The Department of Labor Publishes Proposal to Delay Fiduciary Rule Exemptions Until July 1, 2019

The Department of Labor (the *"DOL"*) published today its proposal to delay for 18-months the more onerous provisions of the exemptions that were issued in connection with the DOL's fiduciary rule (the DOL's proposed regulation can be found here). The delay would occur by amending the following exemptions: the Best Interest Contracts Exemption (PTE 2016-01), the Exemption for Principal Transactions in Certain Assets Between Investment Advice Fiduciaries and Employee Benefit Plans and IRAs (PTE 2016-02) and the Exemption for Certain Transactions Involving Insurance Agent and Brokers, Pension Consultants, Insurance Companies, and Investment Company Principal Underwriters (PTE 84-24). The exemptions were supposed to be fully effective January 1, 2018. Instead, the DOL has proposed that they become fully effective July 1, 2019.

In its proposal, the DOL indicated that the primary purpose of the proposed delay is to give it the time necessary to consider possible changes and alternatives to the exemptions. The DOL provided that it is particularly concerned that, without delay, regulated parties may incur undue expense to comply with conditions or requirements that it ultimately determines to revise or repeal.

The DOL reiterated that, although it is proposing to extend the effective date until July 1, 2019, the current rules and standards that are now in effect will remain in effect. Thus, financial institutions and advisers will have to continue to give prudent advice that is in retirement investors' best interest, charge no more than reasonable compensation, and avoid misleading statements.

During the delay period, the DOL will continue to reexamine the fiduciary rule and exemptions, as directed by the President on February 3, 2017. The DOL indicated that it will also propose in the near future a new and more streamlined exemption based on recent innovations in the financial services industry (presumably related to clean shares). The delay will also give the DOL time to engage constructively with the Securities and Exchange Commission (the *"SEC"*) as the SEC moves forward with its own examination of the standards of conduct of investment advisers and broker-dealers.

In its proposal, the DOL also asked for comments on alternative approaches to delay the effective date of the exemptions, such as a delay that would end after a specified period following the conclusion of a certain action (*e.g.,* after the DOL concludes its review as directed by the President).

In addition to the delay proposal, yesterday the DOL issued Field Assistance Bulletin 2017-03 (which can be found here). The BIC Exemption and the Principal Transaction Exemption provide that the required contract between the financial institution and the retirement investor may not include a provision under which the retirement investor would agree to waive his or her right to bring or participate in a class action in a dispute with the financial institution or settle conflicts by arbitration. FAB 2017-03 provides that such requirement in the exemptions is in conflict with court precedent and the U.S. Government's current position. Accordingly, the DOL provided that it will not pursue a claim against a fiduciary or treat a fiduciary as violating the exemptions if the sole failure is to comply with the class action/arbitration

provision in the exemptions. Thus, financial institutions will be able to draft agreements that require clients to waive their right to a class action against the institution.

For More Information

We will continue to monitor any developments with respect to the proposed delay and the rule in general. In the meantime, if you have any questions, please do not hesitate to contact the Chapman and Cutler LLP attorney with whom you work.

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