



NAMCOA[®]
Registered Investment Advisor

Naples Asset Management Company[®], LLC

Department of Labor Prohibited Transaction Exemption 2020-02

Rule Background

On February 16, 2021, a new U.S. Department of Labor (“DOL”) “Prohibited Transaction Exemption” rule commonly referred to as the “Improving Investment Advice for Workers and Retirees” exemption went into effect. The DOL describes this new exemption as following:

Title I of the Employee Retirement Income Security Act of 1974, as amended (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. The exemption applies to Securities and Exchange Commission – and state-registered investment advisers, broker-dealers, banks, insurance companies, and their employees, agents, and representatives that are investment advice fiduciaries. The exemption includes protective conditions designed to safeguard the interests of Plans, participants and beneficiaries, and IRA owners. The class exemption affects participants and beneficiaries of Plans, IRA owners, and fiduciaries with respect to such Plans and IRAs. This notice also sets forth the DOL's final interpretation of when advice to roll over Plan assets to an IRA will be considered fiduciary investment advice under Title I and the Code.

Of particular note, this new rule exemption generally applies to investment advisers considered to be a Financial Institution when providing investment recommendations related to an IRA rollover from a qualified retirement plan, an IRA rollover from another IRA, a switch from a commission-based to a fee-based IRA, or other similar scenarios.

The exemption’s definition of a *Financial Institution* includes an entity such as NAMCOA that is:

Registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or under the laws of the state in which the adviser maintains its principal office and place of business.

Transition Period

On February 12, 2021, the DOL issued a statement regarding this new exemption that reads “the temporary enforcement policy stated in Field Assistance Bulletin 2018-02 will remain in place until December 20, 2021.” During this transition period, NAMCOA is relying upon Field Assistance Bulletin 2018-02 which requires our firm to work diligently and in good faith to comply with the impartial conduct standards as our firm prepares to fully comply with the new prohibited transaction exemption.

Impartial Conduct Standards

As required by the DOL Field Assistance Bulletin 2018-02, NAMCOA will adhere to the Impartial Conduct Standards which are:

- Give advice that is in the Retirement Investor's Best Interest;
- Charge no more than reasonable compensation and seek to obtain best execution; and
- Make no materially misleading statements about the recommended transaction and other relevant matters

In regard to *Best Interest* advice, the exemption notes the following:

Advice is in a Retirement Investor's "Best Interest" if 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, and does not place the financial or other interests 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.

Furthermore, the exemption defines a number of key terms referenced above regarding *Best Interest* advice.

The definition of a *Retirement Investor* includes:

The beneficial owner of an IRA acting on behalf of the IRA or a fiduciary of... an IRA.

The definition of an *Investment Professional* means an individual who:

(1) Is a fiduciary of... an IRA by reason of the provision of investment advice described in ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B), or both, and the applicable regulations, with respect to the assets of the... IRA involved in the recommended transaction;

(2) Is an employee, independent contractor, agent, or representative of a Financial Institution; and

(3) Satisfies the federal and state regulatory and licensing requirements of insurance, banking, and securities laws (including self-regulatory organizations) with respect to the covered transaction, as applicable, and is not disqualified or barred from making investment recommendations by any insurance, banking, or securities law or regulatory authority (including any self-regulatory organization).

The definition of an *Affiliate* means:

(1) *Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Investment Professional or Financial Institution. (For this purpose, “control” would mean the power to exercise a controlling influence over the management or policies of a person other than an individual);*

(2) *Any officer, director, partner, employee, or relative (as defined in ERISA section 3(15)), of the Investment Professional or Financial Institution; and*

(3) *Any corporation or partnership of which the Investment Professional or Financial Institution is an officer, director, or partner.*

The definition of a *Related Entity* is:

any party that is not an Affiliate, but in which the Investment Professional or Financial Institution has an interest that may affect the exercise of its best judgment as a fiduciary.

IRA Investment Recommendation Checklist

NAMCOA will only make an investment recommendation to a prospect or client related to an IRA rollover from qualified retirement plan, an IRA rollover from another IRA, or a switch from a commission-based to a fee-based IRA account if the recommendation is in the Best Interest of the Retirement Investor.

Accordingly, NAMCOA has implemented a checklist to be completed for all such relevant investment recommendation scenarios. The purpose of the checklist is to document whether the investment advice provided is in the Best Interest of the Retirement Investor and meets the Impartial Conduct Standards. All staff members must provide a completed checklist to the CCO for prior approval before providing the relevant investment recommendation to the prospect or client.

Level Fees

NAMCOA intends to only charge a *Level Fee* with respect to any such relevant investment recommendation scenarios as described above. A *Level Fee* is a fee or compensation that is provided based on a fixed percentage of the value of the assets or a set fee that does not vary with the particular investment recommended, rather than a commission or other transaction-based fee.

If an IRA rollover recommendation is executed, then due to the *Level Fee* arrangement any future IRA investment recommendations (such as a recommended asset allocation modification) should not result in an increase in compensation paid to NAMCOA.

Retention of Recommendation Documentation

During this transition period, NAMCOA will retain all records related to documenting why the investment recommendation is in the Best Interest of the Retirement Investor. This

documentation, including the relevant investment recommendation checklist along with all other relevant supporting documentation, will be retained in the relevant client file(s).

Should you have any questions, please contact your advisor or Paul McIntyre, Chief Compliance Officer.

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