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## Technical Corrections to BIC and Principal Transactions Exemptions Released

On July 7, 2016, the Department of Labor released technical corrections (the “Technical Corrections”) to the Best Interest Contract Exemption (the “BIC Exemption”) as well as to the Principal Transactions Exemption. The Technical Corrections are expected to be published in the Federal Register on July 11, 2016.

The most significant change under the Technical Corrections is a correction to the BIC Exemption’s definition of insurance companies that may act as Financial Institutions.

In addition to correcting various typographical errors, the Technical Corrections make the following notable changes to the BIC Exemption and Principal Transactions Exemption:

- The Technical Corrections add formal headings to the exemptions. The BIC Exemption and Principal Transactions Exemption are now known as Prohibited Transaction Exemption 2016-01 and Prohibited Transaction Exemption 2016-02, respectively.
- The Technical Corrections fix an inconsistency between the preambles of both exemptions and their regulatory text regarding negative consent procedures. Specifically, the preambles included language that, “If the Retirement Investor does terminate the contract within that 30-day period, this exemption will provide relief for 14 days after the date on which the termination is received by the Financial Institution.” The Technical Corrections modify Section II(a)(1)(ii) of both exemptions to reflect the 14 days of relief.
- The Technical Corrections correct a quotation error in the preamble to the BIC Exemption to confirm that an “existing contract” is one that is entered into prior to January 1, 2018.
- The Technical Corrections correct Section VI(b) of the BIC Exemption to clarify that exemptive relief extends to both the purchase and *sale* of investment products, including insurance and annuity contracts, rather than only purchases.
- The Technical Corrections delete the word “solely” from Section VIII(a) of the BIC Exemption and Section VI(a)(1) of the Principal Transactions Exemption. The regulatory text now reads that an Adviser includes an individual who “[i]s a fiduciary of the Plan or IRA ~~solely~~ by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the Plan or IRA involved in the recommended transaction.” While the BIC Exemption continues to be unavailable

where an Adviser has discretion over the recommended transaction, the change makes clear that an Adviser may rely on the BIC Exemption if it has discretion over other assets that are not a part of the recommended transaction.

- The Technical Corrections clarify that the BIC Exemption is available to a broad group of insurance companies. Specifically, the Technical Corrections delete language in the definition of Financial Institution that inadvertently limited the definition of “insurance company.” Section VIII(e)(3)(iii) is revised to apply to insurers that are “domiciled in a state whose law requires that actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority.”
- The Technical Corrections clarify that in order to meet the definition of Financial Institution under Section VI(e) of the Principal Transactions Exemption, an entity is only required to meet one rather than all of the conditions in subsections (1), (2), and (3).

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