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June 12, 2009

To: Office of Regulations and Interpretations Employee Benefits Security Administration;
and

U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Subject: File No. 4-582, Target Date Fund Joint Hearing

Please accept this submission as our firm's request to appear and testify at your June 18, 2009 joint hearing regarding Target Date Funds.

We have attached a discussion document as to the content of our proposed testimony. It describes the specific weaknesses of Target Date Funds in general and as a Qualified Default Investment Alternative. It further describes work I and my partner, Richard Tinervin have done to provide an alternative to Target Date Funds in keeping with the legislative intent of the Pension Protection Act of 2006 for Qualified Default Investment Alternatives.

Sincerely,

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DOL and SEC TESTIMONY on USE of TARGET DATE FUNDS

Presented by Allan D. Grody and Richard R. Tinervin

June 18, 2009

Not long ago driving along the FDR Drive in New York City towards Wall Street, we were struck by a large BMW billboard advertisement **"401K IRA BMW".** Underneath these words was a picture of a BMW. This highly visual message was portraying the simple notion that one's future accumulation of retirement income is to be a higher priority than the Baby Boomer pursuit of the Beemer. Quite a noble purpose, but the point being made is from an automobile company whose only goal is to sell its high priced, high quality products.

Now fast-forward to the common sense innovations embedded in the Pension Protection Act (PPA) of 2006, the most significant change in retirement legislation since the passage of ERISA. The legislation is similarly promoting the concept that we need to set a high priority to save for our retirement and, in this case, the government will help by providing tax and other incentives. However, the deliverer of this message was not the Government, in this case the Department of Labor, but rather the insurance companies and mutual funds, and their investment advisor intermediaries, who dominate the market for implementation of the PPA. They, too, have the same vested interest as BMW, which is to sell high priced products like Target Date Funds that have been built improperly around the good intentions of the key investment concepts embodied in the PPA. Even more disconcerting is that most of the Target Date Fund advocates are already pushing new versions of their products to include post retirement income and annuitized features before they have fixed the discrepancies of their current inventions which have not solved the key problem of how to build an adequate retirement nest egg,

If properly implemented, the PPA has the potential to truly change the landscape for accumulating and preserving assets for current and future generations of retirees. However, the gains expected from this legislation, automatically enrolling employees in their company's 401k plan and placing them in a market rate-of-return QDIA, can be swept away if its implementation is left to traditional retirement specialists whose lack of transparency and intent to preserve fat profits, has left retirees in a state of shock. The new products that the PPA was intent on spawning has been high-jacked by the entrenched players from their existing inventory of old parts – mutual funds and annuities, dressed in the new cloth of Target Date Funds with a high cost structure and underperforming results in comparison to the large, well known market indices.

TMark Associates, a retirement consulting firm, recently authored a comprehensive comparison of the fees for target date products using the Morningstar mutual fund database. On top of an already high fee for the underlying mutual funds of an institutional share class (this being the lowest priced share class presumably offered to retirement plan sponsors) a charge of between .2% and 1.25% for the target date "wrapper" was added. Another recent study by Turnstone Advisory Group and Plan Sponsor magazine found that the average institutional share class expense ratio of 28 target date fund families utilizing 175 funds was .8%.

The culprit is excessive fees charged by financial intermediaries who, while adhering to the law's provisions, are needlessly building products with higher costs using traditional mutual funds vs. Exchange Traded Funds (ETFs) which will do the same job, but at a significantly reduced cost. As an example, the difference between the total management fee of the SPDR ETF (symbol SPY), which represents ownership of all the 500 securities in the Standard & Poor's 500 index, and a typical large cap mutual fund, is 1%. A typical fund available from intermediaries for retirement accounts, the Prudential Large Cap Value fund charges a 1.10% management fee. The SPDR costs .08%.

Intriguingly, in the TMark study, a comparison of the performance of the in-bred target date funds against both a portfolio of Morningstar 4 and 5 star funds, and an equivalent portfolio of ETFs, found that both alternatives improved the performance over target date funds by over 1%. The Milliman actuarial and benefits consulting firm reports that taken over a lifetime of saving for retirement that can cost a retiree in excessive of $ ½ million.

