ERISA Standards 9.00

Introduction

The *Employee Retirement Income Security Act of 1974 (ERISA)* regulates employee pension and welfare benefit plans in the private sector. ERISA, enacted on September 4, 1974, is a comprehensive codification of Federal law pertaining to employee pension and welfare benefit plans in the private sector. *Title I of the Act*, as administered by the Department of Labor (DOL), deals with reporting and disclosure, participation and vesting, fiduciary standards, and provisions for criminal and civil enforcement of these requirements.

9.01 General Guidelines

The designated supervisor shall be responsible for ensuring that the Firm complies with all laws, rules and regulations governing its activities under ERISA. The information and procedures contained in this section represent general guidelines to be followed by the designated supervisor, and are not designed to be all inclusive of ERISA requirements or restrictions.

State Registered Advisers

On November 10, 1997 an amendment to Title 1 of ERISA allows state-registered advisers to be investment managers to ERISA plans if:

- the adviser is registered in the state in which it maintains its principal place of business; and
- the registration form filed with the state is also filed with the Department of Labor or a registration depository within a one-year period beginning 11/10/97.

9.02 Definition of ERISA Plan

Employee Welfare Benefit Plan/ Welfare Plan

The terms *"employee welfare benefit plan"* and *"welfare plan"* mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in Section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

Employee Pension Benefit Plan/Pension Plan

With the exception of certain severance pay arrangements or supplemental retirement income payments, the terms *"employee pension benefit plan"* and *"pension plan"* mean any plan, fund, or program which was established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program provides the following:

- retirement income to employees, or

- results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan

9.03 Fiduciary Obligations under ERISA

Definition of a Fiduciary

A person shall be deemed to be rendering *"investment advice"* to an employee benefit plan within the meaning of *Section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974* if:

- Such person renders advice to the plan as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; and
- Such person either directly or indirectly (e.g., through or together with any affiliate):
  - has discretionary authority or control, whether or not pursuant to agreement, arrangement or understanding, with respect to purchasing or selling securities or other property for the plan; or
  - renders any advice on a regular basis insurance company, insurance service or insurance to the plan pursuant to a mutual agreement, organization licensed to do business in a State, arrangement or understanding, written or otherwise, between such person and the plan or a fiduciary with respect to the plan, that such services will serve as a primary basis for investment decisions with respect to plan assets, and that such person will render individualized investment advice to the plan based on the particular needs of the plan regarding such matters as, among other things, investment policies or strategy, overall portfolio composition, or diversification of plan investments.

A person who is a fiduciary with respect to a plan by reason of rendering investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or having any authority or responsibility to do so, shall not be deemed to be a fiduciary regarding any assets of the plan with respect to which such person does not have any discretionary authority, discretionary control or discretionary responsibility, does not exercise any authority or control, does not render investment advice for a fee or other compensation, and does not have any authority or responsibility to render such investment advice, provided that nothing in this paragraph shall be deemed to:

- Exempt such person from the provisions of *Section 405(a) of the Act* concerning liability for fiduciary breaches by other fiduciaries with respect to any assets of the plan; or
- Exclude such person from the definition of the term "party in interest" (as set forth in *Section 3(14)(B) of the Act*) with respect to any assets of the plan.

Fiduciary Obligations

A fiduciary under ERISA must:

- act solely in the interest of the participants and their beneficiaries;
- defray the expenses of administration of the plan;

- act with the care, skill, prudence and diligence that a prudent man would use in the same situation;
- diversify plan investments to reduce the risk of large losses unless it is clearly prudent not to do so; and,
- act according to the terms of the plan documents, to the extent the documents are consistent with ERISA.

9.04 Prudent Man Standard

Where the Firm acts as an adviser to an ERISA plan, it must adhere to the "Prudent Man Standard" which generally requires that an adviser act solely in the interest of the plan using the skill, care, prudence and diligence of a prudent man. The Prudent Man Standard considers the total performance of the entire portfolio rather than the actual performance of any particular investment.

