

PTE 84-24

Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies, Investment Companies and Investment Company Principal Underwriters

Section I—Retroactive Application

The restrictions of ERISA sections 406(a)(1)(A) through (D) and 406(b) ~~of the Act~~ and the taxes imposed by Code section 4975 ~~of the Code~~ do not apply to any of the transactions described in section III of this exemption in connection with purchases made before November 1, 1977, if the conditions set forth in section IV are met.

Section II—Prospective Application

~~The~~ (a) Except for the receipt of reasonable compensation and/or the sale of any property as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B) and regulations thereunder, the restrictions of ~~section~~ ERISA sections 406(a)(1)(A) through (D) and 406(b) ~~of the Act~~ and the taxes imposed by Code section 4975 ~~of the Code~~ do not apply to any of the transactions described in section III (a)-(f) of this exemption in connection with purchases made after October 31, 1977, if the conditions set forth in sections IV and V are met.

(b) Effective on the date that is [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the restrictions of ERISA sections 406(a)(1)(A), (D) and 406(b) and the taxes imposed by Code section 4975(a) and (b) by reason of Code sections 4975(c)(1)(A), (D), (E) and (F) do not apply to Independent Producers that provide fiduciary investment advice and engage in the transactions described in Section III(g), in accordance with the conditions set forth in Sections VI, VII, are satisfied, and the Independent Producer and Insurer are not ineligible under

Section VIII, and subject to the definitional terms and recordkeeping requirements in Sections IX and X.

Section III—Transactions

(a) The receipt, directly or indirectly, by an insurance agent or broker or a pension consultant of a sales commission from an insurance company in connection with the purchase, with plan assets, of an insurance or annuity contract, if the sales commission is not received as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

(b) The receipt of a sales commission by a ~~principal underwriter~~ Principal Underwriter for an investment company registered under the Investment Company Act of 1940 (hereinafter referred to as an investment company) in connection with the purchase, with plan assets, of securities issued by an investment company if the sales commission is not received as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

(c) The effecting by an insurance agent or broker, pension consultant or investment company ~~principal underwriter~~ Principal Underwriter of a transaction for the purchase, with plan assets, of an insurance or annuity contract or securities issued by an investment company if the purchase is not as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

(d) The purchase, with plan assets, of an insurance or annuity contract from an insurance company if the purchase is not as a result of the provision of investment advice

within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

(e) The purchase, with plan assets, of an insurance or annuity contract from an insurance company which is a fiduciary or a service provider (or both) with respect to the ~~plan~~Plan solely by reason of the sponsorship of a ~~master or prototype plan~~Pre-approved Plan if the purchase is not as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

(f) The purchase, with plan assets, of securities issued by an investment company from, or the sale of such securities to, an investment company or an investment company ~~principal underwriter~~Principal Underwriter, when such investment company, ~~principal underwriter~~Principal Underwriter, or the investment company investment adviser is a fiduciary or a service provider (or both) with respect to the plan solely by reason of: (1) ~~The~~the sponsorship of a ~~master or prototype~~Pre-approved plan; or (2) the provision of ~~nondiscretionary trust services~~Nondiscretionary Trust Services to the plan; or (3) both (1) and (2); and the purchase is not as a result of the provision of investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

(g) An Independent Producer may engage in the following transactions, including as part of a rollover, as a result of providing investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder:

(1) The receipt, directly or indirectly, by an Independent Producer of reasonable compensation; and

(2) the sale of a non-security annuity contract or other insurance product that does not meet the definition of “security” under Federal securities laws.

Section IV—Conditions With Respect to Transactions Described in Section

III(a)-(f) The following conditions apply to a transaction described in Section

III(a)-(f):

(a) The transaction is effected by the insurance agent or broker, pension consultant, insurance company or investment company ~~principal underwriter~~ Principal Underwriter in the ordinary course of its business as such a person.

(b) The transaction is on terms at least as favorable to the plan as an ~~arm's length~~ arm's-length transaction with an unrelated party would be.

(c) The combined total of all fees, commissions and other consideration received by the insurance agent or broker, pension consultant, insurance company, or investment company ~~principal underwriter~~ Principal Underwriter:

(1) For the provision of services to the plan; and

(2) In connection with the purchase of insurance or annuity contracts or securities issued by an investment company is not in excess of “reasonable compensation” within the contemplation of section 408(b)(2) and 408(c)(2) of ~~the Act~~ ERISA and ~~sections~~ section 4975(d)(2) and 4975(d)(10) of the Code. If such total is in excess of “reasonable compensation,” the “amount involved” for purposes of the civil penalties of section 502(i) of ~~the Act~~ ERISA and the excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of “reasonable compensation.”

