

PENSION COMMITTEE
AGENDA
SEPTEMBER 7, 2011
1:00 PM

1. INTRODUCTIONS
2. CALL TO ORDER / PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE
2. CHAIRMAN WILL ASK IF ANYONE IS GOING TO RECORD THE MEETING
3. APPROVAL OF MINUTES
 - a. August 3, 2011
4. OLD BUSINESS
5. NEW BUSINESS
 - a. Acknowledge Pension Committee's acceptance of proposal from Thomas Anderson Associates for Consulting and Actuarial Services to East Goshen's Non-uniform Defined Contribution Pension Plan
 - b. Interviews for Consulting and Investment Services:
 - 1:00 – Cary Scaglione (ICMA-RC)
 - 2:00 – Victor Cozzone (Raymond James)
6. PUBLIC COMMENT
7. ADJOURNMENT

draft
EAST GOSHEN TOWNSHIP
PENSION COMMITTEE MEETING
August 3, 2011

The East Goshen Township Pension Committee met at the East Goshen Township Building on Wednesday, August 3, 2011 at 1:00 pm. Committee members present were: Deborah Beury, Paul Coleman, Giulio Perillo and Marty Shane. Others present were: Rick Smith, Township Manager.

1. Call to Order, Pledge of Allegiance and Moment of Silence

Giulio called the meeting to order, led those present in the Pledge of Allegiance and asked for a moment of silence to remember our troops.

2. Minutes

Giulio made a motion to approve the minutes of the July 6, 2011 meeting. Marty seconded the motion. The motion passed.

3. Recording of Meeting

Giulio asked if anyone present would be recording the meeting. There was no response.

4. Old Business

None

5. New Business

a. Proposals

1. Consulting Actuarial – The committee reviewed two proposals for this position from the Hay Group and Thomas J. Anderson & Associates Inc. Marty made a motion to award the actuarial position to Thomas J. Anderson & Associates who had the less expensive proposal. Deb seconded the motion. There was no further discussion. The motion passed. Giulio abstained. Rick will post this on the website.

2. Investment Consultant – The committee reviewed 4 proposals for this position from InR, Raymond James, ICMA-RC and Consulting Group. There was discussion of the funds expense ratio and fees. Giulio feels the fund expense would be up to the committee based on which funds are selected. They should look at the base rates first. Marty wants to know if the firms get discounts from the funds. Vanguard has different fees based on the amount invested. Soft dollars are commissions and bonuses. Transaction fees are the cost to purchase a fund. All four firms showed no custodial fee. ICMA-RC and InR have the same base rate. Giulio feels that InR could bundle this plan with what they already have with the Township. The committee found the numbers presented by Raymond James to be very confusing and will ask them to resubmit and clarify their numbers. Rick will notify all of the firms that their proposals

1 were received and are being reviewed by the Committee. The Committee decided to
2 invite ICMA-RC to the next meeting in September.

3
4 There being no further business, Deb made a motion to adjourn the meeting. Paul
5 seconded the motion. The motion passed unanimously. The meeting was adjourned at
6 2:00 pm. The next meeting will be held on Wednesday, September 7, 2011 at 1:00 pm.

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8 Respectfully submitted,

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11 Ruth Kiefer, Recording Secretary
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BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP
CHESTER COUNTY
1580 PAOLI PIKE, WEST CHESTER, PA 19380-6199

August 12, 2011

Mr. Thomas Anderson
Thomas J. Anderson Associates
415 McFarlan Road, Suite 104
Kennett Square, PA 19348

Dear Tom:

At their meeting on August 3, 2011 the Pension Committee voted to accept your proposal to provide consulting and actuarial services to the East Goshen Township Non-uniformed Defined Contribution Pension Plan.

The basis of the award was that the fee scheduled proposed by Thomas J. Anderson was less expensive than the fee schedule submitted by the Hay Group.

The Township intends to enter into an agreement with Thomas J. Anderson Associates at the Pension Committee meeting scheduled for September 7, 2011.

