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By Electronic Mail to e-ORI@dol.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: 408(b)(2) Hearing
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Re: Written Request to be Heard and Outline of Proposed Testimony on Proposed Fee Disclosure Rule Under Section 408(b)(2) of ERISA

Ladies and Gentlemen:

In response to the Notice of Public Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2) – Fee Disclosure, published in the Federal Register on February 27, 2008, Groom Law Group submits this written request to testify at the public hearing to be held on March 31 and April 1, 2008. Stephen M. Saxon and Jennifer E. Eller will present testimony on behalf of a group of financial institutions and administrative services providers on whose behalf we submitted a comment letter regarding the proposed regulation. Group members offer insurance and investment products and/or services, including investment, recordkeeping, plan administrative, consulting and advisory services to employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

As indicated in the Notice of Public Hearing, we expect the testimony to take 10 minutes, and we will be prepared to answer the Department's questions. We may remark upon any of the issues discussed in our comment letter, although, time permitting, we expect to specifically address the points below.

Outline of Testimony

I. Scope of the Regulation (3 minutes)

- The obligations imposed by the final regulation should be clearly limited to entities that need relief under ERISA section 408(b)(2) – i.e., entities that are "parties in interest" that provide services to ERISA plans as defined in ERISA Section 3(14).

- The final regulation should provide that a contract or arrangement for services to an employee benefit plan will qualify for relief under section 408(b)(2) and the regulation so long as a service provider makes reasonable efforts to comply with the disclosure requirements contained in the final regulation.

II. Bundled Arrangements (4 minutes)

- The Department should clarify the rules governing bundled arrangements. In particular: (a) does a package of services offered by a single service provider qualify as a bundle; (b) whether a plan service provider offering services that facilitate plan investment transactions as part of a bundle will be deemed to be offering or making available the investment products in which the plan invests as part of the bundle; and (c) what types of payments must be separately allocated among participants in a bundle.
    - The final regulation should include some flexibility with respect to determining when services are provided as a "bundle." For instance, where more than one entity shares the responsibility for providing a single service to a plan, the entity offering the service to the plan should not be required to disclose anything other than the aggregate compensation (direct and indirect) paid for the service. Thus, if a service provider's primary service is investment management, and the service provider, in accordance with the terms of the investment management agreement, hires a sub-advisor to conduct the investment management activities, the service provider should be required to disclose only the aggregate compensation for the single service (investment management) that is provided by itself and the subadviser. If the Department does not agree with this comment, and the final regulations reflect a different view, it is imperative that the Department provide clear and specific examples of the disclosure requirements and the scope of their application. Otherwise, there is a significant risk that differences in interpretation will result in a competitive disadvantage for conservative, compliance-oriented companies.

III. Substantive and Transitional Issues (3 minutes)

- The regulation should be modified so that it will not result in a continuous reporting obligation that will be costly and inefficient and that will not provide plan fiduciaries with helpful information.

- The final regulation should not mandate the inclusion of specific disclosures, statements or representations in the services contract itself. Eliminating this mandate will facilitate compliance and ease the burden of transitioning to the new

requirements. A requirement that the information identified in the final regulation be disclosed in writing should be sufficient. If the Department does require specified information be included in the services contract itself, it should not require amendment of existing contracts before renewal or modification, and it should permit any required language to be included in a separate writing. Prototype plan trust agreements and variable annuity contracts, for example, cannot be modified without governmental approval.

- In order to provide an appropriate period of time for plans and service providers to transition to the new requirements, the effective date should be extended to at least one year after issuance of the final regulation.

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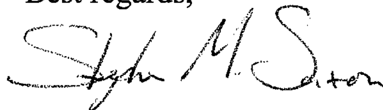
We appreciate the opportunity to testify on this important proposal.

Best regards,



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