

From: sanmitchell@REISH.com [mailto:sanmitchell@REISH.com] **On Behalf Of** fredreish@REISH.com
Sent: Wednesday, July 11, 2007 6:05 PM
To: Campagna, Lou - EBSA
Cc: Sweeney, Erin - EBSA; Alexander, Lisa - EBSA
Subject: FW: QDIA Proposed Regulation

Lou:

Let me add some thoughts to Bruce's email.

1. Some providers of managed accounts will provide the accounts through managed investments in individual stocks and bonds, rather than using the mutual funds in the plan. In performing that service, they do sign on as section 3(38) fiduciary investment managers. However, it appears that the proposed regulation provides that, if the plan does not offer individual stocks and bonds, then the investment management service cannot qualify as a QDIA. On the other hand, if the plan offers individual brokerage accounts to participants, apparently those investment options are also available to the other participants and thus the managed account would qualify as a QDIA.

My thought is that the investment service should qualify as a QDIA regardless of whether the plan offers individual brokerage accounts. That seems like an artificial distinction. As a result, I would recommend that you delete the requirement that the investment alternatives used by the investment manager need to otherwise be available under the plan.

2. In addition, there is some confusion about the meaning of the words "available under the plan." For example, if those same managed accounts (utilizing individual stocks and bonds) are available to participants should they affirmatively elect to use them, does that mean that the individual investments are otherwise available under the plan? Clearly they are available to those participants who affirmatively select the managed account option. However, they are not to those participants who do not select the managed account option. Which interpretation is correct?

From our perspective, we would prefer the interpretation that says that, if participants can elect to use certain investments or services, then all of the investments utilized by those vehicles or service providers are "available under the plan."

Bruce and I apologize for addressing this issue at this late date. However, we just realized that it was an issue--because of work that we are doing for a client.

Fred Reish

Bruce Ashton

From: BLA
Sent: Thursday, July 05, 2007 6:30 PM
To: 'Campagna Lou'
Cc: 'Sweeney Erin'; 'Alexander Lisa'; CFR
Subject: QDIA Proposed Regulation

Lou:

Fred Reish and I wanted to give you one additional comment on the proposed regulation. We realize it is late in the process, but hopefully not too late for you to give this some consideration.

Our comment relates to the definition of an investment management service as a QDIA. An investment management service is described in subsection (e)(5)(iii) as a "service with respect to which an investment manager allocates the assets of a participant's individual account ... through a mix of equity and fixed income exposures, *offered through investment alternatives available under the plan...*" Our comment relates to the highlighted words.

This definition appears to contemplate that the investment management service would only be able to use the investment alternatives which a participant could use to allocate his or her account if the participant actually exercised control. This is in contrast to the other qualified alternatives identified in subsections (i) and (ii), which indicate that the investment model may be created from among the investment alternatives available under the plan or may be a "stand alone" investment.

If our reading of the proposed regulation is correct, we believe that the definition is too restrictive and that it would be preferable to substitute for the highlighted language the following: "prudently selected and monitored by the investment manager." In other words, the investment manager would have the discretion to use appropriate investments to manage a participant's account regardless of whether the option is otherwise available.

Consider the following two examples in support of our comment:

1. Suppose a plan offers participants the opportunity to establish an individually directed brokerage account. Presumably, this would mean that participants could select from virtually any publicly available security in directing the investments in their accounts. Or suppose the plan offers a mutual fund window through which participants may select from an array of, say, 1,000 mutual funds in addition to the core funds that are available on the provider's platform. In this circumstance, it would appear that the words "offered through investment alternatives available under the plan" would include essentially any investments available in the public markets (in the case of the individually directed brokerage account) or 1,000 mutual funds (in the case of the mutual fund window). In this circumstance, it would seem that the "available under the plan" limitation would be no limitation at all.
2. Alternatively, consider a plan that offers a core list of 15 mutual funds and lifestyle or target date funds but does not offer, for example, an emerging markets fund on the theory that it is too volatile for use by participants who direct their own accounts. On the other hand, in the hands of a professional investment manager, it might be highly appropriate to include a small allocation in such a fund to enhance the long term appreciation and balance risk in a given participant's account. Under the proposed definition, however, it would appear that if the investment manager made use of such a fund, prudently selected and monitored by that investment manager, the arrangement would not be an "investment management service" and the plan would not be using a "qualified default investment alternative" for the defaulting participant accounts.

We submit that the apparent limitation on the definition of an investment management service is inappropriate and should be eliminated. Instead, the investment manager should be able to prudently select and monitor investments that assist in the management of the participant's account, regardless of whether they are otherwise available in the plan.

We have intentionally kept this comment short given where you are in the regulation process. We would be pleased to discuss this with you if that would be helpful, and thanks for your consideration.

Fred Reish and Bruce Ashton

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