Section V—Conditions for Transactions Described in Section III (a) Through (d)

The following conditions apply ~~solely~~ to a transaction described in ~~paragraphs~~ subsections

(a), (b), (c) or (d) of section III:

(a) The insurance agent or broker, pension consultant, insurance company, or investment company ~~principal underwriter~~ Principal Underwriter is not:

(1) ~~(1)~~ a trustee of the plan (other than a ~~nondiscretionary trustee~~ Nondiscretionary Trustee who does not render investment advice with respect to any assets of the plan),

(2) ~~(2)~~ a plan administrator (within the meaning of section 3(16)(A) of ~~the Act~~ ERISA and section 414(g) of the Code),

(3) ~~(3)~~ a fiduciary who is ~~expressly~~ authorized ~~in writing~~ to manage, acquire, or dispose of the plan's assets ~~of the plan~~ on a discretionary basis, or

(4) ~~(4)~~ for transactions described in sections III (a) through (d) entered into after December 31, 1978, an employer any of whose employees are covered by the plan.

Notwithstanding the above, an insurance agent or broker, pension consultant, insurance company, or investment company ~~principal underwriter~~ Principal Underwriter that is affiliated with a trustee or an investment manager (within the meaning of section VI(b)) with respect to a plan may engage in a transaction described in section III(a) through (d) of this exemption on behalf of the plan if such trustee or investment manager has no discretionary authority or control over the plan assets involved in the transaction other than as a ~~nondiscretionary trustee~~ Nondiscretionary Trustee.

(b)(1) With respect to a transaction involving the purchase with plan assets of an insurance or annuity contract or the receipt of a sales commission thereon, the insurance agent or broker or pension consultant provides to an independent fiduciary or IRA owner with respect to the plan prior to the execution of the transaction the following

information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) If the agent, broker, or consultant is an affiliate of the insurance company ~~whose contract is being recommended~~, or if the ability of such agent, broker or consultant ~~to recommend insurance or annuity contracts~~ is limited by any agreement with such insurance company, the nature of such affiliation, limitation, or relationship;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by the insurance company to the agent, broker or consultant in connection with the purchase of the ~~recommended~~ contract; and

(C) For purchases made after June 30, 1979, a description of any charges, fees, discounts, penalties or adjustments which may be imposed under the ~~recommended~~ contract in connection with the purchase, holding, exchange, termination or sale of such contract.

(2) Following the receipt of the information required to be disclosed in ~~paragraph~~subsection (b)(1), and prior to the execution of the transaction, the independent fiduciary or IRA owner acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. Such fiduciary may be an employer of employees covered by the plan, but may not be an insurance agent or broker, pension consultant or insurance company involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g., through an ~~affiliate~~Affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(c)(1) With respect to a transaction involving the purchase with plan assets of securities issued by an investment company or the receipt of a sales commission thereon by an investment company ~~principal underwriter~~ Principal Underwriter, the investment company ~~principal underwriter~~ Principal Underwriter provides to an ~~independent~~ Independent fiduciary or IRA owner with respect to the plan, prior to the execution of the transaction, the following information in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) ~~If the person recommending securities issued by an investment company is the principal underwriter of~~ nature of the relationship between the Principal Underwriter and the investment company ~~whose~~ issuing the securities ~~are being recommended, the nature of such relationship and of any limitation it places~~ placed upon the ~~principal underwriter's ability to recommend~~ Principal Underwriter by the investment company ~~securities~~;

(B) The sales commission, expressed as a percentage of the dollar amount of the ~~plan's~~ plan's gross payment and of the amount actually invested, that will be received by the ~~principal underwriter~~ Principal Underwriter in connection with the purchase of the ~~recommended~~ securities issued by the investment company; and

~~(C) For purchases made after~~

(C) For purchases made after December 31, 1978, a description of any charges, fees, discounts, penalties, or adjustments which may be imposed under the ~~recommended~~ securities in connection with the purchase, holding, exchange, termination or sale of such securities.

