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**Re: DOL Issues Proposed Regulations on Participant Fee Disclosures**

Dear Clients and Other Friends:

On July 23, the Department of Labor ("DOL") published important new proposed regulations on participant investment and fee disclosures. Web links to the proposed regulations, the DOL's Fact Sheet about them and the DOL's model chart to disclose plan investment and fee information are included below. Needless to say participant fee disclosures have been under the spotlight recently as 401(k) lawsuits have alleged fiduciary breaches relating to plan sponsor disclosure of participant fees and Congress is considering bills that would expand participant fee disclosure standards. The DOL's ERISA Advisory Council and the Government Accountability Office ("GAO") have separately reviewed the adequacy of participant fee disclosures in recent years; each concluding that a better standard for disclosure was needed.

The proposed regulations apply to all participant-directed 401(k) and other defined contribution plans regardless of whether they are so-called "404(c)" plans. Plan sponsors that voluntarily seek to comply with ERISA § 404(c) requirements to obtain available fiduciary protections already must disclose investment and fee information to participants. However, the DOL noted that many participant-directed plans are not "404(c)" plans, yet these participants still need adequate information to make informed investment allocations. The DOL also acknowledged that information may overwhelm participants if it is too detailed. Therefore, the DOL issued these regulations under ERISA § 404(a) and made conforming amendments to the § 404(c) regulations. The 404(c) changes include deletion of the initial prospectus delivery rule from the 404(c) regulations, though prospectuses would still be required to be provided upon request.

The proposed regulations set forth the general principle that, where participants direct the investment of their accounts, plan fiduciaries must ensure that on a regular basis participants are provided sufficient information about the plan and investment alternatives under the plan, including applicable fees and expenses. The proposed regulations prescribe the information that must be provided to participants as well as timeframes for providing that information. It should be noted that nothing in the proposed regulations would relieve a plan fiduciary of its responsibilities to prudently select and monitor service providers to the plan and investments made available under the plan.

While working on this new proposal for participant fee disclosures, the DOL has been busy issuing proposed regulations for service provider fee disclosures to plan sponsors under ERISA § 408(b)(2) (issued in December 2007) and final Form 5500 regulations (issued in November 2007) that address service provider fee reporting on Schedule C to the 2009 Form 5500 (followed by this month's issuance of FAQs about the Schedule C reporting requirements – see our July 23, 2008 client letter for more information about this topic). Altogether the DOL intends that employee benefit plan fee practices be fully disclosed, taking into account the needs of the disclosure recipient. Therefore, the DOL seeks to require plan service providers to provide disclosures to plan sponsors that specify how the service provider is compensated, including how fees are shared through “revenue sharing” practices, while plan sponsors are required to provide more general disclosures to plan participants. This approach makes sense as plan sponsors need information about service provider fee practices to assess the reasonableness of fees in selecting and monitoring plan service providers and investment vehicles, while plan participants need to know the total fees that apply against their accounts as one factor to consider in allocating their investments.

The proposed regulations require that “investment-related” information, including fees and expenses, must be disclosed in a chart or similar format that will help participants easily compare plan investment options. Investment-related disclosures must be provided to participants on a regular and periodic basis, generally when a participant becomes eligible to participate in the plan, annually thereafter. The DOL helpfully included a model chart with the proposed regulations (*see* Web link below and printed version included with this letter) that can be used to provide comparative information about investment alternatives and fees. The model chart is a template form designed to include required disclosure elements. For example, the model chart includes areas for comparative index data as well as a column where the investment approach of each investment alternative is identified as “active” or “passive.” Plan sponsors may customize disclosures that satisfy the disclosure requirements. The DOL has proposed that these regulations become effective for disclosures beginning in 2009. While there is a chance the effective date may be pushed back after the DOL receives comments, which are due by September 8, the model chart could be used as a “best practice” approach to make participant investment-related disclosures for now.

In addition to the investment-related disclosure, participants must receive disclosures of “plan-related” information. This information falls into three categories – (1) general plan information such as how participants make investment allocations and any applicable restrictions; (2) administrative expense information; and (3) individual expense information. The first two items must be provided to participants on or before plan participation and annually thereafter. A plan's SPD (or SMM) could include this information but to satisfy this disclosure requirement it needs to be provided at the required frequency. On a quarterly basis, individual expense information must be provided to identify dollar amounts actually charged during the preceding quarter to each participant's account for administrative services, including general descriptions of the services to which the charges relate. However, such charges do not need to be broken out and listed on a service-by-service basis. Individual expense information can be provided on quarterly benefit plan statements provided to participants.

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For investment-related information, the model chart included in the proposed regulations is a helpful template. For plan-related information, plan sponsors and service providers should familiarize themselves with the information and timing requirements of the proposed regulations in anticipation of final regulations, which may become effective for plan years beginning as early as January 1, 2009.

Please contact us if you would like more information about these important new proposed regulations on participant disclosures.

