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"TASK FORCE ON ERISA FEES DISCLOSURE AND CONFLICTS OF INTEREST"

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Description of the Project

In January 2009, businesses that sponsor retirement plans (the "Plans") that are qualified under the Employee Retirement Income Security Act of 1974 ("ERISA") will face new complexities. An increase in their responsibility as supervisor over their Plans looms in the form of the U.S. Department of Labor's Regulation 408(b)(2) or the "Regulation."

The Regulation will require full disclosure of fees charged to Plans' participants, a test of the fairness of such fees, and the disclosure of conflicts of interest by parties providing services to the Plans. The responsibility for executing the Regulation's directives falls on the persons who serve as the Plans' trustees. ERISA refers to such trustees as Fiduciaries.

ERISA has always required that Fiduciaries investigate and evaluate fees and conflicts of interest. Notwithstanding ERISA's rules, evidence shows that many Fiduciaries (maybe even most) are unaware of hidden payments received by some of their Plans' service providers or the conflicts of interest that taint some service providers' offerings. Information that the Regulation requires service providers to disclose will surprise many plan sponsors. The information may even be very disturbing.

The Regulation will shine a new spotlight on the actions of Fiduciaries. It will quickly reveal the identity of Fiduciaries that are actually performing the tasks ERISA requires and those that do not. Although the Regulation will not change ERISA's fiduciary responsibilities, it will clear the fog surrounding the more critical fiduciary duties contained in ERISA. The Regulation's penalty structure is harsh for those who do not comply with it.

In addition to the anticipated effect of the Regulation, the U.S. Supreme Court recently reached decisions that expose Fiduciaries, and their employers, to greater risk of adverse litigation outcomes. Litigation against plan sponsors and trustees is growing, with questions about the reasonableness of Plans' fees and conflicts of interest driving the complaints.

In the midst of events aimed at ending service providers' lax disclosure practices, Fiduciaries struggle to find a safe foundation on which they may construct their practices. Currently, there is no defined universal standard against which they may evaluate how, or if, their practices meet the Regulation's fairness and disclosure rules. Developing such a standard would have widespread benefits for plan sponsors.

Consequently, the Investment Fiduciary Leadership Council ("IFLC") has launched an initiative to develop a comprehensive benchmark substantiated by ERISA, the Regulation, case law, and best practices. The *Task Force on ERISA Fees Disclosure and Conflicts of Interest* (the "Task Force") will guide the development of the benchmark.



The purpose of the benchmark is to establish a yardstick for Fiduciaries to use as they seek to meet new regulatory and legal demands. The benchmark, named the **“ERISA Fees and Conflicts Standard”**, will consist of mandates. Plan sponsors who conform to the mandates may earn an independent certification attesting to such. Task Force members will have the opportunity to participate in the certification pilot program.

IFLC is an association of fiduciary organizations that have been independently certified against the *Global Fiduciary Standard of Excellence*. Member organizations include; Investment Stewards (retirement plan sponsors, public pensions, and endowments), Investment Advisors, and Investment Managers. Since the purpose of the Task Force is to develop a standard for the benefit of companies that sponsor ERISA qualified plans, the Task Force will be staffed only by Investment Stewards drawn from the retirement plan arena.

IFLC's mission is to provide the leadership needed in order to influence positively the worldwide fiduciary community. IFLC is fiercely independent and does not accept funding, other than membership dues, from firms that provide services to Investment Stewards. Consequently, IFLC is ideally positioned to organize and guide for retirement plan sponsors the development of a standard process; one that ensures the reasonableness of service providers' fees and eliminates bias in service providers' offerings.

Description of the Task Force

I. Charge to the Task Force and its Authority to Make Decisions Related to the Project

The charge to the Task Force for this project is as follows:

- assist in reviewing a template of mandates for plan sponsors to follow that have already been developed from an operational and legal review of the Regulation and case law;
- determine if the mandates are sufficient in their current form to guide compliance with the Regulation and make suggestions on how to improve them if they are not;
- expand the mandates to include underlying assessment guidelines for each;
- compose the mandates into a structure that will result in a process standard named the “ERISA Fees and Conflicts Standard”;
- evaluate the anonymous results of independent assessments that use the mandates as the benchmark; and
- periodically meet ongoing in order to confirm that the mandates remain in step with Fiduciaries' needs.

The Task Force will serve in an advisory role and assist in planning and implementing the development of the mandates, provide guidance, and make recommendations throughout the project period.

II. Decision Making Process

The decision making process includes discussions at Task Force meetings resulting in decisions made by the collective group. All members are expected to review distributed information, provide feedback, and attend scheduled meetings.



III. Description of the Roles and Authority of Leaders and Staff

The role of the Project Director is to lead discussions during the Task Force meeting and provide recommendations and feedback in these discussions. The Project Director makes the final decisions for items addressed with the Task Force.

The role of the Project Coordinator is to assist the Project Director in development of agendas, meeting materials, meeting resources, facilitating meeting discussions, and providing meeting minutes in a timely manner following all Task Force meetings.

IV. Membership Qualifications and Types of Organizations to be Represented

Task Force members represent entities from the ERISA plan sponsor community. At its formation, the Task Force sought representation from each of the major segments of such community including; corporations, public pensions, and endowments.

Persons invited to serve on the Task Force include; those who serve on investment committees, are Fiduciaries by virtue of their decision making status, potential funding sources, experts in fiduciary standards of care, experts in fiduciary audits, and others deemed appropriate by the Task Force members. Individuals who met these specific criteria were selected based on their reputations as leading proponents of better stewardship for the retirement assets of America's workers.

Organizations that have agreed to contribute to the Task Force include, publicly traded and privately held corporations, public employees' pensions, university endowments that interact with their institutions' retirement plan officials, and the U.S. Department of Labor.

V. Description of the Roles and Duties of Each Individual Member Selected

The roles and duties of each member of the Task Force are; to assist in reviewing the initial template of mandates, contributing to the refinement of the mandates and establishing them as the **ERISA Fees and Conflicts Standard**, reviewing the certification methodology, and to provide guidance and make recommendations throughout the project period. In addition, all members are expected to review distributed information, provide feedback, and attend scheduled meetings. Meetings will be conducted by teleconference. WebEx will be used to augment teleconferences when document review is included on the agenda.

VI. Terms of Office

There are no terms of office, but rather Task Force members are invited to participate with the Task Force for the duration of the project or until they choose to step down or they no longer represent a vested party or agency.

VII. Selection and Termination Process for Task Force Members

The individuals represented on the Task Force were selected based on their roles within the fiduciary community or their profession. The termination process will include notification from the Project Director or Project Coordinator that their representation is no longer



required. If the individual chooses to discontinue, it is their responsibility to notify project staff of this decision as soon as possible so that a suitable replacement can be made.

VIII. Contact Information

Inquiries and comments about the Task Force may be directed to IFLC by any one of the following methods:

Attn: Ronald E. Hagan, Project Director

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