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BARCLAYS GLOBAL INVESTORS

February 7, 2007

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
Attention: 104(k) Plan Investment Advice RFI
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Madam or Sir,

Re: Request for Information RIN 1210-AB13

Barclays Global Investors ("BGI") is pleased to offer its comments regarding the request for information for "Prohibited Transaction Exemption for Provision of Investment Advice to Participants in Individual Account Plans," RIN 1210-AB13 (the "Request for Information"), published by the Employee Benefits Security Administration. BGI is one of the world's largest institutional investment managers, and the world's largest provider of structured investment strategies such as indexing, tactical asset allocation, and quantitative active strategies. BGI manages over 1.6 trillion dollars in both active and index strategies. Headquartered in San Francisco, BGI is a subsidiary of Barclays Bank PLC, one of the world's leading diversified financial services companies.

As both a quantitative manager and one of the largest managers of assets of pension plans subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), BGI has a unique perspective to offer on the Request for Information.

The Department of Labor ("Department") has requested information regarding the requirement that a computer model which serves as the basis of an eligible advice arrangement be certified as meeting certain criteria, and that information regarding fees and compensation be provided to individual account (e.g., 401(k) plan) participants and beneficiaries, for the new investment advice exemption added to ERISA by Section 601 of the Pension Protection Act of 2006. The Department noted that in order for an investment advice program using a computer model to meet the requirements of the exemption that the investment advice pursuant to a computer model that: (i) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,   (ii) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,   (iii) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,   (iv) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and   (v) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately

weighted with respect to any investment option. We have summarized the Department's questions for ease of reference and review.

Computer Model Certification

The Department has asked what procedures and information would be necessary and adequate to determine whether a computer model used in connection with an investment advice program satisfies the criteria described in the advice exemption. For example, would it be necessary to examine underlying computer programs/algorithms, computer software/hardware, or input data including investment-specific information; would it be possible to make a determination based on the results of applying the investment advice program to a sample set of the input data?

We believe that the Department's suggested approach is one way to determine whether a computer model would satisfy the Department's stated criteria, but note that models are not fully transparent and that one data set may not sufficiently show whether a model is unbiased. It is also important to note that small changes to rules and assumptions governing a model can have a significant impact on the model results or output. Model constraints can be used to advantage certain outcomes. For example, given that there is no established wisdom on how to weight recent observations versus history, even technically "fair" models could be constructed in such a way as focus on more recent performance if the fund and advice provider wishes to take advantage of a strong three-year track record to gather assets.

We also note that there may be a number of ways to evaluate a computer model or program. We would like to call your attention to Bulletin OCC 2000-16 of the Office of the Comptroller of the Currency that addresses model validation and outlines key model validation principles as developed by the OCC.

The Department has asked what types and levels of expertise would be required to determine whether a computer model satisfies the criteria described in the investment advice exemption.

BGI believes that there is no single type or level of expertise that would be required to determine whether a computer model satisfies the criteria described in the investment advice exemption. The ability to assess a computer model in an eligible advice arrangement would involve knowledge about asset allocation models, asset allocation generally and some background in investment/portfolio theory and an understanding that models must be able to

evolve over time. Knowledge regarding computer models, algorithms and programming would also be essential.

With respect to currently-available computer models or programs what is the process for designing, developing and implementing the computer model/program, including what parties are involved, and what their roles are, what hardware and software technologies are used? What direct economic costs are associated with the process for designing, developing and implementing the computer model/program?

The design, development and implementation of a computer model or program is a complex process. There may be a variety of ways in which models are designed, developed and implemented, as well as a variety of personnel and roles. Computer instructions or code must be developed, input data identified, assumptions (if any) taken into account, reports and outputs considered and evaluated, and research and development into all of the above would occur. An optimizer, whether or not proprietary, is often utilized in an asset allocation model.

For example in the model underlying our Lifepath® product, we believe that the best approach to determining strategic asset allocation, especially in cases where there is an evolution of risk through time, is to use mean variance[1] optimization. The estimation of asset class risk and correlations required for this analysis are therefore an important part of the portfolio construction process. Recognizing that recent data is more relevant for today's investment decision, a decay factor should be employed to more heavily weight recent observations. Due to the long holding period of most participants, the most important consideration is to get the longer term mean of the market variance correct. The determination of the expected returns is another important step in calculating the recommended mix of assets along the efficient frontier. Once we have the expected returns and expected risk constructed on a consistent basis, we run the mean variance optimization to determine the efficient frontier, which is a graph of the set of portfolios offering the maximum expected return for their level of risk, or specifically their variance of return. The completion of this stage leaves us with the series of portfolios that provide a maximum amount of expected return for any given level of expected risk. Mean variance optimization is a very standard technique in portfolio construction, which in this case has been informed

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[1] Mean variance optimization is a very standard technique in portfolio construction, to maximize the expected return for a portfolio given a level of expected risk. In particular, the benefits of mean variance optimization are clear in cases where there is a sound methodology to calculate the key inputs - expected risks, expected returns and asset class covariances.

by the careful calculation of the key inputs - expected risks, expected returns and asset class co-variances.

In describing the Lifepath® model, our intention is to illustrate the complexity of an advice engine which only considers the participant's age in formulating the most appropriate investment portfolio. Models which take into account a larger number of participant-related variables will be considerably more complex. Further, the Department is likely to see a greater degree of divergence in provider methodology and corresponding investment recommendations when more variables are considered. Monitoring of extremely complex and divergent models presents the Department with a considerable challenge.

