



November 19, 2014

Submitted electronically via the Federal Rulemaking portal @ www.regulations.gov

Attention: Ms. Phyllis C. Borzi
United States Department of Labor
Employee Benefits Security Administration
Assistant Secretary of Labor for Employee Benefits Security
c/o Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Ms. Borzi:

Subject: RIN 1210-AB59 (Request for Information Regarding Standards for Brokerage Windows in Participant-Directed Individual Account Plans)

Aon Hewitt appreciates the opportunity to provide comments on the U.S. Department of Labor (the Department) issued Request for Information Regarding Standards for Brokerage Windows in Participant-Directed Individual Account Plans (RFI).

Who We Are

Aon plc (NYSE: AON) is the leading global provider of risk management, insurance and reinsurance brokerage, and human resource solutions and outsourcing services. We have 66,000 colleagues worldwide, Aon unites to empower results for clients in over 120 countries via innovative and effective risk and people solutions and through industry-leading global resources and technical expertise. Aon has been named repeatedly as the world's best broker, best insurance intermediary, best reinsurance intermediary, best captives manager, and best employee benefits consulting firm by multiple industry sources.

Aon Hewitt empowers organizations and individuals to secure a better future through innovative talent, retirement and health solutions. We advise, design and execute a wide range of solutions that enable clients to cultivate talent to drive organizational and personal performance and growth, navigate retirement risk while providing new levels of financial security, and redefine health solutions for greater choice, affordability and wellness. Aon Hewitt is the global leader in human resource solutions, with over 30,000 professionals in 90 countries serving more than 20,000 clients worldwide.

General Comments

As the global leader in human resources solutions, Aon Hewitt is the largest independent provider of administration services for retirement plans, serving more than 14 million retirement plan participants in the United States. We administer more than 365 defined contribution plans on behalf of large employers, representing \$361 billion in defined contribution assets under administration.

While brokerage windows are not appropriate for all investors, Aon Hewitt believes they provide a beneficial investment option for certain plan participants who are interested and willing to take a very hands-on approach to managing their investment decisions. Aon Hewitt believes that the following comments reflect the perspectives of sponsors of large and mid-size defined contribution plans¹, as well as industry service groups:

- Brokerage windows generally benefit plan participants and encourage employee participation in employer-sponsored defined contribution plans by providing certain investors a means of customizing their investment options under the plan. Participants in defined contribution plans often have diverse investment needs. A self-directed brokerage window can serve to complement the investment options offered to participants and enable participants who have the experience and desire to direct their own investments the opportunity to do so.
- The Department should not impose additional fiduciary or disclosure obligations on plans that contain brokerage windows, especially where such plans also provide designated investment alternatives (DIAs). Participants in brokerage windows are currently subject to rigorous disclosure requirements under both Department rules and securities rules. Such disclosures, when combined with other plan-related disclosures that must be provided to participants in accordance with the requirements of ERISA, are sufficient to enable participants to make informed decisions about both the initial choice to participate in a self-directed brokerage window and investments thereunder.

In addition to the comments above, Aon Hewitt would like to address a select number of questions posed in the RFI issued by the Department. Specifically, Aon Hewitt is providing responses regarding certain questions in which the Department asks for statistical data regarding self-directed brokerage window offerings. Aon Hewitt is providing data from two creditable research reports, [Trends & Experience in Defined Contribution Plans](#) and [Universe Benchmarks](#). The Trends & Experience survey was completed by more than 400 employers, across a variety of plan types, sizes and industries. Combined, these plans represent more than 10 million employees and nearly \$500 billion in assets. Universe Benchmarks reflects the saving and investing behavior of more than 3.5 million employees eligible for defined contribution plans. The reports linked above reflect the demographic of these responses. As a provider of a brokerage window and as an investment consultant to defined contribution plan sponsors, Aon Hewitt has experience with large plan sponsors that provide brokerage windows and has provided responses to the Department, as appropriate, based on those experiences.

Note that our responses generally reflect the experiences of our clients, which typically consist of plans with participants of 5,000 or more and are not intended to necessarily reflect experiences of other plan market sizes.