In accordance with ERISA 404(a), a plan fiduciary (usually the trustee) can be liable for a plan's poor investment performance if the fiduciary does not invest the plan's assets in a "prudent manner" and does not adequately diversify the investments, unless it was clearly prudent not to do so. That basic fiduciary requirement applies even if the participant directs the investment choices in his or her account. Only compliance with ERISA 404(c) can offer relief to the plan fiduciary for liabilities arising from the poor investment decisions made by the participant in a participant directed plan.

9.05 ERISA Clients

The Federal Employee Retirement Income and Security Act (ERISA) contain a number of provisions affecting advisers engaged in managing or other advisory activities with respect to ERISA accounts. The following paragraphs address major compliance issues deriving from the ERISA statute and rules; other issues are best addressed by consulting knowledgeable professionals.

"Plan Fiduciary"

The Firm becomes a "plan fiduciary" subject to ERISA rules where it exercises any discretionary authority or control with respect to managing plan assets OR renders investment advice for a fee or other compensation, direct or indirect, with respect to any plan assets or has any authority to do so. "Plan assets" include assets held in separate employee accounts under "404(c)" plans (see below). "Plan fiduciary" status is significant because of the liabilities attached. There may be more than one "plan fiduciary" of an ERISA plan. Every "plan fiduciary" is personally jointly and severally liable for any violation of the ERISA statute and rules by every other "plan fiduciary." Also, "plan fiduciaries" are subject to an elaborate set of "prohibited transaction" rules barring certain types of transactions between the "plan fiduciary" and the plan. While many managers cannot avoid "plan fiduciary" status because of the discretion they have over plan assets, many advisers who are non-discretionary service providers to plans make an effort to avoid "plan fiduciary" status because of the liability consequences that attach to this status and the application to them of the "prohibited transaction" rules.

"Safe Harbors" and the "Fiduciary Adviser"

Since inception, the Act has had a "safe harbor" for plan sponsors in Section 404(c). This Section frees sponsors from liability for managing plan assets if the sponsor announces the 404(c) status to participants and gives them at least three (3) investment options with materially different risk/return profiles. Registered broker-dealers and mutual fund companies have long been able to provide plans with these options. Until 2006, registered investment advisers had not been able to provide investment management and other advisory services under the 404 (c) "safe harbor." In hearings leading up to passage of the 2006 Act, Congress perceived that while the Act enabled 404(c) plan participants to manage their own

accounts, the existing 404(c) "safe harbor" left most plan participants without access to adequate advice about their investments.

Proposed Department of Labor (DOL) regulations under Section 404(c) of the 2006 Act were adopted January 16, 2009. An effective date of March 23, 2009 for these regulations was extended by the Obama Administration to November 18, 2009. On November 20, 2009 the proposed regulations were withdrawn but on February 26, 2010, later re-issued in almost identical form. While they are currently in a "proposed" state, the regulations are likely to be adopted soon without major changes.

The proposed regulations now allow the sponsor to offer participants a "qualified default investment alternative," whether or not Section 404(c) is elected. The "qualified default investment alternative" is defined as a combination of:

(i) Age-based life cycle or targeted retirement date funds or accounts;
(ii) Risk-based balanced funds; or
(iii) An investment management service.

The new regulations under Sections 408(b)-14 and 408(g) providing an entirely new "safe harbor" for sponsors who want specific investment advice to be provided to plan participants Rule 408 (g)-1 closely follows the statute in that it provides a method whereby the plan sponsor may engage a "fiduciary adviser" to provide an "eligible investment advice arrangement" to plan participants, without violating the "prohibited transaction" rules. The sponsor must exercise a fiduciary level of prudence in picking and monitoring the "fiduciary adviser" and the "eligible investment advice arrangement." Once this is done, the sponsor can then invoke the "safe harbor" and avoid liability for management decisions made with respect to plan assets.

"Fiduciary Adviser" A "fiduciary adviser" is a person who is a fiduciary of the plan by reason of the provision of investment advice to a participant or beneficiary. This is different from an "investment fiduciary" who provides advice only to the plan sponsors or investment committee. A "fiduciary adviser" must be either (a) a registered investment adviser; (b) a bank, a similar financial institution supervised by the United States or a state, or a savings association (as defined under the Federal Deposit Insurance Act), but only if the advice is provided through a trust department that is subject to periodic examination and review by federal or state banking authorities; (c) an insurance company qualified to do business under state law; (d) an entity registered as a broker or dealer under the Securities Exchange Act of 1934; (e) an affiliate of any of the preceding; or (f) an employee, agent or registered representative of any of the preceding who satisfies the requirements of applicable insurance, banking and securities laws relating to the provision of advice.

