

March 6, 2008

*Via Electronic Filing*

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, DC 20210

RE: Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2) –  
Fee Disclosure

Ladies and Gentlemen:

In response to the Department of Labor's Notice of Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2), published in the Federal Register, Vo. 73, No. 39 on February 27, 2008, the Investment Adviser Association<sup>1</sup> requests an opportunity to present testimony at the above-referenced hearing. We request two ten-minute blocks of time for a total of 20 minutes for our presentation and any questions that Department officials may have.<sup>2</sup> We request this additional allotment of time in light of the importance of these issues and the special perspective our organization intends to provide at the hearing with respect to investment managers to defined benefit plans. We will submit an outline of topics to be discussed under separate cover.

Please do not hesitate to contact me if you have any questions or would like any additional information.

Sincerely,



Karen L. Barr  
General Counsel

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<sup>1</sup> The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association that represents the interests of SEC-registered investment advisers. Founded in 1937, the IAA's membership today is comprised of more than 500 firms that collectively manage in excess of \$9 trillion for a wide variety of individual and institutional clients, including pension plans. For more information, please visit our web site: [www.investmentadviser.org](http://www.investmentadviser.org).

<sup>2</sup> We respectfully request additional time if the Department intends to ask a significant number of questions.

March 19, 2008

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, DC 20210

RE: Department of Labor Notice of Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2) – Fee Disclosure, 73 Fed. Reg. 13012 (March 11, 2008)

Ladies and Gentlemen:

In response to the Department of Labor’s Notice of Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2), published in the Federal Register, Vo. 73, No. 48 on March 11, 2008, the Investment Adviser Association<sup>1</sup> requests an opportunity to present testimony at the above-referenced hearing.<sup>2</sup> We submit the following outline of testimony, with estimated times allocated to each topic, pursuant to the Department’s Notice.<sup>3</sup>

**I. Factual Background.** (4 minutes)

- A. Investment advisers usually serve in different roles in defined benefit versus defined contribution plans. The IAA testimony will describe these roles, how the relationships are structured, how the process of making investments for defined benefit plan clients works, and the disclosures provided to clients.
- B. Investment advisers that serve as investment managers are not typically considered to provide a “bundle” of services, even though they may choose other service providers such as sub-advisers and broker-dealers that have no direct contracts with the plan.

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<sup>2</sup> This request should be substituted for our prior request dated March 6, 2008 to testify at the public hearing previously scheduled for March 20, 2008.

<sup>3</sup> We discussed many of these topics in our comments filed with the Department on February 11, 2008. We incorporate those submissions herein by reference.

- C. Fee and expense issues arise more frequently in defined contribution plans because of their potential impact on participants' benefits. The application of the proposed regulation is unclear in the defined benefit context in many respects.

**II. Existing Disclosure Vehicles Should be Utilized As “Safe Harbors” for Compensation and Conflicts of Interest Disclosure. (3 minutes)**

- A. Form ADV and the mutual fund prospectus, developed over many years and applicable to all clients and investors, should provide sufficient disclosures.
  - 1. In a sub-advisory arrangement, the primary adviser should be able to satisfy any disclosure obligations by forwarding to the plan fiduciary the sub-adviser's Form ADV.
  - 2. An investment manager that selects brokers to execute the plan's trades should be able to fulfill any disclosure obligations by providing its Form ADV brokerage disclosure to the plan fiduciary.
- B. In the absence of safe harbors, the conflict of interest disclosures in the proposed regulation are too broad and unworkable.

**III. The Proposal Presents Practical Problems for Investment Advisers. (2 minutes)**

- A. Further clarification is needed with respect to disclosure requirements relating to items that are not ascertainable at the time the contract is executed. For example, specific information related to soft dollars or other non-monetary compensation that may be received in the future is not available at the time of contract. Any requirements to disclose such items should be satisfied by providing clients with Form ADV or other securities law disclosures.
- B. The Department should also clarify that service providers are not required to make disclosures regarding non-monetary compensation that is not received in connection with a specific plan.

**IV. Plan Fiduciaries and Service Providers Should Not Be Required to Immediately Amend Existing Contracts Upon Finalization of the Proposed Regulation. (1 minute)**

- A. Parties should be permitted to defer contract amendments until the contracts are extended, explicitly renewed, or materially modified.
- B. Under such an approach, the Department could require investment advisers to make the required disclosures prior to the time of contract amendment.

The Investment Adviser Association appreciates the opportunity to present our testimony. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Karen L. Barr".

Karen L. Barr  
General Counsel