Please give me a call at 610-692-7171 or e-mail me at rsmith@eastgoshen.org if you have any questions or need additional information.

Sincerely,



Louis F. Smith, Jr.
Township Manager

Cc: Hay Group, with enclosures

F:\Data\Shared Data\Admin Dept\Pension Plan\RFPs\Consulting and Actuarial 081011.doc

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2011, between **EAST GOSHEN TOWNSHIP**, a political subdivision of the Commonwealth of Pennsylvania, with an address of 1580 Paoli Pike, West Chester, Pennsylvania, 19380 (the "Township"), and **THOMAS J. ANDERSON AND ASSOCIATES, INC.**, a Pennsylvania corporation with an address of 415 McFarlan Road, Suite 104, Kennett Square, PA 19348 (the "Consultant").

BACKGROUND:

WHEREAS, on or about July 7, 2011, the Township solicited requests for proposals ("RFP") for consulting and actuarial services for the East Goshen Township Non-Uniformed Defined Contribution Pension Plan (the "Plan") pursuant to certain Specifications for Actuarial and Consulting Services dated July 7, 2011 (the "Specifications"); and

WHEREAS, Consultant submitted a Proposal dated July 12, 2011 (the "Proposal") in accordance with the RFP; and

WHEREAS, in Resolution No. 2010-61 the Board of Supervisors of East Goshen Township (the "Board") established the East Goshen Township Pension Committee (the "Committee") and delegated to such Committee the authority to retain on behalf of the Township professional consultants to administer the Plan; and

WHEREAS, at a public meeting held on August 3, 2011, the Committee awarded the bid to Consultant; and

WHEREAS, the parties desire to set forth the terms pursuant to which Consultant will perform the work specified in the RFP, Specifications and Proposal;

NOW THEREFORE, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The recitals set forth in the Background section of this Agreement are incorporated herein as if set forth herein in their entirety.

2. **Description of Work to Be Performed by Consultant.** In accordance with the RFP, Specifications and Proposal, copies of which are attached hereto collectively as Exhibit "A" and which are incorporated herein by reference, Consultant shall complete the following work (the "Work"):

- (a) Provide Act 205 actuarial services.
- (b) Prepare annual financial statements pursuant to GASB 25 & 27.
- (c) Prepare the Act 205 Actuarial Valuation Reports (Form PC-210C, PC- 203C, and PC-203A) as required by Act 205 for submission to the Pennsylvania Employee Retirement Commission.
- (d) Prepare State Certification and Ad-Hoc Post-Retirement Adjustment Certification Forms (Form AG-385). Provide to Township by March 1st of each year.
- (e) Prepare the Minimum Municipal Obligation as required by Act 205 to be submitted by the Chief Administrative Officer to the governing body by September 30th of each year. Provide to Township by September 1st of each year.
- (f) Maintain a list of all active, retired, and terminated vested members including their date of entry into the Plan, annual wages, members' contributions, accumulated contributions, pension benefits, and separation date.
- (g) Update Township on any changing legislation and regulations that are relevant to the administration of the Plan.

- (h) Prepare year end individual benefit statements including the allocation of investment income, municipal contribution, realized and unrealized gains or losses, and expenses incurred for the Plan.

3. **Term of Agreement.** The term of this Agreement shall commence on the date of execution of this Agreement by both parties and shall expire on December 31, 2013. The Agreement shall automatically renew for successive one year terms unless either party sends written notice to terminate the Agreement at least thirty days prior to December 31, 2013. The fees that Consultant shall be paid in any renewal term shall be specifically approved in writing between the parties.

4. **Fee Schedule.** The Township shall pay Consultant fees for the services that Consultant performs pursuant to this Agreement in accordance with the fee schedule which is attached hereto as Exhibit "B". The Township shall pay Consultant the enumerated fees as the Work is performed after receipt of an invoice from Consultant and approval by the Committee. The invoice shall itemize the Work completed to date and shall be paid within thirty (30) days of receipt of same from funds in the Plan.