Eligible Investment Advice Arrangement. An "eligible investment advice arrangement" is an arrangement (1) which either (a) provides for "fee leveling," whereby any fees (including any commission or compensation) received by the fiduciary adviser for investment advice or with respect to an investment transaction with respect to plan assets do not vary depending on the basis of any investment option selected, or (b) uses a computer model under an investment advice program for participants or beneficiaries as described below. In addition (2) the arrangement must be expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate; (3) an annual audit of the arrangement must be conducted by an independent auditor hired by the plan fiduciary (with deficiencies reported to the DOL); (4) the plan fiduciary must provide a detailed written disclosure statement to participants and beneficiaries containing the items required by the Rule and (5) all records must be maintained by the fiduciary adviser for six (6) years after the provision of the investment advice.

Fee Leveling. The "fee leveling" arrangement requires that any investment advice be based on generally accepted investment theories that, at a minimum take into account the historic returns of different asset classes over defined periods of time, as well as other optional factors selected by the fiduciary adviser.

Any fees or other compensation (including salary, bonuses, awards, promotions, commissions or other things of value) received directly or indirectly by the adviser or any employee, agent or registered representative that provides investment advice on behalf of the fiduciary adviser must not vary based on the basis of any investment option selected by a participant or beneficiary. This requirement is designed to guard against a firm's creation of incentives for individuals to recommend certain investment products based on other than fiduciary concerns. The Rule states that when an individual acts as an employee, agent or registered representative on behalf of an entity engaged to provide investment advice to a plan, that individual as well as the entity must be treated as the "fiduciary adviser" for purposes of the Rule.

Computer Models. If an eligible investment advice arrangement provides investment advice pursuant to a computer model, the model must (1) apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time; (2) use relevant information about the participant or beneficiary; (3) use prescribed objective criteria to provide asset allocation portfolios comprised of investment options under the plan; (4) operate in a manner that is not biased in favor of any investment options offered by the fiduciary adviser or related person; and (5) take into account all the designated investment options under the plan in specifying how a participant's or beneficiary's account should be invested without inappropriate weighting of any investment option. (The term "designated investment option" does not include "brokerage windows," self-directed brokerage accounts or similar plan arrangements). An "eligible investment expert" must certify, before the model is used and in accordance with rules prescribed by the Secretary, that the model meets these requirements. The certification must be renewed if there are material changes to the model as determined under regulations. For this purpose, an "eligible investment expert" is a person who has the appropriate technical training or experience and proficiency to analyze, determine and certify whether the computer model meets the Rule's requirements and who does not bear any material affiliation or contractual relationship with the fiduciary adviser, or affiliate or contractually related person. The proposed rule requires that the any computer model be designed to avoid investment recommendations that inappropriately distinguish among investment options within a single asset class on the basis of a factor that cannot be expected to persist in the future.

Disclosures. Before the initial provision of investment advice under an "eligible investment advice arrangement," the "fiduciary adviser" must provide to the participants written notice (which may be in electronic form) as to: (1) the role of any related party in the development of the investment advice program or the selection of investment options under the plan; (2) past performance and rates of return for each investment option offered under the plan; (3) any fees or other compensation to be received by the fiduciary adviser or affiliate; (4) any material affiliation or contractual relationship of the fiduciary adviser or affiliates in the security or other property involved in the investment transaction; (5) the manner and under what circumstances any participant or beneficiary information will be used or disclosed; (6) the types of services provided by the fiduciary adviser in connection with the provision of investment advice; (7) the limitations of any computer model using employer securities; (8) the adviser's status as a fiduciary of the plan in connection with the provision of the advice; (9) the ability of the recipient of the advice to separately arrange for the provision of advice by another adviser that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property; and (10) miscellaneous other disclosures. A model form of Disclosure is provided with the proposed Rule but is not mandatory. The form may be found at www.dol.gov/ebsa/pdf/frinvestmentadvice.pdf. This information must be maintained in accurate form and must be provided to the recipient of the investment advice, without charge, on an annual basis, on request, or in the case of any material change.

