15.00 Impartial Conduct Standards under DOL PTE 2020-02

Introduction

The Employee Retirement Income Security Act of 1974 (the Act) provides, in relevant part, that a person is a fiduciary with respect to a ‘‘plan’’ to the extent he or she renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan or has any authority or responsibility to do so. Title I of the Act (referred to herein as Title I), which generally applies to employer-sponsored Plans (Title I Plans), includes this provision in section 3(21)(A)(ii). The Act’s Title II (referred to herein as the Code), includes a parallel provision in section 4975(e)(3)(B), which defines a fiduciary of a tax-qualified plan, including IRAs.

Investment advice fiduciaries, like other fiduciaries to Plans and IRAs, are subject to duties and liabilities established in Title I and the Code. Fiduciaries to Title I Plans must act prudently and with undivided loyalty to the plans and their participants and beneficiaries. Although these statutory fiduciary duties are not in the Code, both Title I and the Code contain provisions forbidding fiduciaries from engaging in certain specified ‘‘prohibited transactions,’’ involving Plans and IRAs, including conflict of interest transactions. Under these prohibited transaction provisions, a fiduciary may not deal with the income or assets of a Plan or an IRA in his or her own interest or for his or her own account, and a fiduciary may not receive payments from any party dealing with the Plan or IRA in connection with a transaction involving assets of the Plan or IRA.

Title I and the Code include broad prohibitions on self-dealing. Absent an exemption, a fiduciary may not deal with the income or assets of a Plan or an IRA in his or her own interest or for his or her own account, and a fiduciary may not receive payments from any party dealing with the Plan or IRA in connection with a transaction involving assets of the Plan or IRA. As a result, fiduciaries who use their authority to cause themselves or their affiliates or related entities to receive additional compensation violate the prohibited transaction provisions unless an exemption applies. This exemption conditions relief on the Investment Professional and Financial Institution investment advice fiduciaries providing advice in accordance with the Impartial Conduct Standards.

15.01 Prohibited Transaction Exemption

Prohibited Transaction Exemption

In December 2020, the Department of Labor (Department or DOL) adopted Prohibited Transaction Exemption 2020-02 (“PTE 2020- 02”). These procedures address PTE 2020- 02 and its class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended (the Act). Title I of the Act codified a prohibited transaction provision in title 29 of the U.S. Code (referred to in this document as Title I). Title II of the Act codified a parallel provision now found in the Internal Revenue Code of 1986, as amended (the Code). These prohibited transaction provisions of Title I and the Code generally prohibit fiduciaries with respect to ‘‘plans,’’ including workplace retirement plans (Plans) and individual retirement accounts and annuities (IRAs), from engaging in self-dealing and receiving compensation from third parties in connection with transactions involving the Plans and IRAs.

The provisions also prohibit purchasing and selling investments with the Plans and IRAs when the fiduciaries are acting on behalf of their own accounts (principal transactions). This exemption allows investment advice fiduciaries to plans under both Title I and the Code to receive compensation, including as a result of advice to roll over assets from a Plan to an IRA, and to engage in principal transactions, that would otherwise violate the prohibited transaction provisions of Title I and the Code.

This exemption is available to registered investment advisers, broker-dealers, banks, and insurance companies (Financial Institutions) and their individual employees, agents, and representatives (Investment Professionals) that provide fiduciary investment advice to Retirement Investors. The

exemption defines Retirement Investors as Plan participants and beneficiaries, IRA owners, and Plan and IRA fiduciaries.

Under the exemption, Financial Institutions and Investment Professionals can receive a wide variety of payments that would otherwise violate the prohibited transaction rules, including, but not limited to, commissions, 12b–1 fees, trailing commissions, sales loads, mark-ups and mark-downs, and revenue sharing payments from investment providers or third parties. The exemption's relief extends to prohibited transactions arising as a result of investment advice to roll over assets from a Plan to an IRA. The exemption also allows Financial Institutions to engage in principal transactions with Plans and IRAs in which the Financial Institution purchases or sells certain investments from its own account.

Designated Supervisor(s)

Note: Please see below or the Firm's separate list of currently designated supervisors and/or designees responsible for monitoring and supervision.

Chief Compliance Officer (CCO):	Clarence Yee
Designated Supervisor(s):	
Supervisor Designee(s):	

Note: Although the exemption does not specify that a compliance officer must be appointed, the Department envisions that Financial Institutions will, as a practical matter, assign a compliance role to an appropriate officer.

15.02 Investment Education vs. Investment Advice

Investment Education vs. Investment Advice

Interpretive Bulletin 96-1 sets forth the views of the Department of Labor (the Department) concerning the circumstances under which the provision of investment-related information to participants and beneficiaries in participant-directed individual account pension plans will not constitute the rendering of "investment advice" under the Employee Retirement Income Security Act of 1974, as amended (ERISA). This guidance is intended to assist plan sponsors, service providers, participants, and beneficiaries in determining when activities designed to educate and assist participants and beneficiaries in making informed investment decisions will not cause persons engaged in such activities to become fiduciaries with respect to a plan by virtue of providing "investment advice" to plan participants and beneficiaries for a fee or other compensation.

Interpretive Bulletin 96-1 identifies categories of information and materials regarding participant-directed individual account pension plans that do not, in the view of the Department, constitute "investment advice" under the definition of "fiduciary" in ERISA section 3(21)(A)(ii) and the corresponding regulation at 29 CFR 2510.3-21(c)(1). The interpretive bulletin points out, in effect, a series of graduated safe harbors under ERISA for plan sponsors and service providers who provide participants and beneficiaries with four increasingly specific categories of investment information and materials--plan information, general financial and investment information, asset allocation models and interactive investment materials--as described below:

Investment Education

For purposes of ERISA section 3(21)(A)(ii) and 29 CFR 2510.3-21(c), the Department of Labor has determined that the furnishing of the following categories of information and materials to a participant or beneficiary in a participant-directed individual account pension plan will not constitute the rendering of "investment advice," irrespective of who provides the information (e.g., plan sponsor, fiduciary or service provider), the frequency with which the information is shared, the form in which the information and

materials are provided (e.g., on an individual or group basis, in writing or orally, or via video or computer software), or whether an identified category of information and materials is furnished alone or in combination with other identified categories of information and materials.

- Plan Information. Information and materials that inform a participant or beneficiary about the benefits of plan participation, the benefits of increasing plan contributions, the impact of preretirement withdrawals on retirement income, the terms of the plan, or the operation of the plan; or (ii) information such as that described in 29 CFR 2550.404c-1(b)(2)(i) on investment alternatives under the plan (e.g., descriptions of investment objectives and philosophies, risk and return characteristics, historical return information, or related prospectuses).

  The information and materials described above relate to the plan and plan participation, without reference to the appropriateness of any individual investment option for a particular participant or beneficiary under the plan. The information, therefore, does not contain either "advice" or "recommendations" within the meaning of 29 CFR 2510.3-21(c)(1)(i). Accordingly, the furnishing of such information would not constitute the rendering of "investment advice" for purposes of section 3(21)(A)(ii) of ERISA.

- General Financial and Investment Information. Information and materials that inform a participant or beneficiary about:

  - General financial and investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment;
  - historic differences in rates of return between different asset classes (e.g., equities, bonds, or cash) based on standard market indices;
  - effects of inflation;
  - estimating future retirement income needs;
  - determining investment time horizons; and
  - assessing risk tolerance.

  The information and materials described above are general financial and investment information that have no direct relationship to investment alternatives available to participants and beneficiaries under a plan or to individual participants or beneficiaries. The furnishing of such information, therefore, would not constitute rendering "advice" or making "recommendations" to a participant or beneficiary within the meaning of 29 CFR 2510.3-21(c)(1)(i). Accordingly, the furnishing of such information would not constitute the rendering of "investment advice" for purposes of section 3(21)(A)(ii) of ERISA.

