Simpson Thacher

Memorandum

Department of Labor Extends Transition Period for Certain Requirements of Exemptions Related to the ERISA Fiduciary Rule

December 7, 2017

On November 24, 2017, the Department of Labor (the "**DOL**") finalized its previously proposed 18 month extension of the applicability date of certain requirements under the Best Interest Contract Exemption (the "**BIC Exemption**"), the Class Exemption for Principal Transactions in Certain Assets between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (the "**Principal Transactions Exemption**"), and certain amendments to Prohibited Transaction Exemption 84-24 regarding transactions involving insurance agents and brokers, pension consultants, insurance and investment companies and investment company principal underwriters ("**PTE 84-24**") (the BIC Exemption, Principal Transaction Exemption and PTE 84-24 are collectively referred to herein as the "**Exemptions**"). Those requirements, previously delayed until January 1, 2018, have now been delayed until July 1, 2019.

The revised definition of "fiduciary" and "investment advice" under the fiduciary rule (effective June 9, 2017), which significantly expanded the scope of communications with ERISA plans and IRAs that would give rise to fiduciary status, are still applicable. The extended transition period covered by the DOL's recent action only applies to certain requirements of the Exemptions which are related to the ERISA fiduciary rule. See here for our client memorandum summarizing the fiduciary rule and related exemptions and here for our client memorandum discussing the general June 9, 2017 applicability date for the fiduciary rule.

During the extended transition period, the general rules and standards relating to the fiduciary rule and the Exemptions that were already in effect between June 9, 2017 and December 31, 2017 will remain in place unchanged. The BIC Exemption and the Principal Transactions Exemption will remain available so long as the fiduciary relying on the applicable Exemption adheres to the impartial conduct standards during the transition period. Among other things, this means that financial advisors and other financial services firms that are in compliance with the impartial conduct standards with respect to their retirement investors do not need to satisfy the remaining conditions of the BIC Exemption or Principal Transactions Exemption (e.g., written contracts, warranties and disclosures) until July 1, 2019. Because the amendment revoking the availability of PTE 84-24 for fixed indexed annuity contracts and variable annuity contracts will not be applicable until July 1, 2019, affected parties (including insurance intermediaries) will remain eligible to rely on PTE 84-24, subject to adherence to the existing conditions of this Exemption and the impartial conduct standards for recommendations involving all annuity contracts during the transition period.

The DOL also extended to July 1, 2019 the temporary enforcement relief articulated in Field Advisory Bulletin 2017-02 providing that the DOL will not pursue claims against fiduciaries who are working diligently and in good faith to comply with their fiduciary duties and meet the conditions of the Exemptions or treat those fiduciaries as being in violation of the fiduciary rule and the Exemptions.

The DOL indicated that the extended delay is necessary to allow it to complete its examination of the fiduciary rule and the Exemptions, as instructed by the President's February 3, 2017 memorandum.

For further information regarding the DOL's fiduciary rule and related prohibited transaction exemptions, please contact a member of the Firm's Executive Compensation and Employee Benefits Practice Group.

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