Record Maintenance. The fiduciary adviser must maintain for at least six (6) years any records necessary for determining whether the requirements for the prohibited transaction exemption were met.

Additional Requirements. In order for the exemption to apply, the following additional requirements must be satisfied: (1) the fiduciary adviser must provide disclosures applicable under securities laws; (2) an investment transaction must occur solely at the direction of the recipient of the advice; (3) compensation received by the fiduciary adviser or affiliates in connection with an investment transaction must be

reasonable; and (4) the fees and other terms of the investment transaction must be at least as favorable to the plan as an arm's-length transaction would be.

Fees

Fees charged to a plan by an adviser who is a “plan fiduciary” must be “reasonable” in conformity with DOL regulations.

Prohibited Transactions

In order to prevent potential conflicts of interest, ERISA prohibits a “plan fiduciary” from causing a plan to engage in transactions with any “party in interest” with respect to the plan. Where the Firm is a “plan fiduciary” with respect to any client or account, the Firm and its employees must make sure that the plan avoids all such transactions.

- A “party in interest” is all “plan fiduciaries,” including all investment advisers to, and managers of, “plan assets” and all trustees, counsel, custodians or employees of the plan, any service advisers (including brokers), any employer or employee organization that has employees or members who are covered by the plan and any 50% or more owner of the employer, any entity owned 50% or more by any of the above and officers, directors and over 10% shareholders of any of the above.
- The standard is applied as follows: a “plan fiduciary” should avoid any transaction with a “party in interest” which it knows or should know directly or indirectly involves prohibited conduct. The rules apply whether or not the “party in interest” is acting as a principal or agent or not. A prohibited transaction cannot be justified on the grounds that it was “fair” or that it in fact benefited the plan.

Specific Types of Prohibited Transactions

The following transactions between a “party in interest” and a plan are specifically prohibited:

- Sale, exchange or lease of any property (e.g., leasing computer or office equipment to the plan, charging for publications, etc.).
- Lending money or extension of credit (e.g., margin credit from an affiliated broker-dealer).
- Furnishing of goods, services or facilities (e.g., sale of research services to plan OR providing financial planning or counseling services to Plan participants *while* at the same time managing Plan assets or offering optional management services or products to Plan participants (mutual funds or managed accounts).
- Transfer or beneficial use of Plan assets (e.g., borrowing plan assets to lend to short sellers).
- Ownership of plan employer securities or real property. (NOTE: that plan cannot do this either (with certain exceptions).

General Prohibitions on Self-Dealing

In addition to the specific prohibitions set forth above, a “plan fiduciary” is subject to certain more general prohibitions. A “plan fiduciary”:

- May not deal with “plan assets” in own interest.
- May not act in any capacity for any party with interests adverse to the plan, its participants or beneficiaries.
- May not receive any consideration from a party dealing with a plan in a transaction involving plan assets.

Prohibited Transaction Exemptions

ERISA rules have a long list of exemptions, including:

