

January 31, 2007

Bradford Campbell  
Acting Assistant Secretary  
Employee Benefits Security Administration  
Suite S-2524  
U.S Department of Labor  
200 Constitution Ave. N.W.  
Washington, D.C. 20210

**Re: Response to Request for Information Regarding Computer Models for the Provision of Investment Advice to Individual Retirement Accounts.**

Dear Honorable Acting Assistant Secretary Campbell:

On behalf of the Merrill Lynch Retirement Group, I am writing to respond as one of the top 50 IRA providers of Individual Retirement Accounts (“IRAs”) to the Department’s Request for Information as to the feasibility of a computer model to provide investment advice on Individual Retirement Accounts (“IRAs”).

The Retirement Group at Merrill Lynch provides a broad range of retirement savings and investment programs to employers and individual investors. We support our savings and investment solutions with an array of services to assist employers and individuals in meeting their retirement and individual financial goals. As a firm, Merrill Lynch is responsible for over \$360 billion of total retirement and educational savings assets in the U.S.

We appreciate the opportunity to respond to this RFI and look forward to continuing to work with the Department as it responds to the requirement under section 601 of the Pension Protection Act of 2006 to evaluate the feasibility of investment advice computer models in IRAs.

*1).QUESTION: Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide investment advice to beneficiaries of plans described in section 4975(e)(1)(B)-(F) (and so much of subparagraph (G) as relates to such subparagraphs) (hereinafter “IRA”) of the Code which:*

*(a) Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time;*

*(b) Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments;*

*(c) Operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser;*

*(d) Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and*

*(e) Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.*

ANSWER: Merrill Lynch does not have a computerized model, nor are we aware of any such models presently available in the industry that include the full scope contemplated by item (d) of this question. That requirement indicates that any model would have to take into account the “...full range of investments, including equities and bonds...” There are models that take into account mutual funds, but even they do not take into account the full range of mutual funds available in the marketplace. None of them take into account the full range of investments available to IRAs including stocks, bonds, foreign securities, options, hedge funds, limited partnerships, LLCs, currency instruments, futures and annuities, all of which are permissible in IRA accounts.

2) *QUESTION: If currently available models do not satisfy all of the criteria described above, which are presently not considered by such computer models? Would it be possible to develop a model that satisfies all of the specified criteria? Which criteria would pose difficulties to developers and why?*

ANSWER: Presently available models would not be able to meet requirements (d) and (e) above. Existing models work with a more narrowly defined universe of investments, generally mutual funds available from the IRA provider, which may include proprietary funds and non-proprietary funds for which the IRA provider has entered into distribution agreements.

There are many considerations and significant challenges to the developer and provider of the computer model as follows:

- With tens of thousands of individual securities, open and closed-end mutual funds, exchange traded funds (ETF’s), etc., there are multiple solutions with the same risk and return characteristics and several near-optimal choices. The choice of one of these solutions versus another would largely be driven by personal preferences, e.g. active vs. passive management, strategic vs. tactical asset allocation, funds vs. individual securities vs. ETF’s, etc.
- The processing time to run a computer model that takes into account all possible investments in an IRA would be extensive, if not prohibitive. With such potentially extensive processing time from the time the data is entered to the time the result is received, the output would be out of date. This raises liability issues for any firm that might attempt such a model.
- The model would need to ascertain the beneficiaries’ preferences, often on decisions that are not well understood by the typical investor.
- Such a model would need to deal with such issues as selecting the appropriate share class, considering trading costs, if any, into any change in investment

portfolio, appropriate range and number of options given the size of the beneficiary's IRA, etc.

- A model would need to build in a wide range of constraints and assumptions, such as qualification for a particular investment to be considered in a portfolio, expected risk and return of any investment option to be considered as well as the various asset classes, etc. These constraints and assumptions could vary significantly based on the designer of the model.
- Such a computerized model is quantitative and looks at available current and historic data and must make predictions from this data without the benefit of qualitative review.
- Individual securities are often subject to macroeconomic and issuer-specific news events that require qualitative judgments and are not susceptible to programming.
- Providing computerized models focused solely to IRA beneficiaries, does not recognize the need to incorporate the IRA savings strategy with other savings the individual may have and with their overall financial picture.

*3.) QUESTION: If there are any currently available computer model investment advice programs meeting the criteria described in Question 1 that may be utilized for providing investment advice to IRA beneficiaries, please provide a complete description of such programs and the extent to which they are available to IRA beneficiaries.*

ANSWER: As stated above in answer to Question 1, Merrill Lynch knows of no such model that takes into account available investments.

*4.) QUESTION: With respect to any programs described in response to Question 3, do any of such programs permit the IRA beneficiary to invest IRA assets in virtually any investment? If not, what are the difficulties, if any, in creating such a model?*

ANSWER: As stated above in Question 1, Merrill Lynch knows of no models that meet all of the requirements specified in that question. See responses in Question 2 as to the difficulties of creating such a model, such as capacity, cost, timeliness of output, etc.

