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April 17, 2007

**VIA ELECTRONIC MAIL**

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Default Investment Regulation  
Room N-5669  
U.S. Department of Labor  
200 Constitution Avenue, NW.  
Washington, DC 20210

Re: **Default Investment Alternatives Under Participant Directed  
Individual Account Plans (RIN 1210-AB10)**

To Whom It May Concern:

We are submitting these comments on the proposed regulation under Section 404(c)(5) of the Employee Retirement Income Security Act of 1974, as amended, that provides guidance regarding default investment alternatives for participant directed individual account plans (the "Proposed Regulation"). Our comments relate specifically to managed accounts and the description of "fees and expenses attendant to the investment alternative" required in the notice to participants under subsection (d)(2) of the Proposed Regulation.

We recognize that this comment is being submitted after the comment period deadline provided for in the Proposed Regulation. However, as the Proposed Regulation has not yet been issued in final form, we anticipate that you may still find our comments to be of value. We hope that our submission of comments does not impose an undue burden on the Department.

**SUMMARY**

The following is a summary of our comments and recommendations.

The Proposed Regulation requires that the "fees and expenses attendant to" the qualified default investment alternative or QDIA be disclosed in a notice delivered to participants 30 days before the participant's account would be invested in the QDIA. Neither the

Proposed Regulation nor the Preamble address what this means in the context of a managed account that is used as a QDIA. While it seems clear that the “fees and expenses” for the management of the account must be disclosed, it is not clear whether the fees and expenses attendant to the underlying investments would also need to be disclosed or, if disclosed, how such disclosure should be made.

We submit that for managed accounts, it is not possible to know the exact aggregate expense ratio and other charges of the funds that will be employed in a given participant’s managed account 30 days in advance of the first investment of his or her account because, in most instances, the allocation would change from time to time (with the frequency being determined by how active the manager’s process is, by changing market conditions, by removal and replacement of the underlying mutual funds by the plan’s primary fiduciaries, and so on).

Further, the notice must tell participants where they can obtain information concerning the other investment alternatives available under the plan. Thus, the participants have access to the information regarding the fee and expenses associated with the underlying investments that will be used to manage their account. To require the investment manager to also disclose this information would be duplicative and confusing to the participants. Further, the information would not be usable by the participants, because the allocation would change from time to time.

As a result, we suggest that:

- The Department provide in the final version of the regulation that the fees and expenses disclosure requirement for managed accounts can be satisfied in the *first* notice given to participants by providing them with information regarding the fees for the management of the account, but not requiring disclosure of the expense ratios of the underlying funds. Subsequent annual notices would require disclosure of the underlying fund expenses for the prior calendar quarter.
- If the Department determines that some disclosure of the underlying fund costs is necessary, we suggest one of the following alternatives:
  - The notice to participants disclose the management fee for managing the account and state in text that the managed account will also bear the expense ratios of the underlying funds. Subsequent annual notices would disclose the actual underlying expense ratios for each of the portfolios.
  - Alternatively, the notice could disclose the management fee and the underlying fund expenses for the prior calendar quarter, clearly labeled as such.

- Additionally, we suggest that the Department provide in the final version of the regulation that plans that use multiple managed accounts that are geared toward participants within a particular age range can provide one notice to participants that discloses the relevant information discussed above for all of the managed accounts. This notice would inform the participants that they will be invested in the managed account that corresponds to their present age (or similar language thereto for accounts based on normal retirement age, etc.).

### **DETAILED COMMENTS**

The Proposed Regulation provides that model portfolios managed by investment managers as defined by ERISA section 3(38) and investment companies registered under the Investment Company Act of 1940 may qualify as QDIAs.<sup>1</sup>

In order to receive the relief afforded under the Proposed Regulation, a participant whose account is placed in a QDIA must be given a notice at least 30 days before the first investment in the default account and each plan year thereafter.<sup>2</sup> The notice must include “[a] description of the qualified default investment alternative, including a description of the investment objectives, risk and return characteristics (if applicable), and fees and expenses attendant to the investment alternative...”<sup>3</sup> The Proposed Regulation does not provide further clarification regarding what is meant by the term “fees and expenses attendant to the investment alternative.”