The Exchange Traded Fund is the most significant financial innovation of the modern era of finance. Combining innovations in technology, tax law, investment structures, the industry's own processing infrastructure, and economic arbitrage this masterful stroke of financial genius was sparked when three legends of the industry, Nathan Most, Burt Malkiel and Ivers Riley sat together on the American Stock Exchange's New Products committee and invented the Standard & Poor's Depository Receipt, or the SPDR Trust, or SPY as it has come to be known by its trading symbol. The retirement industry has reacted to this innovation with a mixture of disinterest and misinformation. In place of embracing ETFs, the industry is innovating new retirement products while continuing to preserve their high cost mutual funds as underlying investments.

One myth, perhaps disseminated out of ignorance, is that ETFs are too expensive for retirement accounts. Each purchase of an ETF requires a commission to be paid, while no such commission is paid when mutual funds are acquired. Often cited is the smallest discount brokers' per-trade commission as being too high for participants to pay. Owing to the small amount contributed each pay period by participants, on a percentage basis, even a $4 per-trade commission on a single $147 SPDR is nearly 3%. A daunting fee!! However, this is not the commission wholesalers pay in executing trades. In fact, retirement recordkeepers, in aggregating order flow to executing brokers are in a position to act as wholesalers and pay little, if anything, for these trades!!!

A second myth is that ETFs in retirement accounts need some new technology to account for them within recordkeepers' systems. The story is told that as ETFs are bought with small, periodic payroll deductions, it is not efficient to buy a whole share of an ETF. Thus, they must be held either as cash or as fractional interest in shares until a whole share is purchasable, which record-keepers' systems can't accommodate. Not so. Collective trust systems, self directed-brokerage accounts, even mutual-fund shareholder accounts, can perform such accounting. Purchasing wholesale blocks of ETFs and distributing them in full and fractional interest into their individual recordkeeper accounts, prorated on the basis of the cash contribution, is simple to do through either a unitized accounting or omnibus accounting method. This is been done by brokers in clearing for others, banks in their common trust funds and by investment managers in their accounting for mutual funds.

A third myth is that these ETFs are too dangerous for retirement account holders because they can be traded throughout the day as any ordinary stock can. This feature, it is said, is too tempting as it can be used by a participant to undue any buy-for-the-long-term strategy advocated by most academics and investment thought leaders when saving for retirement. Whether true or not, not many retirement platforms allow for ETFs and thus no data is available to prove or disprove the theory, it is a moot point now that automatic enrollment and automatic investing in the form of target date funds are the law of the land thanks to the Pension Protection Act.

A final falsehood making its rounds, whether out of ignorance or design, is that ETFs are dangerous investments, owing to the narrow focus and more exotic nature of "designer ETFs" proliferating today. We are reminded that these products have limited liquidity and unproven durability, and thus certainly not suitable for retirement accounts. Painted with this same unsuitability brush are the ETFs of broad scope, long duration and proven liquidity such as the SPDR.

A final insult to the innovation of ETFs comes at the hands of those retirement specialists constructing target date funds. Target date funds as currently used set a participant on automatic pilot where, over a set period of years the asset mix is changed to reflect the changing liquidity and income needs of the participants as they near retirement. Pick a retirement data and you are good-to-go. The fund company does the heavy lifting thereafter, switching the asset mix over time. However, almost all retirement fund companies construct these funds with their own mutual funds, thus adding on an additional layer of cost, essentially another management fee, to manage a fund of their own funds.

It is thus a simple conclusion that ETFs in retirement portfolios, held over the lifetime of saving for retirement, can maximize ones income in retirement. A cost reduction of 1% and a performance improvement of 1% over mutual fund alternatives hopefully, will be the legacy of this remarkable invention.

