**This document announces a temporary enforcement policy,**

**and an update to Firm’s Policies and Procedures**

**related to the Department of Labor’s Prohibited Transaction Exemption (PTE) 2020-02.**

As previously communicated by CRP, on October 25, 2021, the Department of Labor (“Department” or “DOL”) stated it would not pursue prohibited transaction claims against investment advice fiduciaries who worked diligently and in good faith to comply with “Impartial Conduct Standards” for transactions that would have been exempt under the new Department of Labor’s Prohibited Transaction Exemption (PTE) 2020-02. The Department understands that investment firms are in the process of developing tools to comply with the rollover documentation and disclosure requirements. Additionally, investment firms expressed concern that they would incur significant additional distribution costs, because the December 20, 2021, expiration date did not coincide with their annual distribution cycle for disclosures.

Accordingly, for the period, December 21, 2021, through January 31, 2022, the Department will not pursue prohibited transactions claims against advisory firms who are working diligently and in good faith to comply with the impartial conduct standards for plan rollover and IRA transfer transactions. In addition, from December 21, 2021, through June 30, 2022, the Department will not pursue prohibited transactions claims against advisory firms who are otherwise working towards compliance with PTE 2020-02. **However, CRP will continue to outline and update the compliance policies and procedures to educate and assist in the implementation of PTE-2020-02.**

**WHAT DO CCO’S NEED TO DO NOW?**

Based on overwhelming confusion within the industry, and various questions from our CRP clients, we believe it is imperative for our firms to analyze IAR activity to determine exactly what services firms are providing to clients.

During 1st Quarter 2022, CRP updated the SAMPLE policies and procedures to outline the two options firms are presented with in light of the new DOL PTE 2020-02. Firms should review, implement, and work toward complying with the Prohibited Transaction. Please read the attached policies and procedures for each option and complete the following steps for implementing your Firm’s policy:

* **OPTION 1**:[**Investment Advice and Rollover Recommendations**](#_INVESTMENT_ADVICE_AND)
* Review CRP’s updated policies and procedures as outlined below to determine if the firm is providing “investment advice and recommendations”. (*Page 2-5 below*).
* Copy/paste the attached “**Investment Advice and Rollover Recommendations**” policies and procedures into your most recent compliance manual. Replace existing language.
* Review and confirm disclosure have been made and/or updated through our ADV Part 2A. If not, please contact CRP to include it on the firm’s 2022 Annual Amendment filing.
* Implement and train IAR’s on the new documentation requirement, which includes the attached “**IRA Rollover Worksheet – Comprehensive Analysis**” form. (*Stay tuned to February’s This Month Resource for sample training content*)
* For unsolicited transactions, implement and train IAR’s on the documentation requirement, which includes the attached “**Unsolicited Transactions - Client Attestation”** form.

**- OR –**

* **OPTION 2:** [**Investment Education**](#_INVESTMENT_EDUCATION)
* Review CRP’s updated policies and procedures to determine if the firm is providing “Investment Education” services to clients. (*Page 6-7 below*).
* Copy and paste the attached “**Investment Education**” policies and procedures into your most recent compliance manual. Replace existing language.
* Implement and train IAR’s on the documentation requirement, which include the attached “**Investment Education - Client Consideration Attestation"** form. *Stay tuned to February’s This Month Resource for sample training content*)
* For unsolicited transactions, implement and train IAR’s on the documentation requirement, which includes the attached “**Unsolicited Transactions - Client Attestation”** form.

**[If the firm offers this service: copy and paste this policy into your firms Compliance Manual]**

**INVESTMENT ADVICE AND ROLLOVER RECOMMENDATIONS**

**INVESTMENT ADVICE AND ROLLOVER RECOMMENDATIONS**

This section below sets forth the Firm’s policies and procedures to address compliance with the Department of Labor’s PTE 2020-02, *Improving Investment Advice for Workers & Retirees*. The prohibited transaction exemption under ERISA and the Internal Revenue Code (“Code”) for investment advice fiduciaries with respect to employee benefit plans and individual retirement accounts (IRAs) requires IARs who recommend to rollovers must justify and explain the benefits, expenses and all conflicts of interest associated with the recommendation as well as attempt to benchmark advisor compensation. “Rollovers” include not only rollovers from dde, but also from an IRA to another IRA, an IRA to a plan, a plan to another plan, and from one type of account to another (brokerage to advisory, and vice versa).