We anticipate that many plan sponsors will elect to use managed accounts whose asset allocation models are geared toward a specific retirement date, akin to age-based lifecycle funds. The managed accounts will use the plan’s investment alternatives to create the managed accounts. The accounts would be reallocated periodically among these alternatives as determined by the investment manager.

There are two types of costs associated with managed accounts. First, there is the fee of the investment manager that has the discretion to manage the participants’ accounts. Second, there are the expense ratios and other costs attendant to the underlying investment alternatives among which a participant’s account is allocated. Of necessity, the cost of a managed account will vary based on how it is allocated among the investment alternatives.

Participants may be defaulted into a QDIA in a number of different situations, but we anticipate that the vast majority of situations will involve a change of recordkeeper/investment provider to the plan or upon the automatic enrollment of a participant into the plan. All of the costs associated with the underlying investments may not be fully

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<sup>1</sup> 29 CFR § 2550.404c-5(e)(3).

<sup>2</sup> 29 CFR § 2550.404c-5(c)(3).

<sup>3</sup> 29 CFR § 2550.404c-5(d)(2).

known 30 days in advance of the first investment of the participants' accounts because the fees for the underlying investments will vary based on the asset allocation of the managed account. As a result, it would not be possible to disclose to participants the exact fees for the managed accounts in advance of the date the participants' accounts are invested in the managed account QDIA.

Accordingly, we have several specific suggestions regarding the disclosure of "fees and expenses attendant to the investment alternative" for managed accounts in the final regulation.

First, we suggest that the Department provide clarification of exactly what "fees and expenses" must be disclosed in the context of managed accounts.

Second, we suggest that the Department provide that in the first notice given to participants – that is, the notice required 30 days prior to the first investment of the participants' accounts – only the management fee of the investment management service be required to be disclosed. Subsequent annual notices could then disclose the underlying expense ratios of each of the model portfolios for the prior calendar quarter, since the investment management service will have the information at that point.

Third, if some disclosure is considered necessary regarding the expense ratios of the underlying funds in the first notice, then the notice should be permitted to state in text that the managed account will also bear the expense ratios of the underlying funds without disclosing those amounts in detail or numerically. Alternatively, the notice could disclose the management fee and the underlying fund expenses for the prior calendar quarter, clearly labeled as such.

We reiterate that the foregoing suggestions relate only to the first notice that must be given 30 days prior to the first investment of participant accounts in the QDIA. Subsequent annual notices could include more specific information about the costs of the underlying funds as noted earlier in this letter.

Additionally, we anticipate that average participants would be able to understand a notice that disclosed the relevant information for multiple managed accounts where the notice explained that the QDIA to be used for their account would be based on their current age (or alternatively, their normal retirement age, etc.). Reasonable participants should be able to easily determine which managed account applied to them based on their current age, etc.

As a result, we suggest that the Department provide in the final version of the regulation that plans that use multiple managed accounts for participants based on a particular age range can provide one notice to all of the applicable participants, which discloses the relevant information for the managed accounts as long as it contained the necessary information for participants to determine which QDIA would be applicable for them.

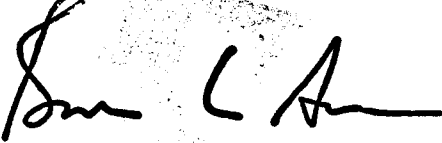
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We hope that these comments have been helpful. Please let us know if you would like to discuss any of our suggestions further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Frederick Reish". The signature is written in a cursive style with a large, looping initial "F".

F. FREDERICK REISH

A handwritten signature in black ink, appearing to read "Bruce L. Ashton". The signature is written in a cursive style with a large, looping initial "B".

BRUCE L. ASHTON