It is unlikely, however, that any of the existing entrenched old-line retirement providers will abandon the use of Target Date Funds and act in the best interest of investors. Rather new innovators in the form of both large fiduciary-minded companies and small entrepreneurial start-ups are eyeing the opportunity. Our start up, Saved Retirements LLC, has come up with an innovative product called the Saving for Retirement Account™ on which we have also filed for a patent. Unique to the Saving for Retirement Account™ is a principal protection feature that provides a guarantee. This guarantee uses proven direct investments in contract hedging markets vs. relying on either the balance sheet of investment product manufacturers that have proven to be inadequate in the recent turmoil surrounding the world's capital markets, or is obtained at higher cost by purchasing such guarantees from intermediaries who, in turn, use these same contract hedging markets. Having used the word "guarantee" in this testimony, we note that we are not permitted to use that word in any of our product literature as that word, much maligned, is still the exclusively province of the insurance industry.

SRA™ is today's equivalent of Merrill Lynch's Cash Management Account™ (CMA), which took the financial services industry by storm in the 1980s by combining existing products already available to better serve the needs of retail investors. Just as the CMA was the logical response to developments in finance and to consumer demand in its day, SRA™ is the logical response to legislative developments, worker needs, and the failure of existing products to accommodate those needs in today's environment.

The SRA™ Master Portfolio consists of Morningstar's three stars or higher rated ETFs. There selection for the Portfolio is based on a value approach for benchmark index large capitalized companies and growth for the balance. The number of ETFs in the Portfolio is normally 10 and the weighted average expense ratio is 20bps (1/5 of 1%). We look for ETFs whose underlying assets are not highly correlated. Foreign exposure provides growth, low correlation, and dollar diversification. Beyond that, we are focused on low costs and high liquidity and on including a mix of ETF fund families, which provide a way, through overlap, to build the desired concentrations while still adding diversification.

The Master Portfolio is heavily weighted toward equities as equities have been preferable to fixed income, both from a return standpoint and a risk standpoint. Over every 30-year period in the last 206 years (using the Ibbotson-Sinquefield Historical Returns Data Base), annualized volatility of the real returns of bills and bonds has been about 2.75%; for stocks the corresponding volatility is just under 2%. In twenty-year periods, there has never been a real (taking inflation into effect) decline in the stock market, but we can find twenty-year periods that have seen bills and bonds lose approximately half of their real returns. This is due to periods of inflation that results in rising prices. Noting that this effect is due to corporations raising prices; a diversified portfolio of shares in these companies should capture the general benefits of price increases. As a stockholder, the one who owns equities (and thereby indirectly the diversified assets of these companies – from energy to commodities to debt) is benefiting from rising prices and inflation.

The SRA™ contains a Principal Protection feature, accomplished by diverting the dividend and interest stream from the investment portfolio to cover the cost of protection. Here, SRA™ Principal Protection is directly hedged in contract markets on behalf of the SRA™ portfolio, using a Central Counterparty (highest rated guarantor) for fulfillment of the guarantee. In fact this innovation has been around a long time as Individual Retirement Accounts already permit the use of covered calls and put options.

Our Investment Manager partner, Coastal Management Group LLC, has extensive experience and considerable expertise in direct principal protection. Our competitors use intermediary investment contracts or guarantees that add another layer of cost to the provisioning of principal protection in retirement portfolios. Also, one of the considerations in constructing the Master Portfolio is the availability of suitable hedging instruments, so its components can all be protected reasonably easily. The hedging strategy is pursued within a rigorous discipline. Coastal has created a proprietary rating scale for hedging ETFs that is quite unique and not available anywhere else. SRA™ is uniquely benefited by this proprietary hedge-rating model.