(2) Following the receipt of the information required to be disclosed in ~~paragraph~~ subsection (c)(1), and prior to the execution of the transaction, the independent

fiduciary or IRA owner approves the transaction on behalf of the plan. Unless facts or circumstances would indicate the contrary, such approval may be presumed if the fiduciary or IRA owner permits the transaction to proceed after receipt of the written disclosure. Such fiduciary may be an employer of employees covered by the plan, but may not be a ~~principal underwriter~~ Principal Underwriter involved in the transaction. Such fiduciary may not receive, directly or indirectly (e.g., through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(d) With respect to additional purchases of insurance or annuity contracts or securities issued by an investment company, the written disclosure required under ~~paragraphs~~ subsections (b) and (c) of this section V need not be repeated, unless—

(1) ~~(1)~~ More than three years have passed since such disclosure was made with respect to the same kind of contract or security, or

(2) ~~(2)~~ The contract or security being ~~recommended for purchase~~ purchased or the commission with respect thereto is materially different from that for which the approval described in ~~paragraphs~~ subsections (b) and (c) of this section was obtained.

(e)(1) In the case of any transaction described in ~~paragraphs~~ Section III(a), (b), or (c) of ~~section III~~ this exemption, the insurance agent or broker (or the insurance company whose contract is being described if designated by the agent or broker), pension consultant or investment company ~~principal underwriter shall~~ Principal Underwriter must retain or cause to be retained for a period of six years from the date of such transaction, the following:

(A) The information disclosed pursuant to paragraphs (b), (c), and (d) of this section V;

(B) Any additional information or documents provided to the fiduciary described in paragraphs (b) and (c) of this section V with respect to such transaction; and

(C) The written acknowledgement described in paragraph (b) of this section.

~~(2)~~(2) A prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of the insurance agent or broker, pension consultant, or ~~principal underwriter~~ Principal Underwriter, such records are lost or destroyed prior to the end of such six-year period.

~~(3)~~(3) Notwithstanding anything to the contrary in ERISA section 504(a)(2) and (b) ~~of the Act~~, such records ~~are~~ must be made unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization ~~any~~ ~~of~~ whose members are covered by the plan.

Section VI--Conditions for Transactions Described in Section III(g)

The following conditions apply to transactions described in Section III(g):

(a) The Independent Producer is authorized to sell annuities from two or more unrelated Insurers.

(b) The Independent Producer and the Insurer satisfy the applicable conditions in Sections VII and IX and are not ineligible under Section VIII. The Insurer will not necessarily become a fiduciary under ERISA or the Code merely by complying with this exemption's conditions.

(c) Exclusions. The relief in Section III(g) is not available if:

(1) The Plan is covered by Title I of ERISA and the Independent Producer, Insurer, or any Affiliate is:

(A) the employer of employees covered by the Plan, or

(B) the Plan's named fiduciary or administrator; provided however that a named fiduciary or administrator or their Affiliate may rely on the exemption if it is selected to provide investment advice by a fiduciary who:

(i) is not the Insurer, Independent Producer, or an Affiliate;

(j) does not have a relationship to or an interest in the Insurer, Independent Producer, or any Affiliate that might affect the exercise of the fiduciary's best judgment in connection with transactions covered by the exemption;

(i) does not receive and is not projected to receive within its current Federal income tax year, compensation or other consideration for their own account from the Insurer, Independent Producer, or an Affiliate in excess of two (2) percent of the fiduciary's annual revenues based upon its prior income tax year; or

(ii) is not the IRA owner or beneficiary; or

(2) The transaction involves the Independent Producer acting in a fiduciary capacity other than as an investment advice within the meaning of ERISA section 3(21)(A)(ii) and Code section 4975(e)(3)(B) and regulations thereunder.

Section VII--Investment Advice Arrangement

Section VII(a) requires Independent Producers to comply with Impartial Conduct Standards, including a Care Obligation and Loyalty Obligation, when providing fiduciary investment advice to Retirement Investors. Section VII(b) requires Independent Producers to acknowledge fiduciary status under Title I of ERISA and/or the Code, and provide Retirement Investors with a written statement of the Care Obligation and Loyalty Obligation, a written description of the services they will provide and the products they are

