertain the nature of communications with current and prospective investors.

If recommendations are being provided to retirement investors and fiduciaries, then an exemption strategy will be warranted to receive any compensation in connection with the advice. PTE 2020-02 was built for these types of arrangements, but it contains numerous conditions, most of which, as noted above, go into effect early next year. One important condition (among others) is a need for policies and procedures that are prudently designed to ensure compliance with the exemption's "impartial conduct standards."

Please feel free to reach out with any questions.

For more information, please contact:

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