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January 30, 2007

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labour
200 Constitution Avenue, NW.
Washington, DC 20210
e-mail: e-ORI@dol.gov

Attention: 401(K) Plan Investment Advice RFI

Dear Sir and Madame,

CEFEX is pleased to respond to your Request for Information (RIN 1210-AB13) of December 4, 2006. Our response is wholly provided within this e-mail. We have focused our response on the section entitled: Model Form for Disclosure of Fees and Other Compensation.

CEFEX, Centre for Fiduciary Excellence is a Limited Liability Company, registered in the state of Delaware, and having offices in Pittsburgh, PA and Toronto, Canada. CEFEX is an independent certification body. Our mission is to promote fiduciary best practices on a global basis. Corporate background is provided in Appendix A.

CEFEX is representing the following industry experts in this submission. These experts have extensive experience in the 401(k) industry, and have a broad combination of skills in general fiduciary practices, investment management, and consulting to both Plan Sponsors and participants.

Ron Hagan, President and CEO, Roland Criss Fiduciary Services of Arlington, TX.
Al Otto, Executive Vice President, Whitehorse Advisors, LLC of Atlanta, GA.
Ed M Lynch Jr., Partner, Dietz & Lynch Financial Strategies Group, of Newburyport, MA.
Mario Giganti, Partner, Cornerstone Capital Advisors of Uniontown, OH.
Tommy Thomasson, President and CEO, DailyAccess Corporation of Mobile, AL.
Blaine Aikin, Chief Knowledge Officer, Fiduciary360 of Sewickley, PA
Jud Doherty, Chief Financial Officer, 401k Toolbox of Athens, GA

We have provided a response in the format requested by the EBSA. In addition, we have taken the liberty of providing some information about fiduciary practices as they relate to the work of our firm. Please see Appendix B.

In summary, we are highly supportive of your office's intent to increase fee disclosure in the industry. We believe that fair and thorough disclosure will (1) safeguard participants and beneficiaries from hidden conflicts of interest, (2) enhance the ability of participants and beneficiaries to assess whether their best interests are being served in Plans, and (3) enable Plan Sponsors to more effectively and efficiently fulfill their own fiduciary obligation to assess fees.

Sincerely,



Carlos Panksep
General Manager, CEFEX
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416-401-8702

RESPONSES TO QUESTIONS

1. In general, what types of information relating to fees received by fiduciary advisers and their affiliates would be helpful to participants and beneficiaries in making their investment decisions?

Participants and beneficiaries should receive all information necessary to easily understand the amount of each fee incurred, what triggered the fee, and how the fee is computed. To accomplish this, the following information should be provided:

- a) Date the fee was incurred
- b) A clear description of the fee
- c) Fee Units or basis upon which the fee is applied (e.g. a fixed annual account fee, a fixed or variable transaction charge, a fixed or variable service or support fee, etc.)
- d) Rate Applied (expressed in a percentage and unit price)
- e) Actual amount charged to the participant's account (i.e. Actual Charge = Fee Units x Rate Applied)

The fee information should clearly disclose the total dollar impact on the participant's individual account. This will permit the participant to fully understand the costs of his/her investments, and therefore make better investment decisions.

For example, traditional bank account statements contain debit or credit items for any amount, itemized at discrete points in time. Interest income, which is quoted on an annual basis, is earned every day and is typically credited at the end of each month based on account balance. Some investment fees are also quoted on an annual basis as a percentage of total assets, and can theoretically be charged in a similar way.

The sponsor, adviser and all affiliates have the duty to provide as much detail as necessary for participants to understand what expenses have been incurred and what can be expected based upon the methodology which has been applied and fully disclosed.

For the purpose of making an investment decision, Plan descriptions should provide a disclosure using an example of what the annual costs to the participant would be on a sample balance of \$10,000 in a 401K account.

2. What types of fees and compensation (including those provided by third parties) would be encompassed by ERISA section 408(g)(6)(A)(iii)? In relevant part, this provision refers to ``all fees or other compensation relating to the advice that the

fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property."