Finally, the Master portfolio and its Principal Protection Portfolio work together as another investment on the menu of alternative investments or as the Qualified Default Investment Alternative (QDIA), sanctioned under the Pension Protection Act (PPA) of 2006, by staying in the Master Portfolio for 30 years then automatically switching to the Principal Protection portfolio for the remaining 10 years or sooner until retirement. Because the product works together it has a “balanced mix of equity and bond exposures” thus qualifying it as a Balanced Default, a more recent characterization in the PPA of what constitutes a QDIA and what we called a QBDIA™ (Qualified Balanced Default Investment Alternative™). The participant can opt out of the Principal Protection at the 30 year point or sooner, in effect opting out from the QDIA. The participant would be counseled by a Fiduciary Advisor, also a new designation sanctioned under the PPA, prior to this decision and until his retirement, allowing the participant to plan a more appropriate strategy perhaps, given the circumstance of the moment, whether it by the market or the individual’s own life interests/risk tolerance, etc. Future enhancements to the QBDIA™ will incorporate the direct purchase of Treasury Inflation-Protected Securities (TIPS) and other Treasury securities once the IRS initiates changes to its interface to the Treasury Department’s direct employers’ salary deduction plan. This will again eliminate unnecessary financial intermediary fees. To date the capability needed, a simple addition of a code to recognize that the deduction is for a tax advantaged recipient, has not been a high priority for completion at the IRS.

So, the compelling question surrounding the use of Target Date Funds that needs to be addressed is when and how can every American save for retirement without worrying that financial intermediaries are just selling investment products that are self-serving. ERISA and PPA were signed into law to first and foremost protect the interests of consumers who are trying to save for retirement. So when will the broader financial services community start to truly implement the intentions of the US Congress? Obviously we, the inventors of the Saving for Retirement Account™, having no vested interest in protecting an existing revenue stream, have hopefully shown a way to map intent into reality. What others who innovate in this space can do is only bounded by their constraints of self interest.

Allan D. Grody
Founder of Financial InterGroup Holdings Ltd.

Financial Intergroup has over two decades created and/or invested in seven start-ups and has patents and trademarks on a number of breakthrough products and businesses in the financial services industry. FIG also formed joint ventures with exchange, clearing houses and technology companies and has advised many of the largest financial enterprises globally.

Mr. Grody has been active in the financial industry for over four decades and has had hands on experience in multiple sectors of the financial industry. He has been advising on domestic and international issues related to financial institutions’ global strategies, restructuring and acquisition needs, information systems, communications infrastructures, and risk management systems.

In an earlier career, he was the founder and Partner-in-charge of Coopers & Lybrand's Financial Services Consulting Practice, which was subsequently merged with Price Waterhouse and eventually sold to IBM. Professor Grody founded and taught the only graduate level Risk Management Systems course at NYU's Stern Graduate School of Business. He also lectures on financial markets, financial information systems and venture investing.

His business career began with General Electric where he was on the team that developed their finance subsidiary's management accounting and reporting systems. He later went on to hold increasingly responsible management positions in the investment management business with Neuberger Berman and in the securities industry with Dean Witter Reynolds. He later was an officer with Algemene Bank Nederland N.V. which was the founding entity of ABN-AMRO Bank.

He was an early advocate for the shift in retirement programs from defined benefits to defined contributions, and promoted both the use of 401K programs for corporations and the asset diversification strategy for retirement assets embodied in ERISA legislation. He was on the team that explored infrastructure implementation strategies for a new concept in mutual funds known as Exchange Traded Funds. Mr. Grody also conducted numerous studies and evaluations of various recordkeeping and portfolio accounting systems related to implementing these new era employee benefits programs that have today become the mainstay of employee savings and retirement programs.

He is the author or co-author of many papers and articles including: *Automation at the NYSE (National Academy of Science 1988); A Global Study of Electronic Markets (NYU Working Paper Series, 1994)*; *Progress in Establishing Financial Industry Standards – The New Initiatives to Exploit XML as the Genome of Financial Transactions (Securities Industry Middleware Assoc., 2001)*; *Operational Risk and Reference Data - Solving the Reference Data Problem in Financial Services – Are We on the Right Path?* (Journal of Operational Risk, Dec. 2006*)*; *The New Basel Capital Accord and the Challenge of Operational Risk Management (Bearing Point White Paper Series, 2003;, Operational Risk and Reference Data: Exploring Costs, Capital Requirements and Risk Mitigation (SSRN.com working paper Feb, 2007); Operational Risk, Data Management and Economic Capital (Journal of Financial Transformations - Cass Institute Series on Risk, June, 2008); and Payment & Settlement Systems - The Case for Mutualized Risk Mitigation within the Basel II Framework (Journal of Risk Management in Financial Institutions – Special Issue on Blind Spots in Risk Management Fall, 2008).* Mr. Grody holds a BS in mathematics from the City University of New York