If Consultant is requested to perform any additional work not specified in paragraph 2 above, it shall perform such work for the Township and bill the Township based on the hourly rate set forth on the Fee Schedule.

5. **Dispute Resolution.** Upon mutual consent of the parties, disputes which arise pursuant to this Agreement or the Work performed pursuant to this Agreement may be submitted to mediation or arbitration in a forum mutually agreeable to both parties. Otherwise, all claims or disputes arising under this Agreement or the

Work performed pursuant to this Agreement shall be litigated in the Court of Common Pleas of Chester County.

6. **Termination.**

A. If the Township fails to make payments to Consultant in accordance with this Agreement, such failure shall be cause for termination or at Consultant's option, suspension of performance of the Work required under this Agreement. Consultant shall give the Township not less than thirty (30) days written notice and opportunity to cure before terminating this Agreement or suspending Work performed hereunder.

B. The Township may terminate this Agreement upon not less than thirty (30) days written notice to Consultant with or without cause provided that Consultant shall be compensated by the Township for services performed prior to termination.

7. **Insurance.** Upon execution of this Agreement, Consultant must provide a certificate of insurance to the Township for professional liability in the minimum amount of \$1,000,000 per claim and annual aggregate. If the professional liability policy is written on a claims-made basis, Consultant shall maintain such insurance for three (3) years after completion of its services.

8. **Miscellaneous Provisions.**

A. **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without regard to conflict of laws principles.

B. Notices. All notices, requests and other communications under this Agreement shall be in writing and shall be addressed as follows:

If intended for Township:

East Goshen Township
Attention: Township Manager
1580 Paoli Pike
West Chester, PA 19380
rsmith@eastgoshen.org
(610) 692-7171

If intended for Consultant:

Thomas J. Anderson and Associates, Inc.
Attention: Thomas Anderson
415 McFarlan Road, Suite 104
Kennett Square, PA 19348
tanderson@tja-inc.com
(610) 925-1810

All such notices shall be given by hand delivery, or sent by overnight delivery service or by certified mail, return receipt requested, or by fax (provided that any faxed notice must also be given by one of the other permitted means). Such notices shall be deemed to have been given on the date received, if hand delivered, or the next business day following deposit of the notice with an overnight delivery service, or three days after mailing, if sent by certified mail, or on the date received, if sent by fax. Notices may be given to and by counsel for each party.

C. Assignment; Benefit. This Agreement is personal in its nature, and the parties shall not, without the written consent of the other, assign or transfer this Agreement or any rights or obligations hereunder.

D. Entire Agreement. This Agreement, together with the RFP

and Bid, contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements or understandings between the parties hereto with respect thereto.

E. Amendments and Waivers. No modification or amendment of any provision of this Agreement shall be effective unless it is in writing and signed by the parties hereto.

F. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the date and year specified above.

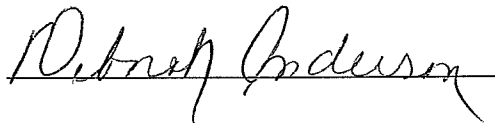
ATTEST:

EAST GOSHEN TOWNSHIP

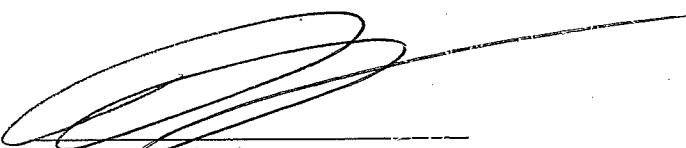
BY _____
Giulio Perillo
Chairman, East Goshen Township
Pension Committee

ATTEST:

THOMAS J. ANDERSON AND ASSOCIATES, INC.