***“Investment Advice and recommendations”*** *to client or potential client to rollover assets is considered fiduciary investment advice if the following 5-part test is satisfied:*

1. For a Fee, *renders advice as to the value of securities* or other property, or make recommendations as to the advisability of investing in, purchasing, or selling securities or other property
2. *On a regular basis*
3. *Pursuant to a mutual agreement*, arrangement, or understanding with the Plan, Plan fiduciary or IRA owner,
4. That the advice will serve as a *primary basis for investment decisions* with respect to Plan or IRA assets, and
5. The advice will be *individualized based on the particular needs* of the Plan or IRA.

If all five parts listed above are satisfied, our Firm will be considered a “fiduciary” under ERISA and/or the Code.

Our Firm does provide investment advice and rollover recommendations and therefore providing “investment advice and recommendations” regarding the individual’s tax-advantaged account(s) prior to recommending the rollover. There is a reasonable understanding that our Firm will be providing investment advice on the assets rolled over to our Firm and our Firm will be considered a fiduciary under the Code.

**OVERVIEW**

By the conditions outlined above, our Firm provides “investment advice and recommendations” with respect to plan rollovers and IRAs. The DOL’s position is that all types of guidance and recommendations pertaining to rollovers ***will be*** considered fiduciary advice. The DOL sees plan rollover recommendations and IRA transfers as the start of an ongoing advisory relationship, and so the advice to enact the rollover or transfer should be treated as the beginning of the fiduciary relationship. As an investment adviser, the DOL says the collection of compensation related to rollover advice and transfer recommendations is almost always going to be a prohibited transaction, triggering the need for an exemption. The prohibited transaction requires formal exemption, all because the adviser is influencing the amount of compensation he or she will receive from a fiduciary client.

Fiduciaries are prohibited from:

* *Self-Dealing* (e.g., providing advice that can increase your compensation)
* *Dual Representation* (e.g., acting on behalf both buyer and seller in a transaction involving plan or IRA assets)
* *Receiving third-party payments* (e.g., receiving compensation from anyone other than the client i.e., commissions, 12b-1, trail and/or solicitor fees, etc. for providing investment advice or exercising discretion)

Therefore, if rollover advice is fiduciary in nature, and it will result in one of the above prohibitions, the recommendation is a prohibited transaction. As a result, the DOL has created a new prohibited transaction exemption.

## POLICY

Our Firm is providing recommendations and therefore considered a fiduciary by offering “investment advice and recommendations”. We will adhere to standards designed to ensure that our investment recommendations reflect the best interest of plan and IRA investors. Since our Firm is relying on the exemption, our Firm will follow the following conditions as outlined in PTE 2020-02:

* **ACKNOWLEDGE** their fiduciary status in writing (either through our Part 2A Brochure or the IRA Rollover worksheet/client attestation)
* **DISCLOSE** their services and material conflicts of interest through our ADV Part 2A and/or Form CRS
* **ADHERE** to Impartial Conduct Standards requiring that:
  + Investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would (i.e., *the recommendations must be “prudent”),*
  + Act with undivided loyalty to retirement investors when making recommendations (in other words, our Firm must never place our own interests ahead of the interests of the retirement investor, or subordinate the retirement investor’s interests to their own),
  + Charge no more than reasonable compensation and comply with federal securities laws regarding “best execution,”
  + Avoid making misleading statements about investment transactions and other relevant matters.
* **ADOPT POLICIES AND PROCEDURES** prudently designed to ensure compliance with the Impartial Conduct Standards and to mitigate conflicts of interest that could otherwise cause violations of those standards as adopted in this section and document (Firm’s Compliance Manual).
* **DOCUMENT AND DISCLOSE** the specific reasons that any rollover recommendation is in the retirement investor’s best interest using our Firm’s **IRA Rollover Worksheet – Comprehensive Analysis form.**
* **CONDUCT** an annual retrospective compliance review by the CCO.

