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Office of Regulations and Interpretations
Employee Benefits Security Administration
ATTN: Plan Fiduciary Class Exemption for Section 408(b)(2) Amendment
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Proposed Class Exemption for Plan Fiduciaries When Plan Service Arrangements Fail to Comply with ERISA Section 408(b)(2)

Ladies and Gentlemen:

This comment letter responds to the proposed class prohibited transaction exemption ("Proposed Exemption") from the restrictions of Section 406(a)(1)(C) of the Employee Retirement Income Security Act of 1974 ("ERISA") published by the Department of Labor (the "Department") in the Federal Register on December 13, 2007. These comments are submitted on behalf of the group of financial service companies for which FMR LLC is the parent corporation (collectively, "Fidelity"). Fidelity companies provide investment management, recordkeeping, benefit disbursement, communications and directed trustee and custodial services to thousands of retirement and welfare plans covering millions of participants.

Prior guidance issued by the Department with respect to fee disclosure has focused on the obligation of the plan sponsor or other responsible fiduciary to obtain the necessary information to make informed decisions in hiring plan service providers. The Department has proposed amendments ("Proposed Amendment") that would revise the regulation issued under ERISA Section 408(b)(2) in a manner that would substantially shift the burden of compliance with the statutory exemption to the plan service provider. Failure to satisfy the new legal requirements would subject the service provider to excise tax exposure and other potential legal liabilities.

With the increasingly important role that workplace benefit plans play in securing retirement, health and other benefits for millions of Americans, we agree that it is critical that plan sponsors and other hiring plan fiduciaries have the information they need to make responsible decisions in hiring service providers for their plans. In Fidelity's experience, plan sponsors do request and receive the information needed to make prudent decisions. At the same time, we appreciate the Department's desire to provide a process for allowing plan fiduciaries to obtain relief from the requirements of the Proposed Amendment where the circumstances are

warranted. Considering the direct burden on the service provider under the Proposed Amendment and various aspects of the disclosure obligations to be imposed, however, we respectfully request that the Department include service provider relief under the Proposed Exemption.

The Proposed Amendment would drastically change the impact of disclosure errors or omissions by service providers in their dealings with plan sponsors and other fiduciaries. Until now, the primary concern is whether a mistake or omission may cause a loss or undue expense to plan participants or fiduciaries. Even if the omission is nonmaterial, the Proposed Amendment would appear to impose a heavy economic sanction (the excise tax) on the service provider. The new approach would result in the imposition of an excise tax in the event of a disclosure failure regardless of its impact on plan administration.

We are also concerned that the service provider may not have sufficient recourse in cases of a disagreement over what constitutes sufficient disclosure. Thus, the inadvertent omission of one item of disclosure could even be cited by the plan sponsor as sufficient grounds for premature contract termination regardless of the omission's impact on the decision-making process of the plan sponsor or other responsible plan fiduciary.

Therefore, we ask that the Proposed Exemption be revised to deal with these concerns by extending relief to service providers that may have compliance problems due in part to the extensive detail requested in the Proposed Amendment. In addition, there are a number of aspects of the Proposed Amendment that may greatly complicate the task of service providers in attempting to comply with the Proposed Amendment after it is issued in final form. These issues are discussed in more detail in a separate Fidelity comment letter (dated the same as this one) submitted to the Department in response to the solicitation of comments on the Proposed Amendment. For convenient reference, however, a short summary is provided below.

(1) The Proposed Amendment states that a "bundled" service provider need not disclose the allocation of mutual fund revenues among affiliated companies. However, proposed Section 2.550.408(b)-2(c)(1)(A)(3) states that the service provider must disclose the aggregate compensation received by the provider, any affiliates or subcontractors, "or any other party in connection with the bundle of services." Although we have asked for confirmation that a recordkeeper would not have to disclose the revenue received by the manager of an unrelated mutual fund or other third parties, we understand that the Department may pursue this course notwithstanding. The Department must clearly address the service provider's limited responsibility to provide only the prospectus or other fee document received from the unrelated

party, and its lack of responsibility or legal exposure for problems with such disclosure, either in revisions to the Proposed Amendment or to the Proposed Exemption.

(2) The Proposal would require a service provider to disclose any relationships or interests that may raise conflicts of interest for the service provider in its performance of services for the plan. The concern expressed by the Department in the proposed preamble refers to influences that may be relevant to the plan fiduciary's assessment of the objectivity of a service provider's decisions or recommendations. Absent clarification of what relationships would constitute such interests or conflicts, particularly in the case of a non-fiduciary service provider, we anticipate great uncertainty what will constitute sufficient disclosure to deal with this requirement.

(3) The Proposed Amendment effective date would be ninety (90) days after publication of the final regulation in the Federal Register. We strongly believe that the final regulation effective date should be extended to a full year to allow service providers sufficient time to get ready for negotiations, otherwise there may well be many compliance failures in the first year. We also need confirmation that only a material contract change, one that changes the fee structure in some manner, would require new disclosure.

(4) We have asked for confirmation that the new disclosure mandate would only apply to contracts entered into (or renegotiated) after the effective date of the final regulation. We maintain thousands of service contracts with retirement plan sponsors and would be literally unable to amend all these contracts other than in the normal course of contract changes.

Finally, we note that the Proposed Exemption would apply if the responsible plan fiduciary unknowingly enters into a service contract that does not satisfy the disclosure requirements of the Proposed Amendment. In order to obtain relief under the Proposed Exemption, the fiduciary would be required to request the missing information from the service provider. The Proposed Exemption would provide in part that the service provider would be deemed to fail to satisfy its disclosure obligations if it does not provide the information requested by the fiduciary within 90 days.

We ask for confirmation that a satisfactory and timely service provider response to the 90-day request would be deemed to satisfy the disclosure requirements of the Proposed Amendment. Alternatively, we ask that the Proposed Exemption be revised to provide exemption relief in such instances.

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In conclusion, we would be pleased to respond to any comments or questions regarding the issues discussed above or any other aspect of the Proposed Exemption.

Respectfully,

Douglas O. Kant

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Fidelity INVESTMENTS