BY:



Thomas J. Anderson
Thomas J. Anderson and Associates, Inc.

t

610-692-7171
www.eastgoshen.org

FILE

BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP
CHESTER COUNTY
1580 PAOLI PIKE, WEST CHESTER, PA 19380-6199

August 4, 2011

ICMA-RC
ATT: Cary Scaglione

RE: Consulting & Investment Services
East Goshen Township Non-Uniformed
Defined Contribution Pension Plan

Dear Cary:

Thank you for your proposal regarding the referenced Pension Plan. The Pension Committee has reviewed your proposal and invites you to attend their next meeting on Wednesday, September 7, 2011 at 1:00 p.m. Please allow 45 minutes for this interview.

If you have any questions, please don't hesitate to call.

Sincerely,

Rick Smith

Rick Smith
Township Manager

Rick Smith

From: Victor Cozzone [Victor.Cozzone@RaymondJames.com]
Sent: Tuesday, August 23, 2011 5:30 PM
To: rsmith@eastgoshen.org
Subject: RE: Response to questions

Rick-

I will look forward to seeing you on the 7th at 2 pm.

Best-

Victor

From: Rick Smith [mailto:rsmith@eastgoshen.org]
Sent: Tuesday, August 23, 2011 3:32 PM
To: Victor Cozzone
Subject: RE: Response to questions

Victor

thanks for the information.

The next Pension Committee meeting is on September 7.

The Commission would like to meet with you to discuss your proposal at 2 pm, if this is convenient. Figure 45 minutes.

Let me know if this works for you.

Thanks

Rick Smith, Township Manager
East Goshen Township
610-692-7171

From: Victor Cozzone [mailto:Victor.Cozzone@RaymondJames.com]
Sent: Tuesday, August 23, 2011 2:15 PM
To: rsmith@eastgoshen.org
Subject: Response to questions

Rick-

Please see attached PDF with answers to the Pension Committee's questions.

Victor

Victor Cozzone
Financial Advisor
Raymond James & Associates, Inc.

Trust Specialist
Raymond James Trust, N.A.
401 City Line Avenue
Suite 700
Bala Cynwyd, PA 19004
610-771-0333 - Office
610-420-5308 - Cell
1-800-657-8969

Disclosures Regarding this Email Communication (Including Any Attachments)

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Disclosures Regarding this Email Communication (Including Any Attachments)

Please visit <http://www.raymondjames.com/disclosure.htm> for Additional Risk and Disclosure Information. Raymond James does not accept private client orders or account instructions by email. This email: (a) is not an official transaction confirmation or account statement; (b) is not an offer, solicitation, or recommendation to transact in any security; (c) is intended only for the addressee; and (d) may not be retransmitted to, or used by, any other party. This email may contain confidential or privileged information; please delete immediately if you are not the intended recipient. Raymond James monitors emails and may be required by law or regulation to disclose emails to third parties.

610-692-7171
www.eastgoshen.org

BOARD OF SUPERVISORS
EAST GOSHEN TOWNSHIP
CHESTER COUNTY
1580 PAOLI PIKE, WEST CHESTER, PA 19380-6199

FILE

TO: Victor Cozzone
Raymond James

FROM: Rick Smith, Township Manager

DATE: August 4, 2011

RE: Consulting & Investment Services
East Goshen Township Non-Uniformed
Defined Contribution Pension Plan

Dear Victor:

Thank you for your proposal regarding the referenced Pension Plan. As a result of the Pension Committee's review of your proposal, they have the following questions:

1. Cost breakdown:
 - a. Custody – It is stated that there is no charge for American Funds to act as custodian. Does this apply only to American Funds? If not, what is the charge for other Funds that may provide custodial services?
 - b. Money Manager or Internal Fund Expenses - .78% avg. expense ratio is listed on the first line of this section. However, following the list of available mutual funds, 1.02% is shown as avg. expense ratio. Please explain the difference and verify the expense ratio.

Also, in (b) it states that the Consulting Fee (reduced to) as .30% avg. assets managed. But in (d) the Consulting or Advisory Fees are shown as .40% of avg. assets managed. And, your amendment dated 8/1/11 shows (d) Consulting or Advisory Fees as 15 basis points. Please clarify what the Consulting Fee will be.