Aon Hewitt Responses

Plan Investment Offerings – Brokerage Windows and Designated Investment Alternatives

4. What are the characteristics of plans that offer brokerage windows?

Overall, 40% of employers offer a brokerage window. Generally speaking, larger employers are more likely to have a brokerage window than smaller employers. In 2013, 46% of companies with 25,000 or more employees had a brokerage window compared to 35% of companies with fewer than 1,000 employees.

¹ Aon Hewitt describes a mid-size plan as any plan with 5,000-14,999 eligible employees and a large plan as any plan with 15,000 or more eligible employees.



Brokerage windows are more common in financial/banking, insurance, health care, energy, industrials such as capital goods, and commercial/professional services.

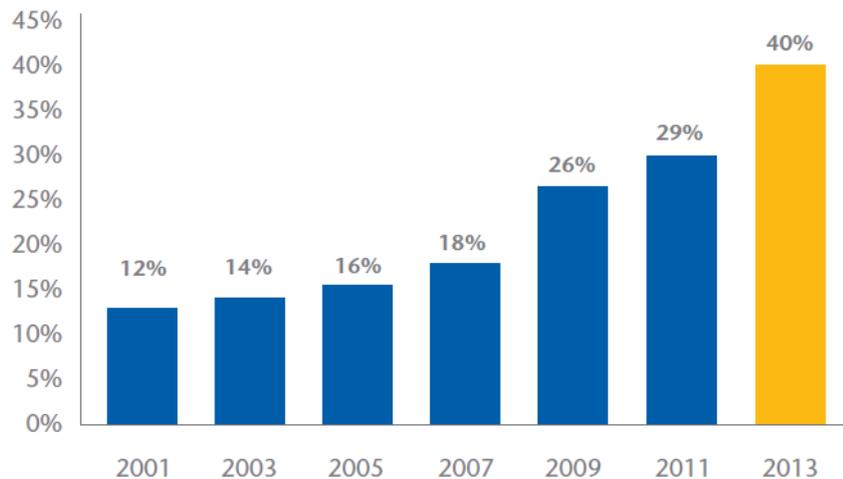
In addition, employers that sponsor both a defined benefit pension plan and a defined contribution plan are more likely (42%) to offer a brokerage window than employers that only have a defined contribution plan (36%).

Source: Aon Hewitt 2013 Trends & Experience in Defined Contribution Plans Survey.

5. Is the number of plans offering brokerage windows increasing, decreasing, or remaining relatively constant? If the number is changing, why?

The percentage of plan sponsors offering brokerage windows has been steadily increasing. In 2013, 40% of employers offered a brokerage window, compared to just 14% in 2003. Although Aon Hewitt's research does not indicate the reason plans sponsors are offering brokerage windows, we believe employers appreciate the ability to offer flexible, customized investment solutions to meet the diverse needs of their participants.

