From: Chad Griffeth [mailto:cgriffeth@myactium.com]
Sent: Sunday, October 05, 2008 10:35 PM
To: EBSA, E-ORI - EBSA
Subject: Comments on PPA Fiduciary Adviser Proposal

The following are Actium LLC's comments and concerns we have about the proposed PPA Fiduciary Adviser/EIAA arrangement:

- Concern over lower standards for participant communication/follow-up compared to "SunAmerica" opinion
- Level fee requirement should be at both adviser and affiliate level, as affiliate is typically the source of the advice
- Audit needs much more clarification so to establish a standard by which these fiduciary advisers must adhere to in order to maintain fiduciary safe harbor for plan sponsor

Participant Communication Standard

We believe the quarterly communication standard, as established by the 2001-09A "SunAmerica Opinion" should be carried through to the requirements for the PPA Fiduciary Adviser. We agree with the DoL from that opinion that it is imperative to keep an open line of communication between the advice source and the participant so the participant can inform the fiduciary adviser if their personal situation has changed, and thus the advice being received should as well. The independent third parties operating under the SunAmerica opinion have integrated this business process and the associated costs incurred for this critical advice element, and we believe it is only fair to establish the same standard for the Fiduciary Adviser role. It is in the best interests of the participant to do so.

Level Fee at Affiliate Level, Not Just Adviser

In the midst of one of the largest financial disasters in the history of our nation, and only a few years removed from the mutual fund scandals that created havoc in our industry earlier this decade, it seems we could be opening up America's defined contribution participants to a similar issues in the future. Congress specifically demanded a full fiduciary standard for the advice that is to be provided to participants, not a management of the potential conflicts of interest that could take place. Unfortunately, our industry has never proven itself to put investors' interests first over revenue. Not only that, but in most cases, and in our personal experience, the first place advisors turn for advice solutions are the mutual fund companies, insurance companies, banks, recordkeeping platforms, etc. that provide the DC plan, which under this proposal could create a "work around" to offer advice solutions that could easily benefit themselves much more than the participant due to the newly proposal.
As an independent, third party advice/managed account provider, we have the unique experience of learning what plan providers and advisors alike are looking for in such

solutions. As we enter an era of tighter margins due to full fee disclosure, the additional revenues of providing advice will be great for the firms willing to implement the standards, business processes, and infrastructure necessary to operate as a Fiduciary Adviser. However, if at the core of the reason for providing advice is to benefit participants, we have little confidence in solutions designed by those entities that no longer would have to abide by a level fee requirement and would be an example of allowing the "wolves into the hen house."

Audit Requirements

We were a big fan of Congress's intention to audit the adviser and plan sponsor to ensure a fiduciary process at both levels for advising the plan participants. Being the first company in the nation to complete the CEFEX Fiduciary Adviser (PPA) certification, we have first hand experience of the necessity of this to ensure all that is delivered to participants is for their benefit only. The audit provision, required to ensure the plan sponsor of the fiduciary safe harbor from advice delivered to participants, is critical to the entire arrangement. More than likely, a new business model of auditors for this provision will created, but much more clarification needs to be provided to clarify the qualifications of those providing these audits, mostly to avoid the potential conflicts of interest of "wink-wink" reciprocating arrangements that would undermine EIAA arrangements and the quality and fiduciary process of the advice delivered to participants.

Summary

If the DoL's concern is that advice is not being used enough by participants and/or not enough advisors have not implemented fiduciary advice into their business model, it has more with the conflicts of interest that exist and becoming a fiduciary, nothing more. We are seeing a good number of RIA firms operate under the SunAmerica opinion, which provides a valuable service to plan sponsors and participants for the small and mid plan market space. Independent advice providers such as ourselves are continuing to see demand for advice increase as market conditions and plan sponsors better understand the need for it.

The fundamental responsibility of providing advice is being a fiduciary. We have some very serious concerns that by relaxing the level fee standard in this proposal, we are going to open up the market to conflicted advice, which only hurts participants not just in performance, but also the credibility needed for them to use advice which is one of the driving forces behind this proposal. Participants will not use advice if they do not or cannot trust the source.

In our humble opinion, it is not the DoL's responsibility to create options that fit into the advisor/provider's business models, but instead for the market to require them to adjust their business models to meet its demands for fiduciary prudence and process. Having spoken with numerous groups, they are simply in the wait-and-see stage, and we hope that the DoL maintains Congress's desire for conflict-free, instead of conflict-managed, advice for the participants that need it. Such solutions exist, but this proposal, as is, could "water down" the entire market, which is not in the best interests of participants.

Sincerely,

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