- Asset Allocation Models. Information and materials (e.g., pie charts, graphs, or case studies) that provide a participant or beneficiary with models, available to all plan participants and beneficiaries, of asset allocation portfolios of hypothetical individuals with different time horizons and risk profiles, where:

  - Such models are based on generally accepted investments theories that take into account the historic returns of different asset classes (e.g., equities, bonds, or cash) over define periods of time;
  - all material facts and assumptions on which such models are based (e.g., retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, and rates of return) accompany the models;
  - to the extent that an asset allocation model identifies any specific investment alternative available under the plan, the model is accompanied by a statement indicating that other investment alternatives having similar risk and return characteristics may be available under the plan and identifying where information on those investment alternatives may be obtained; and
  - the asset allocation models are accompanied by a statement indicating that, in applying particular asset allocation models to their individual situations, participants or

beneficiaries should consider their other assets, income, and investments (e.g., equity in a home, IRA investments, savings accounts, and interests in other qualified and non-qualified plans) in addition to their interests in the plan.

Because the information and materials described above would enable a participant or beneficiary to assess the relevance of an asset allocation model to his or her individual situation, the furnishing of such information would not constitute a "recommendation" within the meaning of 29 CFR 2510.3-21(c)(1)(i) and, accordingly, would not constitute "investment advice" for purposes of section 3(21)(A)(ii) of ERISA. This result would not, in the view of the Department, be affected by the fact that a plan offers only one investment alternative in a particular asset class identified in an asset allocation model.

- <u>Interactive Investment Materials</u>. Questionnaires, worksheets, software, and similar materials which provide a participant or beneficiary the means to estimate future retirement income needs and assess the impact of different asset allocations on retirement income, where:
    - Such materials are based on generally accepted investment theories that take into account the historic returns of different asset classes (e.g., equities, bonds, or cash) over defined periods of time;
    - there is an objective correlation between the asset allocations generated by the materials and the information and data supplied by the participant or beneficiary;
    - all material facts and assumptions (e.g., retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, and rates of return) which may affect a participant's or beneficiary's assessment of the different asset allocations accompany the materials or are specified by the participant or beneficiary;
    - to the extent that an asset allocation generated by the materials identifies any specific investment alternative available under the plan, the asset allocation is accompanied by a statement indicating that other investment alternatives having similar risk and return characteristics may be available under the plan and identifying where information on those investment alternatives may be obtained; and
    - the materials either take into account or are accompanied by a statement indicating that, in applying particular asset allocations to their individual situations, participants or beneficiaries should consider their other assets, income, and investments (e.g., equity in a home, IRA investments, savings accounts, and interests in other qualified and non-qualified plans) in addition to their interests in the plan.

The information provided through the use of the above-described materials enables participants and beneficiaries independently to design and assess multiple asset allocation models, but otherwise these materials do not differ from asset allocation models based on hypothetical assumptions. Such information would not constitute a "recommendation" within the meaning of 29 CFR 2510.3-21(c)(1)(i) and , accordingly, would not constitute "investment advice" for purposes of section 3(21)(A)(ii) of ERISA.

Investment Advice

Whether the provision of particular investment-related information or materials to a participant or beneficiary constitutes the rendering of “investment advice,” within the meaning of 29 CFR 2510.3-21©(1), generally can be determined only by reference to the facts and circumstances of the particular case with respect to the individual plan participant or beneficiary. However, the above examples of investment-related information and materials which if provided to plan participants and beneficiaries would not, in the view of the Department, result in the rendering of “investment advice” under ERISA section 3(21)(A)(ii) and 29 CFR 2510.3-21(c).

When does an advisor cross the line from providing education (non-fiduciary act) to providing a recommendation (fiduciary act) about rollovers? Unless operating within the above categories of information and materials regarding participant-directed individual account pension plans under

Interpretive Bulletin 96-1, under the five-part test, a person is an “investment advice” fiduciary with respect to a plan (including an IRA) under the Employee Retirement Income Security Act of 1974, as amended (ERISA) and the prohibited transaction rules of the Internal Revenue Code (Code) when: (1) providing ***advice or recommendations*** regarding purchasing or selling, or the value of, securities or other property ***for a fee***, (2) on a ***regular*** basis, (3) pursuant to a ***mutual understanding*** that (4) the investment advice will serve as ***a primary basis*** for an investment decision, and (5) the advice is ***individualized***.

Note: this test does not apply to discretionary advice—any discretion over plan assets (other than limited discretion over the time and price at which transactions are executed) generally results in fiduciary status.

Taken together, the five-part test and Interpretive Bulletin 96–1, regarding participant investment education, provide Financial Institutions and Investment Professionals a clear roadmap for when they are, and are not, Title I and Code fiduciaries. All the elements of the five-part test must be satisfied for the investment advice provider to be a fiduciary within the meaning of the regulatory definition, including the ‘‘regular basis’’ prong as well as requirements that the advice be provided pursuant to a ‘‘mutual’’ agreement, arrangement, or understanding that the advice will serve as ‘‘a primary basis’’ for investment decisions.

Therefore, an Investment Professional provides ERISA fiduciary advice when it discusses specific investment products or advice with the client prior to the rollover, and the client and the Investment Professional have a mutual understanding that the Investment Professional will be providing investment advice on a regular basis after the rollover.

Note: The Department acknowledges that a single instance of advice to take a distribution from a Title I Plan and roll over the assets would fail to meet the regular basis prong. Likewise, sporadic interactions between a financial services professional and a Retirement Investor do not meet the regular basis prong. The Department also acknowledges that not all rollover recommendations can be considered fiduciary investment advice under the five-part test set forth in the Department’s regulation. Parties can and do, for example, enter into one-time sales transactions in which there is no ongoing investment advice relationship, or expectation of such a relationship.

15.03 Eligibility Provision

Exemption’s Eligibility Provision

The exemption provides that Financial Institutions and Investment Professionals will be ineligible to rely on the exemption if, within the previous ten (10) years, they were convicted of certain crimes arising out of their provision of investment advice to Retirement Investors. They will also be ineligible if they engaged in systematic or intentional violation of the exemption’s conditions or provided materially misleading information to the Department in relation to their conduct under the exemption. Ineligible parties are permitted to rely on an otherwise available statutory exemption or administrative class exemption, or they can apply for an individual prohibited transaction exemption from the Department.

Criminal Convictions

An Investment Professional or Financial Institution will become ineligible upon the conviction of any crime described in ERISA section 411 arising out of provision of advice to Retirement Investors, except as described below. Crimes described in ERISA section 411 are likely to directly contravene the Investment Professional’s or Financial Institution’s ability to maintain a high standard of integrity and will cast doubt on their ability to act in accordance with the Impartial Conduct Standards.

However, a Financial Institutions with such a criminal conviction may submit a petition to the Department and seek a determination that continued reliance on the exemption would not be contrary to the purposes of the exemption. Petitions must be submitted within ten (10) business

days of the conviction to the Department by email at *IIAWR@dol.gov.* Following submission of the petition, the Financial Institution has the opportunity to be heard, in person or in writing or both. The opportunity to be heard in person will allow the Financial Institution to address the facts and circumstances more fully.