- A “plan fiduciary” may have reasonable arrangements for services (including investment advisory services) which benefit the adviser as “plan fiduciary” where the arrangements are made on behalf of the plan by someone other than the “plan fiduciary.”
- A plan may pay incentive fees to a plan fiduciary adviser as long as the adviser cannot control the amount, timing or payment of the fees.
- Execution of plan transactions may be done for commissions by a registered broker-dealer affiliated with a plan adviser.
- Under the Pension Protection Act of 2006 (the "2006 Act"), execution of plan transactions may be done with a party in interest through an electronic communication network, alternative trading system, or similar execution system or trading venue that is subject to regulation where either (a) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades, or (b) the transaction is effected under rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable regulations, under certain circumstances.
- Under the 2006 Act, certain “block trades” between a plan and a disqualified person (other than a fiduciary) if at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor) does not exceed 10 percent (10%) of the aggregate size of the block trade; (3) the terms of the transaction, including the price, are at least as favorable to the plan as an arm’s-length transaction with an unrelated party; and (4) the compensation associated with the transaction must be no greater than the compensation associated with an arm’s-length transaction with an unrelated party. For purposes of this provision, a “block trade” is defined as any trade of at least 10,000 shares or with a market value of at least $200,000 that will be allocated across two or more unrelated client accounts of a fiduciary.
- Transactions between a plan and a “fiduciary adviser” providing an “eligible investment advice arrangement” are exempt.
- Certain “agency cross” transactions where discretion does not exist on both sides of the transaction, proper disclosures and authorizations are in place and the fiduciary renders reports on a periodic basis. The 2006 Act has codified and expanded these provisions. On February, 12, 2007 the DOL released an interim final rule to facilitate “cross trading” of securities between a plan and any other account managed by the manager. The rule requires that the transaction take place as a cash payment against delivery of a publicly traded security at the market price; the transaction must be authorized by an independent fiduciary for each plan involved; each plan involved must have at least $100 million in assets (or part of a master trust with at least $100 million); and the manager must observe quarterly reporting and fee schedule requirements in accordance with written procedures.
- A plan may invest “plan assets” in a registered mutual fund managed by a “plan fiduciary” adviser provided there are no sales charges or duplications of fees and certain other conditions are met.

Liability for Breach of ERISA Rules

If a “plan fiduciary” breaches its fiduciary duty or any of the “prohibited transaction” rules, it becomes liable to the plan for any resulting losses including lost profits. The breaching fiduciary may be removed from its fiduciary role or subjected to other appropriate equitable or other remedies.

NOTE: A “plan fiduciary” is JOINTLY AND SEVERALLY LIABLE to the plan for breach by any other “plan fiduciary.”

Great care must be taken to identify when the Firm is acting as a “plan fiduciary” with respect to any ERISA client or account. That the Firm has discretionary control over any assets of an ERISA plan subjects the Firm and its employees to heightened levels of responsibility to make sure that contract provisions are clear and fully explained and understood by plan executives/trustees:

- To provide prudent advice;
- To charge reasonable fees;
- To disclose and get the client to “sign off on” all conflicts of interest;
- To avoid engaging in “prohibited transactions.”

Proxy Voting

Management of “plan assets” carries with it the obligation to vote the proxies at annual and special meetings of shareholders of companies (including mutual funds) in which the plan invests, unless otherwise specifically agreed.

NOTE: AIC does not vote proxies on behalf of clients as stated in the Form ADV Part 2A and the Investment Advisory Agreement

Custody of Plan Assets

Custody and indicia of ownership of plan assets must be maintained within the jurisdiction of the U.S district courts. Foreign securities may be held abroad in a U.S. bank or licensed foreign custodian agent for the U.S. bank if certain conditions are satisfied.

Minimum Capital Requirements

State-registered advisers may be subject to minimum capital requirements which vary from state to state.

Bonding and Financial Statement Requirements

In addition to the net capital requirement, many states also typically impose on their registered advisers a bonding requirement.

“Plan Asset” Status

All managers of “plan assets” are subject to “plan fiduciary” rules. Under ERISA regulations, applicable also for purposes of the prohibited transaction rules of the Internal Revenue Code (the “Code”), when a plan holds a non-publicly traded equity interest in a corporation or other entity, the assets of the entity may be considered “plan assets” (and the manager of the entity, therefore, a “plan fiduciary”) if, immediately after the most recent acquisition of any equity interest in the entity, 25% or more of the value of *any* class of equity interest in the entity is held by benefit plan investors, defined as (1) employer sponsored plans (including those exempt from ERISA, such as governmental plans), (2) other arrangements, such as IRAs, that are subject only to the prohibited transaction rules of the Code, and (3) any entity that has assets that are “plan assets” by reason of a plan’s investment in the entity. In that case, unless an exception applies, “plan assets” include the plan’s equity interest in the entity and an undivided interest in each of the underlying assets of the entity.

This provision is particularly of interest to hedge funds and other private equity vehicles, which have managers who are liable to become inadvertent “plan fiduciaries” due to excessive investment by ERISA plans and affiliates. Most such private equity vehicles have rules which allow the fund to terminate any ERISA investment that takes the total ERISA ownership above the 25% mark.