He has represented firms in regulatory and trading matters before the SEC, has counseled with trade associations, exchanges and technology companies, and was an expert witness in a number of financial industry trading patent cases and investment company shareholder suits. He was a Member of the Board of Directors of the Technology Committee of the Futures Industry Association; an Executive Committee Member of the Emerging Business Council of the Information Industry Association; an Executive Board Member of the Vietnamese Capital Markets Committee and, for nearly a decade, an Advisory Board Member to the London Stock Exchange's annual Computers in the City Conference. He is currently an Editorial Board member of the Journal of Risk Management in Financial Institutions.

Richard R. Tinervin
Founder of Tinervin Advisors

Mr. Tinervin has 37 years experience in international and U.S. financial services as a Managing Director of Citigroup; as President, CEO and Director of The Charles Schwab Trust Company; as President, CEO and Director of Irving Trust Company, California; as Director, The Bank of New York Florida Trust Company, and CitiStreet; as Executive Vice President at Charles Schwab & Co., Inc., Fidelity Investments, and NCNB (Bank of America); and as Senior Vice President at the Bank of New York. He started/managed institutional and retail businesses in asset management, financial planning, private banking, retirement services, securities processing and trust. He was responsible for sales, marketing, operations and technology for many of these businesses.

At Citigroup, Mr. Tinervin was responsible for their Global Retirement Services business, which included the strategy, formation and oversight of a global benefits services company called CitiStreet (A Citigroup and State Street Company, recently sold to ING); and the retirement businesses for Citigroup Asset Management in the international developed markets which included forging acquisitions and alliance partnerships in Australia, Hong Kong, Japan and the United Kingdom. At Charles Schwab he was responsible for The Charles Schwab Trust Company, The Hampton Company and TrustMark. At Fidelity he was responsible for the Bank Services Division within Fidelity Institutional Investment Services in providing asset management, retirement, sales/marketing and technology services to Community and National Banks including the Broadway & Seymour Alliance. At NCNB he had Bank-wide responsibility for Institutional Investment and Trust Services including Corporate Trust, Custody, Master Trust, Retirement Services and the Stock Transfer business. At Bank of New York he was responsible for the Personal Trust and Institutional Sales/Marketing Divisions, and the California and Florida Trust Companies.

Since electing early retirement from Citigroup, Mr. Tinervin founded Tinervin Advisors as an independent consultant to financial services organizations and multinational corporations to include leading the adoption of human resource outsourcing. Selected as a 2005, 2006 and 2007 Superstar of HRO Outsourcing by *HRO Today* Magazine and nominated as the 2005 HRO Thought Leader of the Year, he also serves on the Boards of DailyAccess Corporation, the European CxO Outsourcing Project, and Headway Corporate Resources. He frequently writes and speaks on the topic of outsourcing in financial services.

Advisory clients include The Blackstone Group, Frontenac Company and FTV Capital where Mr. Tinervin initiates and provides oversight of private equity investments. Consulting relationships have included Amvescap, Bisys Group, CitiStreet, Milliman and SunGard Employee Benefit Services. Mr. Tinervin has ongoing investment partnership with Allan D. Grody, the President of Financial InterGroup Holdings Ltd.

Other industry leadership affiliations have been with the American Bankers Association, the Association of Investment Management Sales Executives, the Employee Benefits

Research Institute, the Human Resource Outsourcing Association, the International Association of Financial Planners and the Investment Company Institute. Community Board appointments have included Dean College President's Parent Advisory Council, the Multiple Sclerosis Society, the National Lacrosse Foundation, the North Carolina School of the Arts Parents Council and The University of Vermont New York City Alumni Chapter.

Mr. Tinervin received his Bachelor of Arts in psychology from the University of Vermont and a Masters of Business Administration from Fairleigh Dickinson University. In addition he holds Series 7, 63 and 24 Securities Licenses.