licensed and authorized to sell, and all material facts relating to Conflicts of Interest that are associated with their recommendations. In addition, before the sale of a recommended annuity, Independent Producers must consider and document their conclusions as to whether the recommended annuity meets the Care Obligation and Loyalty Obligation. Independent Producers recommending a rollover must also provide additional disclosure as set forth in subsection (b) below. Section VII(c) requires Insurers to adopt policies and procedures prudently designed to ensure compliance with the Impartial Conduct Standards and other conditions of this exemption. Section VII(d) requires the Insurer to conduct a retrospective review, at least annually, that is reasonably designed to detect and prevent violations of, and achieve compliance with, the Impartial Conduct Standards and the terms of this exemption. Section VII(e) allows Independent Producers to correct certain violations of the exemption conditions and continue to rely on the exemption for relief. In complying with this Section VII, the Independent Producer may reasonably rely on factual representations from the Insurer, and Insurers may rely on factual representations from the Independent Producer, as long as they do not have knowledge that such factual representations are incomplete or inaccurate.

(a) Impartial Conduct Standards

The Independent Producer must comply with the following “Impartial Conduct Standards”:

(1) Investment advice must, at the time it is provided, satisfy the Care Obligation and Loyalty Obligation. As defined in Section X(b), to meet the Care Obligation, advice must reflect 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. As defined in Section X(g), to meet the Loyalty Obligation, the advice must not place the financial or other interests of the Independent Producer, Insurer or any Affiliate, Related Entity, or other party ahead of the Retirement Investor's interests, or subordinate the Retirement Investor's interests to those of the Independent Producer, Insurer or any Affiliate, Related Entity, or other party. For example, in choosing between annuity products offered by Insurers, whose products the Independent Producer is authorized to sell on a commission basis, it is not permissible for the Independent Producer to recommend a product that is worse for the Retirement Investor, but better or more profitable for the Independent Producer or the Insurer;

(2) The compensation received, directly or indirectly, by the Independent Producer does not exceed reasonable compensation within the meaning of ERISA section 408(b)(2) and Code section 4975(d)(2); and

(3) The Independent Producer's statements to the Retirement Investor (whether written or oral) about the recommended transaction and other relevant matters must not be materially misleading at the time statements are made. For purposes of this paragraph, the term "materially misleading" includes omitting information that is needed to prevent the statement from being misleading to the Retirement Investor under the circumstances.

(b) Disclosure

At or before the time a transaction described in Section III(g) occurs, the Independent Producer provides, in writing, the disclosures set forth in paragraphs (1)-(5) below to the Retirement Investor. For purposes of the disclosures required by Section VII(b)(1)-(4), the Independent Producer is deemed to engage in a covered transaction on the later of (A) the date the recommendation is made or (B) the date the Independent

Producer becomes entitled to compensation (whether now or in the future) by reason of making the recommendation.

(1) A written acknowledgment that the Independent Producer is providing fiduciary investment advice to the Retirement Investor and is a fiduciary under Title I of ERISA, Title II of ERISA, or both with respect to the recommendation;

(2) A written statement of the Care Obligation and Loyalty Obligation, described in Section VII(a) that is owed by the Independent Producer to the Retirement Investor;

(3) All material facts relating to the scope and terms of the relationship with the Retirement Investor, including:

(A) (i) The material fees and costs that apply to the Retirement Investor's transactions, holdings, and accounts,

(ii) A notice of the Retirement Investor's right to request additional information regarding cash compensation;

(iii) Upon request of the Retirement Investor in Section VII(b)(3)(A)(ii), the Independent Producer shall disclose: (I) A reasonable estimate of the amount of cash compensation to be received by the Independent Producer, which may be stated as a range of amounts or percentages; and (II) Whether the cash compensation will be provided through a one-time payment or through multiple payments, the frequency and amount of the payments, which may also be stated as a range of amounts or percentages.

(B) The type and scope of services provided to the Retirement Investor, including any material limitations on the recommendations that may be made to the Retirement Investor; this description must include the products the Independent Producer is licensed and authorized to sell, inform the Retirement Investor in writing of any limits on the range of insurance products recommended, and identify the specific Insurers and specific

insurance products available to Independent Producer for recommendation to the Retirement Investor; and

(4) All material facts relating to Conflicts of Interest that are associated with the recommendation.