What types of modifications are made to the computer model/program after use has begun? Why and how often are the modifications made (e.g., changes in methodology, technology, economy, marketplace, or plan), and how do the modifications affect the investment advice provided? What parties are involved in the modification process, and what are their roles? What direct economic costs may be associated with the modifications?

BGI believes that superior investment outcomes are most reliably achieved through an investment process that is continually evaluated and re-evaluated with a philosophy of managing risk, return and transaction costs. In fact, a continuous focus on research and innovation is crucial for success, to ensure that participants are consistently receiving a best-in-class solution. It may be difficult for the Department to evaluate the model providers' ability to account for certain aspects such as fees, transaction costs and appropriateness of advice provided.

In our Lifepath® product, significant improvements have taken place approximately once per year but other changes may occur as frequently as quarterly. In our more complex models, such as those which inform our market neutral strategies, it is not uncommon for us to make substantially more adjustments per year. Improvements span all the steps in the investment process, described above, and also include other improvements, such as modifying the core asset classes changing in the target equity allocation for participants in their retirement.

What economic costs and benefits are associated with the use of the computer model/program for providing investment advice, including changes in investment performance and in retirement wealth due to the provision of such advice? What are the indirect costs and benefits, such as impact on markets for financial services, including

investment advice services, and impact on financial markets, including demand for and pricing of securities?

If the model reaches a large share of the participant audience, the economic benefit could be vast, due to more appropriate asset allocations throughout the life of the participant. We have found that DC plans have tended to under-perform Defined Benefit plans by 2-4% per year[2], in part due to inappropriate allocations. To put this in perspective, assume a participant invests $100,000 over a thirty-year period, roughly the average time between mid-career and mid-retirement for today's long-lived individuals. Earning 8% per annum, which seems reasonable for a DB plan, this investment turns into $1,006,266, while the same amount invested at 6% for thirty years grows to only $574,349. The missing 2% compounds to $431,916 – or more than four times the original invested amount, and potentially a change in retirement lifestyle. The economic cost is in part the value of the investment advice provided by investment managers behind the computer model, and also the upfront operational cost of organizing all the data to enable a scaleable solution.

Regarding the indirect economic benefits and costs mentioned below, we estimate that improved retirement wealth will lead to substantial positive implications, with few negative effects other than fees. It will be important for the Department to recognize that certain advice providers may charge fees in excess of 50-100 basis points. If participants are not using the full functionality of a model advice tool (i.e., if the information provided by the participant does not fully reflect his financial position or other personal data beyond his age), these participants may in fact be better served by a lifecycle fund or other more "mass" solution as the advice costs outweigh the additional benefits achieved by the advice that can be provided in such circumstances.

Would the responses to 3.a., 3.b., or 3.c. differ in the case of a computer model/investment advice program intended to satisfy the requirements of ERISA section 408(g)(3)(B)?

The basic principles should be the same, except that in some cases a model that was designed for asset allocation but not for participant advice may differ from a model that is designed to furnish participant advice, as well as differences based on the investment options under the plan.

With respect to the Department's development of regulatory guidance, what special considerations, if any, should be made for small businesses or other small entities? Are there unique costs and benefits for small businesses or other small entities?

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[2] See, for example, Mind the Gap, Waring, Siegel, and Kohn, Investment Insights, Barclays Global Investors, January 2004

The plan sponsor may need its record keeper or other service provider to provide more assistance and support to help the plan sponsor obtain a cost-effective fiduciary advisor and computer model to provide participant advice.

Model Form for Disclosure of Fees and Other Compensation

The Department has asked a number of questions regarding information related to fees received by fiduciary advisers and their affiliates. These questions concern the types of information that might be helpful to participants, challenges in assembling and presenting information including impact of a model form on disclosure. Finally the Department asks about optimal time frame in making disclosure.

Participants should be able to understand what the fees are for the advice arrangement and their impact (if any) on the investment options in their individual account underlying the individual account plan. It is important to note that participants will still bear the cost of the management fees for the underlying funds, i.e. this fee disclosure is for advice only. Plan sponsors also need to be able to understand the fees for an eligible advice arrangement. We respectfully note that plan participants may not want or need too much disclosure regarding fees and expenses other than the costs that are involved in their investment option.

Typically, the performance summary for a particular time period (often quarterly) includes 1) beginning positions, 2) participant activity, 3) employer contributions (as applicable), 4) market returns, and summarized (1+2+3+4) as ending period assets.

Conclusion

We commend the Department for its continuing efforts in implementing this exemption and other provisions of the Pension Protection Act. We believe that the evaluation of models will be challenging given the complexity of most asset allocation tools, the lack of transparency and consensus around the inputs and constraints which should drive investment recommendations and uncertainty around the appropriate treatment of fees. In considering economic costs and benefits of advice, careful attention should be given to the additional returns provided by individualized advice over and above readily available mass market asset allocation products. The Department should consider convening a roundtable discussion of industry experts on these topics as the best way to develop the next phase of this rulemaking, as there is likely to be robust debate on many facets of these issues.

Kristi Mitchem

cc: Matthew Scanlan
    Theda Haber
    Joanne Medero

We look forward to working with the Department on this and other initiatives as the Pension Protection Act is implemented.

Very truly yours,