A Pension Plan may rely upon several service providers, numerous third parties, and a multitude of fee types. The participant should be informed of all charges against his/her assets. The fees should be categorized as follows:

Custodial or Trustee Fees (including 12(b)(1), soft dollars, shareholder service fees)

Money Management (including share class/unit costs, turnover, directed brokerage fees)

Recordkeeping and Administration (including record-keeping service fees, shareholder service fees, wrap charges)

Advisory Fees (including 12(b)(1), soft dollars, turnover, pay-to-play, wrap charges, or any compensation received from a party in interest)

Education and Communication Fees

Participant Advisory Fees

Expense Reimbursement (i.e. from revenue-sharing arrangements)

Other Fees or Charges (to capture any and all fees not included in the above list)

The participant must be assured that the fees represented reflect the TOTAL fees incurred in the plan. As a test for completeness, the fee disclosure should reflect which incremental fees are incurred compared to a theoretical non-plan investment made by the participant.

For example, if a participant was to purchase a single security *outside* of his Plan, what would be the incremental costs (or savings) from the acquisition of the same security *within* the Plan.

3. What challenges might be encountered in assembling and/or presenting the information on fees and compensation described in section 408(g)(6)(A)(iii) in a manner that is clear and understandable by the average plan participant? Are there any suggestions as to how these challenges can be addressed by the Department?

The challenges are significant.

The industry will need to adjust its accounting practices to identify fees at the individual participant level. The amount of transactional information may be overwhelming, since individual plans may contain dozens of mutual funds, or stocks. The result may be an overwhelming number of line items in a participant disclosure.

The volume of data may require that data be provided electronically to allow prompt and efficient communication of changes in fees or fee methodologies. Paper reporting must also be available.

Ideally fees should be explicitly itemized in the participant's account, as they are incurred, as in the bank account example. This would clarify for the participant what part of his contribution is going towards retirement, and what part is going towards servicing his retirement plan.

In the interim, since it will take time to implement ideal transparency, fees should be disclosed on separate forms, as proposed in the next question.

Fee disclosure will require a level of trust since verification of the disclosures may not be in place. A system of independent verification may be necessary. For the instances where fee disclosure has proven to be false or inaccurate, the provider must face a consequence. The participant should have a tool for identifying questionable fee disclosures. The Department of Labour should consider the implementation of a watch-list to monitor poor disclosers.

Successful fee disclosure, in the eyes of the participant, will come from the consistent representation of fees across different industry groups. Since all players will require investment to improve disclosure, there may be extensive opposition to change.

4. Is there a form or format for presenting information on fees and compensation described in section 408(g)(6)(A)(iii) (e.g., narrative, chart, combination of both) that might be particularly suitable in giving participants a clear and understandable description of the fees and compensation received by a fiduciary adviser or its affiliates? Is there an optimal time frame, relative to when the advice is provided, for providing this information to participants and beneficiaries? What impact, if any, will the receipt of a model form have on investment decisions made by participants and beneficiaries?

Chart 1 (below) provides a suggested format for presenting information on fees and compensation of the Fiduciary Adviser. This information should be provided to participants as part of the Plan enrollment package provided to each employee when they become a Plan participant. The information should also be provided annually.

It would not seem necessary to provide the disclosure at the time advice is given unless there is a charge applied for each occasion of advice. If there is such a charge, a specific disclosure should be provided at that time.

The likely impacts on the investment decision making of participants and beneficiaries of providing the model form would be to:

- (1) induce more participants to take advantage of professional advice by increasing awareness that a specific fiduciary adviser is available to assist them,
- (2) allow advice-seeking participants to use the format and content of the disclosure to more readily compare the fees and compensation of the fiduciary adviser with other advisers who are not party to the eligible advice arrangement,
- (3) allow advice-seeking participants the ability to assess potential conflicts of interest between the fiduciary adviser and affiliates of the fiduciary adviser that are also involved with the Plan, and
- (4) equip all participants with the ability to accurately assess whether the fiduciary adviser services offered are of sufficient value to incur the costs involved.

In short, part of the investment decision-making process of participants and beneficiaries is the decision to seek advice or not. This is itself an investment decision because it entails a cost incurred for an expected return. No one should reasonably be expected to invest in advice without knowing such fundamental information as the price of the service and the potential for the advice to be tainted by conflicts of interest.

