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New Fee Disclosure Rules for Participant-Directed Retirement Plans

On October 15, 2010, the Department of Labor issued final regulations that create new fee disclosure requirements for 401(k) plans and other participant-directed retirement plans. The regulations are intended to ensure that plan administrators provide participants with the information they need to make informed decisions about their retirement savings.

What Information Should Be Included? The new participant disclosure is required to include two separate categories of information: plan-related information and investment-related information.

Plan-Related Information. The disclosure is required to include each of the following:

- **General plan information**, including a list of available investment funds; the names of the plan's investment manager(s); procedures through which participants and beneficiaries can make investment elections; restrictions on investments, transfers of investments, or voting rights; and a description of any arrangements that allow participants to invest in funds outside those directly offered by the plan (e.g., investments through individual brokerage accounts);
- **Administrative expenses** that may be charged to the plan, including a description of how expenses will be assessed and whether any expenses are paid from revenue sharing paid to the plan by the plan's investment funds; and
- **Individual expenses**, including charges related to plan loans, investment advice, investment management fees, or fees related to qualified domestic relations orders that are charged to an individual participant's account.

Investment-Related Information. In addition to the plan-related information described above, the disclosure is also required to include the following information about each of the plan's investment funds:

- **Name and type of fund**;
- **Performance data**, including average 1-, 5-, and 10-year returns (or, for funds with a fixed rate of return, the term and the rate of return);

- **Benchmark information** (e.g., a comparison of the fund's performance to an appropriate index);
- **Fees and expenses**, expressed as total annual operating expenses and as a percentage of each \$1,000 invested;
- **Restrictions** on a participant's ability to purchase or withdraw from the fund;
- **Web-site address** where participants can find additional information about the fund, including identifying information, investment strategies, portfolio data, and updated performance data; and
- **Glossary** of general investment terms or a web-site address where such a glossary can be found.

The investment-related information is required to be provided to participants in a chart or similar format that makes it easier for participants to compare investment funds. The Department of Labor has published a model comparative chart that may be used to satisfy this requirement.

Who Should Receive the Information? The information described above is required to be provided to all participants and to any beneficiary who has the right to direct investments (e.g., due to a participant's death or a qualified domestic relations order).

When Should the Information Be Provided? The information described above is required to be provided on or before the first date on which a participant can make an investment election and annually thereafter.

In addition, certain other investment-related information is required to be provided after a participant first invests in each fund, and, upon request, the plan administrator is required to also provide prospectuses, financial statements, valuation information, and a list of portfolio assets for each fund.

Also, each quarter, participants are required to receive a statement showing the actual expenses charged to their accounts. This statement is required to include both the actual dollar amount charged to the participant's account and a description of the services to which the charges relate.

How Can the Information Be Provided? The required disclosure may be included in the plan's summary plan description and/or quarterly participant benefit statements. It also may be provided as one or more separate documents.

When Are the New Disclosure Rules First Effective? The new disclosure rules are effective for plan years beginning on or after November 1, 2011. For calendar-year plans, the rules will become effective January 1, 2012.

What If I Have Questions? If you have any questions about these new fee disclosure rules, please contact David Putnal (404.888.8836), Toby Walls (404.888.8870), Teri King (404.888.8847) or Brenna Clark (404.888.8842).

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