The 2006 Act provides that the assets of any entity are not to be treated as “plan assets” if, immediately after the most recent acquisition of any equity interest in the entity, less than 25 percent (25%) of the total value of *each* class of equity interest in the entity is held by benefit plan investors. For this purpose, an entity is considered to hold plan assets *only to the extent of the percentage of the equity interest held by benefit plan investors* employee benefit plans subject to the fiduciary rules of ERISA, any plans to which

the prohibited transaction rules of the Internal Revenue Code applies, and entities that have underlying assets that include plan assets by reason of a plan's investment in such entity.

9.06 ERISA Section 408(b)(2)

In recent years, the DOL has undertaken a series of regulatory initiatives to ensure that employee benefit plan fiduciaries, as well as plan participants and beneficiaries, obtain comprehensive information about the services that are provided to employee benefit plans, and the cost of those services. The DOL's final rule covers the disclosures that must be furnished to plan fiduciaries in order for a contract or arrangement for plan services to be "reasonable," as required by ERISA section 408(b)(2).

ERISA section 408(b)(2) requires that reasonable contracts or arrangements between employee pension benefit plans and certain providers of services to such plans include specified information to assist plan fiduciaries in assessing the reasonableness of the compensation paid for services and the conflicts of interest that may affect a service provider's performance of services. The DOL believes that plan fiduciaries need this information, when selecting and monitoring service providers, to satisfy their fiduciary obligations under ERISA section 404(a)(1) to act prudently and solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan.

The furnishing of goods, services, or facilities between a plan and a party in interest to the plan generally is prohibited under section 406(a)(1)(C) of ERISA. As a result, a service relationship between a plan and a service provider would constitute a prohibited transaction, because any person providing services to the plan is defined by ERISA to be a "party in interest" to the plan.
However, section 408(b)(2) of ERISA exempts certain arrangements between plans and service providers that otherwise would be prohibited transactions under section 406 of ERISA.
Specifically, section 408(b)(2) provides relief from ERISA's prohibited transaction rules for service contracts or arrangements between a plan and a party in interest if the contract or arrangement is reasonable, the services are necessary for the establishment or operation of the plan, and no more than reasonable compensation is paid for the services.

Amended Section 408b-2(c) includes new conditions to the meaning of a "reasonable" contract or arrangement for covered plans to include a requirement that, in order for certain contracts or arrangements for services to be reasonable, the covered service provider must disclose specified information to a "responsible plan fiduciary." The regulation defines this term as a fiduciary with authority to cause the plan to enter into, or extend or renew, a contract or arrangement for the provision of services to the plan.

Cover Plans

A "covered plan" is defined as an employee pension benefit plan or a pension plan within the meaning of ERISA section 3(2)(A) (and not described in ERISA section 4(b)). A "covered plan" shall not include a "simplified employee pension" described in section 408(k) of the Internal Revenue Code of 1986 (the Code), a "simple retirement account" described in section 408(p) of the Code, an individual retirement account described in section 408(a) of the Code, or an individual retirement annuity described in section 408(b) of the Code.

Covered Service Providers

A "covered service provider" is a service provider that enters into a contract or arrangement with the covered plan and reasonably expects $1,000 or more in compensation, direct or indirect, to be received in connection with providing one or more of the services described in paragraphs (c)(1)(iii)(A), (B), or (C) of the final rule.

The first category of covered service providers includes those providing services as an ERISA fiduciary or as an investment adviser registered under either the Investment Advisers Act of 1940 (Advisers Act) or any State law. This category is split into three subsections, as in the interim final rule: paragraph (*1*) includes ERISA fiduciary services provided directly to the covered plan; paragraph (*2*) includes ERISA fiduciary services provided to an investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment (a direct equity investment does not include investments made by the investment contract, product, or entity in which the covered plan A service provider will be covered even if some or all of the services provided pursuant to the contract or arrangement are performed (or some or all of the compensation for such services is received) by affiliates of the covered service provider or subcontractors invests); and paragraph (*3*) includes services provided directly to the covered plan as an investment adviser registered under either the Advisers Act or State law.

The second category of covered service providers includes providers of recordkeeping services or brokerage services to a covered plan that is an ERISA section 3(34) individual account plan that permits participants and beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available (*e.g.*, through a platform or similar mechanism) in connection with such recordkeeping services or brokerage services.

