GROOM LAW GROUP

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DOL Proposes Major Changes to Fiduciary Advice Definition, Revises Existing Exemptions and Introduces New Exemptions

On April 14, 2015, the U.S. Department of Labor ("DOL") made available its long-awaited re-proposed regulation on the definition of "fiduciary" under section 3(21) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). The package of materials proposed by the DOL included:

- A regulation re-defining who is a "fiduciary" by reason of providing investment advice to a plan or an IRA (the "2015 Proposed Regulation");
- Two new prohibited transaction class exemptions; and
- Amendments to several existing prohibited transaction class exemptions.

In addition, the Department made available several documents in support of its regulatory impact analysis with respect to the proposals. We expect the materials to appear in a number of separate items published in the Federal Register on or about April 20, 2015. The comment period for the 2015 Proposed Regulation and the exemptions will be open for 75 days (until July 6, 2015). The DOL also plans to hold public hearings on the proposals, and will likely re-open the comment period after the hearings. The entire package of proposed changes 2015 Proposed Regulation will be subject to intense scrutiny and public debate in the upcoming months.

I. Executive Summary

The changes proposed by the DOL would fundamentally alter the landscape of retirement services provided to IRAs and individual plan participants. Outside of the IRA context, the proposed changes are also likely to have a significant impact. Specifically:

- The changes proposed by the DOL to the fiduciary definition will expand the universe of individuals and entities viewed as investment advice fiduciaries to ERISA retirement plans and IRAs.
  - While the proposal includes some helpful exceptions to the application of the new fiduciary definition, these exceptions are relatively narrow. As a result, certain sales activities, and consulting, recordkeeping, participant education and valuation services that do not currently give rise to fiduciary status, would do so under the proposal.
- The proposed new prohibited transaction class exemptions and amendments to existing class exemptions would require significant changes to the current service delivery and compensation models of many registered investment advisers, brokers, banks, insurance companies and consultants.
  - Many current compensation practices will simply not work under the modifications to the current class exemptions and limitations of the newly proposed class exemptions.
  - Where current compensation practices can be preserved, the ability to receive such compensation will be accompanied by taking on significant contractual, recordkeeping, and reporting obligations not currently required.

II. Overview of Groom Law Group Summary Materials

In addition to this Executive Summary, Groom Law Group has prepared the following materials for clients:

- A memorandum outlining the key elements and scope of the 2015 Proposed Regulation
- An outline of each of the proposed new prohibited transaction class exemptions, including:
    - The proposed "Best Interest Contract Exemption"
        - The proposed "Pre-Existing Transaction Exemption" (a supplemental exemption under the Best Interest Contract Exemption)
        - The proposed "Insurance and Annuity Contract Exemption" (a supplemental exemption under the Best Interest Contract Exemption)
    - The proposed Exemption for Principal Transactions in Debt Securities
- A chart outlining the proposed revisions to existing prohibited transaction class exemptions
- A memorandum describing DOL's regulatory impact analysis for the 2015 Proposal.

We recognize there are several significant issues raised by the 2015 Proposal and accompanying materials. Throughout our materials, we include initial observations about the implementation of the proposal and potential comment points. We will continue to provide updates as we further analyze the proposal and its implications, and we invite you to contact us for assistance in evaluating how the 2015 Proposed Regulation will impact your business.