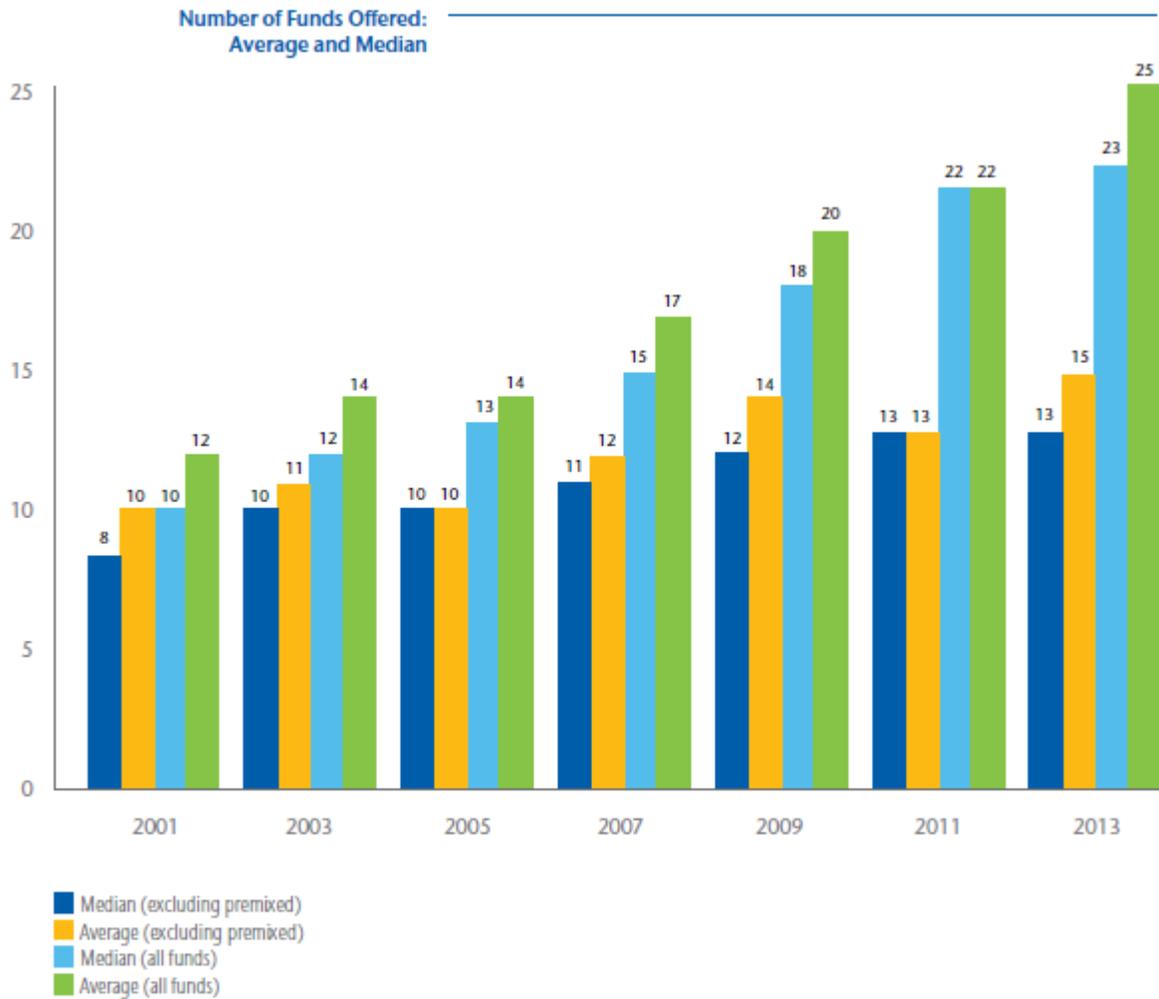
Plans Offering Self-Directed Brokerage Window



Source: Aon Hewitt 2013 Trends & Experience in Defined Contribution Plans Survey.

6. What is a typical number of “designated investment alternatives” offered by a 401(k) plan? Are plans increasing, decreasing, or holding constant the number of designated investment alternatives that they offer? If the number is changing, why?

On average, 401(k) plans offered 25 investment options in 2013, up from 22 in 2011, driven primarily by the increase in target-date portfolios. Excluding diversified premixed portfolios (target-date and target-risk funds), the number of options slightly increased over the past two years, increasing from 13 to 15 in 2013.



Source: Aon Hewitt 2013 Trends & Experience in Defined Contribution Plans Survey.

7. Is there any correlation between the trends observed in the preceding two questions, and if so, what is the correlation?

On average, plans with a brokerage window offer a fewer number of “designated investment alternatives” than plans without a brokerage window, though by only a small number. In 2013, plans with a brokerage window offered an average of 24 funds, compared to an average of 26 funds in plans without brokerage windows.



	Overall survey results	Plans that offer a Brokerage Window	Plans that do <u>not</u> offer a Brokerage Window
Average number of funds	25	24	26
Median number of funds	23	22	24
Average number (excluding premixed funds)	15	14	17
Median number of funds (excluding premixed funds)	13	13	14

Source: Aon Hewitt 2013 Trends & Experience in Defined Contribution Plans Survey.

Participation in Brokerage Windows.

9. How many participants, or what proportion of participants, typically use their plan's brokerage window? What proportion of a plan's total assets typically is invested through the brokerage window?