Chart 1: Model Form for disclosure of fees for the fiduciary adviser and affiliates

Fiduciary Adviser Fees			
Annual Advisory Fees to Plan		@\$10,000 Acct Bal	@\$50,000 Acct Bal
Flat Dollar Charge per participant	\$10/yr		
% of Assets	0.10%	\$10	\$50
Participant Level Fees for Fiduciary adviser			
Flat Dollar	\$90/yr		
% of Assets	0.90%	\$90	\$450
Additional Fees Received by Fiduciary adviser and/or Affiliates of Advisor (bonuses, overrides, or any other compensation received directly or indirectly)		@\$10,000 Acct Bal	@\$50,000 Acct Bal
Flat Dollar	\$0	\$0	\$0
% of Assets	0.20%	\$20	\$100
Estimated Trading Costs	\$30/trade	N/A	N/A
Total Fiduciary Adviser Fees/ year			
Flat Dollar	\$100	\$220	\$700
% of Assets	1.20%		

The example shown in Chart 1 shows that a participant who uses a fiduciary adviser with this plan will pay \$100 + 1.2% of his/her plan assets per year.

While we believe Chart 1 provides a suitable form to disclose the fees and compensation of the fiduciary adviser and affiliates of the fiduciary adviser, we do not believe this is sufficient disclosure to provide participants the complete understanding of fees and expenses associated with the Plan that directly impact their investment results. Participants are also entitled to know the nature and amounts of Plan level and investment specific expenses.

Thorough and meaningful disclosure must apply across all platforms, otherwise it's value will be diminished. Fees for mutual fund contracts, group annuity contracts and collective trusts need to be categorized into common sub-groups so they can be expressed on one form regardless of origin This will be challenging since the fee structures for each of these products vary widely. However, this is the only way participants (and Plan Sponsors) will be able to make clear, informed decisions about their retirement plans

Shown below in Chart 2 is a model form for disclosure of Plan Level Fees.

Chart 2: Model Form for plan-level disclosure

Plan Level Fees			
Plan Assets as of __/__/____	\$50,000,000		
# of Plan Participants	1,000		
	Plan Level	Avg. Per Participant	% of Assets
Total Costs*	\$325,000	\$325	0.65%
Custodial or Trustee fees	\$25,000	\$25	.05%
Money Management	\$275,000	\$275	.55%
Recordkeeping and Administration	\$85,000	\$85	.17%
Education & Communication Fees	\$15,000	\$15	.03%
Expense Reimbursement	(\$75,000)	(\$75)	(.15%)
Other Expenses	\$0	\$0	0%

* see examples of fees contained in categories, in Response #2 text.

The total of the above fees should be disclosed in a summary chart as a summary for the participant. In this example, the participant will pay \$100 + 1.85% of his/her plan assets per year, as shown below.

Chart 3: Total Fees charged to Participant's account

Total Annual Fees			
Fiduciary Advisor Fees		@\$10,000 Acct Bal	@\$50,000 Acct Bal
Flat Dollar	\$100/yr		
% of Assets	1.2%	\$220	\$700
Plan Level Fees			
Flat Dollar	\$0/yr		
% of Assets	0.65%	\$65	\$325
Total Fees per year			
Flat Dollar	\$100	\$285	\$1,025
% of Assets	1.85%		

Investment-Specific Considerations:

While investment specific fees and expenses are generally reported in prospectuses and other offering materials, this information is often not compiled in a format that is easy for participants to access and understand. Consequently, we suggest that the plan sponsor should also disclose the fees/costs charged to participants for each investment option as a percentage of assets and/or dollar amount, as appropriate. This recognizes that fees may be determined on a different basis. For example, Investment Management Fees typically are based on asset size; however, Plan Administration Fees may be assessed on a per-participant basis, based on asset size or some combination of these methods.

Mutual Funds

- Plan sponsors and their service providers should be required to provide information beyond what is contained in the typical mutual fund prospectus. (i.e. Revenue Sharing between affiliated parties should be disclosed on a plan level basis) All fees to all affiliated parties should be disclosed.

Separate, Commingled, and Internally Managed Accounts

- Plan sponsors and their service providers should be required to disclose both the investment advisory fees (overall advisory, and all sub-advisory fees), and operating fees (wrap and trust/custody fees) associated with managing these funds.

Mutual Fund Windows

- Direct administrative costs and any trading costs should be disclosed (i.e. annual service charge)

Brokerage Accounts

- Plans that offer full brokerage accounts should disclose administrative costs, give examples of costs charged by the brokerage account provider.