*5.) QUESTION: If computer model investment advice programs are not currently available to IRA beneficiaries that permit the investment of IRA assets in virtually any investment, are there computer model investment advice programs currently available to IRA beneficiaries that, by design or operation, limit the investments modeled by the computer program to a subset of the investment universe?*

ANSWER: Merrill Lynch does not maintain an investment advice computer model for IRA beneficiaries. Therefore, we do not maintain an investment advice computer model that permits beneficiaries to limit the investments modeled by a computer program.

However, Merrill Lynch maintains proprietary computer programs to help clients with all of their accounts, (IRA as well as non-retirement), select an asset allocation strategy and to construct a portfolio to implement this strategy. These programs are built around

interaction between the beneficiary and a trained Financial Advisor and the beneficiaries' preferences are incorporated at several steps in the process, e.g. preference for mutual funds vs. individual securities, whether to and of course the final investment decision is made by the beneficiary.

Separately, Merrill Lynch offers participants in employer-sponsored retirement programs investment advice based on a computer model provided by a third party financial expert. The advice provided is based on investments selected by the plan sponsor to be available in the employer-sponsored plan.

*QUESTION: If so, who is responsible for the development of such investment limitations and how are the limitations developed?*

ANSWER: As we indicated in response to Question 1 and the above question, we do not maintain an investment advice computer model for IRA beneficiaries, therefore, this question is not applicable.

*QUESTION: Is there any flexibility on the part of an IRA beneficiary to modify the computer model to take into account his or her preferences?*

ANSWER: As we indicated in response to Question 1 and the above questions, we do not maintain an investment advice computer model for IRA beneficiaries, therefore, this question is not applicable.

*QUESTION: Are such computer model investment advice programs available to the beneficiaries of IRAs that are not maintained by the persons offering such programs?*

ANSWER: There may be independent entities (*i.e.*, that do not hold IRA assets) that may offer computer models where the IRA beneficiary limits the scope of investments to be considered by the model.

6.) *QUESTION: If you offer a computer model investment advice program based on nonproprietary investment products, do you make the program available to investment accounts maintained by you on behalf of IRA beneficiaries?*

ANSWER: As stated in response to Question 1, Merrill Lynch does not have a computer model investment advice program, therefore this question is not applicable.

7.) *QUESTION: What are the investment options considered by computer investment advice programs? What information on such options is needed? How is the information obtained and made part of the programs? Is the information publicly available or available to IRA beneficiaries?*

ANSWER: The existing computer investment advice programs are based on mutual funds (and for some 401(k) plans, certain other investment options selected by the plan sponsor to be included as an option for participants (e.g. collective trust pools, etc.)). Employer stock generally may be considered in determining the model but is generally *not* included in the recommended model. Information necessary for the IRA beneficiary (or participant in the case of 401(k) plans) to evaluate their available choices may be obtained from public sources. Some public sources charge an access fee and others are free.

*8.) QUESTION: How should the Department or a third party evaluate a computer model investment advice program to determine whether a program satisfies the criteria described in Question 1 or any other similar criteria established to evaluate such programs?*

ANSWER: An evaluation would need to take into account that the model is able to assess any type of investment product, fee and performance data, the short term historic performance and the long term historic performance of the asset, and to consider the asset against its peers in the same asset class. This would be necessary so that the IRA beneficiary would be able to evaluate the risk of each option. Additionally, the evaluation of the model would have to take into account all of the information about the IRA beneficiaries' total financial picture (risk preferences, personal debt, longevity factors, current health of beneficiary and, if married, their spouse, etc.). The Department should be assured that the computer model is able to evaluate user-specific events as they impact the investment choices. The Department needs to be assured that the means by which the IRA beneficiary will be able to enter the data will be understandable to the IRA beneficiary, such that their responses are accurate and usable by the computer model. In essence, the IRA beneficiary, as the potential user of the model, would need to have enough of an understanding of the questions being asked by the model, to provide appropriate responses that will enable the model to create a usable output.

*9.) QUESTION: How do computer model investment advice programs present advice to IRA beneficiaries? How do such programs allow beneficiaries to refine, amend or override provided advice?*

ANSWER: Most models provide investment education rather than advice. In some cases, examples of investments from an asset class of mutual funds are suggested, but no single fund is recommended. Models generally permit the individual to change risk, financial information, and expected retirement age. Models may permit entire asset classes to be excluded, or to seek additional choices if the first output is rejected.

We appreciate the opportunity to respond to the Department's Request for Information and hope the Department will not hesitate to contact us at Merrill Lynch if we can be of further assistance in providing additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael I. Falcon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael I. Falcon, Managing Director  
Head of the Retirement Group at Merrill Lynch