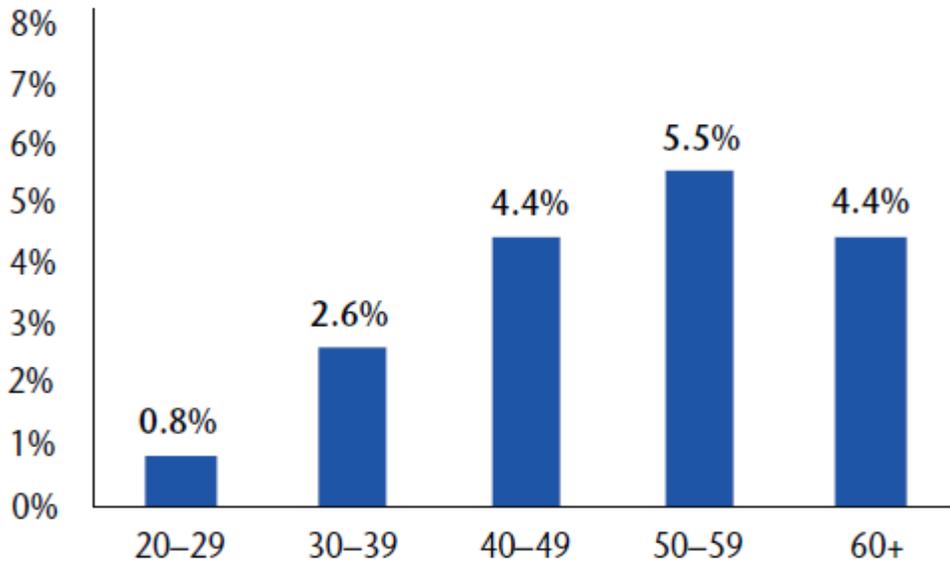
Brokerage windows are not widely used by participants. On average, 3.8% of participants use brokerage windows when available, and on average, 4.0% of plan assets are invested in the brokerage window.

Source: Aon Hewitt 2014 Universe Benchmarks: Measuring Employee Savings and Investing Behavior in Defined Contribution Plans.

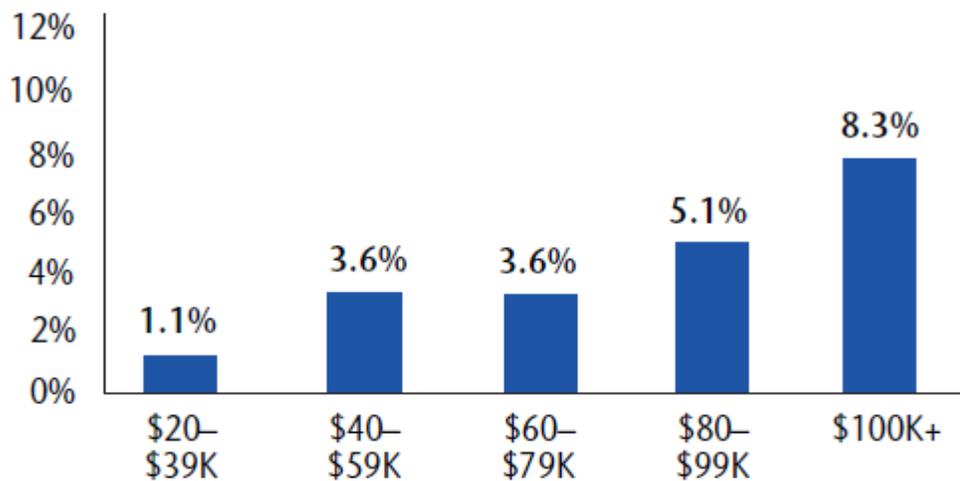
10. Do respondents have demographic data on these participants, either for a particular plan or more broadly?

Older, higher-salaried and higher-tenured participants are most likely to use brokerage windows. Participants making at least \$100,000 annually and those who have more than 20 years of tenure are the most common users of brokerage windows.