Please call if you have any questions.
610-692-7171

Rec'd 8-24-11

Victor Cozzone
Raymond James & Associates, Inc.
401 E. city Avenue Suite 700
Bala Cynwyd, PA 19004
610-771-0333 Direct
610-420-5308 Cell

TO: Rick Smith, Township Manager

FROM: Victor Cozzone, Financial Advisor, Raymond James & Associates., Inc.

RE: Response to questions of letter dated August 4, 2011 for Consulting & Investment services.

Dear Rick,

In response to the Pension Committee's questions:

1. Cost Breakdown

a. Custody –

East Goshen Township's Non-Uniformed Defined Contribution Plan (EGTNUDC) is not required to have a 'custodian' as referenced by Internal Revenue Service (IRS) for 403b plans. However, 457b plans are required to have a "Trustee". In my response, the American Funds would be authorized, through the trust instrument required for 457b plans, to hold and invest the assets of the plan for the benefit of the participants – thereby taking 'custody' of the assets and contributions within the plan.

"Custodial Services" are provided by an organization (usually a bank or trust company) that holds in safekeeping the securities and other assets of the plan. A 457b plan is not required to have a 'Custodian', however, they are required to have a trust or a trustee. "Trustees" are the parties named in the plan or trust documents that are the authorized to hold the assets of the plan for the benefit of the plan participants. *Although this appears to be the same function, the legal terminology for 403b and 457b plans is different.*

There is no charge itemized for custodial services in the American Fund prospectus. Although custodial services may be included in the Internal Fund Expense, there is not a specific, itemized disclosure for 'custodian', or 'custodial services' (for example, the 12b-1 fee is required by the Investment Company Act of 1940 to be disclosed). "Other funds" i.e., mutual funds, generally do not disclose a "custodial fee" as an itemized expense or charge in their prospectus.

b. Money Manager or Internal Fund Expense

The average expense ratio for the American Funds in our response is .78 basis points.

My response included a *second option* with a higher internal fund expense of 1.02% that would have offered the availability –within the American Funds platform – of an additional twenty(20)mutual funds families, as referenced. If the second option was chosen, I would have reduced the consulting fee to off-set the higher internal fund expenses associated with the broader array of fund families available to the plan participants.

As the second option has inadvertently introduced confusion, *please remove the second option.*

To clarify, the consulting fee to be paid directly for ‘Investment and Consulting Services’ by the township (or EGTNUDC) will be fifteen (15) basis points of the assets, payable quarterly.

Thank you in advance for your time and consideration. Please let me know if I may be of any further assistance.

Sincerely,

Victor Cozzone

FYI



FIDUCIARY FOCUS:

The New Fee Disclosure Under ERISA

This material is an educational discussion of the new Department of Labor (DOL) rule governing fee disclosure, which provides ideas and suggestions on this topic and should not be construed as legal advice. Advisers, plan sponsors and others should consult their own legal counsel and designated adviser, if applicable, for specific guidance on their particular circumstances.

Executive Summary

During the last ten years, plaintiffs' attorneys have filed numerous complaints related to the fees service providers charge retirement plans. The U.S. Department of Labor (DOL) has now published the long-awaited rule on Employee Retirement Income Security Act of 1974, as amended (ERISA), Section 408(b)(2)—the statutory exemption allowing plan service providers to be compensated for their services without engaging in a prohibited transaction.

If the DOL does not make any additional changes to this rule, it will become final and effective on April 1, 2012.

This paper briefly discusses the new rule and some of the issues that advisers who have retirement plan business should consider.

The new disclosure will require covered service providers to:

- ▶ Describe the services they provide;
- ▶ Determine whether the services provided are fiduciary services or services under the Investment Advisers Act of 1940 or any similar State law;
- ▶ Determine what compensation they are receiving and how it is being received; and
- ▶ Provide additional disclosures for investment services, discussed in greater detail on the following pages.