Note: The Department's determination as to whether to grant a Financial Institution's petition to continue relying on the exemption following a criminal conviction will be based solely on its discretion. In determining whether to grant the petition, the Department will consider the gravity of the offense; the relationship between the conduct underlying the conviction and the Financial Institution's system and practices in its retirement investment business as a whole; the degree to which the underlying conduct concerned individual misconduct, corporate managers, and/or policy; how recently the underlying conduct occurred and any related lawsuit; remedial measures taken by the Financial Institution upon learning of the underlying conduct; and such other factors as the Department determines in its discretion are reasonable in light of the nature and purposes of the exemption. The Department will consider whether any extenuating circumstances indicate that the Financial Institution should be able to continue to rely on the exemption despite the conviction. In sum, the Department will focus on the Financial Institution's ability to fulfill its obligations under the exemption for the protection of Retirement Investors. Upon making a determination as to a Financial Institution's petition, the Department will provide a written determination to the Financial Institution that states the basis for the Determination.

Conduct With Respect to Compliance With the Exemption

Investment Professionals and Financial Institutions will also become ineligible if they are issued a written ineligibility notice from the Department stating that they (i) engaged in a systematic pattern or practice of violating the conditions of the exemption, (ii) intentionally violated the conditions of the exemption, or (iii) provided materially misleading information to the Department in connection with the Investment Professional's or Financial Institution's conduct under the exemption.

The exemption sets forth a process governing the issuance of the written ineligibility notice, as follows. Prior to issuing a written ineligibility notice, the Department will issue a written warning to the Investment Professional or Financial Institution, as applicable, identifying specific conduct that could lead to ineligibility, and providing a six month opportunity to cure. At the end of the six-month period, if the Department determines that the conduct has persisted, it will provide the Investment Professional or Financial Institution with the opportunity to be heard, in person or in writing, before the Department issues the written ineligibility notice. If a written ineligibility notice is issued, it will state the basis for the determination that the Investment Professional or Financial Institution engaged in conduct warranting ineligibility. The final exemption provides that Financial Institution will have 21 days after the date of the written ineligibility notice before becoming ineligible.

Scope of Ineligibility

A Financial Institution's ineligibility would be triggered by its own conviction or receipt of a written ineligibility notice, or by the conviction or receipt of such a notice by another Financial Institution in the same Controlled Group. A Financial Institution is in the same Controlled Group with another Financial Institution if it would be considered in the same ''controlled group of corporations'' or ''under common control'' with the Financial Institution, as those terms are defined in Code section 414(b) and (c), in each case including the accompanying regulations. The Department is including in the eligibility provision other Financial Institutions in the same Controlled Group to ensure that a Financial Institution facing ineligibility for its actions affecting Retirement Investors cannot simply transfer its fiduciary investment advice business to another Financial Institution that is closely related and that also provides fiduciary investment advice to Retirement Investors, thus avoiding ineligibility entirely.

Note: The proposed exemption provided that a Financial Institution is in a Control Group with another Financial Institution if, directly or indirectly, the Financial Institution owns at least 80 percent of, is at least

80 percent owned by, or shares an 80 percent or more owner with, the other Financial Institution (or interests such as profits interest or capital interests in which directly or indirectly, the Financial Institution owns at least 80 percent of, is at least 80 percent owned by, or shares an 80 percent or more owner with, the other Financial Institution).

Period of Ineligibility

The period of ineligibility under Section III is ten (10) years; however, the eligibility provision would apply differently to Investment Professionals and Financial Institutions. An Investment Professional that is convicted of a crime would become ineligible immediately upon the date the Investment Professional is convicted by a trial court, regardless of whether that judgment remains under appeal, or upon the date of the written ineligibility notice from the Department, as applicable. Financial Institutions, on the other hand, would have a one-year winding down period after becoming ineligible, during which they may continue to rely on the exemption, as long as they comply with the exemption's other conditions during that year. The winding down period begins ten (10) business days after the date of the trial court's judgment, regardless of whether that judgment remains under appeal.

Financial Institutions that timely submit a petition regarding the conviction would become ineligible twenty-one (21) days after the date of a written notice of denial from the Department. Financial Institutions that become ineligible due to conduct with respect to exemption compliance would become ineligible twenty-one 21 days after the date of the written ineligibility notice from the Department and begin their winding down period at that point.

Description of Supervisory Review Process
The Firm and its Investment Professionals are eligible to rely on the exemption because neither the Firm nor its Investment Professionals, within the previous ten (10) years, have been convicted of any crimes arising out of their provision of investment advice to Retirement Investors nor have they engaged in systematic or intentional violation of the exemption's conditions or provided materially misleading information to the Department in relation to their conduct under the exemption. The designated supervisor will conduct periodic monitoring of retirement investment related activities and corresponding books and records, to include applicable DRPs, written ineligibility notices, retrospective reviews, certifications, and support records, to confirm that both the Firm and its Investment Professionals have not received any related convictions, violations, or notices to maintain eligibility regarding the continued reliance on the exemption.

15.04 Impartial Conduct Standards

Impartial Conduct Standards

The exemption's principles-based approach is rooted in the Impartial Conduct Standards for fiduciaries providing investment advice. Financial Institutions and Investment Professionals must comply with the Impartial Conduct Standards by providing advice that is in Retirement Investors' best interest, charging only reasonable compensation, and making no materially misleading statements about the investment transaction and other relevant matters.

Best Interest Standard

Section II(a)(1) requires investment advice that is, at the time it is provided, in the best interest of the Retirement Investor. Section V(b) of the exemption defines ''best interest'' advice as advice that ''reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, based on the investment objectives, risk

tolerance, financial circumstances, and needs of the Retirement Investor, and does not place the financial or other interest of the Investment Professional, Financial Institution or any affiliate, related entity or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own.''

The best interest standard is an objective standard that requires the Financial Institution and Investment Professional to investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would. The standard of care is measured at the time the advice is provided, and not in hindsight.

The appropriate measure is whether the Investment Professional gave advice that was prudent and in the best interest of the Retirement Investor at the time the advice is provided. The standard also provides that Financial Institutions and Investment Professionals have a duty to ''not place the financial or other interest of the Investment Professional, Financial Institution or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor or subordinate the Retirement Investor's interests to their own.'' The Department intends for the standard to be interpreted and applied consistently with the standard set forth in Regulation Best Interest and the SEC's interpretation regarding the conduct standard for investment advisers.

Financial Institutions wishing to be certain that they complied with the ERISA section 404 standard and the Impartial Conduct Standards would adopt rigorous policies and procedures to align the interests of Investment Professionals with their Retirement Investor customers, refrain from creating incentives for Investment Professionals to violate the Impartial Conduct Standards, and prudently oversee the implementation and enforcement of the policies and procedures.

Financial Institution and Investment Professionals must engage in a prudent process in recommending investment products and ensure that their advice does not put the interests of the Investment Professional, Financial Institution, or other party ahead of the interests of the Retirement Investor.

The Financial Institution is required to document the reasons that the advice to roll over was in the Retirement Investor's best interest and provide the documentation to the Retirement Investor.

Note: This best interest standard also does not impose an unattainable obligation on Investment Professionals and Financial Institutions to somehow identify the single ''best'' investment for the Retirement Investor out of all the investments in the national or international marketplace, assuming such advice were even possible at the time of the transaction.

Description of Supervisory Review Process
To comply with the Impartial Conduct Standards by providing advice that is in Retirement Investors' best interest, the designated supervisor will monitor retirement investment activities, and specifically rollovers, to ensure that the Firm's Investment Professionals are properly investigating and evaluating retirement investments, providing advice, and exercising sound judgment regarding those investments. Certain factors to be evaluated include but are not limited to the Retirement Investor's suitability information such as investment objectives, risk tolerance, and overall financial needs and circumstances, as well as the relative costs associated with the new investment options, the range of available investment options under the plan and the IRA, and the individual circumstances of the particular investor. In the event the Firm's Investment Professionals make a recommendation or provide advice to a retirement investor regarding a rollover, they will document these factors including the reasons that the advice to roll over was in the Retirement Investor's best interest by completing a Rollover Due Diligence Form for DOL PTE 2020-02 or other similar type of form which will be maintained in

accordance with books and records requirements. Additionally, a copy of the completed form will be provided to the Retirement Investor at the time of the recommendation or at a minimum prior to the transaction.