(5) Before the sale of a recommended annuity, the Independent Producer considers and documents the basis for the determination to recommend the annuity to the Retirement Investor and provides that documentation to both the Retirement Investor and to the Insurer;

(6) Rollover disclosure. Before engaging in or recommending that a Retirement Investor engage in a rollover from a Plan that is covered by Title I of ERISA or making a recommendation to a Plan participant or beneficiary as to the post-rollover investment of assets currently held in a Plan that is covered by Title I of ERISA, the Independent Producer must consider and document the bases for its recommendation to engage in the rollover, and must provide that documentation to both the Retirement Investor and to the Insurer. Relevant factors to consider must include to the extent applicable, but in any event are not limited to:

(A) the alternatives to a rollover, including leaving the money in the Plan, if applicable;

(B) the fees and expenses associated with the Plan and the recommended investment;

(C) whether an employer or other party pays for some or all of the Plan's administrative expenses; and

(D) the different levels of fiduciary protection, services, and investments available.

(7) The Independent Producer will not fail to satisfy the conditions in Section VII(b) solely because it makes an error or omission in disclosing the required information while acting in good faith and with reasonable diligence, provided that the Independent Producer discloses the correct information as soon as practicable, but not later than 30 days after the date on which it discovers or reasonably should have discovered the error or omission.

(8) Independent Producers and Insurers may rely in good faith on information and assurances from each other and from other entities that are not Affiliates as long as they do not know or have a reason to know that such information is incomplete or inaccurate.

(9) The Independent Producer is not required to disclose information pursuant to this Section VII(b) if such disclosure is otherwise prohibited by law.

(c) Policies and Procedures

(1) The Insurer establishes, maintains, and enforces written policies and procedures for the review of each recommendation, before an annuity is issued to a Retirement Investor pursuant to an Independent Producer's recommendation, that are prudently designed to ensure compliance with the Impartial Conduct Standards and other exemption conditions. The Insurer's prudent review of the Independent Producer's specific recommendations must be made without regard to the Insurer's own interests. An Insurer is not required to supervise an Independent Producer's recommendations to Retirement Investors of products other than annuities offered by the Insurer.

(2) The Insurer's policies and procedures 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 the Independent Producer to place its interests, or those of the Insurer, or any Affiliate or Related Entity, ahead of the interests of the Retirement Investor. The Insurer may not use quotas, appraisals, performance or personnel actions, bonuses, contests, special awards, differential compensation, or other similar actions or incentives in a manner that is intended, or that a reasonable person would conclude are likely, to result in recommendations that do not meet the Care Obligation or Loyalty Obligation.

(3) The Insurer's policies and procedures include a prudent process for determining whether to authorize an Independent Producer to sell the Insurer's annuity contracts to Retirement Investors, and for taking action to protect Retirement Investors from Independent Producers who have failed to adhere to the Impartial Conduct Standards, or who lack the necessary education, training, or skill. A prudent process includes careful review of objective material, such as customer complaints, disciplinary history, and regulatory actions concerning the Independent Producer, as well as the Insurer's review of the Independent Producer's training, education, and conduct with respect to the Insurer's own products. The Insurer must document the basis for its initial determination that it can rely on the Independent Producer to adhere to the Impartial Conduct Standards, and must review that determination at least annually as part of the retrospective review set forth in subsection (d) below.

(4) Insurers must provide their complete policies and procedures to the Department upon request within 30 days of request.

(d) Retrospective Review

(1) The Insurer conducts a retrospective review of each Independent Producer, at least annually, that is reasonably designed to detect and prevent violations of, and achieve

compliance with the conditions of this exemption, including the Impartial Conduct Standards, and the policies and procedures governing compliance with the exemption, including the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any. The retrospective review also includes a review of Independent Producers' rollover recommendations and the required rollover disclosure. As part of this review, the Insurer prudently determines whether to continue to permit individual Independent Producers to sell the Insurer's annuity contracts to Retirement Investors. Additionally, the Insurer updates the policies and procedures as business, regulatory, and legislative changes and events dictate, to ensure that the policies and procedures remain prudently designed, effective, and compliant with Section VII(c). Insurers may rely in part on sampling of each Independent Producer's transactions to conduct their retrospective reviews, as long as any sampling or other method is designed to identify potential violations, problems, and deficiencies that need to be addressed.

(2) The Insurer provides to each Independent Producer the methodology and results of the retrospective review, including a description of any non-exempt prohibited transaction the Independent Producer engaged in with respect to investment advice defined under Code section 4975(e)(3)(B), and instructs the Independent Producer to:

- (A) correct those prohibited transactions;
- (B) report the transactions to the IRS on Form 5330;
- (C) pay the resulting excise taxes imposed by Code section 4975; and,
- (D) provide the Insurer with a copy of filed Form 5330 within 30 days after the form is due (including extensions);

(3) The methodology and results of the retrospective review are reduced to a written report that is provided to a Senior Executive Officer of the Insurer.

