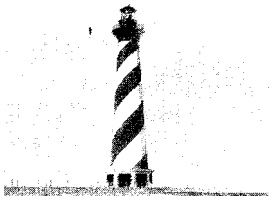

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January 29, 2007

Office of Exemption Determinations
Employee Benefits Security Administration, Room N-5700
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210,

Attention: IRA Investment Advice RFI

Ref: RFI Response: Prohibited Transaction Exemption for Provision of Investment Advice to Individual Retirement and Similar Plans [published 12/04/20061

Document ID: EBSA-2006-0051-0001

Fiduciary360 (see Enclosure 1 for additional information about "060") is pleased to submit the following response to question 8 of the above captioned RFI.

Respectfully submitted,

Donald B Trone, AIFA®
CEO

8. 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?

Our response is based on the following presupposition:

There is likely to be confusion as to whether a computer model ("model") that meets the requirements of section 4975 of the Internal Revenue Code ("Code") is intended just to be used in the development of an IRA beneficiary's asset allocation strategy, or to be more inclusive and apply to the development of a beneficiary's overall investment strategy. We believe the latter; the proper evaluation of a computer model also should include how the model is used in all four steps of a traditional investment decision-making process.

To illustrate, each of the model criteria ("criteria") described in 4975(e)(1)(B)-(F) of the Code can be mapped to one of the four steps.

Step One - Organize: What beneficiary input is required, and how does the computer model obtain and organize the information?

Criteria (b): Utilizes 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

Step Two - Formalize: How does the model formalize the investment strategy, including the development of the beneficiary's asset allocation strategy, and prepare a written document that summarizes the beneficiary's inputs and records the suggested investment strategy provided to the beneficiary?

Criteria (a): Applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time

Step Three - Implement: How does the computer model suggest the implementation of the investment advice, and identify specific investment options for implementation?

Criteria(c): Operates 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

Criteria (e): Allows the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options

Step Four - Monitor: How does the computer model monitor the beneficiary's investment strategy? Does it include procedures to periodically rebalance the beneficiary's portfolio? Prompt the fiduciary adviser to check for material changes in the beneficiary's profile? And provide investment performance information to the beneficiary?

> *Criteria (d): Takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary*

The evaluation of a model should be based on a flexible doctrine that gives consideration to incorporating changes in the types of financial products made available to beneficiaries, as well as evolving investment strategies and theory. At the root of this doctrine should be the concept of a process standard and the requirement that fiduciary advisers demonstrate their procedural prudence.

Models provide the fiduciary adviser an additional means for managing investment decisions, but they still must be evaluated against the backdrop of sound fiduciary practices. No model is ever inherently imprudent; it is the way it is built and how it is used that determine whether the prudence standard has been met. While even the most aggressive and unconventional model can meet the standard if arrived at through a sound process, the most conservative and traditional one may be inadequate if a sound process was not implemented.

The following questions are intended to serve as a guide to help the Department, or a qualified third-party, make a determination as to whether a model meets the criteria of the Code.

Step One - Organize:

> *Criteria (b): Utilizes 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*

1. How does the model determine the beneficiary's risk tolerance?

2. How does the model allow a beneficiary to opt out of an asset class?

3. How does the model incorporate the beneficiary's time horizon until retirement?

4. How does the model incorporate the beneficiary's life expectancy?

5. How does the model overlay the beneficiary's time horizon until retirement with the beneficiary's life expectancy?

6. How does the model calculate the expected return that a beneficiary needs to earn in order to meet retirement goals?

7. How does the model factor in other sources of retirement income?

Step Two - Formalize

Criteria (a): Applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time

The development of an asset allocation strategy involves as much art and intuition as science; and the outputs of a computer model are only as good as the inputs. The old adage "garbage in-garbage out" has never been more applicable. The challenge for the expert in evaluating the model is to be able to evaluate the reasonableness of both the inputs and the outputs.

