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Re: DOL Issues LM-10 and LM-30 Filing Advisory

Dear Clients and Other Friends:

In an important announcement affecting service providers of Taft-Hartley/union benefit plans, the Department of Labor ("DOL") issued a filing advisory for Form LM-10 and Form LM-30 effectively extending the deadline to file these forms to May 15, 2006. Without this filing advisory issued March 7, 2006, these forms were due by March 31, 2006 for fiscal years ending December 31, 2005.

The filing advisory is posted on the DOL's Web site at http://www.dol.gov/esa/regs/compliance/olms/filing_advisory_03_06.htm.

The DOL has also provided answers to Frequently Asked Questions about the LM-10 at http://www.dol.gov/esa/regs/compliance/olms/LM10_FAQ.htm.

Background – LM-10 Reporting Controversy

Form LM-10 is filed annually by "employers" to disclose certain financial dealings, subject to a \$250 annual de minimis exemption, with a union or officer, agent, shop steward, employee or other representative of a union (collectively referred to as "union officials"). The term "employer" is defined very broadly under the Labor-Management Reporting and Disclosure Act.

In June 2005, the DOL took the unusual step of announcing for the first time by guidance posted on the DOL's Office of Labor-Management Standards' Web site that service providers to "trusts in which a labor organization is interested," including financial advisors, accountants and attorneys, would "most likely" be subject to the Form LM-10 reporting requirements. See Trusts and Form LM-30 and Form LM-10 (available at http://www.dol.gov/esa/regs/compliance/olms/LM30_LM10_Trusts_Info.htm).

This unusual approach caused alarm among financial service providers as they scrambled to comply with this "new" reporting requirement. Among the affected activities were receptions at education conferences, dinners following trustee meetings, Holiday parties, and similar events, sponsored by service providers to Taft-Hartley/union plan trustees who also serve as union officials. Such events were to be covered unless they qualified for the de minimis exception. (See Q&As 50 to 55 in the DOL's Form LM-10 Frequently Asked Questions for more information on the de minimis rule (see Web link above)).

March 9, 2006

Page 2

Expression of Industry Concern

On January 24, 2006, the American Bankers Association, American Council of Life Insurers, Investment Advisor Association, Investment Company Institute, National Association of Real Estate Investment Managers, Securities Industry Association, The Financial Services Roundtable and The Real Estate Roundtable wrote to DOL Secretary Elaine Chao seeking to have any requirements to file the LM-10 be applied prospectively only. In its letter, these organizations pleaded with the DOL: "It is a matter of fundamental fairness that the DOL, at a minimum, publish its interpretation for notice and comment so that affected parties can then explain to the DOL the difficulties and burdens of complying with this new guidance." The DOL asserts in its Frequently Asked Questions that it is not required to seek such notice and comment for Form LM-10 filing requirements as it asserts such requirements are statutorily required.

The DOL previously issued a Form LM-10 filing advisory (see http://www.dol.gov/esa/regs/compliance/olms/lm10_advisory.htm) allowing "first time" filers of Form LM-10 relief from filing and record maintenance for fiscal years beginning prior to January 1, 2005. This relief is provided if these first time filers submit the 2005 form by the deadline (now May 15, 2006 for 2005 calendar year employers). This guidance also allowed a good faith search for records and attestation to that effect for 2005 fiscal year filings (see Q&A # 66 of the DOL's Form LM-10 Frequently Asked Questions (see Web link above)).

Welcome – but Minimal – Relief for Service Providers

In the LM-10 filing advisory published on the DOL's Web site Tuesday, the DOL has delayed the deadline for first time filers of Form LM-10 to May 15, 2006. The DOL has also provided detailed questions and answers that express its views of the LM-10 filing requirement.

While this extension is welcome relief to financial service providers, most will no doubt wish that the DOL had provided even greater relief.

Please let us know if you have any questions about the matters discussed above.

Sincerely,

s/Ted Rice

Ted Rice

TKR/jks