Company Stock Funds

- Plan sponsors and their service providers should be required to disclose the commission cost per share charged to participants for buying and selling shares. Many company stock funds are unit valued and the commission costs are borne by all participants in the company stock fund. In these cases this should be described along with any policy for holding cash to meet participant liquidity needs.

Stable Value Funds

- Plan sponsors and their service providers should be required to disclose both the investment advisory fees (overall stable value advisory, and all sub-advisory fees), and operating fees (wrap, traditional GIC, and trust/custody fees) associated with managing stable value funds.

The following sample describes an ideal participant statement, identifying all fees charged to his/her plan. The participant must be assured that ALL fees are included. A simplified (albeit unrealistic) situation is shown, where a single stock is purchased outside a plan vs. inside a plan, to illustrate the point.

Chart 4. Sample participant transaction detail

Date	Activity	Outside Plan				Inside Plan			
		Units / AUM	Rate	Amount	Market Value	Units/ AUM	Rate	Amount	Market Value
12-Jan-06	Deposited to Account			\$50,000			\$50,000		
15-Jan-06	Stock ABC value	1.00			10	1.00			10
15-Jan-06	Purchase								
15-Jan-06	Commission	1.00	-\$30.00	-\$30	-	1.00	-\$5.00	-\$5	-
15-Jan-06	Stock ABC purchased	4500.00	-\$10.00	\$45,000	\$45,000	4500.00	\$10.00	\$45,000	\$45,000
	<u>Annual Fees</u>								
31-Dec-06	Custodial or Trustee Fees					50000.00	-0.05%	-\$25	
31-Dec-06	Money Management					50000.00	-0.55%	-\$275	
31-Dec-06	Recordkeeping & Admin					50000.00	-0.17%	-\$85	
31-Dec-06	Plan Advisory Fees					50000.00	-0.20%	-\$100	
31-Dec-06	Education &					50000.00	-0.03%	-\$15	

31-Dec-06	Communication Participant Advisory Fees				50000.00	-0.10%	-\$50
31-Dec-06	Expense Reimbursement				50000.00	0.15%	\$75
31-Dec-06	Total Annual Fees						-\$475
31-Dec-06	Self-directed account fee	1.00	\$120.00	-\$120			
31-Dec-06	Interest	4900.00	2.00%	\$98	4995.00	2.00%	\$100
2-Jan-07	Stock ABC value	4500.00	\$11.25	\$50,625	4500.00	\$11.25	\$50,625
2-Jan-07	Selling Commission	1.00	-\$30.00	-\$30	1.00	-\$5.00	-\$5

Reporting experts will provide numerous variations on how to organize the ‘raw’, yet complete data. They will sort the data by fee type, by reporting period (daily, weekly, monthly, quarterly, etc.) and will combine it with the participant’s investment performance data – the movement in value of the participant’s actual investment.

5. Persons that may qualify as ‘‘fiduciary advisers’’ are invited to provide forms that they currently use, or might use, to provide the kinds of fee and compensation information described above. As described in ERISA section 408(g)(11)(A), ‘‘fiduciary advisers’’ may include investment advisers registered under the Investment Advisers Act of 1940, certain banks and similar financial institutions, insurance companies qualified to do business under the laws of a State, and brokers or dealers registered under the Securities Exchange Act of 1934. Commenters are reminded that submissions are made solely for the purpose of assisting the Department. Accordingly, no inferences should be drawn as to whether the forms submitted meet the standards for presentation described in ERISA section 408(g)(8)(A).

We are not responding to this question.

Appendix A

CEFEX Certification Program



MISSION

CEFEX is a global initiative established to define and promote global fiduciary standards of excellence for Investment Stewards, Investment Advisors, and Investment Managers.

PRODUCTS

The CEFEX Detailed Fiduciary Assessment is an independent risk-based assessment of an Investment Manager's ability to meet investor's expectations. Using quantitative and qualitative criteria, it measures adherence to generally-accepted fiduciary practices. CEFEX describes results in two areas: Fiduciary Governance and Investment Systems. The assessments are performed annually.

The CEFEX Fiduciary Certification is an independent recognition of a fiduciary's conformity to all Fiduciary Practices and criteria. It implies that a fiduciary can demonstrate adherence to the industry's best practices, and is positioned to earn the public's trust. The ISO 19011 audit standard is used. The certification assessments are performed annually.