(4) The Senior Executive Officer must certify, annually, that:

(A) The Senior Executive Officer has reviewed the report of the retrospective review report;

(B) The Insurer has provided Independent Producers with the information required under (d)(2) and has received a certification that the Independent Producer has filed Form 5330 within 30 days after the form is due (including extensions);

(C) The Insurer has established written policies and procedures that meet the requirements of Section VII(c)(1); and

(D) The Insurer has a prudent process in place to modify such policies and procedures as set forth in Section II(d)(1).

(5) The review, report, and certification are completed no later than six months following the end of the period covered by the review.

(6) The Insurer retains the report, certification, and supporting data for a period of six years and makes the report, certification, and supporting data available to the Department, within 30 days of request, to the extent permitted by law.

(e) Self-Correction

A non-exempt prohibited transaction will not occur due to a violation of the exemption's conditions with respect to a transaction, provided:

(1) Either the Independent Producer has refunded any charge to the Retirement Investor or the Insurer has rescinded a mis-sold annuity, cancelled the contract and waived the surrender charges;

(2) The correction occurs no later than 90 days after the Independent Producer learned of the violation or reasonably should have learned of the violation; and

(3) The Independent Producer notifies the person(s) at the Insurer 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 required under Section VII(d)(3).

Section VIII—Eligibility

(a) Independent Producer

Subject to the timing and scope of ineligibility provisions set forth in subsection (c), an Independent Producer will become ineligible to rely on the relief for transactions described in Section III(g), if, on or after [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the Independent Producer has been:

(1) Convicted by either:

(A) a U.S. Federal or State court as a result of any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or a crime that is identified or described in ERISA section 411; or

(B) a foreign court of competent jurisdiction as a result of any crime, however denominated by the laws of the relevant foreign or state government, that is substantially equivalent to an offense described in (A) above (excluding convictions

that occur within a foreign country that is included on the Department of Commerce's list of "foreign adversaries" that is codified in 15 CFR 7.4 as amended); or

(2) Found or determined in a final judgment or court-approved settlement in a Federal or State criminal or civil court proceeding brought by the Department, the Department of the Treasury, the Internal Revenue Service, the Department of Justice, a State insurance regulator, or State attorney general, to have participated in one or more of the following categories of conduct irrespective of whether the court specifically considers this exemption or its terms:

(A) engaging in a systematic pattern or practice of conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(B) intentionally engaging in conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(C) engaging in a systematic pattern or practice of failing to correct prohibited transactions, report those transactions to the IRS on Form 5330 or pay the resulting excise taxes imposed by Code section 4975 in connection with non-exempt prohibited transactions involving investment advice under Code section 4975(e)(3)(B); or

(D) providing materially misleading information to the Department, the Department of the Treasury, the Internal Revenue Service, the Department of Justice, a State insurance regulator, or State attorney general in connection with the conditions of the exemption.

(b) Insurers

Subject to the timing and scope of ineligibility provisions set forth in subsection (c), an entity will be ineligible to serve as an Insurer if, on or after [INSERT DATE

THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], the Insurer or an entity in the same Controlled Group as the Insurer has been:

(1) Convicted by either:

(A) a U.S. Federal or State court of any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or a crime that is identified or described in ERISA section 411; or

(B) a foreign court of competent jurisdiction as a result of any crime, however denominated by the laws of the relevant foreign or state government, that is substantially equivalent to an offense described in (A) above (excluding convictions that occur within a foreign country that is included on the Department of Commerce's list of "foreign adversaries" that is codified in 15 CFR 7.4 as amended); or

(2) Found or determined in a final judgment or court-approved settlement in a Federal or State criminal or civil court proceeding brought by the Department, the Department of the Treasury, the Internal Revenue Service, the Department of Justice, a State insurance regulator, or State attorney general to have participated in in one or more of the following categories of conduct irrespective of whether the court specifically considers this exemption or its terms:

(A) engaging in a systematic pattern or practice of conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions;

(B) intentionally engaging in conduct that violates the conditions of this exemption in connection with otherwise non-exempt prohibited transactions; or

(C) providing materially misleading information to the Department, the Department of the Treasury, the Internal Revenue Service, the Department of Justice, a State insurance regulator, or State attorney general in connection with the conditions of the exemption.