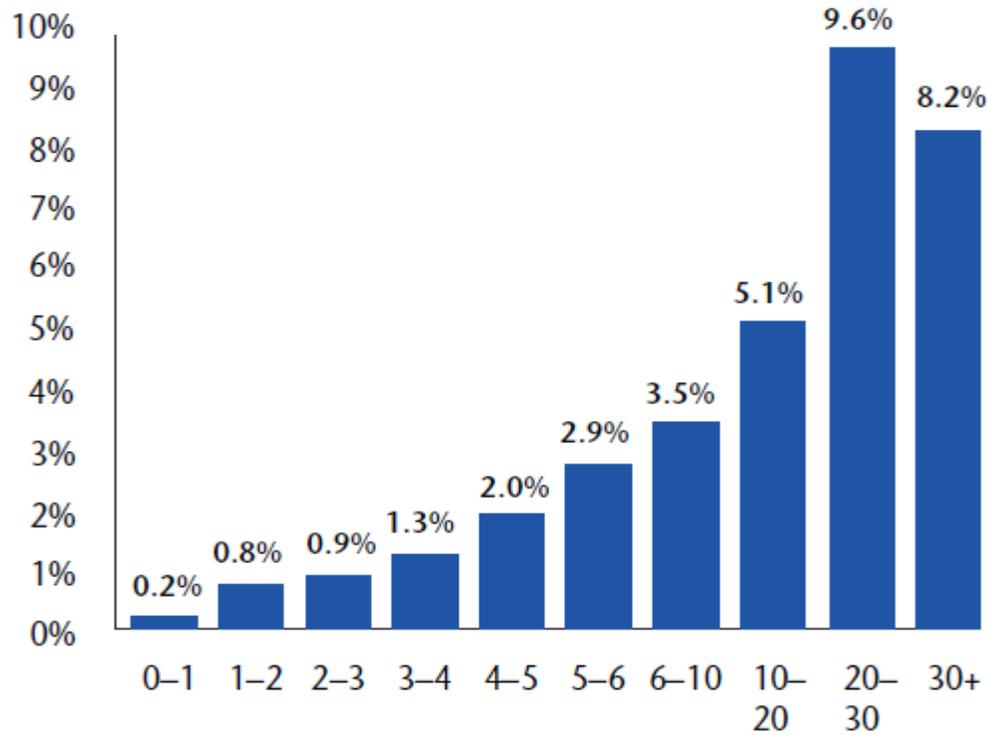
Percentage of Participants Using SDBA—By Age



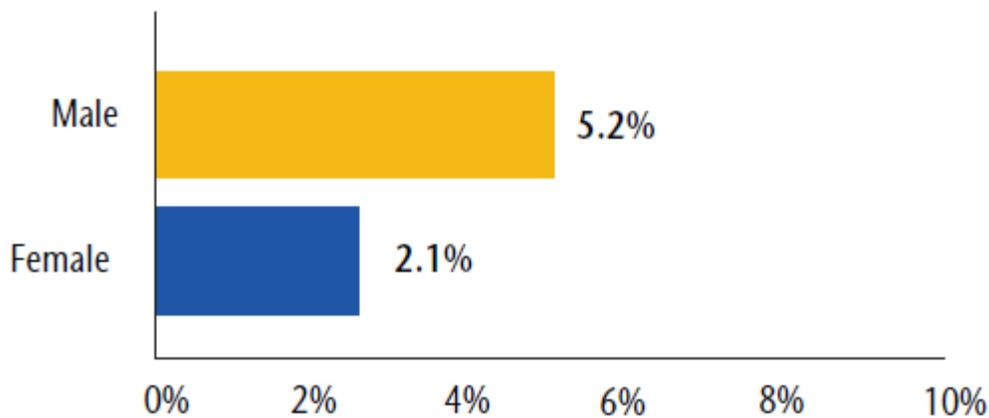
Percentage of Participants Using SDBA—By Salary



Percentage of Participants Using SDBA—By Tenure



Percentage of Participants Using SDBA—By Gender



Source: Aon Hewitt 2014 Universe Benchmarks: Measuring Employee Savings and Investing Behavior in Defined Contribution Plans.

11. Of the participants that use their plan's brokerage window, do these participants typically invest all of the assets in their plan account through the window, or some proportion of their assets?

Among participants using a brokerage window, on average, nearly half of their plan balance (47%) is invested in a brokerage window.

Source: Aon Hewitt 2014 Universe Benchmarks: Measuring Employee Savings and Investing Behavior in Defined Contribution Plans.

12. What types of restrictions, if any, are typically made on brokerage window participation (e.g., minimum account balances, minimum dollar amounts that may be transferred to a brokerage window, maximum percentage of account balance that may be invested through a brokerage window, etc.)?

About half of plans (51%) that offer a brokerage window have no restrictions on the maximum percentage of the balance that can be invested in the brokerage window. The other half of plans (49%) place varying restrictions on participants, with the most common restriction prohibiting participants from investing more than 50% of their balance in the brokerage window. Nearly one-fifth of plans sponsors (18%) with brokerage windows have this provision in place.