Certification Mark

THE FIDUCIARY PRACTICES

Fiduciary Practices are derived from industry consultation and existing guidelines. The Investment Advisor and Steward Practices were developed by Fiduciary360 of Sewickley PA, and are substantiated by legislation, case law and regulatory opinion letters from the Employee Retirement Income Security Act (ERISA), Uniform Prudent Investor Act (UPIA), and Uniform Management of Public Employee Retirement Systems Act (MPERS). The Investment Manager Practices are derived from Codes of Conduct from the CFA Institute and the European Fund and

Asset Management Association (EFAMA), and other industry sources. As ‘open standards’, they will evolve with the industry’s best practices, guided by advisory groups.

FIDUCIARIES SERVED

Investment Advisors: those who provide investment advice, and manage an overall strategy, for a fee.

Investment Managers: those who make investment decisions, including buying and selling securities.

Investment Stewards: trustees, pension fund investment committees, etc.

CEFEX MEMBERS

CEFEX is comprised of the following member organizations:

CSA Group, CSA Group is an independent, not-for-profit membership association serving business, industry, government, and consumers. CSA Group consists of four divisions: Canadian Standards Association, a leading solutions-based standards organization, providing standards development, application products, training and advisory services; CSA International, which provides testing and certification services; QMI, North America’s leading registrar for management systems registration (e.g., ISO 9001); and OnSpeX, a provider of consumer product testing, inspections and advisory services for retailers and manufacturers. Please visit www.csagroup.org

SAI Global (ASX: SAI) is one of the world’s leading applied information services companies that works with organizations to manage risk, achieve compliance, and drive business improvement. Through its compliance software solutions and international network of auditors and training professionals, it helps organizations to build better businesses. Please visit www.saiglobal.com.

Fiduciary360 in Pittsburgh, USA, developed the Accredited Investment Fiduciary (AIF[®]) and Accredited Investment Fiduciary Analyst (AIFA[®]) designations. Fiduciary360 is comprised of the Foundation for Fiduciary Studies, a nonprofit organization established in 2000 for the purpose of defining the practices that detail a prudent process for investment fiduciaries; the Center for Fiduciary Studies, which provides educational programs on investment fiduciary responsibility; and Fiduciary Analytics, which develops Web-based tools incorporating fiduciary practices for investment decision-makers. Please visit www.fi360.com.

Rating Capital Partners is a European-based rating agency that pioneered the concept of fiduciary risk and rating in 1995. It has generated numerous ratings on mid-sized

alternative management firms in bonds, equities, money markets, real estate, hedge funds, life settlement, and private equity investments.

CEFEX also has an association with **AFAQ AFNOR International** of Paris, France; a global standards development, certification and training organization, with offices in Germany, the UK, Russia, Africa, China, and Southeast Asia.

CERTIFICATION PROCESS

The CEFEX Certification Process is as follows:

1. Off-site Data Collection

- a) Liaison Officer (LO) appointed and schedule established by Client.
- b) SAFE (Self Assessment for Fiduciary Excellence) and/or CAFÉ (Consultant Assessment for Fiduciary Excellence) provided to Client.
- c) LO collects data and provides response to CEFEX Analyst off-site and/or on-site
- d) Analyst verifies data to ensure completeness of information
 - If not complete, resolve with LO

2. On-site Visit

Analyst schedules visit with Client. Analyst performs on-site verification of documents, to ensure completeness, and performs interviews as required by SAFE/CAFE questions.

3. Draft Report Issued.

- a) Analyst provides Draft Report to Client, for review and correcting data if necessary.
- b) Analyst provides Draft Report and recommendation to CEFEX Registration Committee (CRC).
- b) Registration of Fiduciary Certification is granted when the CRC concludes that the Client conforms to the Fiduciary Practices

4. Registration Issued.

- a) Client information posted to web-site.
- b) Official electronic and hard-copy Certificate of Registration is issued.
- c) Analyst provides Final Report to Client

Non-Conformance

If the Analyst, determines that the Client is not in conformance with one or more criteria and/or Practices, the Registration Process is suspended until the Non-Conformance (NCR) is addressed and cleared. In order to maintain the integrity of the Registration Program, the Client has 90 days from the Assessment date, to address the NCR, and have it approved by the Analyst, and the CRC.