8. How were the capital markets inputs (expected return, standard deviation, correlation coefficient) developed for the model?

Simply stated, there are two approaches to developing computer model inputs: (1) Using the actual historical returns of various asset classes; or, (2) Using historical returns to then further develop risk-premium inputs. Of the two, the risk-premium approach is the methodology preferred by most institutional investment consultants, while the use of historical data is preferred by most broker-dealers.

The problem with using simple extrapolations of recent historical data is that they are not only likely to be poor estimates of future performance, they also may cause the computer model to overweigh an asset class that has had recent superior performance, and underweight the laggards, setting the stage for the classic investment mistake-buying high and selling low. On the other hand, the development of risk premium inputs is quite involved, and equally challenging to evaluate.

9. Are the capital markets inputs reasonable?

There should be no fiduciary requirement; nor should a fiduciary adviser ever imply; that the computer model is capable of forecasting future returns. However, there should be a requirement that the expert evaluating the computer model be capable of easily determining the source of data used by the model, and the process that was followed in developing the inputs.

Enter the capital markets inputs for the model, and compare to those developed by fi360 (or other investment expert):

Broad Asset Class	Standard Deviation	Comparable to 11360 (4)	Modeled Return	Comparable to 11360 (,l)
Cash/ Money Market				
Short-term Fixed Income/				
Intermediate-term Fixed Income				
Broad Fixed Income/ High Yield				
Global Fixed Income				
Real Estate				
Large Cap Equities				
Mid Cap Equities				
Small Cap Equities				
International Equities				
Alternative Investments/ Other				

10. Does the model prepare a written investment strategy for the beneficiary?

See Enclosure 2 for a sample Beneficiary Policy Statement ("BPS"). By reducing the details to writing and preparing a written investment strategy (PPS), the fiduciary adviser can: (1) reduce misunderstandings with beneficiaries, (2) minimize the possibility of missteps by the beneficiary due to a lack of clear guidelines, and (3) establish a reasoned basis for measuring success, both in terms of meeting the beneficiary's objectives and the fiduciary adviser's efforts.

11. How is the level of risk communicated to the beneficiary?

The primary function of the model is to demonstrate the probable risk and return ranges associated with different investment strategies, so that the average beneficiary can comprehend the risk/return tradeoffs associated with each proposed strategy.

12. How does the model calculate the expected return for a specific asset allocation?

Using the model, calculate the risk/ return profile of the following asset mix:

30% Large cap equities
15% Small cap equities
15% International equities
30% Intermediate fixed income
10% Money market, cash, short-term fixed income

Record Risk: Worse case scenario and/or Standard Deviation
And/or other risk measure

Record Expected Return

If possible, compare results to fi360's Optimizer, utilizing the same asset allocation
Risk: Model fi360
Return: Model fi360

13. How does the model determine which asset classes should be included?

The following illustration is a suggested guide: Ordinarily, the most appropriate asset classes to be used as a starting point are the broad market classes representing the full capitalization-weighted range of investment opportunities. Simply stated: stocks, bonds, and cash. From this starting point, additional asset classes and peer groups should be added that provide meaningful risk and return benefits to the beneficiary's overall investment strategy.

ADDING ASSET CLASSES To AN IMPLEMENTATION MATRIX

# OF OPTIONS		ASSET and SUB-ASSET CLASSES
3		Large Blend, Multisector Fixed & Cash
4	Add	International Equity Blend
5	Add	Small Blend
6	Add	Intermediate Fixed
7	Add	Mid-Cap Blend
8	Add	Large Value, Large Growth
9	Add	Emerging Markets
10	Add	Real Estate
11	Add	High-Yield Fixed
12	Add	International Bond

14. Is the model output provided to the beneficiary in a clear and conspicuous manner, and in a manner the average plan beneficiary can understand?

