

To Whom it May Concern,

Attached please find our response to the Department's request for additional information and feedback regarding investment advisory services to 401(k) participants. Please feel free to call with any questions or for any additional information you require.

All the best,

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**RE: Response to Request for Information Relating to the Provision of Investment Advice To Participants in Individual Account Plans (DOL Employee Benefits Security Administration
RIN 1210-AB13): FEE DISCLOSURE COMMENTS**

1. BACKGROUND

We are Francis Investment Counsel LLC, an independent registered investment advisory firm providing investment consulting and employee education services to retirement plan sponsors. Part of our advisory services involves personalized investment advice to plan participants in face-to-face consultations (the most commonly used method), via the phone or online. We are paid pursuant to our contract with the plan sponsor solely out of plan assets. We are not affiliated with any broker-dealer and accept no compensation of any kind from the providers of investments offered under the plan or any third party. Since our fees are paid from total plan assets, they are charged as part of the plan's operating expenses against the accounts of all plan participants. Thus, each participant's account bears this expense, without any element of choice on the individual participant's part and without regard to whether the participant chooses to seek personalized investment advice from us. We wish to insure that our provision of investment advice to participants qualifies as an "eligible investment advice arrangement" under the Pension Protection Act, for competitive reasons, even though we believe the prohibited transaction relief added by the new law's provisions is not necessary in our case.

2. TIMING AND IMPACT OF FEE DISCLOSURE

The Department has asked for comment on whether there is an optimal time frame relative to when the investment advice is provided for disclosure of the fee information to participants, and of what impact the receipt of a model form of fee disclosure may have on the investment decisions made by participants.

a. Timing of the Fee Disclosure

We can understand a position under the new law that would support the concept of requiring that the fee disclosure be made prior to the giving of any investment advice to the participant. In our view, where the participant would be in a position to either agree to go forward and pay for the investment advice or to reject the imposition of any fee and decline to receive the investment advice, this is a reasonable position. In short, the participant has a choice: he or she would be able

to decide whether or not to pay for and receive investment advice. Further, if the adviser is receiving any compensation from a third party, such as a fund provider, disclosure of this compensation arrangement prior to the giving of the investment advice would be important so the participant would understand the potential for any bias.

However, where the employer/plan sponsor has contracted with the investment advisory firm to make personalized advice service available to any participant who requests it and the advisory firm is paid solely out of plan assets via a charge against all participant accounts, the individual participant has no element of choice and hence, no need to receive the fee information prior to the advice. Further, where the adviser accepts no compensation from any third party but is paid solely out of plan assets, there is no potential bias and hence no need to receive the fee information prior to the advice.

b. Impact of the Fee Disclosure on Investment Decisions by Participants

We believe that where the employer/plan sponsor has decided to make personalized investment advice available to all plan participants who wish it by contracting with an advisory firm to provide that advice and by paying the fees charged against total plan assets as part of the operating expenses of the plan, the fee disclosure will have no impact on investment decisions by participants. The participant has no element of choice as to whether to pay for personalized investment advice and there is no potential for bias which the participant otherwise would need to know in advance; his or her choice is simply whether to use this service which is available to all participants.

3. SUMMARY

We visualize using the model form to review the fee disclosure information at the end of our face-to-face sessions with the participants. A copy of the form would be given to the participant. Of necessity, the length of each face-to-face session is limited (20 to 30 minutes) and our goal is to devote as much time as possible to the giving of personalized investment advice. Delivery of the fee information via the model form at the session's end would aid this goal.

Respectfully,

Francis Investment Counsel LLC

By: _____