GROOM LAW GROUP

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Insurance and Annuity Contract Exemption
(Supplemental Exemption under the Best Interest Contract Exemption)

1) Rationale for Exemption

A plan's or an IRA's purchase of an insurance product would be a prohibited transaction if the insurance company has a pre-existing relationship with the plan/IRA as a service provider, or is otherwise a party in interest/disqualified person. DOL believes that the purchase of an insurance contract from a party-in-interest insurer is likely to occur in connection with fiduciary recommendations for which relief would be available under the Best Interest Contract Exemption. While PTE 84-24 would cover most of these party-in-interest transactions, DOL is proposing to revoke that exemption to the extent it provides relief for an IRAs' purchase of variable annuity contracts and other annuity contracts that are securities under federal securities law. Therefore, it decided to propose, as part of the Best Interest Contract Exemption, an exemption from 406(a) for the purchase of insurance or annuity contracts from a party in interest, "both to ensure that relief is available for transactions involving IRAs but also for ease of compliance" for transactions involving other Retirement Investors described in that exemption.

2) Covered Transactions and Relief Provided

Relief from ERISA sections 406(a)(1)(A) and (D) of Code sections 4975(c)(1)(A) and (D) for a fiduciary causing the purchase of an Asset that is an insurance or annuity contract from an a party-in-interest insurance company.

3) Covered Purchasers

"Retirement Investors" as defined in the Best Interest Contract Exemption.

4) Covered Sellers

The insurance or annuity contract must be issued by a "Financial Institution" that is an insurance company. A "Financial Institution" is defined in the Best Interest Contract Exemption and includes an insurance company qualified to do business under the laws of a state, if it has satisfied various state regulatory and audit requirements.

5) Exclusions

The exemption does not cover purchases by plans covered by Title I of ERISA where (i) the Adviser, Financial Institution or any Affiliate is the employer of employees covered by the plan or (ii) the Adviser or Financial Institution is a named fiduciary or plan administrator with respect to the plan, or an affiliate thereof, that was selected by a fiduciary who is not independent.

6) Conditions

a. The transaction must be effected by the insurance company in the ordinary course of its business as an insurance company.

b. The combined total of all fees and compensation received by the insurance company must not be in excess of reasonable compensation under the circumstances.

c. The purchase is for cash only.

d. The terms of the purchase are at least as favorable to the plan, participant or beneficiary account, or IRA as the terms generally available in an arm’s length transaction with an unrelated party.