Principal Financial Group

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November 20, 2002

Office of Regulations and Interpretations
Pension and Welfare Benefits Administration,
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attention: Blackout Notice Regulation

Dear Sir/Madam:

This letter is in response to the Pension and Welfare Benefits Administration's (PWBA) request for comments on the interim final regulations regarding Section 101(i) of ERISA, which requires the provision of a notice to participants and beneficiaries of individual account plans prior to a "blackout period". Section 101(i) was enacted into law as part of the Sarbanes-Oxley Act of 2002.

The Principal Financial Group® (The Principal®) is a diversified family of financial service companies with total assets under management of $120.2 billion. The parent company, Principal Financial Group, Inc., is a member of the Fortune 500. More employers choose the companies of the Principal Financial Group for their 401(k) plans than any other bank, mutual fund or insurance company in the United States. The member companies of The Principal include Principal Life Insurance Company, which serves 619,000 individual policyholders, 75,000 group employer clients, and 40,000 pension customers (employers). They also include Princor Financial Services Corporation, which serves 637,000 mutual fund shareholder accounts, and Trustar Retirement Services, which serves 450,000 retirement accounts. In all, 13 million customers (businesses, individuals and their dependents) worldwide rely on the member companies of The Principal for their financial services needs. Principal Financial Group, Inc. is traded on the New York Stock Exchange under the ticker symbol PFG.

Comments

We'd like to thank the PWBA for the prompt issuance of guidance related to the notice requirements for blackout periods. We appreciate the opportunity to comment on the regulations.

Freezing an Investment Option

It seems clear that the notice requirements would apply when an investment option is either being removed from the list of options available under the plan or an investment option is being shut down. In either such event, it is common for plans to suspend new investments in the affected investment option and the funds must be transferred to other investment options. There are times, however, when an investment option is merely frozen - closed to new contributions - but the existing funds remain in the frozen investment option and are available for loans, withdrawals and transfers to other investment options. This does not appear to fit the definition of blackout period; if nothing else, it lacks an ending date. The participant still has to the ability to direct or diversify assets credited to his or her account, even from the frozen one, and may still take loans (if allowed by the plan) and distributions from the account. It is only the ability to direct funds to the frozen investment that is no longer allowed.

Irrespective of any other duty to disclose when an investment option will be closed to new contributions, we do not believe this situation is a blackout period as described in the Sarbanes-Oxley Act and therefore would not fall under the requirements of these regulations. We ask the Department to confirm this point.

Exclusions

The Sarbanes-Oxley Act and regulations provide that the term "blackout period" does not include a suspension, limitation or restriction that occurs because of a certain provision of securities law listed in the regulation, is a regularly scheduled limitation, or which applies only to one or more individuals who are the participant, an alternate payee, or any other beneficiary pursuant to a qualified domestic relations order.

We feel that this does not go far enough; that there are other events that should likewise be excluded from the provisions of this regulation.

One of these is other individually-centered situations such as segregation of assets in an account with regard to a domestic relations order before it's determined to be qualified. The parties involved in such proceeding are involved in the creation of a blackout and are frequently represented by counsel. Other matters that should be excluded are the death of the participant, instances of an employee convicted of a crime involving the plan, tax levies, etc.

Also, many investment providers impose rules against "day-trading", a practice of moving funds on a short notice to take advantage of investment pricing or other procedures. The federal courts that have opined have described this practice as deleterious to the good of the other participants who invest in the plan option that the day traders pass through. Ending such practices should not be considered to be something that requires notice and explanation. For one thing, there is often the need to move quickly. Also, the people involved in this kind of behavior tend to be sophisticated investors, who would learn nothing from the notice proposed by the regulation.

The definition of blackout period under the Act specifies that a blackout is "any period for which any ability of participants or beneficiaries under the plan, **which is otherwise available under the terms of such plan**, to direct or diversify, etc....". We ask the Department to confirm, preferably within

the text of the regulation, that these items and any other similar, individually-centered situations are not rights "otherwise available under the terms of such plan" that require notice described in the regulation. There is nothing to be gained by providing formal notice in these instances, and, given the speed with which these situations may develop or change (and the fact that their termination is often beyond the power of any plan fiduciary) notice will, more often than not be an exercise in futility.

Because of liquidity and market stability concerns many investments have the right to delay payments or transfers from the investment for a period set out in the investment. In addition, many stable value funds limit transfers or investments in competing fixed income investment options in a plan. We also ask for confirmation that delays, such as these, that are a result of the normal operation of the investment, and which have their roots in the documents governing the investment and not the plan, are not blackouts.

Unforeseeable Events

There is an exception to the requirement to provide notice at least 30 days in advance if the inability to provide the notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator. The regulations then add a requirement, that the unforseeability or lack of control is certified, in writing, by a fiduciary of the plan. Placing another entity in the position of second-guessing the plan administrator makes little sense. There are times when reasonable people can differ on subjectivities, such as what can be foreseen or what is within someone's control. There is also timing to consider; the more parties that have to be involved, the better chance for a misstep or mishap. The Department should either amend the regulation to state that the plan administrator make the determination or make it clear that the plan administrator is a fiduciary that can make the determination in writing.

Notice

We believe the model notice is in most respects straightforward and easy to understand. We have a few concerns with that notice and items that might carry through into non-model notices that may be provided under the regulation that we would like the Department to address.

We are extremely concerned about the requirement that a precise ending date be given in a notice and believe this requirement will be administratively burdensome and decrease the flexibility of the process. There can be times when unexpected occurrences can increase or decrease the length of blackout periods by only a few days. There should be enough flexibility within the guidelines to allow for these situations without the expense or effort of another full and formal notice having to be provided. We understand the Department's concern that participants be able to factor the duration of the blackout into their decisions and that participants should have some idea of when they will be able to again exercise their rights. However, this can be addressed by giving an expected length of the blackout period, such as saying "the blackout period will end not later than..." or that "the blackout period will take approximately 2 weeks", etc. This could be supplemented with a less formal, simple notice that the blackout period is over. Such a notice could be circulated and posted electronically or in paper form in a manner calculated to inform the typical participant. The simplicity of this approach would save on costs and would avoid giving participants a long notice to read and digest when a simple announcement that the blackout is over, combined with the explanations in the prior notice, would provide sufficient data.

The model notice currently includes wording about the risks of holding substantial portions of assets in the security of one company. Many plans do not provide for investment in single securities, such as through investment in company stock or in individual securities through a self-directed account. We ask the Department to clarify that this specific wording is not needed in those instances when the plan does not allow participants to invest in single securities and that a more general statement about diversification would suffice.

We would also like the Department to clarify that the model notice may be given with other materials, such as other information about the transition in service providers, investment information, etc.

Conclusion

Again, we appreciate the time and effort that have gone into this regulation, as well as the opportunity to provide comments on it. If you have any questions or wish to discuss these comments, please call me at the number below or call Donna Dunne at (515) 362-2561.

Sincerely,

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