(3) Controlled Group. An entity is in the same Controlled Group as an Insurer if the entity (including any predecessor or successor to the entity) would be considered to be in the same “controlled group of corporations” as the Insurer or “under common control” with the Insurer as those terms are defined in Code section 414(b) and (c) (and any regulations issued thereunder),

(c) Timing and Scope of Ineligibility

(1) Ineligibility shall begin upon either:

(A) the date of conviction, which shall be the date of conviction by a U.S. Federal or State trial court described in Section VIII(a)(1) or VIII(b)(1) (or the date of the conviction of any trial court in a foreign jurisdiction that is the equivalent of a U.S. Federal or State trial court) that occurs on or after [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] regardless of whether the conviction remains under appeal; or

(B) the date of a final judgment (regardless of whether the judgment remains under appeal) or a court-approved settlement described in Section VIII(a)(2) or VIII(b)(2)

that occurs on or after [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

(2) One-Year Transition Period. An Independent Producer or Insurer that becomes ineligible under subsection VIII(a) or VIII(b) may continue to rely on this exemption or serve as an Insurer for up to 12 months after its ineligibility begins as determined under subsection (c)(1) if the Independent Producer or Insurer, as applicable, provides notice to the Department at PTE84-24@dol.gov within 30 days after ineligibility begins.

(3) An Independent Producer will become eligible to rely on this exemption and an Insurer will become eligible to serve as an Insurer again only upon the earliest of the following occurs:

(A) the date of a subsequent judgment reversing such person's conviction or other court decision described in Section VIII(a) or VIII(b);

(B) 10 years after the person became ineligible as determined under subsection (c)(1) or if later, 10 years after the person was released from imprisonment as a result of a crime described in Section VIII(a)(1) or Section VIII(b)(1); or

(C) the effective date an individual exemption granted by the Department, (under which the Department may impose additional conditions) permitting the person to continue its reliance on this exemption.

(d) Alternative Exemptions

An Insurer or Independent Producer that is ineligible to rely on this exemption may rely on a statutory or separate administrative prohibited transaction exemption if one is available or may request an individual prohibited transaction exemption from the Department. To the extent an applicant requests retroactive relief in connection with an

individual exemption application, the Department will consider the application in accordance with its retroactive exemption policy as set forth in 29 CFR 2570.35(d). The Department may require additional prospective compliance conditions as a condition of providing retroactive relief.

Section IX—Recordkeeping

The Independent Producer and Insurer must maintain for a period of six years records demonstrating compliance with this exemption and makes such records available, to the extent permitted by law, to any authorized employee of the Department or the Department of the Treasury, which includes the Internal Revenue Service.

Section ~~IX~~—Definitions

~~For purposes of this exemption:~~

~~(a) The term “principal underwriter” is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29)).~~

~~(b) The~~ For purposes of this exemption, the terms “insurance agent or broker,” “pension consultant,” “insurance company,” “investment company,” and “~~principal underwriter~~ Principal Underwriter” mean such persons and any ~~affiliates~~ Affiliates thereof. In addition, for purposes of this exemption:

~~(c) The term “affiliate” of a person~~ (a) “Affiliate” means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with ~~such person~~ the person (For this purpose, “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual);

(2) Any officer, director, ~~employee (including, in the case of principal underwriter, any registered representative thereof, whether or not such person is a common law employee of such principal underwriter), or relative of any such person, or any partner~~

~~in such~~ partner, employee, or relative (as defined in ERISA section 3(15)), of the person; ~~or~~ and

(3) Any corporation or partnership of which ~~such~~ the person is an officer, director, or ~~employee, or in which such person is a~~ partner.

~~(d) The term “control” means the power to exercise a controlling influence over the management or policies of a person other than an individual.~~

~~(e) The term “relative” means a “relative” as that term is defined in section 3(15) of the Act (or a “member of the family” as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.~~

~~(f) The term “master or prototype plan” means a plan which is approved by the Service under Rev. Proc. 72 7, 1972 1 C.B. 715, or Rev. Proc. 72 8, 1972 1 C.B. 716, or their successors.~~

(b) Advice meets the “Care Obligation” if, with respect to the Retirement Investor, such advice 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.

