

August 1, 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

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OFFICE OF REGULATIONS AND INTERPRETATIONS  
EMPLOYEE BENEFITS SECURITY ADMINISTRATION  
U.S. DEPARTMENT OF LABOR

Reference: DOL Proposed 408(b)(2) Regulations on Fee Disclosure

Thank you for the opportunity to comment on the proposed regulation requiring those with fiduciary responsibilities to disclose fees and other associated costs charged to holders of 401k's, pension and retirement funds, in which the participant have some or complete decision making authority regarding the investment of their funds.

Any disclosure of material information which provides for transparency is of great importance to the investor of these funds and provides them with the knowledge to improve the quality of their investment decision making. This additional transparency should include disclosure to the buyer by the broker for securities transactions executed on their behalf which are not closed out properly in the legal three (3) day settlement period. This would be securities in which there are "fails to deliver" and/or "fails to receive". This information is vital to the purchaser of these securities to know whether they, after paying hard earned money, have received legally issued and authentic securities or whether they are merely receiving a "securities entitlement" issued by the clearing broker (IOU) in their account. In many cases, this information is much different than is currently being disclosed to these account holders. This has very serious implications to the owners of these retirement accounts, because the nature and value of these so called "entitlements" can be greatly different from the real securities. Many times these securities entitlements (phantom shares) are held in these 401k accounts for years, unknown to the owner, since information currently provided by the brokers imply real authentic shares, not entitlements, were deposited to their accounts.

The Department of Labor should seriously examine this issue because, in my opinion, it can have a significantly greater impact on the future value of these 401k investments than the fees being required to be disclosed by this proposed rule since this really amounts to nothing more than the counterfeiting of shares and IOUs being placed into these 401k accounts. This counterfeiting can be easily eliminated simply by the Securities and Exchange Commission's enforcement of current laws regarding the proper settlement of all securities transactions. This would essentially eliminate all "fails to deliver" and/or "fails to receive", resulting in the delivery of actual legitimate securities to the retirement holder's account. The terminology currently being used to describe these fails is "naked short selling", but a more correct descriptions would be "counterfeiting" shares.

It seems somewhat ironic that the Securities Industry and Financial Markets Association, an industry trade group, praised the department for the disclosure of fees proposal as "an excellent starting point" that provides investors useful information "without overwhelming them. I wholehearted agree with this position, however it is the SIFMA and its members who have repeatedly blocked any disclosure with regard to the problem involving "fails to deliver" and "fails to receive" and whose members ignore and do not follow SEC's Reg Sho regarding the close out of these fails, knowing that the SEC does not enforce the regulation. I am also presuming, since there is an absence of penalties defined in Reg SHO, the SEC did not feel they were necessary since it now appears apparent that no substantial enforcement actions were to be forthcoming anyway.

The information you released, regarding the purpose of this proposed regulation, stated this to be a part of a larger effort by the Labor Department to improve fee disclosures. Further, I would presume it is the Department's wishes to see the investors in these retirement accounts to be as knowledgeable and protected as possible from actions detrimental to their investments. This is why it is so important for them to understand that "counterfeiting of shares" through naked shorting can have a significant effect on the value of their retirement investment, since the flooding of the market place with fictitious shares can well depress the price of such investments simply by overwhelming the market with excess supply as well as affecting many of the securities owner's share rights. The overall effect can potentially cause an adverse or lower value of the investment over its entire life.

For additional information pertaining to the issue of "fails to deliver/receive" (naked shorting), the following web site is being suggested for your review:

<http://www.deepcapturethemovie.com/>

To further the commendable efforts of the Department of Labor toward important disclosure and the protection of assets held in these retirement accounts, as a minimum, the following actions should be taken.

1. Utilize the best efforts and the considerable influence of the Department of Labor to demand the SEC follow and enforce the Securities Acts of 1933 and 1934, regarding the protection of investors and further that they follow the provisions of those acts regarding prompt and efficient settlement of all securities transactions. The Labor Department, in their rightful concern for the retirement accounts of the nation's workers, should be very concerned about the existence of "naked shorting" and its adverse affect on the markets and the assets of these workers. The very action taken by the SEC in the establishment of the "emergency rule" with regard to the shorting of certain financial stocks is evidence of the harm that can be caused by "naked shorting" and you should insist the SEC extend the rule to apply to all companies promptly.

2. Amend the language of this proposed regulation to include the requirements for these institutions to fulfill their fiduciary duties to these retirement account holders by requiring immediate (T+4) disclosure:

(A) ....of any stock purchased for their account in which the buying broker had a "fail to receive" (security not received within the 3 day settlement period mandated by law); therefore, their account is not being credited with authentic company issued shares, but merely broker's "securities entitlements";..... and,

(B) .... by definition, such broker's "securities entitlements" differs from actual shares contracted for by the purchaser in both nature and value. These differences could well result in a lesser value than the "real" securities contracted for purchase, as well as resulting in the buyers rights being potentially altered, denied or compromised when voting on issues affecting the company by its shareholders.

Thank you for this opportunity to comment.

  
James O. Carnes