

COMPLIANCE ALERT



ERISA, PTE, ROLLOVERS, AND YOU!

Ding, time is up!

What is a prohibited transaction exemption (PTE)? It's a rule release that allows someone (in this case financial professionals) to do something they otherwise would not be allowed to do. The PTE released last year, which becomes enforceable June 30th, allows financial professionals to be compensated for providing advice to clients after they roll their 401(k)s to IRAs or IRAs to IRAs.

Remind me, why is this happening?

DOL was concerned that clients were being advised to roll their 401(k) assets into IRAs. Their concern was that an Adviser was providing this advice with the intent of charging the fees on the retirement assets versus what was in the client's best interest, thus not acting as a fiduciary. As we know, whenever you do not act as a fiduciary, we are not putting the client interests ahead of our own. Ergo, you have a huge whooper of a conflict of interest, and it is now a prohibited transaction.

But the Exemption part?

Acting in the best interests of the client is always acting with prudence and loyalty. We know you do that already do that but HOLD ON and keep your shirts



on.... While I'm sure most of you would look fantastic in a cape, the DOL proposed other solutions for you to ultimately prove you are acting in your clients' best interest. That's where the Rollover Form comes in!

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What are the key parts to the Rollover form?

The Rollover form is something in writing which details that the Advisor has analyzed all options available. Then, after analyzing the options, has determined what is in the best interest of client, presents to the client, and the client signs off.

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The rollover form should also include written acknowledgement that the firm and IARs are fiduciaries under ERISA.

Is there anything else?

1. You need to have “Written description of the services to be provided and conflicts of interest disclosed”. Hmmm....sounds familiar. Oh yes...that’s your ADV and Form CRS!

2. Do you need to worry about instituting your new Rollover Form for IRAs to IRAs...(wait, what?). As they say on Ancient Aliens, “And, the answer is, yes!” but why? I can only think of a scenario if I rolled my 401(k) into retail IRA and then moved to an Adviser. If it is new to the adviser, there could be other options that are in the best interest of the client. I think it is possible they are trying to close any possible loopholes.

3. What about a lookback period? Should I go back and do this for client accounts we have already rolled over? If you’re doing everything you possible can to institute these new policies and procedure, no. However, a word of advice: if you already had these policies in your manual, you should have been following them. Remember to always follow your own policies!

What’s next?

- ✓ Ensure you have a Rollover Form ready and available for use.
- ✓ Ensure all IARs understand when and how to use the Rollover Form
- ✓ Make sure your manual is updated to reflect PTE and “Rollovers” (if this required a change in the manual, get signed acknowledgements from employees for the update)
- ✓ Plan on doing annual reviews (with documentation) of your Rollovers/IRA/ERISA accounts to make sure they have the proper disclosures and forms.

If you are unsure if your firm is ready to deal with PTE or Rollovers, please call us and let us know. 🐾🐾

BUGS BUNNY A TRUSTED CONTACT?



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My husband and I were showing our unimpressed children the cartoons we had growing up and watched in the wee hours of Saturday mornings. While vintage cartoons did come with a bit more hammering over the head and TNT explosives, I still find them to have more meaningful lessons than today’s cartoons, or mind melting Tiktok videos.

Take for example, Warner Brothers 1953 “Hare Trimmed”. Yosemite Sam catches wind that Granny, (who also goes by my nickname Emmie) inherits 50 million dollars. He shows up on Granny’s door, professing his love in hopes to score a wedding and a rich subvariant wife. Bugs sees through this his scam and steps in to protect Granny. If you’d like to see how it ends, you’ll have to go find it and watch it, but I’m sure you can guess.

Now as a disclaimer, I’m not implying that you should call trusted contacts or sound the alarms over client’s personal relationship. Nonetheless, this fun little cartoon from 1953 (well into

(Bugs, Continued from page 1)

syndication when I first saw it, thank you very much!), demonstrates that we should watch out for bad actors and those who wish to take advantage of our vulnerable.



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We are frequently asked by our advisers, what are we permitted to do if we see or hear something of concern? For starters, as an RIA you should:

1. Protect yourself and your clients before there is an issue. Ensure all your client's brokerage accounts have been offered **Trusted Contact Forms** and encourage clients to provide a trusted contact.
2. Do not rely on your custodian's Trusted Contact's Form. Have your own for your RIA.
3. Confirm the Trusted Contact Form is accurate annually as part of your client relationship general housekeeping.
4. If you suspect exploitation, contact your custodian. Brokerage firms now are permitted to place a temporary hold on a securities transaction, as well as on disbursements of funds or securities from an account, when there is reason to believe financial exploitation might be occurring. The rule applies to accounts belonging to investors age 65 and older and to those with mental or physical impairments that the firm reasonably

believes make it difficult for these investors to protect their own financial interests. The custodian would have 15 days to investigate. (<https://www.finra.org/investors/insights/senior-financial-exploitation>)

5. Protect your client's information. If a client emails you requesting money, call them to verify and vice versa. Follow your Red Flag procedures.
6. If you think someone is trying to exploit your client and you're unsure of what to do, do hesitate to seek advice. 🐾

Did You know? Swayze Offers Monthly Auto Payments

Part of our value proposition is Concierge Compliance. We try to find ways to make your life easier any way we can. In the spirit of that, we can process your bill for you if you pay using a debit or credit card.

You would still receive a monthly invoice detailing your fees and expenses. If there are any issues, you'd just reach out to eswayze@swayzellc.com and adjustments can be made. You may cancel anytime.

Interested?

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