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BENEFITS BRIEF

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DOL Finalizes Transition Period Extension to July 1, 2019

The Department of Labor will move forward to finalize its proposed 18 month extension of the transition periods under the Best Interest Contract (or "BIC") Exemption and the Class Exemption for Principal Transactions (respectively, PTEs 2016-01 and 2016-02) until July 1, 2019. The Department will also finalize its proposed delay of the applicability of certain amendments to Prohibited Transaction Exemption 84-24 until July 1, 2019.[1] Amendments to the three class exemptions implementing these extensions are expected to be published in the *Federal Register* this coming Wednesday, November 29, 2017. In the meantime a pre-publication version of the extension grant has been made publicly available (copy attached).

While widely anticipated, publication of the Department's transition period extensions is likely to be a source of relief to financial institutions that have been concerned about a potential "worst case" scenario under which full compliance with all of the exemptions' conditions could have been required beginning January 1, 2018. The publication of the 18 month extension furnishes the regulated community with a much greater degree of certainty, at least in the near term. Consumer groups and other proponents of the Department's original rulemaking may bring lawsuits challenging the extension of the transition period. Such challenges could dispute the Department's authority to grant a delay.

While we are continuing to review the Department's preamble explanation, our initial observations are as follows –

- During the extended transition period, the same rules and standards that were already in effect between June 9, 2017 and December 31, 2017 remain in place unchanged.
- Importantly, the Department has confirmed that the temporary enforcement relief announced in its Field Advisory Bulletin 2017-02 for firms that are working "diligently and in good faith" to comply with the final rule and the exemptions is being commensurately extended to July 1, 2019.
- The Department indicates it intends to utilize the next 18 months to re-examine the fiduciary rule as instructed by the President's February 3, 2017 memorandum. The Department also signals a desire to coordinate with other federal and state regulators, including the SEC, FINRA and the NAIC as part of that effort.

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[1] Amendments adding the DOL's Impartial Conduct Standards to the exemptive relief conditions under PTE 84-24 became applicable on June 9, 2017. The PTE 84-24 Impartial Conduct Standards conditions are unaffected by the extension.

- The Department anticipates the proposal of a new streamlined class exemption "in the near future." However, no further hint is provided as to the timing of the proposal or the content that the streamlined exemption may contain.

We will continue to evaluate the Department's announcement, including the discussion of the extension's regulatory impact analysis. In the meantime, please don't hesitate to call or email any of your Groom contact attorneys with any questions.