U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210

Kent A. Mason, Esq.
Davis and Harman LLP
The Willard
1455 Pennsylvania Avenue
Suite 1200
Washington, DC 20004

Dear Mr. Mason:

As you are aware, on October 22, 2010, the Department of Labor's Employee Benefits Security Administration (EBSA) issued a proposed rule that would amend a 1975 regulation defining when a person providing investment advice becomes a fiduciary under section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 (ERISA). On September 19, 2011, EBSA announced its intention to re-propose the rule.

EBSA is now developing an expanded regulatory impact analysis (RIA) that will assess the impact of the re-proposal on both ERISA plans and Individual Retirement Accounts. The expanded RIA will take into account input from stakeholders and consultations with other federal agencies.

On April 12, 2011, you submitted to EBSA a study prepared by Oliver Wyman that assessed the impact of the proposed rule on IRA consumers. In order to help inform EBSA's expanded RIA, we request your voluntary assistance. In particular we ask that you provide the dataset(s) underlying the statistics and analysis presented (with identifying information removed as necessary). We also would like you to explain the following: (1) how the particular entities included in the dataset were selected; and (2) how their structures (for example, presence of affiliated product manufacturers), business models and practices, and product and service offerings compare with those of entities not included. We also would like you to provide answers to the questions presented in the attached document.

In order that we may use the information in drafting our re-proposal, a prompt response is needed. Please provide the information requested within 30 days of the date of this letter to:

The Office of Policy and Research
Employee Benefits Security Administration
Room N-5718
U.S. Department of Labor
200 Constitution Ave
Washington, DC 20210
Attention: Definition of Fiduciary – Data Request

If you prefer, you may email the information to me at piacentini.joseph@dol.gov.

We expect that any information you provide will be made part of the public record of this rulemaking. The Department appreciates your assistance in this matter. If you have any questions regarding this data request or need additional information, please contact me at (202) 693-8427.

Sincerely,

Joseph S. Piacentini
Director
Office of Policy and Research

cc: Phyllis C. Borzi
Michael L. Davis
Alan D. Lebowitz
Representative Bill Huizenga
Representative David Schweikert
Representative Francisco "Quico" Canseco
Representative Albio Sires
Representative Blaine Luetkemeyer
Representative Carolyn McCarthy
Representative Cedric Richmond
Representative Cynthia M. Lummis
Representative Dave Camp
Representative Dennis Cardoza
Representative Denny Rehberg
Representative Jim Renacci
Representative Jo Ann Emerson
Representative John Kline
Representative Michael Grimm
Representative Robert Dold
Representative Robert Hurt
Representative Ron Paul
Representative Stephen Fincher
Representative Steve Stivers
Representative Todd Rokita
Representative William "Lacy" Clay, Jr.
Representative Sean Duffy
Representative Nan Hayworth
Representative Jim Moran
Representative Phil Roe
Senator Orrin Hatch
Senator Richard Shelby
Senator Roy Blunt
Senator Richard Burr
Senator Johnny Isakson
Senator Mike Enzi
Senator Mary Landrieu

Follow-up questions on Oliver Wyman Report dated April 12, 2011

Page 10-11. See figures 6 and 7. Is this really a distribution of account holders by asset level, or is it a distribution of accounts? That is, if a single account holder has multiple accounts (with one or multiple vendors) are those accounts aggregated or counted separately here? (Presumably some account holders have additional accounts with vendors not included in the sample?)

Page 12. See figure 9, last line, number of trades per account. Can you provide additional information characterizing the account holdings and activity? For example, are most accounts holding a few positions consisting of internally diversified funds representing different asset classes? How many are holding individual securities? Is the activity mostly in the nature of periodic rebalancing? With respect to number of trades and turnover, are most accounts near the average, or is the distribution more bi-modal, with some accounts trading heavily and others little if any? Can you provide data on the size of these trades?

Do you have data linking some or all of the following: account positions and trades, advice interactions (including whether a trade was solicited), adviser (broker) compensation arrangements, investor fees (including loads/commissions and expense ratios) and performance? If so, can you perform additional analysis on such data, or make such data available for analysis by others?

Page 21-22, figure 15. The comparison pertains to "direct costs." Can you provide similar information for indirect costs? Including those referenced in figure 15 footnote 1? Why were these excluded from the comparison? What is the basis for the conclusion that if these costs were considered "brokerage would continue to be less expensive"? Do the brokerage figures reported here include both full service and discount brokerage?

"Firms vary in whether they receive such [indirect] fees and how they account for them." Can you quantify that variation? What is the incidence and amount of these types of compensation, both by source (such as product manufacturer) and recipient (such as the broker)? What explains the variation? What is being compensated?

Various pages. Can you separate statistics for discount v. full service brokerage?

Page 23 figure 16, and elsewhere. Did Wyman attempt to determine whether net returns differ depending on distribution channel and/or broker conflicts? Did Wyman review academic literature or other evidence on this question?