The designated supervisor's review of retirement investment activities are to confirm that the interests of the Firm's Investment Professionals are sufficiently aligned with their Retirement Investor customers, and that the Firm refrain from creating incentives for Investment Professionals that may place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own. The Firm does not currently engage in any sales contests, quotas, bonuses, non-cash compensation or other incentive programs that would place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity, or other party ahead of the interests of the Retirement Investor.

Reasonable Compensation Standard

Section II(a)(2) of the exemption includes a reasonable compensation standard. The exemption provides that compensation received, directly or indirectly, by the Financial Institution, Investment Professional, and their affiliates and related entities for their services is not permitted to exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2).

The reasonable compensation standard requires that compensation not be excessive, as measured by the market value of the particular services, rights, and benefits the Investment Professional and Financial Institution are delivering to the Retirement Investor. Given the conflicts of interest associated with the commissions and other payments that would be covered by the exemption, and the potential for self-dealing, it is particularly important that Investment Professionals and Financial Institutions adhere to these statutory standards, which are rooted in common law principles.

The reasonable compensation standard applies to all transactions under the exemption, including investment products that bundle services and investment guarantees or other benefits, such as with annuities. In assessing the reasonableness of compensation in connection with these products, it is appropriate to consider the value of the guarantees and benefits as well as the value of the services. When assessing the reasonableness of a charge, one generally needs to consider the value of all the services and benefits provided for the charge, not just some. If parties need additional guidance in this respect, they should refer to the Department's interpretations under ERISA section 408(b)(2) and Code section 4975(d)(2).

Several factors inform whether compensation is reasonable, including the nature of the service(s) provided, the market price of the service(s) and/or the underlying asset(s), the scope of monitoring, and the complexity of the product. No single factor is dispositive in determining whether compensation is reasonable; the essential question is whether the charges are reasonable in relation to what the investor receives.

Note: Under the exemption, the Financial Institution and Investment Professional are not required to recommend the transaction that is the lowest cost or that generates the lowest fees without regard to other relevant factors. In fact, the Department agrees with commenters that recommendations of the ''lowest cost'' security or investment strategy, without consideration of other factors, could in in some cases even violate the exemption.

Note: A firm that recommends a rollover to a Retirement Investor can generally expect to earn transaction-based compensation such as commissions, or an ongoing advisory fee, from the IRA, but may or may not earn compensation if the assets remain in the Title I Plan. In light of potential

conflicts of interest related to rollovers from Title I Plans to IRAs, Title I and the Code prohibit an investment advice fiduciary from receiving fees resulting from investment advice to Title I Plan participants to roll over assets from the plan to an IRA, unless an exemption applies. The exemption provides relief, as needed, for this prohibited transaction, if the Financial Institution and Investment Professional provide investment advice that satisfies the Impartial Conduct Standards and comply with the other applicable conditions.

Description of Supervisory Review Process
To ensure compliance with the reasonable compensation standard, the designated supervisor will monitor retirement investment activities, and specifically rollovers, to ensure that the Firm and its Investment Professionals are not receiving compensation that is excessive, as measured by the market value of the particular services, rights, and benefits the Firm and its Investment Professionals are delivering to the Retirement Investor. Such compensation received, directly or indirectly, by the Firm, its Investment Professionals, and their affiliates and related entities for their services is not permitted to exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2). *Several factors are considered in determining whether compensation is reasonable, including the nature of the service(s) provided, the market price of the service(s) and/or the underlying asset(s), the scope of monitoring, and the complexity of the product. Ultimately, the objective reasonableness of fees will depend on all the facts and circumstances at the time of the recommendation. In the event the Firm's Investment Professionals make a recommendation or provide advice to a retirement investor regarding a rollover, they will document the overall reasonableness of fees by completing a Rollover Due Diligence Form for DOL PTE 2020-02 or other similar type of form which will be maintained in accordance with books and records requirements. Additionally, a copy of the completed form will be provided to the Retirement Investor at the time of the recommendation or at a minimum prior to the transaction.* *The designated supervisor's review of retirement investment activities is to confirm that the Firm and its Investment Professionals are charging reasonable compensation and that the reasonable compensation standard applies to all transactions under the exemption, including investment products that bundle services and investment guarantees or other benefits, such as with annuities. In assessing the reasonableness of compensation in connection with these products, the designated supervisor will consider the value of the guarantees and benefits as well as the value of the services (the value of all the services and benefits provided for the charge) in the review process.*

No Misleading Statements

Section II(a)(3) requires that statements by the Financial Institution and its Investment Professionals to the Retirement Investor about the recommended transaction and other relevant matters are not materially misleading at the time they are made. Other relevant matters include fees and compensation, material conflicts of interest, and any other fact that could reasonably be expected to affect the Retirement Investor's investment decisions.

Note: the Department confirms that nothing in the final exemption requires Financial Institutions or Investment Professionals to provide ongoing monitoring services. Of course, the exemption's general prohibition against misleading statements applies, and Financial Institutions and Investment Professionals should be clear and candid with Retirement Investors about the existence, scope, and duration of any monitoring services.

Description of Supervisory Review Process

To ensure that accurate communications are a consistent standard involving the Firm's interactions with customers, the designated supervisor will monitor statements and representations made to retirement investors about the recommended transaction and other relevant matters to include fees and compensation, material conflicts of interest, and any other fact that could reasonably be expected to affect the Retirement Investor's investment decisions, to ensure that such information is free from material misstatements and omissions. Such statements and representations include the Written Acknowledgement of Fiduciary Status, Rollover Due Diligence Form for DOL PTE 2020-02 or other similar type of form to include a written description of the services to be provided and material conflicts of interest arising out of the services and any recommended investment transaction, new account documentation and supporting disclosures, Form ADV Part 2 and Form CRS if applicable.

15.05 Disclosures, including a Written Acknowledgment of Fiduciary Status

Disclosures, including a Written Acknowledgment of Fiduciary Status

Section II(b) of the exemption requires the Financial Institution to provide certain written disclosures to the Retirement Investor prior to engaging in any transactions pursuant to the exemption. The Financial Institution must acknowledge, in writing, that the Financial Institution and its Investment Professionals are fiduciaries under Title I and the Code, as applicable, with respect to any fiduciary investment advice provided by the Financial Institution or Investment Professional to the Retirement Investor. The Financial Institution must also provide a written description of the services to be provided and material conflicts of interest arising out of the services and any recommended investment transaction.

The Financial Institution also must provide documentation of the specific reasons that any recommendation to roll over assets from one Plan or IRA to another Plan or IRA, or from one type of account to another, is in the Retirement Investor's best interest. These disclosure obligations are designed to protect Retirement Investors by enhancing the quality of information they receive in connection with fiduciary investment advice.

The disclosures should be in plain English, taking into consideration Retirement Investors' level of financial experience.

Once disclosure has been provided, the Financial Institution is not obligated to provide it again, except at the Retirement Investor's request or if the information has materially changed.

Written Fiduciary Acknowledgment

Section II(b)(1) of the final exemption includes the requirement to provide Retirement Investors with a written fiduciary acknowledgment as proposed. This disclosure is designed to ensure that the fiduciary nature of the relationship is clear to the Financial Institution and Investment Professional, as well as the Retirement Investor, at the time of the investment transaction.

