



## Proprietary Products, Annuities and Revision of PTE 84-24

**THE ISSUE:** The Department of Labor's (DOL) proposed change to fiduciary rules, prohibited transaction exemptions (PTEs) and exceptions includes revoking the exemption coverage for the sale of variable annuities and mutual funds to IRA account holders, a change in the definition of commissions, and new conditions under a revised PTE 84-24.

**EXPLANATION:** Under the rules prior to the proposed rule change, receipt of commissions, 12b-1 fees, trails, and revenue sharing is permissible without violating the parties-in-interest/self-dealing rules if the conditions of PTE 84-24 were met. Also, sales of proprietary products are permissible.

**THE PROBLEM:** The DOL proposed rule is complicated and confusing overall, but particularly with respect to the sale of different kinds of annuities in different situations, and for the sale of proprietary products. One exemption pertains to fixed annuities; another to variable annuities if sold to an IRA account holder; and no advice can be offered to a plan sponsor with respect to annuity options inside the plan unless under a fee-for-service arrangement. The proposed revision narrowly defines commissions to be sales commissions paid by an insurance company, including renewal fees and trailers, but excludes revenue sharing. The proposed rule imposes a new Impartial Conduct Standard that requires advisors to advise with care, skill, prudence and diligence – without regard to the financial or other interest of the advisor or financial institution. It is unclear how proprietary products could be recommended under those conditions.

Receipt of commissions from the sale of a variable annuity or a mutual fund to an IRA account is only permissible if the conditions of the BIC exemption have been met. Receipt of commissions from the sale of a fixed annuity, whether to a 401(k) type plan or an IRA are permissible under PTE 84-24, as revised. This confusion and complexity is contrary to the DOL's views on guaranteed lifetime payments — something that is generally only available through annuities -- as something that should be incentivized. The risk of outliving one's retirement savings is very real. These rules would make the sale of annuities to retirement investors seeking advice on how to handle plan distributions upon retirement much more difficult, if not impossible.

**THE SOLUTION:** DOL must resolve the conflict between the rules in its BIC PTE proposal and SEC/FINRA rules. It must also deal with the parties-in-interest/self-dealing rule issues that particularly impact fixed versus variable annuities, and captive as compared to independent advisors. And it must explicitly clarify that the sale of a proprietary product would not be contrary to the Impartial Conduct Standard or a best interest standard.

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