Step Three - Implement

Criteria(c): Operates 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

Criteria (e): Allows the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options

15. What due diligence process is used to identify, select, and monitor investment options utilized by the model?

6360 developed the following due diligence process more than eight years ago, and believes that it represents the minimum process that should be used to evaluate an investment option in both the selection and monitoring phases.

Suggested Fields of Due Diligence	M60 Suggested Threshold	Model Defined Threshold	Implement (Step 3)	Monitor (Step 4)
1. Regulatory oversight	Each investment option should be managed by: (a) a bank; (b) an insurance company; (c) a registered investment company (mutual fund); or, (d) a registered investment adviser.			
2. Minimum track record	Each investment option should have at least three years of history so that performance statistics can be properly calculated.			
3. Stability of the organization	The same portfolio management team should be in place for at least two years.			
4. Assets in the product	Each investment option should have at least $75 million under management (for mutual funds - can include assets in related share classes).			
5. Holdings consistent with style	At least 80% of the underlying securities should be consistent with the broad asset class.			

6. Correlation to style or peer group	Each investment option should be highly correlated to the asset class being implemented.			
7. Expense ratios/ e s	Fees should not be in the bottom quartile (most expensive) of the peer group.			
8. Per orinance relative to assumed risk	The investment option's risk-adjusted performance (Alpha and/or Sharpe Ratio) should be evaluated against the peer group median manager's risk-adjusted performance.			
9. Per ormance relative to a peer group	Each investment option's performance should be evaluated against the peer group's median manager return, for 1-, 3- and 5-year cumulative periods.			
10. Other				
11. Other				

Step Four - Monitor

Criteria (d): Takes into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary

16. How does the model determine the number of investment options presented to a beneficiary?

There are numerous factors that should be considered in determining the number of investment options presented to a beneficiary, but no formula can determine the best number of investment options-the appropriate number, and type, are determined by facts and circumstances: [1]

- Size of the beneficiary's portfolio
- Investment expertise of the beneficiary
- Ability of the beneficiary to properly monitor the strategies and/or investment options

[1] Most of these factors were developed by the AICPA's Personal Financial Planning Executive Committee (Investment Advisory Task Force)

- Ease of liquidity
- Minimum required investment
- The degree to which the investment is diversified
- Ease in meeting asset allocation and rebalancing guidelines
- Degree of portfolio transparency
- Whether portfolio and performance information is audited
- Degree of regulatory oversight
- Ability to give investment direction to the portfolio manager

Does the model facilitate the rebalancing of the beneficiary's account?

Enclosure 1: About Fiduciary360 (fi360)

Fiduciary360 (fi360) is the unincorporated identity brand coordinating the resources of the Foundation for Fiduciary Studies, Center for Fiduciary Studies, and Fiduciary Analytics. Our mission is to promote a culture of fiduciary responsibility and improve the decision making process of investment fiduciaries. This includes topics covered in this RFI.:

The **Foundation for Fiduciary Studies** is a nonprofit organization established for the purpose of defining the practices that detail a prudent process for investment fiduciaries including investment advisors, trustees, and investment committee members. The Foundation has produced a series of fiduciary handbooks, three of which served as a basis to the responses in this RFI. Copies of these three handbooks are included with this RFI. Additional copies are available in a limited number upon request:

Prudent Practices for Investment Stewards (U.S. Edition) - Defines the fiduciary practices for plan sponsors, trustees, and members of investment committees.

Prudent Practices for Investment Advisors (U.S. Edition) - Defines the fiduciary practices for professionals who provide comprehensive and continuous investment advice. These practices can serve as the basis for defining the standard of care for the PPA's fiduciary adviser and model expert.

Legal Memorandums - Provides the legal opinions to substantiate all of the fiduciary practices defined for Investment Stewards and Investment Advisors.

The function of the PPA's fiduciary adviser represents a melding of traditional investment fiduciary practices with financial planning. As such, we suggest that the Financial Planning Association's handbook, ***Prudent Practices for Fiduciary Advisers,*** (as of this date, it is still in draft form) also be referenced in conjunction with this RFI.