Advisers can prepare for the new rule by:

- ▶ Evaluating their exposure;
- ▶ Evaluating their disclosure obligations;
- ▶ Modifying their service contracts or implementing ones now; and
- ▶ Seeking legal advice.



Contents

- 2 Background - Prohibited Transactions
- 2 Additional Requirements
- 5 How to Prepare
- 6 Conclusion

Background - Prohibited Transactions

What Are They. ERISA prohibits a number of transactions between “parties in interest” and ERISA-covered retirement plans. A party in interest includes persons providing services to such a plan. For example, a registered investment adviser (RIA) or stockbroker providing services to a retirement plan is a party in interest. The ERISA prohibitions preclude the furnishing of services between a plan and a party in interest and the transfer of plan assets to a party in interest. Thus, absent an exemption, the plan could not employ the RIA or stockbroker or use plan assets to pay their fees.

What Happens If One Occurs? If a plan engages in a prohibited transaction, the Internal Revenue Code of 1986, as amended, imposes an excise tax of 15% on the amount involved in the prohibited transaction. The excise tax increases to 100% of the amount involved if the prohibited transaction is not corrected. There can also be other consequences, such as lawsuits against the parties who participate in a prohibited transaction.

Exemption. There are, however, exemptions from the prohibited transaction provisions. Under ERISA 408(b)(2), a prohibited transaction will not occur if the contract or arrangement between the plan and the service provider is reasonable, the services are necessary to the plan, and the plan pays only reasonable compensation for the services offered by a service provider. The current DOL regulation explains what constitutes a “reasonable arrangement,” “necessary services,” and “reasonable compensation.” In the past, these requirements have not been particularly difficult to meet, and service providers have been able to avail themselves of the exemption.

New Rule Imposes Additional Requirements to Avoid Prohibited Transactions

The New Rule. The new DOL rule (technically an interim final rule) amends the current regulation to impose an additional requirement on “covered service providers” that offer certain services to “covered plans,” namely, extensive disclosure to the plan of the fees and other compensation the covered service provider expects to receive from its services.

Definitions. “Covered service providers” are those providers that entered into a contract or arrangement with a covered plan reasonably expecting to receive \$1,000 or more in compensation, direct or indirect, in connection with providing certain services to the plan. Those services are:

- ▶ fiduciary services provided directly to the plan by a fiduciary;
- ▶ services provided directly to the plan by an RIA;

- ▶ brokerage services and recordkeeping provided to an individual account plan (e.g., a 401(k) plan) that permits participants to direct investments to their accounts, if one or more designated investment alternatives are made available (through a platform or similar mechanism) in connection with the brokerage services or recordkeeping; and
- ▶ services performed for “indirect compensation,” including accounting, appraisal, auditing, banking, consulting (i.e., related to development or implementation of investment policies or the selection or monitoring of service providers or plan investments), custodial, insurance, investment adviser (for the plan or its participants), securities brokerage, third-party administration, and valuation services.

A “covered plan” includes practically any retirement plan subject to ERISA, other than a simplified employee pension – SEP IRAs, a simple retirement account – SIMPLE IRA, or an individual retirement account (IRA) or individual retirement annuity.

The Format and Timing of Disclosure

Format, Delivery. The covered service provider must provide the required disclosure described below in writing to the “responsible plan fiduciary,” the plan official with authority to cause the plan to enter into, extend or renew, a contract or arrangement with a covered service provider. The rule does not require the service provider to make disclosures in any particular format or manner. As a result, the disclosures may be made through multiple documents. However, the DOL may amend the interim final rule to require a short, summary disclosure statement that would include key information and identify where the responsible plan fiduciary could find the more detailed elements of the disclosure that the rule requires.

Timing of Disclosure Requirements. For contracts and arrangements between plans and covered service providers that are in place prior to April 1, 2012, the service provider must provide the required disclosure described below on or before that date. For contracts and arrangements put in place after that date, the service provider must provide the required disclosure to the responsible plan fiduciary reasonably in advance of the date the contract or arrangement is entered into, extended or renewed, with limited exceptions.