Upon successful completion of the Assessment, the Client is registered and is provided a Certificate of Registration. The Client's registration and its Certificate of Registration expire twelve months after registration and may be renewed for an additional twelve months thereafter upon the Client's completion of a Renewal Assessment.

The certificate will include details such as: legal company name, site address, standard, scope of registration, and the initial registration date.

Renewal Assessments

Upon completion of any Assessment, the Client undertakes to keep CEFEX informed of developments which may affect such Assessment, by putting CEFEX on an electronic mailing list for all relevant periodical or special reports, releases and announcements or, where appropriate (e.g., following the departure or recruitment of senior personnel), by specific notification or access to a performance database.

Assessments are conducted every twelve months, in order to maintain the CEFEX Registration. Assuming an unchanged scope of registration, the duration of the Renewal assessment is shorter than the initial assessment.

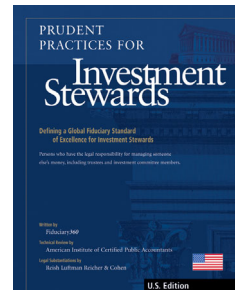
If CEFEX receives notification from a Client, or if CEFEX otherwise becomes aware of, any Significant Change or other development, event, fact or occurrence that CEFEX, in its sole discretion, believes could affect the Assessment or registration of such Client, CEFEX shall have the right to conduct a Renewal Assessment of the Client. If the Client refuses to allow CEFEX to conduct such a Renewal Assessment or does not fully cooperate with the Renewal assessment, CEFEX may terminate the Registration Agreement.

Appendix B

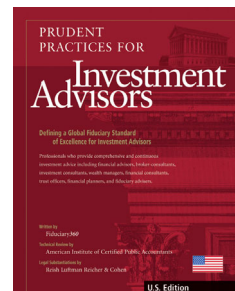
Fiduciary Practices related to Fees and Compensation

The following Fiduciary Practices are included in Fiduciary360's documents: "Prudent Practices for Investment Stewards" and "Prudent Practices for Investment Advisors", published in 2006. The CEFEX Certification program requires evidence of adherence to these practices.

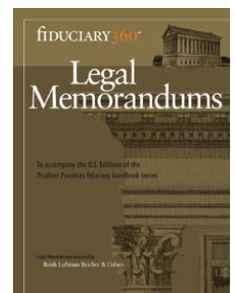
Prudent Practices for Investment Stewards: Persons who have the legal responsibility for managing someone else's money, including trustees and investment committee members.



Prudent Practices for Investment Advisors: Professionals who provide comprehensive and continuous investment advice including financial advisors, broker-consultants, investment consultants, wealth managers, financial consultants, trust officers, and financial planners.



The Practices are fully substantiated by ERISA, case law, and regulatory opinion letters; and are covered in the handbook, **Legal Memorandums**, which was prepared by the law firm of Reish Luftman Reicher & Cohen.



Practice A-4.3 Control procedures are in place to periodically review policies for best execution, “soft dollars,” and proxy voting.

The Investment Advisor has a responsibility to control and account for investment expenses—that the expenses are prudent and are applied in the best interests of the client. When the Advisor is utilizing a separate account manager, managers need to be monitored for:

Best Execution Practices: The Investment Advisor has an ongoing responsibility to determine that money managers are seeking best execution in trading the client’s portfolio. In seeking best execution, money managers are required to shop their trades to various brokerage firms, taking into consideration: (1) commission costs, (2) an analysis of the actual execution price of the security, and (3) the quality and reliability (timing) of the trade.

“Soft Dollar” Practices: Soft dollars represent the excess in commission costs—the difference between what a brokerage firm charges for a trade versus the brokerage firm’s actual costs. The Advisor must confirm that the soft dollars are expended only for brokerage and research for the benefit of the client; and that the amount is reasonable in relation to the value of such services. Failure of the Investment Advisor to monitor soft dollars may subject a client’s investment program to expenditures which yield no benefit to the client; itself a fiduciary breach.

Proxy Voting Policy: A client has the right to vote their own proxies, but the vast majority of sub-institutional clients delegate the responsibility to the money manager. The Investment Advisor should periodically (once a year) confirm that the money manager is fulfilling their proxy voting responsibilities.

