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May 5, 2010

By E-mail: e-ORI@dol.gov

Office of Regulations and Interpretations,
Employee Benefits Security Administration,
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210.

ATTN: 2010 Investment Advice Proposed Rule

To Whom It May Concern:

The proposed investment advice regulations[1] address only conflicted investment advice provided to plan participants. The regulations do not address conflicted investment advice provided to plan sponsors. We urge the U.S. Department of Labor ("DOL") to issue a class exemption in connection with the proposed regulations that would allow fiduciary advisers to provide similarly conflicted investment advice to plan sponsors under a fee-leveling arrangement.

Conflicted Advice Definition. For purposes of this comment letter, we define "conflicted investment advice" in the same manner that the DOL has described it in the preamble to the proposed regulations.[2] In order words, conflicted investment advice means that an entity (e.g., the investment adviser for a mutual fund) affiliated with a fiduciary adviser (e.g., a separately incorporated registered investment adviser owned by the mutual fund's investment adviser) could receive fees that vary based on the investments selected by the plan sponsor. However, the fiduciary adviser (and its employees) advising the plan sponsor could not receive variable fees.

Conditions for Proposed Class Exemption. The terms and requirements for a proposed class exemption could be virtually identical to those that apply to fee-leveling arrangements in the proposed regulations. Of course, the important difference is that the proposed class exemption would enable fiduciary advisers to provide investment advice to plan sponsors.

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[1] "Investment Advice--Participants and Beneficiaries," published at 75 Fed. Reg. 9360 (Mar. 2, 2010).
[2] See 75 Fed. Reg. 9360, 9361 ("Thus, even though an affiliate of a fiduciary adviser may receive fees that vary depending on investment options selected, any provision of financial or economic incentives by an affiliate (or any other party) to a fiduciary adviser or any individual employed by such fiduciary adviser (e.g., an employee providing advice on its behalf or an individual responsible for supervising such an employee) to favor certain investments would be impermissible.")

Rationale for Proposed Class Exemption. Plan sponsors – particularly for small plans – need investment advice at competitive prices as much, if not more so, than plan participants. Yet, under the proposed regulations, fiduciary advisers could provide conflicted investment advice only to plan participants, not plan sponsors.

From a public policy point of view, the distinction between plan sponsors and plan participants in the ERISA investment advice marketplace is difficult to justify. If the safeguards in the proposed regulations are sufficient to protect plan participants from conflicted investment advice, then the same safeguards in the class exemption should similarly be sufficient to protect plan sponsors.

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Thank your for your attention to and consideration of this comment. If you have questions, please do not hesitate to contact me.

Sincerely,

Russell A. Gaudreau, Jr.

RAG/krk

cc: Dennis T. Blair, Esq.
Marcia S. Wagner, Esq.