(c) A “Conflict of Interest” is an interest that might incline an Independent Producer—consciously or unconsciously—to make a recommendation that is not disinterested.

(d) “Independent Producer” means a person or entity that is licensed under the laws of a State to sell, solicit or negotiate insurance contracts, including annuities, and that sells to Retirement Investors products of multiple unaffiliated insurance companies, and

(1) is not an employee of an insurance company (including a statutory employee as defined under Code section 3121(d)(3)); or

(2) is a statutory employee of an insurance company that has no financial interest in the covered transaction.

(e) “Individual Retirement Account” or “IRA” means any plan that is an account or annuity described in Code section 4975(e)(1)(B) through (F).

(f) “Insurer” means an insurance company qualified to do business under the laws of a State, that: (A) has obtained a Certificate of Authority from the insurance commissioner of its domiciliary State which has neither been revoked nor suspended; (B) has undergone and shall continue to undergo an examination by an independent certified public accountant for its last completed taxable year or has undergone a financial examination (within the meaning of the law of its domiciliary State) by the State’s insurance commissioner within the preceding five years, (C) is domiciled in a State whose law requires that an actuarial review of reserves be conducted annually and reported to the appropriate regulatory authority; (D) is not disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization and the Department under Section VIII of this exemption), that retains the Independent Producer as an independent contractor, agent or registered representative.

(g) Advice meets the “Loyalty Obligation” if, with respect to the Retirement Investor, such advice does not place the financial or other interests of the Independent Producer, Insurer, or any Affiliate, Related Entity, or other party ahead of the interests of the Retirement Investor or subordinate the Retirement Investor’s interests to those of the Independent Producer, Insurer, or any Affiliate, Related Entity, or other party.

(h) ~~(g)~~“The term “~~nondiscretionary trust services~~ **Nondiscretionary Trust Services**” means custodial services, services ancillary to custodial services, none of

which services are discretionary, duties imposed by any provisions of the Code, and services performed pursuant to directions in accordance with ERISA section 403(a)(1).

(i) The term “~~nondiscretionary trustee~~ Nondiscretionary Trustee” of a plan means a trustee whose powers and duties with respect to the plan are limited to the provision of ~~nondiscretionary trust services~~ Nondiscretionary Trust Services. For purposes of this exemption, a person who is otherwise a ~~nondiscretionary trustee~~ Nondiscretionary Trustee will not fail to be a ~~nondiscretionary trustee~~ Nondiscretionary Trustee solely by reason of his having been delegated, by the sponsor of a ~~master or prototype plan~~ Pre-Approved Plan, the power to amend such plan.

(j) “Plan” means any employee benefit plan described in ERISA section 3(3) and any plan described in Code section 4975(e)(1)(A).

(k) The term “Pre-Approved Plan” means a plan which is approved by the Internal Revenue Service pursuant to the procedure described in Rev. Proc. 2017-41, 2017-29 I.R.B. 92, or its successors.

(l) A “Principal Underwriter” means a principal underwriter as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(29)).

(m) A “Related Entity” means any party that is not an Affiliate, and (i) has an interest in an Independent Producer that may affect the exercise of the fiduciary’s best judgment as a fiduciary, or (ii) in which the Independent Producer has an interest that may affect the exercise of the fiduciary’s best judgment as a fiduciary.

(n) “Retirement Investor” means a Plan, Plan participant or beneficiary, IRA, IRA owner or beneficiary, Plan fiduciary within the meaning of ERISA section (3)(21)(A)(i) or (iii) and Code section 4975(e)(3)(A) or (C) with respect to the Plan, or

IRA fiduciary within the meaning of Code section 4975(e)(3)(A) or (C) with respect to the IRA.

(o) A “Senior Executive Officer” is 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 Insurer.

Section XI—Phase-In Period

During the one-year period beginning [INSERT DATE THAT IS 150 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], Independent Producers may receive compensation under Section II(b) of this exemption if the Independent Producer complies with the Impartial Conduct Standards set forth in Section VII(a) and the fiduciary acknowledgment set forth in Section VII(b)(1).

Summary report: Litera Compare for Word 11.4.0.111 Document comparison done on 5/6/2024 1:00:37 PM	
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Intelligent Table Comparison: Active	
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Modified filename: PTE 84-24 (2024).docx	
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Delete	104
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<u>Move To</u>	4
<u>Table Insert</u>	0
Table Delete	0
<u>Table moves to</u>	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
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