Disclosure of Changes. A covered service provider must disclose a change to the information disclosed as soon as practicable, but not later than 60 days from the date on which the service provider is informed of the changes. However, if the disclosure was precluded due to extraordinary circumstances beyond the service provider’s control, the information must be disclosed as soon as practicable.

Content of Required Disclosure

The following is a brief summary of the disclosure requirements that will become effective on April 1, 2012. The DOL may change the requirements before that date, so covered service providers should be alert to that possibility.

Services. The covered service provider must provide a description of the services to be provided to the plan pursuant to the contract or arrangement.

Status of Service Provider. If applicable, the covered service provider must state that it (or an affiliate or a subcontractor) will provide, or reasonably expects to provide:

- if applicable, fiduciary services directly to the plan or to an investment contract, entity or product that holds plan assets and in which the plan has a direct equity investment; and/or
- if applicable, services directly to the plan as an investment adviser registered under either the Investment Advisers Act of 1940 or any State law.

Compensation. The covered service provider must describe all of the compensation it, an affiliate, or a subcontractor expects to receive including the following:

- direct compensation
 - compensation paid directly from the covered plan, and
 - can be identified either in the aggregate or itemized service-by-service;
- indirect compensation
 - compensation received from any source other than from the plan, the plan's sponsor, the covered service provider, an affiliate, or a subcontractor;
 - Examples are numerous, and might include float revenue, finder's fees, management fees a mutual fund pays to its investment adviser, shareholder servicing fees, soft dollars from a broker-dealer, sub-transfer agency fees, 12b-1 distribution fees, and brokerage commissions, and
 - the description must identify the services for which the indirect compensation will be received and the payer of the indirect compensation;
- compensation paid among the covered service provider, an affiliate, or a subcontractor
 - disclosure is required only if the compensation is determined on a transaction basis (e.g., on the basis of commissions, finder's fees, or soft dollars) or is charged against the covered plan's investment and reflected in the net value of the investment (e.g., 12b-1 fees), and

- the disclosure must identify the services for which compensation will be paid and the payers and recipients of the compensation; and
- compensation payable to the covered service provider (or an affiliate or a subcontractor) in connection with the termination of contract or arrangement.

Compensation, whether direct or indirect, can be expressed as a fixed dollar amount, a formula, a per capita charge for each participant, a percentage of the covered plan's assets, or if none of these can be used, any other reasonable method. Any expression of compensation must permit the evaluation of the reasonableness of the compensation.

Recordkeeping Services. There are additional disclosure requirements related to recordkeeping services provided to the plan.

Manner of Receipt of Compensation. The disclosures must contain a description of the manner in which the compensation will be received, such as whether the plan will be billed or the compensation will be deducted directly from the plan's account(s) or investments.

Investment Disclosure – Fiduciary Services for Pooled Investments. In the case of a fiduciary who manages a separate contract, entity or product in which the plan has an equity interest (such as a collective investment fund), the following information must be disclosed for each investment in which the plan has the direct equity interest, and for which the fiduciary services will be provided pursuant to the contract or arrangement:

- a description of any compensation that will be charged directly against the amount invested in connection with the acquisition, sale, transfer of, or withdrawal from the investment contract, entity, or product (e.g., account fees, deferred sales charges, exchange fees, purchase fees, redemption fees, sales charges, sales loads, and surrender charges);
- a description of the annual operating expenses (e.g., expense ratio), but only if the investment return is not fixed; and
- a description of any ongoing expenses in addition to annual operating expenses (e.g., mortality and expense fees, wrap fees).

This requirement can be satisfied if a covered service provider who provides brokerage or recordkeeping services gives the information to the responsible plan fiduciary.

