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Department of Labor's Final "Investment Advice" Regulation and Its Impact on the Retail Investor Marketplace

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On April 6, 2016 the Department of Labor (Department or DOL) issued its final regulation (Final Regulation) defining the term "investment advice" for purposes of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the Internal Revenue Code of 1986, as amended (Code).

The Department also issued a new prohibited transaction exemption called the best interest contract exemption (BIC) designed to address conflicts that, in the Department's view, arise when a person provides advice to "retail" investors who are particularly vulnerable to adviser and firm conflicts of interest. Finally, the Department substantially revised several current prohibited transaction exemptions, including Prohibited Transaction Exemption 84-24 (PTE 84-24), with the intent of pushing advisers and firms to primarily rely upon the BIC when they provide "investment advice."

The purpose of this article is to: (i) provide a summary of the definition of "investment advice" under the Final Regulation; (ii) discuss the impact of the Final Regulation and the prohibited transaction exemptions, particularly the BIC and PTE 84-24, on the distribution of products and services; and (iii) provide some recommendations on how to proceed. Please see the attached article for further information.

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