Model Language

To assist Financial Institutions and Investment Professionals in complying with this condition of the exemption, the Department provided the following model fiduciary acknowledgment language as an example of language that will satisfy the disclosure requirement in Section II(b)(1):

When we provide investment advice to you regarding your retirement plan account or individual retirement account, we are fiduciaries within the meaning of Title I of the Employee Retirement Income Security Act and/or the Internal Revenue Code, as applicable, which are laws governing retirement accounts. The way we make money creates some conflicts with your interests, so we operate under a special rule that requires us to act in your best interest and not put our interest ahead of yours.

In addition, although the exemption does not require it, Financial Institutions and Investment Professionals could more fully explain the exemption's terms with the following model disclosure:

Under this special rule's provisions, we must:

- *Meet a professional standard of care when making investment recommendations (give prudent advice);*
- *Never put our financial interests ahead of yours when making recommendations (give loyal advice);*
- *Avoid misleading statements about conflicts of interest, fees, and investments;*
- *Follow policies and procedures designed to ensure that we give advice that is in your best interest;*
- *Charge no more than is reasonable for our services; and*
- *Give you basic information about conflicts of interest*.

Description of Supervisory Review Process
To provide a clear understanding of the Firm's status as a fiduciary, the designated supervisor will monitor to ensure that on or before each recommendation to roll over assets from one Plan or IRA to another Plan or IRA, or from one type of account to another, the Firm is providing each Retirement Investor written Fiduciary Acknowledgement, adopted from the Department's model language as referenced above, in addition to the Firm's written description of the services to be provided and material conflicts of interest arising out of the services and any recommended investment transaction. Copies of the written fiduciary acknowledgement along with the description of services to be provided and material conflicts of interest will be maintained in accordance with the Recordkeeping requirements.

Written Description of Services and Material Conflicts of Interest

Under Section II(b)(2) of the exemption, the Financial Institution must also provide a written description of the services to be provided and material conflicts of interest arising out of the services and any recommended investment transaction. The description must be accurate in all material respects.

Material conflicts of interest that would be required to be disclosed under the exemption would include, for example, conflicts associated with proprietary products, payments from third parties, and compensation arrangements.

Note: The Department confirms that the disclosure required by the exemption may be included with or accompanied by the disclosure provided to responsible Plan fiduciaries under 29 CFR 2550.408b–2, as applicable, and that such disclosures may satisfy, in whole or in part, the disclosure obligations under this exemption when the fiduciary of the Plan is the Retirement Investor receiving advice, as defined in Section V(k)(3). However, if advice is provided to individual Plan participants, disclosure to the Plan fiduciary will not satisfy the disclosure obligation under the exemption. In such cases, the Retirement Investor is the individual participant receiving the investment advice, as defined in Section V(k)(1), and the disclosure obligation applies to that particular individual.

Note: The Department's approach in the proposal allowed for the disclosure to be satisfied through disclosures
provided pursuant to other regulators' requirements. Since the Department's 2016 rulemaking, other regulators have developed additional conflict of interest disclosure requirements and oversight that provide a greater measure of accountability and investor protection in the marketplace. Permitting use of other regulators' disclosures was intended to minimize the potential for duplicative and voluminous disclosures which could contribute to reduced effectiveness.

Description of Supervisory Review Process
To ensure that accurate communications are a consistent standard involving the Firm's interactions with customers, the designated supervisor will monitor statements and representations made to retirement investors to ensure that the Firm's Investment Professionals are providing a written description of the services to be provided and material conflicts of interest arising out of the services and any recommended investment transaction that could reasonably be expected to affect the Retirement Investor's investment decisions. Such statements and representations would include any conflicts associated with proprietary products, payments from third parties, and compensation arrangements. However, the Firm does not currently engage in any sales contests, quotas or other incentive programs that would place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity, or other party ahead of the interests of the Retirement Investor. *To the extent applicable, such statements and representations may include the Firm's existing Form ADV Part 2, Form CRS, Additional Disclosures and Related Conflicts of Interest and/or other preexisting disclosures related to services and conflicts of interest which will serve to satisfy this disclosure requirement. The statements and representations used will be provided to the Retirement Investor prior to engaging in a rollover recommended pursuant to the exemption and ultimately maintained in accordance with books and records requirements.*

Documentation of Rollover Recommendation

Section II(b)(3) of the final exemption requires Financial Institutions to provide Retirement Investors, prior to engaging in a rollover recommended pursuant to the exemption, with documentation of the specific reasons that the recommendation to roll over assets is in the best interest of the Retirement Investor. This requirement extends to recommended rollovers from a Plan to another Plan or IRA as defined in Code section 4975(e)(1)(B) or (C), from an IRA as defined in Code section 4975(e)(1)(B) or (C) to a Plan, from an IRA to another IRA, or from one type of account to another (*e.g.,* from a commission-based account to a fee-based account). The requirement to document the specific reasons for these recommendations is part of the required policies and procedures, in Section II(c)(3).

The requirement to document the reasons that a rollover is in the best interest of the Retirement Investor is included in the exemption's policies and procedures provision to ensure that Financial Institutions and Investment Professionals take the time to form a prudent recommendation, and that a record is available for later review.

Note: Because of the special importance of rollover recommendations, the Department has concluded that Retirement Investors should be provided with the rollover documentation.

With respect to recommendations to roll assets out of a Title I Plan and into an IRA, the factors that a Financial Institution and Investment Professional should consider and document include the following:

- The Retirement Investor's alternatives to a rollover, including leaving the money in his or her current employer's Plan, if permitted, and selecting different investment options;

- the fees and expenses associated with both the Plan and the IRA;
- whether the employer pays for some or all of the Plan's administrative expenses; and
- the different levels of services and investments available under the Plan and the IRA.

For rollovers from another IRA or changes from a commission-based account to a fee-based arrangement, a prudent recommendation would include consideration and documentation of the services that would be provided under the new arrangement. The Department agrees with commenters that the long-term impact of any increased costs and the reason(s) why the added benefits justify those added costs, as well as the impact of features such as surrender schedules and index annuity cap and participation rates, should be considered as part of any rollover recommendation, as relevant.

Note: If the Retirement Investor is unwilling to provide the information, even after a full explanation of its significance, and the information is not otherwise readily available, the Financial Institution and Investment Professional should make a reasonable estimation of expenses, asset values, risk, and returns based on publicly available information. The Financial Institution and Investment Professional should document and explain the assumptions used and their limitations. In such cases, the Investment Professional could rely on alternative data sources, such as the most recent Form 5500 or reliable benchmarks on typical fees and expenses for the type and size of Plan at issue.

Note: The exemption also does not mandate that a Financial Institution review documentation of each and every rollover recommendation. However, depending on the Financial Institution's business model and the other methods available to mitigate conflicts of interest, regular review of some or all rollover recommendations may be an effective approach to compliance with the exemption.

Timing of the Disclosure

The disclosure must be provided prior to the transaction. However, because the exemption requires the disclosure to be provided prior to the transaction, parties wishing to provide disclosure at the time of the recommendation would be permitted to do so.

