



VIA ELECTRONIC MAIL to: e-ORI@dol.gov

September 8, 2008

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: Participant Fee Disclosure Project  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW.  
Washington, DC 20210



Subject: Proposed Regulation  
Fiduciary Requirements for Disclosure in  
Participant-Directed Individual Account Plans

Ladies and Gentlemen:

The National Association of Personal Financial Advisors ("NAPFA")<sup>i</sup> appreciates the opportunity to submit these comments in support of the Department's Proposed Regulation regarding enhancements to 401(k) Plan Disclosures. As the leading national organization of fiduciary-only personal financial advisors, NAPFA's members often provide substantial assistance to both plan sponsors and to plan participants in the selection of investment plan options for participant-directed retirement plans.

**Cost Savings to Plan Participants Appear to Be Understated.** We believe the cost savings suggested in the Proposed Regulation are understated. It has been the experience of NAPFA members that once the fees and costs of very high-cost investments are fully disclosed, that plan sponsors (whether acting of their own accord or due to pressure from plan participants) are highly likely to seek out, with the aid of fiduciary investment consultants (such as NAPFA members), and embrace lower-cost investment vehicles. Many plan sponsors and participants are currently unaware of retirement plan fees and costs at present. While plan sponsors and participants cannot control the actual selection of securities by

investment advisers to mutual funds and other pooled income vehicles, they can assert control over fees and costs. With full disclosure of fees and costs this control will likely be asserted greatly; especially since it is becoming more widely known (due to greater dissemination of academic research to the investment public) that higher-fee investment vehicles on average underperform lower-fee investment vehicles. Hence, NAPFA believes the overall impact of the disclosures required by the Proposed Regulation may result in savings which are double or more those estimated by the Department.

While we support both the disclosures and the model disclosure format, we do have two concerns.

#### **Disclosures of Pooled Income Vehicles' Transaction Costs.**

As noted in footnote 13 in the Proposed Regulation: "mutual funds' internal transaction costs (including explicit brokerage commissions and implicit trading costs) ... are sometimes larger than funds' expense ratios." Given the dramatic impact of these "hidden costs," as acknowledged by the Department of Labor, we urge the Department of Labor to provide that disclosure of these costs be mandated by all pooled investment vehicles.

We note that the "Summary Prospectus" format under consideration by the SEC provides for the following disclosure:

#### **Portfolio Turnover**

The Fund pays transaction costs, such as commissions, when it buys and sells securities (or "turns over" its portfolio). A higher portfolio turnover may indicate higher transaction costs. These costs, which are not reflected in annual fund operating expenses or in the example, affect the Fund's performance. During the most recent fiscal year, the Fund's portfolio turnover rate was 63% of the average value of its whole portfolio.

(See "Investor Testing of Mutual Fund Summary Prospectus and Related Disclosures," July 31, 2008, available on the SEC's web site at <http://www.sec.gov/comments/s7-28-07/s72807.shtml>.)

NAPFA urges the Department of Labor to mandate a similar, or even more extensive, disclosure of turnover costs. For example, an investor could be informed that brokerage commissions for a mutual fund can be discerned in the fund's Statement of Additional Information. Furthermore, the Department could require funds to disclose the average annual turnover of the fund over 1-year, 5-year and 10-year periods, in the disclosure form itself. Also helpful to an individual investors understanding would be a statement that "these transaction costs may include brokerage commissions, bid-ask spreads, principal mark-ups and mark-downs, market impact costs, and opportunity costs due to delayed or canceled trades."

**Broad Index Comparisons.**

NAPFA is concerned that many funds have resorted to using comparisons to indices which are not true “broad market” indices. For example, many funds compare their performance to an index which includes only actively managed stock mutual funds and which excludes index funds and other passively managed investment vehicles. By virtue of these exclusions, the mutual fund’s comparison to an index misleads investors.

Accordingly, NAPFA suggests that the Department of Labor require that “broad-based benchmarks” utilized for comparison purposes not exclude funds which would materially affect the ability of the investor to compare performance across similar funds or asset classes.

Again, the National Association of Personal Financial Advisors thanks the Department of Labor for the opportunity to submit these comments. As the nation’s leading organization of fiduciary and fee-only financial advisors, we are available to respond to questions or submit further comments as you may desire.

Respectfully,

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<sup>i</sup> NAPFA has more than 2,000 members across the United States. All NAPFA-Registered Financial Advisors must submit a comprehensive financial plan and undergo a thorough review of their qualifications prior to admission. NAPFA-Registered Financial Advisors all sign a Fiduciary Oath which states that the advisor will only work in good faith and with the best interests of the consumer at heart. NAPFA-Registered Financial Advisors are strictly Fee-Only®, which means they do not accept commissions or any additional fees from outside sources for the recommendations they make to their clients.