Our Firm must document and disclose in writing the specific reasons that a rollover recommendation is in the retirement investor’s best interest. In doing so, our Firm will consider the client’s alternatives to a rollover, such as leaving the money in an employer’s plan and taking advantage of the investment options available in that plan, including available options other than those reflected in the retirement investor’s current plan holdings. Our Firm is expected to make diligent and prudent efforts to obtain information about the existing employee benefit plan and the participant’s interests in it.

**Please refer to: IRA Rollover Worksheet – Comprehensive Analysis form.**

## IMPARTIAL CONDUCT STANDARDS

The Impartial Conduct Standards are consumer protection standards that ensure that investment professionals adhere to fiduciary norms and basic standards of fair dealing.

The standards specifically require investment professionals to:

* Give advice that is in the “best interest” of the retirement investor. This best interest standard has two chief components: prudence and loyalty.
* Under the prudence standard, the advice must meet a professional standard of care as specified in the text of the exemption;
* Under the loyalty standard, our Firm may not place their own interests ahead of the interests of the retirement investor, or subordinate the retirement investor’s interests to their own;
* 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.

## PRUDENT ANALYSIS – INFORMATION GATHERING

Our Firm will document a prudent analysis of why a rollover recommendation is in a retirement investor’s best interest. For recommendations to roll over assets from an employee benefit plan to an IRA, the relevant factors include but are not limited to:

* the *alternatives to a rollover*, including leaving the money in the investor’s employer’s plan, if permitted;
* the *fees and expenses* associated with both the plan and the IRA;
* whether the *employer pays* for some or all of the plan’s administrative expenses;
* the different levels of services and investments available under the plan and the IRA;
* the ability to take penalty-free withdrawals;
* the application of required minimum distributions;
* the protection from creditors and legal judgements;
* holdings of employer stock; and
* any special features of the existing account.

When considering the alternatives to rollover, our Firm generally should not focus solely on the retirement investor’s existing investment allocation, without any consideration of other investment options in the plan.

For rollovers from another IRA or from a commission-based account to a fee-based arrangement, a prudent recommendation would include consideration and documentation of the services under the new arrangement. As relevant, the analysis should include consideration of factors such as the long-term impact of any increased costs; why the rollover is appropriate notwithstanding any additional costs; and the impact of economically significant investment features such as surrender schedules and index annuity cap and participation rates.

To satisfy the documentation requirement for rollovers from an employee benefit plan to an IRA, will make diligent and prudent efforts to obtain information about the existing employee benefit plan and the participant’s interests in it. In general, such information should be readily available because of Department regulations mandating disclosure of plan-related information to the plan's participants. If the retirement investor won’t provide the information, even after a full explanation of its significance, and the information is not otherwise readily available, our Firm will make a reasonable estimation of expenses, asset values, risk, and returns based on publicly available information.

Additionally, our Firm will document and explain the assumptions used and their limitations. In such cases, our Firm could rely on alternative data sources, such as the most recent Form 5500 or reliable benchmarks on typical fees and expenses for the type and size of plan at issue.

## FIDUCIARY ACKNOWLEDGEMENT

Our Firm will satisfy the fiduciary acknowledgment requirement by requiring the following:

When we provide investment advice to you regarding your retirement plan account or individual retirement account, we are fiduciaries within the meaning of Title I of the Employee Retirement Income Security Act and/or the Internal Revenue Code, as applicable, which are laws governing retirement accounts. The way we make money creates some conflicts with your interests, so we operate under a special rule that requires us to act in your best interest and not put our interest ahead of yours.

Under this special rule’s provisions, we must:

* Meet a professional standard of care when making investment recommendations (give prudent advice);
* Never put our financial interests ahead of yours when making recommendations (give loyal advice);
* Avoid misleading statements about conflicts of interest, fees, and investments;
* Follow policies and procedures designed to ensure that we give advice that is in your best interest;
* Charge no more than is reasonable for our services; and
* Give you basic information about conflicts of interest.

## CONFLICTS OF INTEREST

Since our Firm is relying on PTE 2020-02, our Firm will identify and carefully focus on the conflicts of interest associated with our business model and practice that create incentives for our Firm to place our interests ahead of the retirement investor’s interest. Our policies and procedures are designed to, among other things, protect retirement investors from recommendations that are not in the investor’s best interest, or to allocate excessive amounts to illiquid or risky investments. Our Firm does not recommend nor use any investment products where our IARs are compensated differently, nor is there an incentive for an IAR to meet any compensation thresholds that would pose as a conflict to retirement investors.

