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BY FIRST-CLASS MAIL AND E-MAIL TO e-ORI@dol.gov
Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N–5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: RIN 1210–AB08; 408(b)(2) Guide

Re: Proposed Amendment Relating to Reasonable Contract or Arrangement Under Section 408(b)(2)—Fee Disclosure

Ladies and Gentlemen:

PNC Bank, National Association ("PNC Bank") appreciates the opportunity to comment on the Department's proposed amendment to its fee disclosure rule under Section 408(b)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), as published in the Federal Register on March 12, 2014 (at 79 Fed. Reg. 13,949).

PNC Bank, along with its affiliates, provides trust, custody, recordkeeping, asset management, banking and other services to over 3,500 ERISA-governed employee benefit pension plans. We support the goal of providing clear and meaningful disclosures to assist plan fiduciaries in understanding and assessing plan expenses. However, based on our experience in complying with the current 408(b)(2) disclosure rules and our dealings with these clients during the relatively short time that the rules have been in effect (just under two years), we do not perceive any need to amend the regulations to require a disclosure "guide" of the type described in the proposed amendment. We are also concerned that the additional costs and burdens that would be required to comply with the proposed amendment outweigh any meaningful benefit for plan fiduciaries. Of particular concern are the serious prohibited transaction liability consequences of noncompliance. For these and the other reasons discussed below, it is our view that the proposed amendment should be withdrawn.

Description of PNC

Headquartered in Pittsburgh, Pennsylvania, The PNC Financial Services Group, Inc. – the parent company of PNC Bank – is one of the largest diversified financial services companies in the United States. It has businesses engaged in retail banking, corporate and institutional banking, asset management, and residential mortgage banking, providing many of its products and services nationally, as well as other products and services in its primary geographic markets located in Pennsylvania, Ohio,

New Jersey, Michigan, Illinois, Maryland, Indiana, North Carolina, Florida, Kentucky, Washington, D.C., Delaware, Alabama, Virginia, Missouri, Georgia, Wisconsin and South Carolina. It also provides certain products and services internationally. At March 31, 2014, PNC's consolidated total assets and total deposits were $323 billion and $222 billion, respectively.

PNC Bank and its affiliates (collectively, "PNC") provide a wide range of services to ERISA-governed employee benefit plans. These include:

- Traditional trust and custody services
- 401(k) plan recordkeeping and other support services
- Asset management and general brokerage
- Traditional banking services

Our plan clients span the spectrum of small to large, with a significant portion in the small to mid-size range. We believe that this client population – crossing size, type and service levels – gives us a broad perspective on the employee benefit plan market in general and experience with 408(b)(2) disclosures in particular.

Comments on the Proposed Amendment

As a general matter, PNC supports the positions being taken by the American Bankers Association, of which it is a member, in requesting that the Department withdraw the proposed regulation. Our reasons are as follows.

There is no data or other basis to support the need for the proposed amendment.

During 2011 and up to the effective date of the Section 408(b)(2) disclosure rules on July 1, 2012, PNC worked closely with outside counsel and others, and incurred significant costs to prepare and send out disclosure documents designed to meet the requirements of the final regulation. In total, PNC sent 408(b)(2) disclosures to over 3,500 client plans across its diverse client base. PNC also developed procedures to track any inquiries received from clients relating to the disclosures, assigning personnel to be available to work with a client if questions or concerns arose.

Our sense is that the 408(b)(2) disclosure rule, in its current form, is effective in accomplishing its goals, so that making a change to the rule at this time is entirely unnecessary. Out of its client base, PNC has received only four inquiries regarding the disclosure documents, and no complaints. Thus, as a general matter, our experience does not support the view that plan fiduciaries receiving these documents are either confused or overwhelmed by the disclosures or experiencing difficulty in obtaining or locating the required information in an understandable format. In fact, this appears to be the experience not just of our institution but industry-wide, as confirmed by the comment letters being submitted by the American Bankers Association and the Securities Industry and Financial Markets Association. We believe that the reliance on anecdotal evidence suggesting otherwise, as described in the notice of proposed amendment, is misplaced.

PNC already organizes its disclosures in a manner intended to aid the plan fiduciaries in understanding the services being provided and the related direct fees and indirect compensation. We generally arrange our disclosure documents along the lines of the categories of information described by the sample guide included with the final regulation. In some instances, the relevant information is provided by reference to another document, such as a client agreement, fee schedule, prospectus or Form ADV disclosure. In other instances, the information is described directly in the disclosure document itself. PNC often uses both approaches in a single document, depending on the types of services and other agreements and disclosures in place for the particular line of business. We see no benefit in requiring a separate, standalone document that provides no more than cross-references to other documents without context, particularly because, as indicated, PNC has received no complaints from its client base on how it has structured these disclosures. In fact, we believe that this type of guide document may actually be distracting to the plan fiduciary, as it adds an additional document to be reviewed and no substantive information.

The guide requirements would be unworkable in practice and unnecessary.

As for the proposed guide itself, we are concerned that it would not be workable in practice. The proposed amendment would require that the guide be in a format "specifically identifying the document and page or other sufficiently specific locator, such as a section, that enables the responsible plan fiduciary to *quickly and easily find* the following information" (emphasis added). Because responsible plan fiduciaries may have different levels of knowledge and sophistication, and therefore different levels of ability to "quickly and easily" locate information, how to determine what type of locator is necessary is a subjective standard. At best, PNC can only draft its disclosures for an objectively reasonable fiduciary.

This also raises the related issue of how specific the locator must be. Client agreements and fee schedules are subject to negotiation, and disclosure documents, such as a Form ADV or mutual fund prospectus, may be updated from time to time. Determining appropriate locators, and then updating them, would be a labor-intensive process, adding to the costs and burdens of compliance with the existing disclosure rules.

