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Practice Update

Investment Advisers: Portions of DOL Prohibited Transaction Exemption Enforced Effective February 1, 2022

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Effective February 1, 2022, the Department of Labor (**DOL**) began enforcement of portions of the Prohibited Transaction Exemption 2020-02 (**PTE 2020-02** or the **Exemption**). PTE 2020-02 was adopted on December 18, 2020, under the Employee Retirement Income Security Act of 1974, as amended (**ERISA**), and the Internal Revenue Code of 1986, as amended (the **Code**), and sets forth several requirements that financial institutions and investment professionals must satisfy when providing fiduciary investment advice, including advice to roll over a retirement plan account into an individual retirement account (**IRA**). The exemption became effective on February 16, 2021, but the DOL provided transitional relief through December 20, 2021. With respect to the written documentation and disclosure obligations under PTE 2020-02, the DOL further delayed enforcement until June 30, 2022 via Field Assistance Bulletin 2021-02 (**FAB 2021-02**).

Pursuant to FAB 2021-02, the DOL will not pursue prohibited transaction claims against investment advice fiduciaries who are working diligently, and in good faith, to comply with the "Impartial Conduct Standards" (i.e., best interest, reasonable compensation, and without misleading statements) for transactions exempted in PTE 2020-02 until February 1, 2022. In addition, the DOL will not treat

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such fiduciaries as if they were violating the applicable prohibited transaction rules. Finally, the DOL will not enforce the specific documentation and disclosure requirements for rollovers in PTE 2020-02 until June 30, 2022. However, all other requirements of the exemption were subject to full enforcement on Feb. 1, 2022.

Accordingly, firms must now comply with the Impartial Conduct Standards with respect to certain retirement accounts, which are:

- Give advice that is in the "best interest" of the retirement investor. This best interest standard has two chief components: prudence and loyalty;
- Charge no more than reasonable compensation and comply with federal securities laws regarding "best execution"; and
- Make no misleading statements about investment transactions and other relevant matters.

For a background summary of PTE 2020-02 and its requirements, see our Practice Update on the topic.

For additional information on how your firm or practice can comply with the DOL's most recent regulations, including the remaining documentation and disclosure requirements prior to the June 30, 2022 deadline, please contact Paul Foley, Chair, John Faust, Kiki Scarff, Bree Ward, or Brittany Puckett, each of Akerman's Investment Management Practice.