Description of Supervisory Review Process
The designated supervisor will monitor retirement investment activities, and specifically rollover transactions, to ensure that the Firm's Investment Professionals are properly documenting each rollover recommendation (e.g., recommended rollovers from a Plan to another Plan or IRA, from an IRA to a Plan, from an IRA to another IRA, or from one type of account to another (e.g., from a commission-based account to a fee-based account)). Documentation will be recorded by completing a Rollover Due Diligence Form for DOL PTE 2020-02 or other similar type of form that documents the specific reasons for the rollover recommendation, which will be provided to the Retirement Investor prior to engaging in a rollover recommended pursuant to the exemption. *With documenting each rollover recommendation, certain factors to be evaluated include but are not limited to the Retirement Investor's alternatives to a rollover, including leaving the money in his or her current employer's Plan, if permitted, and selecting different investment options; the fees and expenses associated with both the Plan and the IRA; whether the employer pays for some or all of the Plan's administrative expenses; and the different options, levels of services and investments available under the Plan and the IRA. The Firm's Investment Professionals will make a reasonable effort to complete all applicable sections, and will include reasonable estimations of expenses, asset values, risk, and returns based on publicly available information or alternative data sources (such as the most recent Form 5500 or reliable benchmarks on typical fees and expenses for the type and size of Plan) if the client is unwilling to provide such information.*

15.06 Policies and Procedures prudently designed to ensure Compliance with the Impartial Conduct Standards and that mitigate Conflicts of Interest

Policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards and that mitigate conflicts of interest

Section II(c)(1) of the exemption establishes an overarching requirement that Financial Institutions establish, maintain, and enforce written policies and procedures prudently designed to ensure that the Financial Institution and its Investment Professionals comply with the Impartial Conduct Standards. Under Section II(c)(2), Financial Institutions' policies and procedures are required to mitigate conflicts of interest to the extent that a reasonable person reviewing the policies and procedures and incentive practices as a whole would conclude that they do not create an incentive for a Financial Institution or Investment Professional to place their interests ahead of the interest of the Retirement Investor; and documentation and disclosure to Retirement Investors of the reasons that a rollover recommendation is in the Retirement Investor's best interest.

Note: As defined in section V(c), a Conflict of Interest is ''an interest that might incline a Financial Institution or Investment Professional—consciously or unconsciously—to make a recommendation that is not in the Best Interest of the Retirement Investor.'' Conflict mitigation is a critical condition of the exemption and is important to the required findings under ERISA section 408(a) and Code section 4975(c)(2), that the exemption is in the interests of, and protective of, Retirement Investors.

To comply with Section II(c)(2) of the exemption, Financial Institutions would need to identify and carefully focus on the conflicts of interest in their particular business models that may create incentives to place their interests
ahead of the interest of Retirement Investors. Under the exemption condition, Financial Institutions' policies and procedures must be prudently designed to, among other things, protect Retirement Investors from recommendations to make excessive trades, or to buy investment products, annuities, or riders that are not in the investor's best interest or that allocate excessive amounts to illiquid or risky investments. Examples of policies and procedures and conflict mitigation strategies are provided later in this preamble.

Section II(c)(2) of the exemption states that Financial Institutions' policies and procedures must mitigate conflicts of interest "to the extent that a reasonable person reviewing the policies and procedures and incentive practices as a whole would conclude that they do not create an incentive for a Financial Institution or Investment Professional to place their interests ahead of the interest of the Retirement Investor."

Note: The final exemption does not permit Financial Institutions to pay Investment Professionals significantly more to recommend one investment product over another, without putting in place stringent oversight mechanisms to ensure that the compensation structure does not incentivize recommendations that do not adhere to the exemption's standards.

Description of Supervisory Review Process
To ensure compliance with the Impartial Conduct Standards, the designated supervisor will review, customize, and update these policies and procedures to ensure that they properly identify and focus on the conflicts of interest specific to the Firm's particular business models that may create incentives to place its and/or its Investment Professionals interests ahead of the interest of Retirement Investors. The Firm's conflict mitigation procedures include the designated supervisor actively monitoring retirement investment activities, specifically rollover transactions, and corresponding compensation structures and possible incentive programs that would place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity, or other party ahead of the interests of the Retirement Investor. Currently, the Firm

does not engage in any sales contests, quotas or other incentive programs that would place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity, or other party ahead of the interests of the Retirement Investor. The designated supervisor will also conduct regular reviews of relevant transaction records and supporting documentation and disclosures (e.g. completed Rollover Due Diligence Form for DOL PTE 2020-02 or other similar type of form that documents the specific reasons for the rollover recommendation, Form ADV Part 2, Form CRS, Additional Disclosures and Related Conflicts of Interest and/or other preexisting disclosures) for detecting recommendations involving excessive trading, or to buy investment products, annuities, or riders that are not in the investor's best interest or that allocate excessive amounts to illiquid or risky investments.

Note: To the extent that the Firm offers transaction-based compensation, ongoing review and monitoring of conflicts of interest will focus on both financial incentives to Investment Professionals and supervisory oversight of investment advice to meet the standards.

Sales Contests, Quotas, Bonuses, and Non-Cash Compensation

Financial Institutions should carefully review its processes for sales contests and similar incentives such as sales quotas, bonuses, and non-cash compensation that are based on sales of certain investments within a limited period of time. The Department intends to apply a principles-based approach to sales contests and similar incentives. To satisfy the exemption's standard of mitigation, Financial Institutions would be required to carefully consider all performance and personnel actions and practices that could encourage violation of the Impartial Conduct Standards**.**

Description of Supervisory Review Process

The designated supervisor's review of retirement investment activities are to confirm that the interests of the Firm's Investment Professionals are sufficiently aligned with their Retirement Investor customers, and that the Firm refrain from creating incentives for Investment Professionals that may place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own. To minimize conflicts of interest, the Firm does not currently engage in any sales contests, quotas, bonuses, non-cash compensation or other incentive programs that would place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity, or other party ahead of the interests of the Retirement Investor.

Commission-Based Compensation Arrangements

Financial Institutions that compensate Investment Professionals through transaction-based payments and incentives are required to minimize the impact of these compensation incentives on fiduciary investment advice to Retirement Investors, so that the Financial Institution would be able to meet the exemption's standard of conflict mitigation set forth in Section II(c)(2).

For commission-based compensation arrangements, Financial Institutions are encouraged to focus on financial incentives to Investment Professionals and supervisory oversight of investment advice. These two aspects of the Financial Institution's policies and procedures would complement each other, and Financial Institutions could retain the flexibility, based on the characteristics of their businesses, to adjust the stringency of each component provided that the exemption's overall standards would be satisfied. Financial Institutions that significantly mitigate

commission-based compensation incentives would have less need to rigorously oversee individual Investment Professionals and individual recommendations. Conversely, Financial Institutions that have significant variation in compensation across different investment products would need to implement the policies and procedures by using more stringent supervisory oversight.

The following are non-exhaustive examples of practices identified as options by the SEC that could be implemented by Financial Institutions in compensating Investment Professionals:

1. Avoiding compensation thresholds that disproportionately increase compensation through incremental increases in sales;
2. minimizing compensation incentives for employees to favor one type of account over another; or to favor one type of product over another, proprietary or preferred provider products, or comparable products sold on a principal basis, for example, by establishing differential compensation based on neutral factors;
3. eliminating compensation incentives within comparable product lines by, for example, capping the credit that an associated person may receive across mutual funds or other comparable products across providers;
4. implementing supervisory procedures to monitor recommendations that are: Near compensation thresholds; near thresholds for firm recognition; involve higher compensating products, proprietary products, or transactions in a principal capacity; or involve the rollover or transfer of assets from one type of account to another (such as recommendations to roll over or transfer assets in a Title I Plan account to an IRA) or from one product class to another;
5. adjusting compensation for associated persons who fail to adequately manage conflicts of interest; and
6. limiting the types of retail customer to whom a product, transaction or strategy may be recommended.

Financial Institutions also must review and mitigate incentives at the Financial Institution level. Firms should establish or enhance the review process for investment products that may be recommended to Retirement Investors. This process should include procedures for identifying and mitigating conflicts of interest associated with the product or declining to recommend a product if the Financial Institution cannot effectively mitigate associated conflicts of interest.