Left open by the proposal is how these requirements will work in practice. For example, is a cross–-reference to a section in a Form ADV that may run several paragraphs specific enough? If the cross-reference is to page 10 and for pagination/formatting reasons the information actually appears on page 11, is this violation of the rule?

Thus, the subjective nature of the proposed rule is unworkable.

Moreover, we note that, as drafted, a guide would be required if the mandated disclosures are not contained in a single document, or the single document containing disclosures is in excess of a to-be-specified number of pages. Neither of these conditions in isolation bears any relation to whether a disclosure document would be confusing or overwhelming to a plan fiduciary. The key issue is how mandated disclosures are organized and presented in a document, not whether the document exceeds an arbitrarily established length or its use of cross-references.

For example, if a disclosure document summarizes the services to be provided and then cross-references the client agreement for greater detail, would this cross-reference trigger the guide requirement? If a disclosure document generally discusses mutual fund fees and commissions and then cross-references the fund's prospectus, does this necessitate using a guide?

It is important to recognize that the use of cross-references to other documents is not *per se* confusing. When done in conjunction with lead-in commentary and explanation, cross-referencing can be an effective method of disclosure. This is particularly the case where the cross-referenced documents are ones the fiduciary negotiated and is expected to have reviewed prior to engaging the service provider or making the investment. PNC's disclosure documents commonly refer to, for example, the client agreement and fee schedule, both of which the client is required to sign when entering into an arrangement for PNC to provide such services as trust/custody or 401(k) plan recordkeeping, or a fund prospectus or Form ADV that provides information in the form and format required by rules and regulations of the Securities and Exchange Commission. Where the information is already clearly described in documents that the client already has (and which PNC, in its 408(b)(2) disclosure documents, also offers to provide to the client on request), references to those documents should be sufficient for disclosure purposes. This is especially the case where the referenced document is one designed for retail customers and mandated and overseen by another regulator, such as a mutual fund prospectus or Form ADV. Moreover, we continue to believe that the best way to deal with client questions and concerns is an active line of communication between the client and the service provider. As a service provider, we can and do stand ready to address questions and concerns raised by our plan clients. We do not see how this extra disclosure benefits plan fiduciaries.

Before adding additional requirements, the Department should take into account the severity of non-compliance.

The Section 408(b)(2) disclosure rules have been made a condition to compliance with a prohibited transaction exemption. As a result, non-compliance with the rules results in a prohibited transaction, and the attendant liabilities for engaging in a prohibited transaction under ERISA and the Internal Revenue Code, for the service provider (and possibly the responsible plan fiduciary as well, subject to complying with the terms of a class exemption embedded within the final regulation). For this reason, the Department should consider the severe consequences of non-compliance when adding additional requirements to the regulation.

As discussed above, the proposed amendment would employ a subjective standard as to the sufficiency of the locator. PNC, like many other large financial services firms, services ERISA plans through multiple business lines offering a number of products and services, each of which may use different forms of agreements and disclosures. Applying this standard to all of those documents and arrangements exposes service providers to potential prohibited transaction liability in the event of subjective complaints from plan fiduciaries about the format of the disclosure guide. Moreover, we are concerned that inadvertent errors in citing to these locators due to updates in the documents, technological glitches, or human error could lead to prohibited transaction liability.

Question on Proposed Use of Focus Groups

We question the use of focus groups comprised of a single sector of the plan market as a basis for changing a rule that will affect the entire market, as discussed in the American Bankers Association comment letter. Further, like the American Bankers Association, we believe that the focus group data collection should have been completed before proposing the rule. Considering the severe consequences of violating this rule, we believe that additional fact finding is necessary and should take into account all sectors of the employee benefit plan market before proceeding with such a broadly applied rule.

Cost Considerations

We also question the Department's analysis of the cost burden of implementing the proposed new guide. Similar to the concerns raised in both the American Bankers Association and the Securities Industry and Financial Markets Association comment letters, we believe that the Department is significantly underestimating the costs attributable to implementing this proposal. We believe that for the reasons discussed herein, the creation, updating and distribution of the proposed guide would likely be a manual process, particularly where there is a need to monitor changes to third-party documents to assess changes to "locators" and to address changes that relate to individual clients or sub-groups of clients. To the extent that any part of this process could be automated, such system changes may still require substantial technology builds and costs, which the Department's cost analysis does not adequately consider. Our concern is in part based on our experiences with implementing the 2012 changes to ERISA section 408(b)(2), for which we had to engage in an enterprise-wide project to analyze each business area and create appropriate disclosures to meet the rule. We do not believe that the Department fully appreciates the efforts and expenses associated with complying with these new rules.

Conclusion

PNC supports the goal of providing clear and meaningful disclosure about its services and compensation to the responsible plan fiduciaries of ERISA-governed employee benefit pension plans. However, we do not see a need for an additional disclosure guide of the type described by the proposed amendment. PNC provides disclosure documents designed to comply with the 2012 final regulation to over 3,500 plan clients and to date has received very few inquiries and no complaints, and no indication of any difficulty finding the required information. For this reason, and because we believe requiring a guide would be unworkable in practice, it is our view that there would be no apparent benefit to requiring an additional disclosure guide. We further believe that the Department has significantly underestimated the costs associated with complying with this proposal, as further confirmed by the comment letters being submitted on the proposal by the American Bankers Association and the Securities Industry and Financial Markets Association. Finally, we do not believe that the Department should base such an important rule change, which could result in severe consequences and excise taxes for the service provider, solely on anecdotal evidence. On this basis, it is PNC's position that the proposed amendment to the Section 408(b)(2) regulation should be withdrawn.

If you have any questions, please feel free to contact the undersigned at 215-585-5670.

Very truly yours,

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