The third category of covered service providers includes those providing specified services to the covered plan when the covered service provider (or an affiliate or subcontractor) reasonably expects to receive "indirect" compensation or certain payments from related parties.

Initial Disclosure Requirements

Covered service providers are required to furnish specified disclosures to responsible plan fiduciaries in writing. These disclosures generally must be furnished reasonably in advance of entering into, or extending or renewing, the contract or arrangement for services. The disclosed information will assist plan fiduciaries in understanding the services and in assessing the reasonableness of the compensation, direct and indirect, that the service provider will receive.

Description of Services

Covered service providers are required to describe the services to be provided to the covered plan pursuant to the contract or arrangement (but not including certain non-fiduciary services to an investment product, contract, or entity in which the covered plan invests. The description of services should be clear and understandable to the responsible plan fiduciary. This regulation requires that responsible plan fiduciaries receive the basic information needed to make informed decisions about service costs and potential conflicts of interest.

Status of Covered Service Providers, Affiliates, and Subcontractors

If applicable, a statement must be included that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan (or to an investment vehicle that holds plan assets and in which the covered plan has a direct equity investment) as a fiduciary; and, if applicable, a statement that the covered service provider, an affiliate, or a subcontractor will provide, or reasonably expects to provide, services pursuant to the contract or arrangement directly to the covered plan as an investment adviser registered under either the Advisers Act or any State law.

Disclosure of Compensation

Covered service providers are required to disclose comprehensive information about the compensation that will be received in connection with the services provided pursuant to the contract or arrangement. A description is required of all *direct* compensation, either in the

aggregate or by service, which the covered service provider, an affiliate, or a subcontractor reasonably expects to receive in connection with the services.

Disclosures Regarding Recordkeeping Services

The final rule requires disclosure concerning the cost to the covered plan of recordkeeping services to the extent such services will be provided to the covered plan.

Investment Disclosure – Fiduciary Services

The final rule requires additional investment disclosures from covered service providers (providers of fiduciary services to an investment contract, product, or entity that holds plan assets and in which the covered plan has a direct equity investment). The information must be furnished for each investment contract, product, or entity for which fiduciary services will be provided pursuant to the contract or arrangement with the covered plan, unless such information is disclosed to the responsible plan fiduciary by a covered service provider providing recordkeeping services or brokerage services.

1. A description of any compensation that will be charged directly against an investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, accounts fees, and purchase fees; and that is not included in the annual operating expenses of the investment contract, product, or entity.

2. A description of the annual operating expenses (*e.g.*, expense ratio) if the return is not fixed and any ongoing expenses in addition to annual operating expenses (*e.g.*, wrap fees, mortality and expense fees), or, for an investment contract, product, or entity that is a designated investment alternative, the total annual operating expenses expressed as a percentage and appropriately calculated.

3. For an investment contract, product, or entity that is a designated investment alternative, any other information or data about the designated investment alternative that is within the control of, or reasonably available to, the covered service provider and that is required for the covered plan administrator to comply with the disclosure obligations described in Section 404a-5(d)(1) (the participant-level disclosure regulation).

Investment Disclosure – Recordkeeping and Brokerage Services

The final rule requires the same investment disclosure from covered service providers (providers of recordkeeping services or brokerage services to an individual account plan that permits participants and beneficiaries to direct the investment of their accounts, if one or more designated investment alternatives will be made available in connection with such recordkeeping services or brokerage services)

Manner of Receipt of Compensation

The final rule requires a description of the manner in which the will be received, such as whether the covered plan will be billed or the compensation will be deducted directly from the covered plan's account(s) or investments.

Timing of Initial Disclosures

A covered service provider must disclose the information to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, and extended or renewed.

Reporting and Disclosure Information

A covered service provider is required to furnish, upon request of the responsible plan fiduciary or covered plan administrator, any other information relating to the compensation received in connection with the contract or arrangement that the covered plan needs in order to comply with the reporting and disclosure requirements of Title I of ERISA and the regulations, forms and schedules issued thereunder.

Please see the Firm's ERISA Section 408b2 Notice for further details.