Investment Disclosure – Brokerage Services and Recordkeeping. In the case of a person providing brokerage services to an individual account plan (e.g., a 401(k) plan) that permits participants to direct the investment of their accounts, if one or more designated investment alternatives are made available in connection with the brokerage services, the broker-dealer must disclose the same

information described in the paragraph above for each designated investment alternative for which brokerage services will be provided pursuant to the contract or arrangement with the plan.

Additional Information on Request. Upon request of the responsible plan fiduciary or plan administrator, the covered service provider must furnish any other information relating to compensation received in connection with the contract or arrangement that is required for the plan to comply with the reporting and disclosure requirements of ERISA and the forms, regulations and schedules issued thereunder. The covered service provider must disclose the information not later than 30 days following receipt of a written request from the responsible plan fiduciary or plan administrator unless such disclosure is precluded due to extraordinary circumstances beyond the service provider's control, in which case the information must be disclosed as soon as practicable.

Disclosure Errors

No contract or arrangement will be deemed unreasonable solely because the covered service provider, acting in good faith and with reasonable diligence, makes an error or omission in disclosing the information if the service provider discloses the correct information to the responsible plan fiduciary as soon as practicable, but not later than 30 days from the date on which the service provider knows it made an error or omission.

Basic Fiduciary Duty

Compliance with the DOL's rule does not absolve the responsible plan fiduciary from exercising basic prudence in the selection of covered service providers to perform for a covered plan.

How to Prepare for the New Rule

The following are a few suggestions you may consider to prepare for the DOL rule and some of the issues you may confront.

Evaluate Your Exposure. Define the extent to which you will be subject to the new rule. For example, the new rule may cover a significant number of unsuspecting RIAs that advise or manage pooled funds such as collective investment funds.

Evaluate the Extent of Your Disclosure Obligation. The new rule will require many RIAs and broker-dealers to disclose forms of compensation that they have never been required to disclose before. You should consider whether you are a covered service provider under more than one of the categories discussed above and identify the different disclosure requirements that apply to each category.

RIAs Should Consider Modifying Their Service Contracts. RIAs should consider developing a model service contract that includes all the disclosures that the DOL's rule requires. This will avoid the necessity for generating a separate disclosure document. Furthermore, the signed model service contract will provide proof that the disclosures were made to the responsible plan fiduciary.

Broker-Dealers Should Consider Using Service Contracts. Many broker-dealers do not use service contracts. They should consider using them for the same reasons discussed above.

Consider Providing the Required Disclosure to All Retirement Plan Clients. As noted above, some types of retirement plans are not considered "covered plans" and are therefore not subject to the new disclosure requirements under the DOL rule. However, covered service providers that serve multiple markets may find it more efficient to establish one disclosure regimen rather than attempting to determine when the disclosures are and are not required.

Identify and Educate the Appropriate Personnel Regarding These New Disclosure Requirements. Depending on the size of your organization, there could be a substantial number of employees involved in gathering and delivering the required disclosure. Identify them and start educating them now.

Seek Legal Advice Now. The new rule is complex and this paper does not attempt to discuss all of its complexities or nuances. You should contact your legal counsel now to begin sorting through the impact of the new rule on your particular situation.

Conclusion - A Great Opportunity

The new fee disclosure rule will level the playing field by allowing plan sponsors to understand the true costs of their plans and fees paid to providers. With this new focus on transparency comes great opportunity for the adviser who has a service model in place that can provide the plan with what the rule requires.

Because fees will now be explicit, it will make it easier for advisers to provide information to clients about products and what they cost. Advisers will be able to make better "apples-to-apples" comparisons of 401(k) products for their clients, utilizing a myriad of fee benchmarking tools such as the one available at www.planadvisorstools.com.



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This article was written by David H. Williams, Esq., Schiff Hardin LLP. Mr. Williams is an attorney with particular expertise in employee stock ownership plans (ESOPs), other tax qualified retirement plans, health and welfare plans, and executive compensation. His practice focuses on representation of parties in the design, implementation, and administration of employee benefit plans, and representation of retirement plan fiduciaries.

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