## SUPERVISORY OVERSIGHT

Our Firm will include supervisory oversight of investment recommendations when monitoring the specific documentation of rollovers on at least a quarterly basis.

Our Firm will provide the following monitoring of investment professional recommendations at or near compensation thresholds, recommendations at key liquidity events for investors (e.g., rollovers), and recommendations of investments that are particularly prone to conflicts of interest as outlined in our Code of Ethics.

## VIOLATIONS – CORRECTIVE ACTION

If the CCO determines a rollover was initiated that was not in the best interest of the client, the Firm will work with the client to correct the action within 90 days of when the rollover occurred or was found to be inconsistent with the Policy.

* The PTE allows for self-correction of violations of its conditions if the following conditions are met:
  + The violation didn’t result in investment losses, or the investor was made whole.
  + The violation is corrected, and the DOL is notified of the violation and correction within 30 days after the correction.
  + The correction occurs no later than 90 days after the financial institution knew or reasonably should have known of the violation.
  + The violation and correction are disclosed in a timely manner and described in the Financial Institution’s retrospective review.

Documentation on how the situation was corrected must be maintained in the Compliance file and documented in the Annual Retrospective Review. Documentation on how the situation was remediated.

## ANNUAL RETROSPECTIVE REVIEW

Our Firm’s CCO will conduct an annual retrospective review that is reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, the Impartial Conduct Standards and our policies and procedures. The methodology and results of the retrospective review will be a written report and available to our Firm’s senior executive officers.

Our procedures include that the Firm’s CCO will draft the report and review that policies and procedures are in place to achieve compliance with conditions of the exemption. The CCO will ensure there is a prudent process is in place to modify such policies and procedures as business, regulatory, and legislative changes and events dictate, and to test their effectiveness on a periodic basis to ensure continuing compliance with the conditions of the exemption.

The Annual Certification Review is completed no later than six months following the end of the period covered by the review. This is typically conducted during Q4 or the following Q1. Our Firm retains the report, certification, and supporting data for six years and provide these documents to the Department within 10 business days of a request.

Our Firm will use the results of the review to find more effective ways to help ensure that our firm is providing investment advice in accordance with the Impartial Conduct Standards and to correct any deficiencies in existing policies and procedures. CCO will carefully review the report before making the required certifications, so that they can make the certifications with confidence. Making the certifications without carefully reviewing the report would constitute a violation of the exemption. This ensures that our Firm, through an appropriate senior executive officer and/or CCO, is fully accountable for the retrospective review.

The only time a recommendation will NOT be considered fiduciary under ERISA, or the Code is **when our Firm received an unsolicited rollover transaction, initiated by the client, and we did not provide investment advice or recommendations, before or after the rollover.**

## UNSOLICITED ROLLOVER TRANSACTIONS

Firms may obtain plan assets from a qualified plan or an IRA transfer, on an unsolicited basis with the intent to be managed, and where the client independently decided to rollover the assets.

## SUPERVISORY OVERSIGHT ON UNSOLICITED ROLLOVERS

IAR’s will be required to obtain a client’s attestation that the IAR did not provide “investment advice or recommendations” regarding the plan rollover or IRA transfer. IAR’s are required to submit client signed documentation to Compliance for review.

**Please see: Unsolicited Transactions - Client Attestation form.**

**[If the firm offers this service: copy and paste this policy into your firms Compliance Manual]**

**INVESTMENT EDUCATION**

Below sets forth the Firm’s policies and procedures to address compliance with the Department of Labor’s PTE 2020-02, *Improving Investment Advice for Workers & Retirees*. The Department of Labor has determined that the furnishing of qualified plan information and educational materials to a participant or beneficiary in a participant-directed qualified plan will not constitute the rendering of ``investment advice’’.

## POLICY

Our Firm’s policy is to have IARs provide education only to participants or beneficiaries in a participate directed qualified plan. DOL IB 96–1 identifies four categories (or “safe harbors”) of investment-related educational materials that advisors or others can provide to plan participants and beneficiaries without being considered to have provided fiduciary investment advice:

1. Plan information
2. General Investment Information
3. Asset Allocation Models, and
4. Interactive Investment Materials

## Plan Information

Information and materials described relate to the plan and plan participation, without reference to the appropriateness of any individual investment option for a particular participant or beneficiary under the plan. The information, therefore, does not contain either “advice” or “recommendations”. Accordingly, the furnishing of such information would not constitute the rendering of “investment advice” for purposes of section 3(21)(A)(ii) of ERISA.