Criteria

- 4.3.1 Control procedures are in place to periodically review each separate account manager’s policies for best execution.**
- 4.3.2 Control procedures are in place to periodically review each separate account manager’s policies for “soft dollars.”**
- 4.3.3 Control procedures are in place to periodically review each separate account manager’s policies for proxy voting.**

Suggested Procedure

One of the easiest ways for an Investment Advisor to monitor a separate account manager’s practices for *best execution* and “*soft dollars*” is to watch where the manager is trading the client’s account. When the same brokerage firm keeps popping up, there’s a good chance the manager is not following a sound practice; unless the client has agreed to “directed brokerage,” where the client instructs the money manager to trade a percentage of the client’s account with a specific broker. This often is the case when a client agrees to a wrap fee arrangement.

Substantiation

Employee Retirement Income Security Act of 1974 [ERISA]

§3(38); §402(c)(3); §403(a)(1) and (2); §404(a)(1)(A) and (B)

Case Law

Herman v. NationsBank Trust Co., (Georgia), 126 F.3d 1354, 21 E.B.C. 2061 (11th Cir. 1997), *reh'g denied*, 135 F.3d 1409 (11th Cir.), *cert. denied*, 525 U.S. 816, 19S.Ct. 54, 142 L.Ed.2d 42 (1998)

Other

Interpretive Bulletin 75-8, 29 C.F.R. §2509.75-8 (FR-17Q); Interpretive Bulletin 94-2, 29 C.F.R. §2509.94-2(1); DOL Prohibited Transaction Exemption 75-1, Interim Exemption, 40 Fed. Reg. 5201 (Feb. 4, 1975); DOL Information Letter, Prescott Asset Management (1/17/92) (fn. 1); DOL Information Letter, Refco, Inc. (2/13/89); ERISA Technical Release 86-1 (May 22, 1986)

Uniform Prudent Investor Act [UPIA]

§2(a); §2(d); §7; §9(a)

Management of Public Employee Retirement Systems Act [MPERS]

§6(2) and (3); §7(5); §8(a)(3)

Practice A-4.4 Fees for investment management are consistent with agreements and with all applicable laws.

The Investment Advisor's responsibility in connection with the payment of fees is to determine: (1) whether the fees can be paid from portfolio assets [See also Practice 1.2.] and (2) whether the fees are reasonable in light of the services to be provided. [See also Practice 1.5.] Accordingly, the Investment Advisor must negotiate all forms of compensation to be paid for investment management to ensure that the aggregate (and individual components) is reasonable compensation for the services rendered.

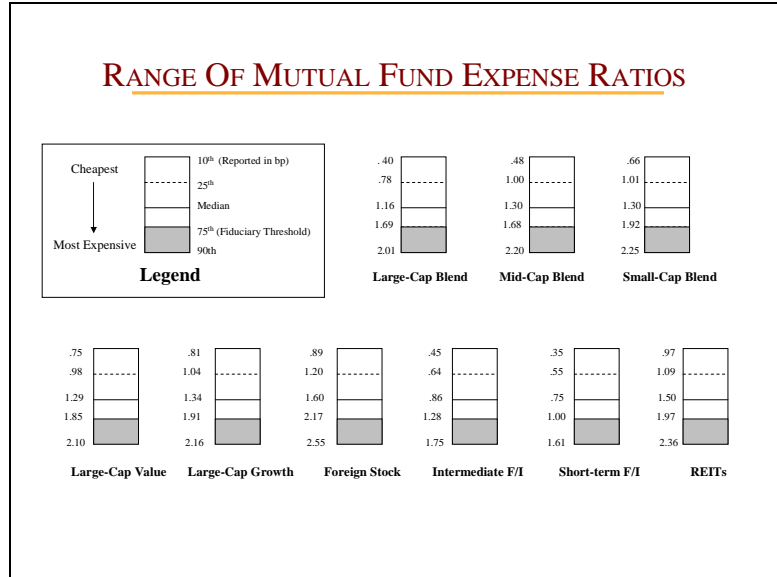
Criteria

- 4.4.1** *A summary of all parties being compensated from each client's portfolio has been documented, and the fees are reasonable given the level of services rendered.*
- 4.4.2** *The fees paid to each party are periodically examined to determine whether they are consistent with service agreements.*
- 4.4.3** *The fees being paid for various services are periodically compared with industry benchmarks.*

Suggested Procedure

The Investment Advisor has a duty to control and account for all investment-related expenses, including the expense ratios of mutual funds.

Fiduciary360 provides the details of the range of expenses ratios for every peer group. The information can be accessed through the *Fund Analyzer*.