Source: Aon Hewitt 2013 Trends & Experience in Defined Contribution Plans Survey.

Selecting and Monitoring Brokerage Windows and Service Providers.

19. When a plan fiduciary selects a brokerage window feature for a plan, does the plan fiduciary typically enter into a contract for this service, on behalf of the plan? If so, who are the parties to the contract? If not, why not?

When a plan fiduciary selects a brokerage window feature for a plan, the plan fiduciary typically enters into a contract for the service on behalf of the plan. The parties to the contract include the plan, the vendor providing the brokerage window service, and may include, depending on the contractual terms or arrangement, the plan trustee.

20. Do plan participants themselves commonly contract with the vendor when they choose to participate in the brokerage window (either in lieu of, or in addition to, a contract with a plan official) and, if so, what role, if any, does a plan fiduciary play in this process?

The plan sponsor and/or plan fiduciary would be directly involved with the brokerage provider/vendor in the decision to offer a brokerage window in their plan and therefore to their participants. Discussions would include the rules, restrictions, availability, etc. and would be determined by the plan sponsor/fiduciary with assistance from the vendor and generally not directly involve participants.

After a plan has opened the self-directed brokerage option, participants would contact the brokerage provider/vendor directly to open and manage the account and the participant would be subject to the rules set up by both the brokerage provider (required to follow securities industry regulations) and the plan sponsor.



Fiduciary Access to Information about Brokerage Window Investments.

22. How do plan fiduciaries monitor investments made through their plan's brokerage window, if at all? For example, do plan fiduciaries have access to information about specific investments that are selected or asset class or allocation information?

In our experience, providers give periodic reports to plan sponsors including, assets (including a breakdown by asset class), trade activity and top 10 mutual fund and equity holdings (if applicable) in addition to any necessary reports for audit and 5500 reporting purposes. Ad hoc reports are usually available as well to provide further detail, such as a full holdings report including shares and market value and trade activity reports.

Plan fiduciaries are also able to control the investments made in the brokerage window through restrictions. These restrictions can be made on individual securities by CUSIP (most commonly company stock) as well as by category (i.e. bulletin board/pink sheets, leveraged ETFs, etc.) and by asset class as seen with mutual fund only brokerage windows.

Brokerage Window Costs.

25. What are the most common costs associated with participation in a brokerage window (e.g., account fees, brokerage commissions, etc.), and what dollar amounts are typically charged? Are there costs to including a brokerage window that usually are borne by the plan sponsor or by the plan, rather than by individual participants who use the brokerage window?

The most common costs associated with brokerage windows are annual maintenance fees and transaction fees. According to our database, annual maintenance fees generally vary from \$0 to \$150 per utilizing participant depending on the brokerage provider or recordkeeper, plan size, and other factors. Transaction fees generally range from \$20 to \$75 depending on the brokerage provider or recordkeeper and fund or equity holding. In most cases, all costs associated with brokerage windows are borne by the individual participant.

26. To what extent are brokerage windows effectively subsidized by plan participants other than those participating in the brokerage window?

Typically, brokerage window fees are paid by the investors who chose to open a brokerage account as opposed to plan participants not utilizing the brokerage window. As noted in question 25, investors with a brokerage account typically pay an annual maintenance fee and any fees associated with transaction or trade requests. These fees then cover the overall costs of including a brokerage window in the plan. In our experience, there is generally not an issue with cross subsidization of costs between brokerage account investors and other plan participants.

27. How do the costs of investing through a brokerage window typically compare to investing in a plan's designated investment alternatives? How do the costs compare to investing outside of the plan, e.g., in an IRA?

The investment costs of brokerage windows and plans' DIAs vary greatly and are not easily compared. Within larger plans, the actual investment management fees of a plan's DIAs are often significantly lower than the similar investments within a brokerage environment. For example, a plan's DIAs may be CITs or institutional share classes of an investment that will be lower cost or perhaps may not be even available in a brokerage window.

Unlike investing in a retail brokerage environment (e.g., IRA), however, participants investing in brokerage windows within an employer-sponsored plan maintain many of the benefits of investing through an employer plan, including the economy of scale provided by institutional investing, which may lower trading and other fees within the brokerage window.

Disclosure Concerning Brokerage Windows and Underlying Investments.