The **Center for Fiduciary Studies,** which is associated with the **University of Pittsburgh's Center for Executive Education** at the **Joseph M. Katz Graduate School of Business,** provides educational programs on investment fiduciary resonsibility, and sponsors the professional designations Accredited Investment Fiduciary* (AIF®) and Accredited Investment Fiduciary Analyst™ (AIFA®). To date, more than 6,000 professionals have gone through the fiduciary training programs.

The AIF is the core course on fiduciary responsibility, and is available on-line or at various university and professional locations across the country. In 2006 the AIF designation was named one of the "Ten Most Wanted" designations in the investment industry by Financial Planning magazine.

The AIFA is the advanced course on fiduciary responsibility which trains professionals to serve as analysts to assess whether an entity is in conformance with defined fiduciary practices. The assessment process is based on the global auditing procedures defined by ISO 19011. We believe that AIFA designees are well-suited to serve as experts, and to conduct the annual audits of fiduciary advisers.

Fiduciary Analytics is a technology firm which develops Web-based tools, including models, incorporating fiduciary practices. Though fi360 has experience in building models, it does not anticipate that it will serve as a vendor of such tools in support of the PPA.

Enclosure 2: Sample Beneficiary Policy Statement (BPS)

Step 1 - Organize

Participant Name Date Prepared

Fiduciary Adviser Adviser's Firm

Current Account Balance $ Annual Contribution Amount $

Additional Retirement Benefits:

Defined Benefit Plan $ Spousal Retirement Benefits $

Savings $ Other (Define) $

Step 2 - Formalize (RATE)

Risk Tolerance

Investment Knowledge:

Know a little Know some Know a lot

Risk Tolerance Scale:

I don't want to lose any money

I can take some investment risk

I can take a lot of risk, knowing I also may lose a lot of money

Asset Class Preferences

Make all of the plan's asset classes available

Restrict the following asset classes:

Time Horizon

Age Years until Retirement

Life Expectancy (actuarial chart) Years in Retirement

Expected Return

Targeted (Desired) Investment Return

4% 6% 8% 10%

Proposed allocation

Proposed	Model	Percentage Stocks	Percentage Bonds	Modeled Risk	Modeled Return
	Model A	20%	80%	0	4.0%
	Model B	40%	60%	-4.0%	6.0%
X	Model C	60%	40%	-8.0%	8.0%
	Model D	80%	20%	-12.0%	10.0%

Step 3 - Implement

Suggested Investment Options and Allocations

Fund Name	Peer Group	Allocation
Mutual Fund A	Large Cap Equity	30%
Mutual Fund B	Mid Cap Equity	10%
Mutual Fund C	Small Cap Equity	10%
Mutual Fund D	International Equity	10%
Mutual Fund E	Intermediate Fixed Income	30%
Mutual Fund F	Short-term Fixed Income	10%

Step 4 - Monitor

Historical Performance (as of Dec 31, 2006)

Fund Name	Peer Group	1 Yr	3 Yr	5 Yr
Mutual Fund A	Large Cap Equity	3.2%	2.8%	7.4%
Mutual Fund B	Mid Cap Equity	3.2%	2.8%	7.4%
Mutual Fund C	Small Cap Equity	3.2%	2.8%	7.4%
Mutual Fund D	International Equity	3.2%	2.8%	7.4%
Mutual Fund E	Intermediate Fixed Income	3.2%	2.8%	7.4%
Mutual Fund F	Short-term Fixed Income	3.2%	2.8%	7.4%

Moving Forward

Your responsibilities: You must implement the proposed strategy if you believe it is appropriate.

My responsibilities: I will meet with you on an annual basis to review your PPS, and discuss whether you need to rebalance your portfolio, make changes to your asset allocation, and/or change your mutual fund selections.

_____

Plan Participant Date

_____

Fiduciary Adviser Date