

TECHNICAL CORRECTIONS TO BEST INTEREST CONTRACT AND PRINCIPAL TRANSACTION EXEMPTIONS

THE DEPARTMENT OF LABOR (DOL) HAS PUBLISHED TECHNICAL CORRECTIONS TO TWO OF THE EXEMPTIONS ISSUED IN CONJUNCTION WITH ITS FINAL RULE EXPANDING ERISA'S DEFINITION OF INVESTMENT ADVICE FIDUCIARY (THE FINAL RULE).

On July 7, 2016, DOL released technical corrections to its two new exemptions published in April 2016 in conjunction with the Final Rule:

- [The Best Interest Contract Exemption \(BICE\), now officially designated as Prohibited Transaction Exemption \(PTE\) 2016-01](#); and
- [The Principal Transaction Exemption, designated as PTE 2016-02](#).

The principal clarifications included in these releases are summarized below. These clarifications helpfully resolve unintended discontinuities between the text of the exemptions and DOL's drafting intent as expressed in the preamble or elsewhere, and conform a detail in the definition of insurance companies that may serve as BICE Financial Institutions to applicable state insurance law. Certain clerical corrections were also made. The revised text of each PTE is reproduced in full in the respective release.

APPLICABLE SECTION		PROVISION	CLARIFICATION IN OPERATIVE PTE TEXT
BICE	2016-02		
II		Negative consent procedure for existing contracts—determination date for existing contracts	An existing contract must be executed before January 1, 2018.
II	II	Negative consent procedure for existing contracts—consequence of retirement investor's rejection of terms required by PTE through contract termination	If retirement investor does not consent, exemption continues to provide relief for 14 days after receipt of termination.
VIII	V	Adviser definition	Adviser may have discretion over assets not involved in the recommended transaction.
VIII		Insurance company as Financial Institution	Annual actuarial review need not be conducted by an independent actuary.
	VI	Principal Traded Asset definition	DOL may expand the types of investments for which PTE 2016-02 provides relief, through an individual PTE granted after the issuance date of PTE 2016-02.
VI		Purchase and sale exemption	Relief is provided for sales as well as purchases.

DID YOU KNOW?

US RETIREMENT MARKET STRATIFICATION

First Quarter 2016

\$7.4
Trillion

IRAs

\$6.8
Trillion

Defined Contribution
Plans

\$5.1
Trillion

Government Defined
Benefit Plans

\$2.8
Trillion

Private Defined
Benefit Plans

\$2.0
Trillion

Annuity Reserves

Source: Investment Company Institute
Quarterly Retirement Market Data (June 23, 2016)

SUTHERLAND'S INTERDISCIPLINARY DOL FIDUCIARY RULE COMPLIANCE TEAM

Sutherland's unique team of ERISA, insurance, securities, banking, investment management and litigation attorneys is working collaboratively to share industry knowledge and insight regarding DOL fiduciary rule compliance best practices.

For resources and commentary regarding the Final Rule, visit Sutherland's www.dolfiduciaryrule.com.



WHY SUTHERLAND?



STRENGTH in representing the country's and the world's leading organizations impacted by the Final Rule.



INSIGHT into the legal and business drivers impacting our clients' compliance decisions.



EXPERIENCE advising our clients on fiduciary compliance issues in the ERISA, FINRA, insurance, securities and investment management space for more than 35 years.



DEPTH as trial attorneys in efficiently and zealously representing our clients in individual and class actions filed in state and federal courts across the country.

ABOUT SUTHERLAND ASBILL & BRENNAN LLP

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