29. Is the information required to be disclosed about brokerage windows by the Department's participant-level disclosure regulation sufficient to protect plan participants? Is this required information more or less than plans disclosed prior to the effective date of the regulation? Does this information usually come from plan administrators or from a third party, such as plan service or investment providers? What additional information, if any, is or should be disclosed to participants?

Aon Hewitt believes the participant-level disclosure regulations are sufficient to protect plan participants—those regulations require information on how the brokerage window works and whom to contact with questions.

In our experience, approximately the same level of brokerage window information is disclosed to participants pre- and post-participant fee disclosure regulation. What is different is the frequency with which this information is delivered to participants. Before participant fee disclosure, significant information about brokerage windows was communicated to participants at the time the window was implemented. Information would then be available to participants on a "self-serve" basis through the recordkeeper or brokerage window provider website and in the summary plan description (SPD). Occasionally, a plan sponsor would highlight the brokerage window in a plan newsletter or similar communication as a way to build awareness or remind participants of the availability of the brokerage window option. Participant fee disclosure now requires information to be sent to participants and beneficiaries at least every 12 months, and this disclosure includes information about any brokerage window option available.

As the participant fee disclosure regulations require, plan sponsors are responsible for delivering the annual fee disclosure notice. Aon Hewitt sees variation from whom the plan sponsor requests help; legal counsel, investment managers, investment consultants, internal finance/treasury department, brokerage window providers, managed account providers, trustees and recordkeepers. Many of these parties collaborate to support the plan sponsor's effort to create and update the annual disclosure notice. The responsibility to distribute the annual disclosure notice typically lies with the recordkeeper or plan sponsor.



Presuming the plan's investment line-up contains both core designated investment alternatives and a brokerage window, Aon Hewitt feels the existing disclosure requirements provide participants with enough information to make participation and investment decisions and prepare for retirement.

The Role of Advisers.

35. Do plans generally make advisers or managed account providers available to participants for this purpose and, if so, do the advisers or managed account providers typically contract with the plan or with the participant?

In Aon Hewitt's solution, managed account providers do not utilize options within brokerage windows when making determinations surrounding asset allocation. This lack of utilization is primarily due to the complexities surrounding the ability to automatically invest/rebalance within a brokerage window, transaction fees, and retail share classes available within the brokerage window.

Fiduciary Duties.

In connection with the issuance of FAB 2012-02 and FAB 2012-02R, the Department became aware of the possibility that plan fiduciaries and service providers have questions regarding the nature and extent of ERISA's fiduciary of duties under section 404(a) of ERISA in connection with brokerage windows in plans intended to be "ERISA 404(c) plans."

37. Do these questions indicate a need for guidance, regulatory or otherwise, on brokerage windows under ERISA's fiduciary provisions? For instance, is there a need to clarify the extent of a fiduciary's duties of prudence, loyalty, and diversification under section 404(a) of ERISA, both with respect to brokerage window itself, as a plan feature, and with respect to the investments through the window? If guidance is needed, please try to identify the precise circumstances in need of guidance. If no guidance is needed, please explain why not.

Under current guidance, the general view of plan sponsors and the fiduciary community is that investments made by participants through the brokerage window are not subject to the fiduciary requirements set forth under Section 404(a) of ERISA. However, some uncertainty may exist within the plan sponsor and fiduciary community with respect to brokerage windows, due in part, to the position initially developed by the Department of Labor in FAB 2012-02 (subsequently modified in FAB 2012-02R).

Aon Hewitt suggests that any future guidance on brokerage windows issued by the Department of Labor should resolve any lingering uncertainty in the plan sponsor community by clarifying that investments made by participants through a brokerage window are not subject to the fiduciary requirements set forth under Section 404(a) of ERISA. Since plan sponsors and fiduciaries cannot hope to be familiar with all investment alternatives that may be available, we believe clarification should be provided stating that plan fiduciaries' responsibility for brokerage windows should be limited to the selection of the brokerage account provider and determination that such fees are reasonable. The clarification should further confirm that participants who invest in brokerage windows are acting on their own and that the employers and plan fiduciaries have no responsibility for reviewing the appropriateness of such underlying brokerage window investments and will have no fiduciary liability for investments made by participants in the self-directed brokerage window.



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Closing

If you have any questions or comments, please contact the undersigned at the telephone number or email address provided below.

Sincerely,

Aon Hewitt

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