Sincerely,

Ted Rice

TKR/jks

Web links

DOL Fact Sheet on the Proposed Participant Fee Disclosure Regulations:

<http://www.dol.gov/ebsa/newsroom/fsfeedisclosures.html>

DOL Link to MS Word version of Model Participant Fee Disclosure from Proposed Regulations:

<http://www.dol.gov/ebsa/modelcomparativechart.doc>

DOL Proposed Participant Fee Disclosure Regulations:

<http://www.dol.gov/federalregister/HtmlDisplay.aspx?DocId=20973&AgencyId=8&DocumentType=1>

**Appendix to Prop. Reg. §2550.404a-5 – DOL Model Comparative Chart (7.23.08)**

**ABC Corporation 401k Savings Plan**  
Investment Options – January 1, 200X

Whether you will have adequate savings at retirement will depend in large part on how much you choose to save and how you invest your savings. The following information will assist you in comparing the designated investment options available to you under the **ABC Corporation 401k Savings Plan**.

While the information furnished below is important to making informed investment decisions, you should carefully review all available information about an investment option prior to directing your retirement savings into an investment option. Internet Web site addresses are provided to help you access additional information (such as investment strategies and risks, portfolio holdings and turnover) about each of the plan's investment options. You may also contact your plan representative, [insert name of fiduciary or designee] at [insert telephone number and address] for additional information or visit the Department of Labor's Web site for general information on investing for retirement. See [www.dol.gov/ebsa/investing.html](http://www.dol.gov/ebsa/investing.html)

**Part I. Performance Information**

This chart shows each option's performance over several time periods and compares the performance with a recognized benchmark. For options with returns that vary over time, past performance does not guarantee how your investment in the option will perform in the future; your investment in these options could lose money.

Name/Type of Option	Mgmt.	Fixed Return/ Term	Average Annual Total Return as of 12/31/0X			Benchmark/Index As of 12/31/0X		
			1yr.	5yr.	10 yr.	1yr.	5yr.	10yr.
<b>Stock Funds</b>								
<b>A Fund/S&amp;P 500 Index</b> www.website.com	Passive	NA	15.6%	6.1%	8.3%	15.8%	6.2%	8.4%
						S&P 500		
<b>B Fund/Large Cap</b> www.website.com	Active	NA	8.9%	.22%	NA	-8.9%	5.9%	12.2%
						Russell 1000		
<b>C Fund/Int'l Stock</b> www.website.com	Active	NA	4.3%	5.2%	11.2%	26.9%	15.4%	8.1%
						MSCI EAFE		
<b>D Fund/Mid Cap ETF</b> www.website.com	Passive	NA	15%	12.7%	1.4%	15%	13%	12%
						Russell Midcap		
<b>Bond Funds</b>								
<b>E Fund/Bond Index</b> www.website.com	Passive	NA	4.3%	5.2%	6.2%	4.3%	5.1%	6.2%
						LBA US Aggr. Bd.		
<b>Other</b>								
<b>F Fund/GICs</b> www.website.com	Active	NA	4.7%	4.4%	5%	5%	3%	3.8%
						US 91 Day T Bill		
<b>G Fund/Stable Value</b> www.website.com	Active	NA	4.3%	4.0%	4.9%	4.7%	3.4%	4.3%
						Treasury CM		
<b>H 200X GIC</b> www.website.com	NA	4% 2 yr.	NA	NA	NA	NA		

## Part II. Fees and Expense Information

This chart shows only investment-related fees and expenses for investment options offered in your plan. Fees and expenses are only one of many factors to consider when you decide to invest in an option. You may also want to think about whether an investment in a particular option, along with your other investments, will help you achieve your financial goals.

<b>Name/Type of Option</b>	<b>Total Annual Operating Expenses*</b>	<b>Shareholder/Shareholder-Type Fees**</b>
<b>Stock Funds</b>		
<b>A Fund/ S&amp;P 500 Index</b>	0.18%	\$20 annual service fee assessed for accounts holding less than \$10,000. May be waived in certain circumstances.
<b>B Fund /Large Cap</b>	2.45%	4.25% deferred sales charge against amounts redeemed within 12 months of purchase.
<b>C Fund/ International Stock</b>	0.79%	5.75% sales charge against amounts invested.
<b>D Fund/Mid Cap ETF</b>	0.20%	4.25% sales charge against amounts invested or redeemed.
<b>Bond Funds</b>		
<b>E Fund/Bond Index</b>	0.50%	N/A
<b>Other</b>		
<b>F Fund/GICs</b>	0.46%	10% charge against amounts withdrawn within 18 months. of initial investment.
<b>G Fund/Stable Value</b>	0.65%	Dollars withdrawn may not be transferred to a competing fund for 90 days after withdrawal.
<b>H 200X GIC</b>	NA	12% charge against amounts withdrawn before maturity.

For an explanation of non investment-related fees and expenses, such as record keeping or loan processing fees that may be charged against your account, you may consult your [SPD], [insert name of annual disclosure used to satisfy § 2550.404a-5(c)], [and] [quarterly benefit statement]. The dollar amount actually charged to your account during the preceding quarter for such administrative or individual expenses will be reported to you on a quarterly basis.

**Note: More current information about your plan's investment options, including fees and expenses and performance updates, may be available at the listed Internet Web site addresses.**

\*Total Annual Operating Expenses are ongoing expenses paid indirectly from your investment in this option each year, expressed as a percentage of the value of your investment in the option (e.g., expense ratio).

\*\*Shareholder/Shareholder-type Fees are fees paid directly from your investment in this option (e.g., sales loads, sales charges, deferred sales charges, redemption fees, exchange fees, account fees, purchase fees, transfer or withdrawal fees, surrender charges, contract maintenance fees, and mortality and expense charges).