

September 8, 2008

The Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Proposed Participant Disclosure Regulation
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Proposed Participant Disclosure Regulation

Ladies and Gentlemen:

On behalf of the Securities Industry and Financial Markets Association (“SIFMA”)¹, I write to provide comments regarding the Department of Labor’s (“Department”) proposed regulation under the Employee Retirement Income Security Act of 1974 (“ERISA”) that will define the appropriate content, manner and timing of disclosure to participants in a participant directed defined contribution plan.

SIFMA appreciates the opportunity to comment on the proposed regulations. We agree with the Department that enhanced disclosure will be helpful to plan participants and will put them in a better position to make important investment decisions. We also support the Department’s decision to amend section 404 in general, rather than section 404(c) in particular, so that this guidance covers all participant directed plans. Overall, we think the Department has focused correctly on the information participants need to assess investment alternatives and the proposal strikes the appropriate balance, in our view, in terms of detail. We believe that a comparative chart may well be helpful, but the proposed regulation should provide flexibility to address the challenges of putting together a chart of options that are not limited to mutual funds. We are concerned that compiling a chart where all investment alternatives are not mutual funds will be difficult and even misleading. We hope to work with the Department to take some real life examples of investment choices that span the available investment options to determine if the chart proposed by the Department can be created by plans and actually provide participants with needed information in a user friendly manner.

¹ SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

We are also pleased that the Department has focused on administrative costs and how they affect investment return. Participants should know what costs are allocated to their accounts and what services are provided for those costs. However, the burden of allocating these costs will fall on plan sponsors and participants; we urge the Department to review carefully any objections to these proposed requirements and tailor them appropriately. As the Department noted in the preamble for the proposed regulation, there are a number of differences in investment alternatives that must be reconciled in the final regulation. SIFMA's comments suggest a few potential improvements that we hope the Department will consider before finalizing the regulation.

First, SIFMA recommends that the Department address the disclosure of additional charges recordkeepers may attach to investment vehicles so that each investment alternative under the plan pays the same amount for recordkeeping. For arrangements such as collective trusts, pooled funds and separate accounts, the investment management and other associated fees are often "loaded" by a recordkeeper to put these types of arrangements on a par with mutual funds which pay sub transfer agency or other fees to a recordkeeper. We urge the Department to make explicit the recordkeeping fees that affect the return of these vehicles. Thus, in section (c)(2)(i) of the proposed exemption, we urge the Department to require a plan sponsor to disclose the added administrative expenses by investment choice and to allow the participants to compare the amounts paid the recordkeeper directly by the mutual fund or its advisor or distributor and the amounts the recordkeeper charges the return of the vehicles other than mutual funds. Of course, where a mutual fund does not pay the recordkeeper, or where additional charges are levied, or where a separate account or collective fund does pay the recordkeeper some or all of the charge, those additional facts should be disclosed as well. The disclosure should make clear that it is because of plan imposed requirements and arrangements that the additional fees are charged, and not because of the investment provider. We also urge the Department to clarify that the disclosures, while the obligation of the plan sponsor, may be provided by recordkeeper, third party administrator or plan sponsor.

SIFMA also recommends that the disclosure should advise participants that the performance of the investment vehicle may differ from plan to plan because of plan imposed charges. Otherwise, two participants in different plans with different recordkeepers might be confused by a difference in performance.

The second area where SIFMA recommends modifications relates to the need for additional flexibility for the disclosure of required information where the investment option is not governed by the Investment Company Act of 1940. The disclosure requirements in the proposed regulation are reasonable and appropriate and well tailored to the average participant for most mutual fund products; our concern is that the focus on form of disclosure contemplates mutual funds, rather than other types of pooled vehicles, such as collective trusts, or for the very largest plans, separate account arrangements. See in particular the definitions at section (h)(2) and (3), which rely exclusively on the return and expense formulation under the securities laws, even though other regulators and self-regulatory organizations ("SROs") accept other types of formats and descriptive methods. In addition, Section (d)(1)(iv)(B) requires that each investment alternative provide an operating expense

ratio determined in accordance with a rule developed by the SEC for specific purposes which do not include nontaxable retirement plan disclosure. SIFMA strongly encourages the Department to include an affirmative statement in the final regulation that permits the use of other definitions recognized by other regulators.

In section (d)(1)(i)(B), the proposed regulation requires that the plan sponsor provide a website that describes the investment options designated by the plan. If the proposal intends the website to be that of the plan (either independently, through a recordkeeper or through a custodian), we believe that most plan sponsors can accommodate this rule with enough lead time. On the other hand, many types of investment alternatives like separate accounts and collective trusts and pooled funds other than mutual funds, do not maintain such websites and should not be required to create such websites solely for this regulation.

SIFMA also urges the Department to clarify that paragraph (as well as section (d)(4)(iv)) which suggests that the website be sufficiently detailed to reveal the actual securities held by the investment alternative and in what proportion. Section (d)(4)(iv) is even more burdensome because it appears to suggest that a participant could request this information at any point in time, and in fact, every day. We believe the relative burden to investment alternative providers far outweighs any benefit an individual participant might obtain from this information, in this detail, with this frequency. We believe that such information is proprietary and unnecessary for a participant to know on a real time basis; the investment guidelines, and the investments permitted by those guidelines, should be more than adequate for participant disclosure.

Finally, the Department should delay the proposed effective date. It is already September; final regulations will not be published until late October at the earliest. Two months is simply not enough time to draft and disseminate these disclosures, particularly in the case of investment options that are not mutual funds. We urge the Department to make the rules effective commencing on January 1, 2010 to ensure adequate time for developing material. It would also simplify disclosures and communicating changes to the plan sponsors and plan participants by making the effective date start at the first of the calendar year.

Again, we thank the Department for the opportunity to comment on the proposed regulation. Please feel free to contact me with any questions you may have.

Sincerely,

Elizabeth Varley