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August 2010

Investment Fund Fee Reporting—Responding to Plan Investor Fee Disclosure Requests

Many investment funds have recently received requests from ERISA plan investors asking for a range of information relating to fees paid to fund service providers. Plan administrators are making these requests in order to allow them to complete Schedule C to Form 5500, which now requires expanded fee reporting, including the reporting of "indirect compensation" paid by a plan. The new Schedule C reporting rules apply to fees paid to investment fund service providers (as "indirect compensation"), even if the fund's assets do not constitute "plan assets" for purposes of ERISA. Funds that qualify as venture capital operating companies or real estate operating companies under ERISA, however, are exempt. This is the first Form 5500 cycle for which the expanded fee disclosure is required on Schedule C, so many fund managers are wrestling with the complexity of the new rules and inevitable difficulties in applying them to their particular situations.

Although complicated and difficult to apply, the general process for preparing responses to fee disclosure requests from ERISA plans will typically involve the following steps:

1. ***Identify All Fees:*** As an initial step, all fees paid to or received by fund service providers should be identified. This would include, among other items, investment management fees, administrator fees, soft dollar receipts, float revenue, etc. Many of these fees are disclosed in the fund's offering documents, but a broader review should be undertaken to make sure all fees are identified.
2. ***Identify Excludable Operating Expenses:*** Because fees for ordinary operating expenses are not required to be reported under the Schedule C reporting rules, fees that qualify as such should be identified and excluded from the response. Ordinary operating expenses include, among other items, attorneys' fees, accounting fees, and printing costs.
3. ***Identify Fees That May Qualify as Eligible Indirect Compensation:*** After excluding fees for ordinary operating expenses, fees that can qualify as "eligible indirect compensation" should be identified. Under the Schedule C reporting rules, eligible indirect compensation is subject to substantially more limited reporting requirements. Indirect compensation can qualify as eligible indirect compensation

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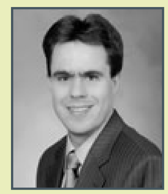

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if it is charged to the fund and reflected in the value of the investment or return on investment of the participating plan for, among other specified items, distribution, investment management, recordkeeping or shareholder services, finders' fees, float revenue, and soft dollar revenue. In order to qualify as eligible indirect compensation, the plan must be provided with certain information specified in the Schedule C instructions, generally including the amount (or estimate) of the indirect compensation or a description of the formula under which it is determined. Often, much of the required information will already be included in the fund's offering document, but to the extent it has not been previously provided to the plan, can be included as a part of the response to the plan administrator.

4. ***Allocate Reportable Indirect Compensation to Plans:*** For indirect compensation for which fee amounts must be reported, total fees need to be allocated to the individual plan investors. The Schedule C instructions provide that any reasonable method of allocation may be used, provided that the allocation method is disclosed to the plan.

Many funds will receive fee disclosure requests that, although requesting the same Schedule C-related information, come in a variety of formats and ask for the information in different ways. Rather than preparing responses that are tailored to each request, a fund may find it more efficient to prepare a form response that can be used for all plan responses.

We hope you find this summary helpful. For further information relating to investment fund fee reporting, please contact:

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