Substantiation

Employee Retirement Income Security Act of 1974 [ERISA]

§3(14)(B); §404(a)(1)(A), (B) and (D); §406(a)

Regulations

29 C.F.R. §2550.408(b)(2)

Other

Booklet: A Look at 401(k) Plan Fees, U.S. Department of Labor, Pension and Welfare Benefits Administration; DOL Advisory Opinion Letter (7/28/98) 1998 WL 1638072; DOL Advisory Opinion Letter 89-28A (9/25/89) 1989 WL 435076; Interpretive Bulletin 75-8, 29 C.F.R. §2509.75-8 (FR-17Q)

Uniform Prudent Investor Act [UPIA]

§2(a); §7 and Comments; §9 Comments

Management of Public Employee Retirement Systems Act [MPERS]

§7(2) and (5); §7 Comments

Practice A-4.5 “Finder’s fees,” or other forms of compensation that may have been paid for asset placement, are appropriately applied, utilized, and documented.

The Investment Advisor has a duty to account for all dollars spent for investment management services, whether the dollars are paid directly from the account or in the form of “soft dollars” and other fee-sharing arrangements. In addition, the Advisor has the responsibility for identifying those parties that have been compensated from the fees, and applying a reasonableness test to the amount of compensation received by any party.

In the case of an all-inclusive fee (sometimes referred to as a “bundled” or “wrap” fee) investment product, the Investment Advisor should investigate how the various parties associated with each component of the all-inclusive fee are compensated to ensure that no one vendor is receiving unreasonable compensation, and to compare the costs of the same services on an *à la carte* basis.

In the case of defined contribution plans, it is customary to offer investment options that carry fees that often are used to offset the plan’s recordkeeping and administrative costs. Normally, for a new plan with few assets, such an arrangement is beneficial to the participants. However, as the assets grow, the fiduciary should periodically determine whether it is more advantageous to pay for the recordkeeping and administrative costs on an *à la carte* basis, switching to mutual funds that have a lower expense ratio, and reducing the overall expenses of the investment program.

Criteria

- 4.5.1 All parties compensated from portfolio assets have been identified, along with the amount (or schedule) of their compensation.***
- 4.5.2 Compensation paid from portfolio assets has been determined to be fair and reasonable for the services rendered.***

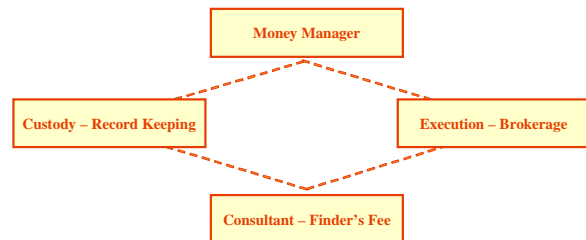
Suggested Procedure

Basically, there are four cost components in a *bundled, wrap, or all-inclusive fee* investment product. The Investment Advisor should investigate how the various service vendors associated with each component are compensated to ensure that no one vendor is receiving unreasonable compensation, and to compare the costs of the same services on an *à la carte* basis. The four components are:

1. The money manager who is selecting the stocks and bonds for the portfolio.
2. The brokerage firm that is executing the trades.
3. The custodian that is holding and safeguarding the securities.
4. The Investment Advisor, or broker, who is servicing the account.

UNBUNDLING FEES AND EXPENSES

"Bundled fees" should be broken down into four categories so that a proper evaluation can be made – various costs can be obscured or moved to create apparent savings.



Substantiation

Employee Retirement Income Security Act of 1974 [ERISA]

§404(a)(1)(A) and (B); §406(a)(1); §406(b)(1); §406(b)(3)

Case Law

Brock v. Robbins, 830 F.2d 640, 8 E.B.C. 2489 (7th Cir. 1987)

Other

DOL Advisory Opinion Letter 97-15A; DOL Advisory Opinion Letter 97-16A (5/22/97)

Uniform Prudent Investor Act [UPIA]

§2(a); §7; §7 Comments

Case Law

Matter of Derek W. Bryant, 188 Misc. 2d 462, 729 NYS 2d 309 (6/21/01)

Other

McKinneys EPTL11-2.3(d)

Management of Public Employee Retirement Systems Act [MPERS]

§6(b)(2) and (3); §7(2) and (5)