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**From:** Han, Jennifer [mailto:[jennifer@managedfunds.org](mailto:jennifer@managedfunds.org)]  
**Sent:** Monday, March 10, 2008 1:32 PM  
**To:** EBSA, E-ORI - EBSA  
**Cc:** Allensworth, Benjamin  
**Subject:** Public Hearing on Proposed Rule under Sec. 408(b)(2)

Dear Sir/Madam,

Managed Funds Association requests an opportunity to present testimony at the Department of Labor's public hearing on its proposed regulation under section 408(b)(2) of ERISA. Presenting on behalf of MFA will be Benjamin Allensworth, MFA Senior Legal Counsel, and Erin Cho of Davis Polk & Wardwell. Please see the attached outline of topics to be discussed along with the time to be allocated to each topic.

Please contact me if you have questions or need additional material from us.  
Thanks.

Regards,

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**MFA Request to Present Testimony**  
**Hearing on Reasonable Contracts or Arrangements Under Section 408(b)(2)**

**Outline of Topics**

I. Scope of proposed regulation-- 3 minutes

A. Service providers to pooled investment vehicles that do not have a class of equity securities owned 25% by benefit plan investors should not be deemed service providers to a benefit plan for purposes of the rule.

B. Service providers to pooled investment vehicles that do have a class of equity securities 25% owned by benefit plan investors should be able to rely on any other applicable exception to or exemption from the prohibitions of section 406 of ERISA, without needing to comply with the proposed rule.

II. Clarification on fee disclosure-- 3 minutes

A. Disclosure of compensation should be permitted in any of the forms listed in the proposed rule.

B. In situations when a service provider does not have specific information available at the time of the contract (e.g., when using an affiliate broker-dealer), general disclosure should be permitted, followed by subsequent disclosure of compensation actually paid.

C. In situations when a service provider does not have the ability to determine whether to use an affiliate for services (e.g., service providers to funds of funds do not have the ability to determine which service providers underlying funds will use), more general disclosure should be permitted.

D. Disclosure of non-cash items should not be required if the gift is given because of an overall relationship, and not in connection with services being provided to the plan.

E. Disclosure of non-cash items in amounts less than the de minimis amounts in Form 5500 should not be required.

F. Specific disclosure should not be required in advance as the amounts will likely not be known. More general disclosure should be permitted.

III. Conflicts of Interest-- 1 minute

A. The scope of the conflicts of interest disclosure in the proposed rule would be difficult at best to comply with and should be more narrowly tailored to address the Department's concerns.