Description of Supervisory Review Process

The designated supervisor's review of retirement investment activities are to confirm that the interests of the Firm's Investment Professionals are sufficiently aligned with their Retirement Investor customers, and that the Firm refrain from creating incentives for Investment Professionals that may place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own. To minimize conflicts of interest, the designated supervisor will review for any variations in compensation across different investment products, with special attention to those investment products that provide higher compensation thresholds compared to the list of investment products offered by the Firm and its Investment Professionals or involve the rollover or transfer of assets from one type of account to another (such as recommendations to roll over or transfer assets in a Title I Plan account to an IRA) or from one product class to another. To further minimize conflicts of interest, the Firm will consider implementing one or more of the following processes:

- *Avoiding compensation thresholds that disproportionately increase compensation through incremental increases in sales;*

- *minimizing compensation incentives for employees to favor one type of account over another; or to favor one type of product over another, proprietary or preferred provider products, or comparable products sold on a principal basis, for example, by establishing differential compensation based on neutral factors;*
- *eliminating compensation incentives within comparable product lines by, for example, capping the credit that an associated person may receive across mutual funds or other comparable products across providers;*
- *adjusting compensation for associated persons who fail to adequately manage conflicts of interest; and*
- *limiting the types of retail customer to whom a product, transaction or strategy may be recommended.*

Proprietary Products and Limited Menus of Investment Products

The best interest standard can be satisfied by Financial Institutions and Investment Professionals that provide investment advice on proprietary products or on a limited menu of investment options, including limitations to proprietary products and products that generate third party payments. Product limitations can serve a beneficial purpose by allowing Financial Institutions and Investment Professionals to develop increased familiarity with the products they recommend. At the same time, limited menus, particularly if they focus on proprietary products and products that generate third party payments, can result in heightened conflicts of interest. Financial Institutions and their affiliates and related entities may receive more compensation than they would for recommending other products, and, as a result, Investment Professionals and Financial Institutions may have an incentive to place their interests ahead of the interest of the Retirement Investor.

Financial Institutions and Investment Professionals providing investment advice on proprietary products or on a limited menu can satisfy the conditions of the exemption by providing complete and accurate disclosure of their material conflicts of interest in connection with such products or limitations and adopting policies and procedures that mitigate conflicts to the extent that a reasonable person reviewing the policies and procedures and incentive practices as a whole would conclude that they do not create an incentive for a Financial Institution or Investment Professional to place their interests ahead of the interest of the Retirement Investor.

The conflict mitigation requirement in the policies and procedures obligation extends to the Financial Institution’s own interests, including interests in proprietary products and limited menus of investment options that generate third party payments. The Department believes this exemption’s standard of mitigation ensures that Financial Institutions will take a broad-based approach to addressing their conflicts of interest, which will provide a strong threshold foundation for the formulation of best interest investment recommendations.

Note: The Department confirms that the exemption does not require Financial Institutions to compare proprietary products with all other investment alternatives available in the marketplace. There is no obligation to perform an evaluation of every possible alternative, including those the Financial Institution or Investment Professional are not licensed to recommend, and the exemption does not contemplate that there is a single investment that is in a Retirement Investor’s best interest. The exemption merely provides that Financial Institutions and Investment Professionals cannot use a limited menu to justify making a recommendation that does not meet the Impartial Conduct Standards.

Description of Supervisory Review Process

The designated supervisor’s review of retirement investment activities are to confirm that the interests of the Firm’s Investment Professionals are sufficiently aligned with their Retirement Investor customers, and that the Firm

refrain from creating incentives for Investment Professionals that may place the financial or other interest of the Investment Professional, Firm or any affiliate, related entity or other party ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own. To minimize conflicts of interest, the Firm does not maintain proprietary products nor does it provide investment advice on any proprietary products or on a limited menu of investment options, including limitations to proprietary products and products that generate third party payments to mitigate the presence of incentive practices that create an incentive for the Firm or its Investment Professionals to place their interests ahead of the interest of the Retirement Investor.

Supervision of Foreign Associates

Financial Institutions must conduct proper oversight of foreign affiliates with respect to compliance with the conditions of the exemption. If a foreign affiliate performs services in connection with a transaction covered by this exemption but does so in a manner that is in violation of the conditions of this exemption, this will subject the Financial Institution to possible ineligibility under Section III(a)(2).

Description of Supervisory Review Process

The Firm does not currently engage or otherwise affiliate with Foreign Associates at this time. However, in the event that the Firm affiliates with one or more Foreign Associates who are involved in retirement investments and/or making rollover recommendations, the Firm will provide proper oversight of such foreign affiliates with respect to compliance with the conditions of the exemption.

Periodic Review of Policies and Procedures

Financial Institutions complying with the exemption would need to review their policies and procedures periodically and reasonably revise them as necessary to ensure that the policies and procedures continue to satisfy the conditions of this exemption.

Financial Institutions should regularly review their policies and procedures to ensure that they are achieving their intended goal of ensuring compliance with the exemption and the provision of advice that satisfies the Impartial Conduct Standards. For example, to the extent new products, lines of business, or compensation structures are introduced, Financial Institutions should consider whether their policies and procedures continue to be appropriate and effective. To the extent that the policies are failing to achieve their goal of ensuring compliance, the deficiencies should be corrected.

Description of Supervisory Review Process

The designated supervisor will review the Firm's policies and procedures periodically but not less than annually, and reasonably revise them as necessary to ensure that the policies and procedures continue to satisfy the conditions of this exemption. Each review will assess the extent of any new products, lines of business, or compensation structures or any other material changes in its business activities and operations that should be considered and whether the existing policies and procedures continue to be appropriate and effective. If revisions are required, the designated supervisory will updates the Firm's policies and procedures within a reasonable timeframe (typically 30 days) from such material change, event, or occurrence.

15.07 Retrospective Compliance Review

Retrospective Compliance Review

Section II(d) of the exemption requires Financial Institutions to conduct a retrospective review, at least annually, that is reasonably designed to assist the Financial Institution in detecting and preventing violations of, and achieving compliance with, the Impartial Conduct Standards and the policies and procedures governing compliance with the exemption. While mitigation of Financial Institutions' and Investment Professionals' conflicts of
interest is critical, Financial Institutions must also monitor Investment Professionals' conduct to detect advice
that does not adhere to the Impartial Conduct Standards or the Financial Institution's policies and procedures.

The methodology and results of the retrospective review must be reduced to a written report that is provided to one of the Financial Institution's Senior Executive Officers. The review will be aimed at detecting non-compliance across a wide range of transaction types and sizes, large and small, identifying deficiencies in the policies and procedures, and rectifying those deficiencies. The retrospective review, report and certification must be completed no later than six (6) months following the end of the period covered by the review. The Financial Institution is required to retain the report, certification, and supporting data for a period of six (6) years (also see Recordkeeping requirements herein).

Description of Supervisory Review Process

The designated supervisor will ensure the Firm conducts a retrospective review, at least annually, that is reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, the Impartial Conduct Standards and the Firm's policies and procedures governing compliance with the exemption. Each retrospective review will be completed no later than six (6) months following the end of the period covered by the review. Upon completion, the Firm will maintain a copy of the written report with any findings and/or corrective actions in addition to the corresponding certification signed by a Senior Executive Officer will be maintained in accordance with recordkeeping requirements.

Although not required, the Firm may consider whether to engage an independent party to assist in providing an external audit in further determining the Firm's compliance with the Impartial Conduct Standards and internal policies and procedures.

Senior Executive Officer Certification

The retrospective review may be certified by any of the Financial Institution's Senior Executive Officers. The exemption defines a ''Senior Executive Officer'' as any of the following: The chief compliance officer, the chief executive officer, president, chief financial officer, or one of the three most senior officers of the Financial Institution.