* + - 1. **General Financial and Investment Information**

Information and materials that inform a participant or beneficiary about:

1. General financial and investment concepts, such as risk and return, diversification, dollar cost averaging, compounded return, and tax deferred investment;
2. Historic differences in rates of return between different asset classes (e.g., equities, bonds, or cash) based on standard market indices;
3. Effects of inflation;
4. Estimating future retirement income needs;
5. Determining investment time horizons; and
6. Assessing risk tolerance.

The information and materials described above are general financial and investment information that have no direct relationship to investment alternatives available to participants and beneficiaries under a plan or to individual participants or beneficiaries. The furnishing of such information, therefore, would not constitute rendering “advice'' or making “recommendations” to a participant or beneficiary.

## Asset Allocation Models

Examples include pie charts, graphs, or case studies that provide a participant or beneficiary with asset allocation portfolios of hypothetical individuals with different time horizons and risk profiles. Such models must satisfy the following requirements:

1. The models must be based on generally accepted investment theories that take into account the historic returns of different asset classes (e.g., equities, bonds, or cash) over define periods of time.
2. All material facts and assumptions on which such models are based (e.g., retirement ages, life expectancies, income levels, financial resources, replacement income ratios, inflation rates, and rates of return) must accompany the models.
3. To the extent that an asset allocation model identifies any specific investment alternative available under the plan, the model must be accompanied by a statement that
   * 1. other investment alternatives having similar risk and return characteristics may be available under the plan;
     2. Identifies where information on those investment alternatives may be obtained; and
     3. Included disclosure that, when applying an asset allocation to their individual situations, participants or beneficiaries should consider their other assets, income, and investments (e.g., equity in a residence, IRA and retirement investments, savings accounts, and interests in other qualified and non-qualified plans) in addition to their interests in the plan.

## Interactive Investment Materials

Examples could include, but not limited to profile questionnaires, planning software, financial worksheets, and other materials that provide a participant or beneficiary the means to estimate future retirement income needs and assess the impact of different asset allocations on retirement income.

Approved materials must include:

1. General investment theories that take into account the historic returns of different asset classes (e.g., equities, bonds, or cash) over defined periods of time;
2. An objective correlation between the asset allocations generated by the materials and the information and data supplied by the participant or beneficiary;
3. All material facts and assumptions (e.g., retirement ages, income levels, financial resources, replacement income examples, life expectancies, rates that may affect a participant’s or beneficiary’s assessment of the different asset allocations
4. A statement indicating other investment alternatives having similar risk and return characteristics may be available under the plan and where information on those investment alternatives may be obtained; and
5. A statement indicating that, in applying particular asset allocations to their individual situations, participants or beneficiaries should consider their other assets, income, and investments (e.g., equity in a home, IRA investments, savings accounts, and interests in other qualified and nonqualified plans) in addition to their interests in the plan.

Providing education is not a fiduciary act, *but the authorization or designation to provide investment educational services to plan participants and beneficiaries is a fiduciary act.* Therefore, persons making this designation must act prudently and solely in the interest of the plan participants and beneficiaries.

## SUPERVISORY OVERSIGHT

The IAR will be required to obtain a client attestation that the IAR only provided “investment education” regarding the rollover and is required to submit educational materials and a client signed attestation to Compliance for review. **Please refer to: Education - Review of Client Consideration Attestation form.**

## UNSOLICITED ROLLOVER TRANSACTIONS

Firms may obtain plan assets from a qualified plan or an IRA transfer, on an unsolicited basis with the intent to be managed, and where the client independently decided to rollover the assets.

## SUPERVISORY OVERSIGHT ON UNSOLICITED ROLLOVERS

IAR’s will be required to obtain a client’s attestation that the IAR did not provide “investment advice or recommendations” regarding the plan rollover or IRA transfer. IAR’s are required to submit client signed documentation to Compliance for review.

**Please refer to: Unsolicited Transactions - Client Attestation form.**