

# COVINGTON & BURLING LLP

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February 27, 2008

**By electronic transmission to  
e-ORI@DOL.gov**

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: 408(b)(2) Hearing  
Room N-5655  
United States Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Re: Reasonable Contract or Arrangement under Section 408(b)(2): Fee Disclosure  
(Proposed amendment to 29 C.F.R. § 2550.408b-2)

Ladies and Gentlemen:

On behalf of Covington & Burling LLP and several clients of the firm, I hereby request the opportunity to testify at the March 20, 2008, hearing on the proposed regulations under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended. I will submit an outline of my testimony no later than March 10, 2008.

Respectfully submitted,



Katherine Mineka

# COVINGTON & BURLING LLP

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March 5, 2008

**By electronic transmission to  
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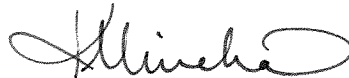
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Re: Reasonable Contract or Arrangement under Section 408(b)(2): Fee Disclosure  
(Proposed amendment to 29 C.F.R. § 2550.408b-2)

Ladies and Gentlemen:

Enclosed is an outline of my expected testimony at the March 20, 2008, public hearing on the proposed regulations concerning Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended. On February 27, 2008, I submitted a request to testify at the March 20th hearing.

Respectfully submitted,



Katherine Mineka

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March 5, 2008

**Katherine Mineka  
Covington & Burling LLP**

**Outline of Testimony  
at the Hearing on the  
Proposed Amendment to 29 C.F.R. § 2550.408b-2  
March 20, 2008**

**I. Treatment Non-Plan-Asset Funds**

- A. The fee disclosure regulation should not apply to funds that are deemed to hold no plan assets.
- B. If the regulation is to be extended to non-plan-asset funds, a separate rulemaking is necessary to explain the rationale for this extension and to provide an opportunity for all affected parties to comment.
- C. If a fund's status changes from a non-plan-asset fund to a plan-asset fund, the fund should be permitted comply with the regulation going forward.

**II. Preservation of Ability to Rely on Other Class Exemptions**

The fee disclosure regulation should not apply to arrangements covered by a separate class exemption, such as the QPAM or INHAM exemptions.

**III. Service Providers to an Investment Fund**

Compensation paid by an investment fund to an entity providing services to the fund as a whole should not be treated as indirect compensation merely because the other investors in the fund are deemed to have paid a share of the compensation proportional to their investments.

**IV. Transition Rules**

A reasonable transition period of at least one year should be provided to allow funds to comply with the final regulation.