The Financial Institution may choose whichever Senior Executive Officer it believes is most appropriate to perform the certification. No matter which Senior Executive Officer is selected to provide the certification, the definition of a Senior Executive Officer ensures that an officer of sufficient authority within the Financial Institution will be held accountable for oversight of exemption compliance.

That officer is required to certify annually that:

- The officer has reviewed the report of the retrospective review;

- The Financial Institution has in place policies and procedures prudently designed to achieve compliance with the conditions of this exemption; and
- The Financial Institution has in place a prudent process to modify such policies and procedures as business, regulatory and legislative changes and events dictate, and to test the effectiveness of such policies and procedures on a periodic basis, the timing and extent of which is reasonably designed to ensure continuing compliance with the conditions of this exemption.

The certification provides an important protection of Retirement Investors by creating accountability for the retrospective review and report at an executive level within the Financial Institution. The broader certification focuses the Financial Institution's assessment of the ongoing effectiveness of the policies and procedures, the periodic testing of those policies and procedures, and the need to make modifications to the extent they are not working. A strong process to review the effectiveness of the Financial Institution's policies and procedures and to make course corrections as necessary is critical to the protection of Retirement Investors affected by the exemption.

Financial Institutions' reports regarding their retrospective review are required to be certified by a Senior Executive Officer of the Financial Institution and provided to the Department within ten (10) business days of request.

Description of Supervisory Review Process
The designated supervisor will ensure that one of the Firm's Senior Executive Officers, such as the president, CEO, CCO, CFO or a top senior officer of the Firm has reviewed the report from each annual retrospective review and has completed the corresponding annual certification no later than six (6) months following the end of the period covered by the review. A copy of the certification signed by a Senior Executive Officer will be maintained in accordance with the recordkeeping requirements (see Recordkeeping requirements herein).

Regulatory Requests for Written Reports & Certifications

If the Department requests the written report, certification, and supporting data within those six (6) years, the Financial Institution must make the requested documents available within ten (10) business days of the request, to the extent permitted by law including 12 U.S.C. 484.

The Department believes that Financial Institutions' report of the retrospective review and corresponding internal compliance documents should be available to regulators but not Retirement Investors, so as to promote full identification and remediation of compliance issues without undue concern about the widespread disclosure of the issues.

Description of Supervisory Review Process
Upon receipt of a regulatory request, the designated supervisor will provide, in a secure manner, copies of the Firm's written report, certification, and/or supporting data within ten (10) business days of the request.

15.08 Self-Correction

Self-Correction

Section II(e) to the exemption, allows Financial Institutions to correct certain violations of the exemption. Under the new Section II(e), the Department will not consider a nonexempt prohibited transaction to have occurred due to a violation of the exemption's conditions, provided:

1. Either the violation did not result in investment losses to the Retirement Investor or the Financial Institution made the Retirement Investor whole for any resulting losses;
2. the Financial Institution corrects the violation and notifies the Department via email to *IIAWR@dol.gov* within thirty (30) days of correction;
3. the correction occurs no later than ninety (90) days after the Financial Institution learned of the violation or reasonably should have learned of the violation; and
4. the Financial Institution notifies the persons responsible for conducting the retrospective review during the applicable review cycle, and the violation and correction is specifically set forth in the written report of the retrospective review.

Note: the section allows for correction even if a Retirement Investor has suffered investment losses, provided
that the Retirement Investor is made whole. The Department believes that the self-correction provision will provide
Financial Institutions with an additional incentive to take the retrospective review process seriously, timely identify
and correct violations and use the process to correct deficiencies in their policies and procedures, so as to avoid potential future penalties and lawsuits. However, if self-correction is not available or a Financial Institution decides not to self-correct, then the Financial Institution remains liable for a prohibited transaction associated with the transaction for which there was a failure.

Description of Supervisory Review Process
Whether through performing regular reviews throughout the year, or upon completion of each annual retrospective review, the designated supervisor will review for any possible non-compliance or detected violations of the Impartial Conduct Standards and/or the Firm's policies and procedures governing compliance with the exemption. In the event of any detected violations, the designated supervisor will take the following action: • *Determine whether the violation resulted in investment losses to the Retirement Investor and whether the Firm made the Retirement Investor whole for any resulting losses;* • *Assist the Firm in correcting the violation and notify the Department via email to IIAWR@dol.gov within 30 days of correction;* • *Ensure that the correction occurs no later than 90 days after the Firm learned of the violation or reasonably should have learned of the violation; and* • *Notify the persons responsible for conducting the retrospective review during the applicable review cycle, and the violation and correction is specifically set forth in the written report of the following retrospective review.*

15.09 Duty of Best Execution

Duty of Best Execution

Section II(a)(2)(B) of the exemption requires, in accordance with the federal securities laws, that the Financial Institution and Investment Professional seek to obtain the best execution of the investment transaction reasonably available under the circumstances. Financial Institutions and Investment Professionals subject to federal securities laws such as the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940, and rules adopted by FINRA and the Municipal Securities Rulemaking Board (MSRB), are obligated to adhere to a longstanding duty of best execution. As described recently by the SEC, ''[a] broker-dealer's duty of best execution requires a broker-dealer to seek to execute customers' trades at the most favorable terms reasonably available

under the circumstances.'' This condition complements the reasonable compensation standard set forth in the exemption.

The Department applies the best execution requirement consistent with the federal securities laws. Financial Institutions that are FINRA members satisfy this subsection if they comply with the best execution standards under federal securities laws and FINRA rules 2121 (Fair Prices and Commissions) and 5310 (Best Execution and Interpositioning), or any successor rules in effect at the time of the transaction, as interpreted by FINRA. Financial Institutions engaging in a purchase or sale of a municipal bond satisfy this subsection if they comply with the standards in MSRB rules G–30 (Prices and Commissions) and G–18 (Best Execution), or any successor rules in effect at the time of the transaction, as interpreted by MSRB. Financial Institutions that are subject to and comply with the fiduciary duty under section 206 of the Investment Advisers Act—which, as described by the SEC, encompasses a duty to seek best execution—will also satisfy this subsection.

Description of Supervisory Review Process
See the Firm's separate written supervisory procedures section regarding its best execution processes under federal securities laws and FINRA rules 2121 (Fair Prices and Commissions) and 5310 (Best Execution and Interpositioning) and/or its fiduciary duty under section 206 of the Investment Advisers Act.

15.10 Recordkeeping

Recordkeeping

Under Section IV of the exemption, Financial Institutions must maintain records for six (6) years demonstrating compliance with the exemption. The Department generally includes a recordkeeping requirement in its administrative exemptions to ensure that parties relying on an exemption can demonstrate, and the Department can verify, compliance with the conditions of the exemption. Section IV requires that the records be made available, to the extent permitted by law, to any authorized employee of the Department or the Department of the Treasury.

Financial Institutions are required to maintain, among other things, documentation of rollover recommendations; their written policies and procedures adopted pursuant to Section II(c); and the report of the retrospective review, certification, and supporting data. Except with respect to rollovers, the Department does not expect Financial Institutions to document the reason for every investment recommendation made pursuant to the exemption. However, documentation may be especially important for recommendations of particularly complex products or recommendations that might, on their face, appear inconsistent with the best interest standard.

Description of Supervisory Review Process
The designated supervisor will monitor the Firm's retirement investor related books and records and ensure that such records are maintain for a period of six (6) years demonstrating compliance with the exemption. The following records, at a minimum, will be maintained by the Firm: • *documentation of rollover recommendations;* • *written policies and procedures adopted pursuant to Section II(c); and* • *the report of the retrospective review, certification, and supporting data.*