MUTUAL FUND DIRECTORS FORUM

The FORUM *for* FUND INDEPENDENT DIRECTORS

January 14, 2011 *Transmitted via electronic mail to: e-ORI@dol.gov*

Ms. Phyllis C. Borzi
Assistant Secretary, U.S. Department of Labor
Office of Regulations and Interpretations,
Employee Benefits Security Administration
200 Constitution Avenue, NW, Room N-5655
Washington, DC 20210

Re: Target Date Amendments (RIN 1210–AB3)

Dear Ms. Borzi:

The Mutual Fund Directors Forum ("the Forum")[1] appreciates the opportunity to comment on the proposed rulemaking by the Department of Labor ("DOL") concerning "Target Date Disclosure."[2]

The Forum, an independent, non-profit organization for investment company independent directors, is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through continuing education and other services, the Forum provides its members with opportunities to share ideas, experiences, and information concerning critical issues facing investment company independent directors today and serves as an independent vehicle through which Forum members can express their views on matters of concern.

Comments

In light of the fact that target date funds are available through 401(k) retirement plans, and some plans use these funds as the default investment for plan participants who have not selected their investments under the plan, the DOL has recently focused on enhancing disclosure requirements for target date retirement funds.[3] The proposed amendments are intended to help clarify the shifting asset allocation within particular target date funds and improve the information provided when these funds are offered as investment options in

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[1] The Forum's current membership includes over 600 independent directors, representing 84 independent director groups. Each member group selects a representative to serve on the Forum's Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum's Board of Directors, although it does not necessarily represent the views of all members in every respect.

[2] Proposed Rulemaking: Target Date Disclosure, Rel. No. 10-1658-NAT (November 16, 2010) [75 FR 73987 (November 30, 2010)] ("Release").

[3] *See*, DOL and SEC Investor Bulletin, Target Date Retirement Funds, May 6, 2010, avail. at: http://www.dol.gov/ebsa/pdf/TDFInvestorBulletin.pdf.

retirement plans. The proposals are thus intended to advance the goal of better aligning the expectations of the millions of Americans who use target date funds to invest for retirement with the investment assumptions underlying the funds' asset allocation mixes over time, or "glide paths."[4]

As proposed, the new disclosure rules proposed by the DOL would require that retirement plan fiduciaries provide certain information to plan participants regarding a target date fund offered as an investment alternative in a participant-directed individual account retirement plan. In particular, the amendments would require plan fiduciaries to disclose to participants the target date fund's asset allocation at the target date, how the asset allocation will change over time, and the point in time in which the investment will reach its most conservative asset allocation, including a graphical representation illustrating the changes in asset allocation over time.[5] Further, the proposals would require that disclosures to plan participants include a statement to the effect that a target date retirement fund should not be selected based solely on age or retirement date, that it is not a guaranteed investment, and that the stated asset allocations may be subject to change.

Fund independent directors have a special and unique interest in accurate and comprehensible fund disclosure. First, and most obviously, a fund's directors sign the registration statement, including the prospectus, and thus must be satisfied that the prospectus disclosure complies with the relevant statutory requirements. But second, and even more importantly, as the one group that represents only fund shareholders, independent directors have a substantial interest in ensuring that prospectuses and other required disclosure documents clearly and effectively communicate to fund investors the information that those investors need and want to know about their investment options. Therefore, the Forum supports the DOL's overall effort to provide investors in target date funds through retirement plans with more transparent and understandable information about these investment options.

Disclosure Enhancements

In our view, clarity and directness are the keys to effective disclosure. As the Release notes,[6] improvements can be made in the information that is disclosed to participants and beneficiaries concerning their plan investments in target date funds. For a target date fund, key information for investors includes a description of the fund's glide path (including, significantly, what the allocation will be at the fund's target date and at its landing date). Analyzing the differences between possible investments requires

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[4] Release at 73991.

[5] Presumably, as in the SEC Proposal (see footnote 8), target date funds that have passed their target date would be required to disclose the fund's actual asset allocation as of the most recent calendar quarter.

[6] Release at 75 FR 73988.

understanding the differences in the funds' glide paths and differences in the time at which a final allocation is reached. For many investors, the differences among target date funds (including target date funds with the same target date) and the risks associated with the investment strategies of the funds can be difficult to grasp. The DOL's proposal is focused appropriately on requiring disclosure of a target fund's asset allocation at its target date and requiring that the fund's glide path be presented graphically in materials provided to plan participants.[7] Combined with required disclosure about the risks of target date funds, this information will make it easier for investors to understand the operation of particular target date funds, to compare target date funds with one another, and to compare target date funds with other potential investment options they might select.

We note that the new disclosures to retirement plan participants in the DOL's proposal mirror those that would be required under the Securities and Exchange Commission's (SEC) recently proposed amendments to target date fund advertisement and marketing rules.[8] We believe it very important that the disclosures under each regulatory scheme remain consistent, and do not subject funds and their advisers to two different sets of requirements.

GAO Study

The benefits outlined above provide strong reason for the DOL to adopt the proposed rules and we applaud the initiatives in this regard. We note, however, that the Dodd-Frank Wall Street Reform and Consumer Protection Act directs the Government Accountability Office to conduct a study of mutual fund advertising ("GAO Study").[9] Because that study may in turn lead to further legislation or rulemaking by the Securities and Exchange Commission and/or the DOL with regard to disclosures about investment vehicles, the DOL may wish to postpone finalizing the rules proposed in the Release to allow time for the results of the GAO Study to inform the rules ultimately adopted.

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[7] We note that some target date funds are constructed with explicit discretion left to management to alter asset allocation tactically along the glide path, including the period after the target date. Therefore, we encourage disclosures in, or adjacent to, the graphic describing the permitted ranges (if any) around the fund's glide path.

[8] Proposed Rulemaking: Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Rel. No. 9126 (June 16, 2010) [75 FR 35920 (June 23, 2010)] ("SEC Proposal").

[9] Public Law No: 111-203, Title IX, Sec. 918

> The Comptroller is required to conduct a study, and to report to the Congressional Banking Committees within 18 months after enactment of the Act, on mutual fund advertising to identify: (i) existing and proposed regulatory requirements for open-end investment company advertisements; (ii) current marketing practices for the sale of open-end investment company shares, including the use of past performance data, funds that have merged, and incubator funds; (iii) the impact of such advertising on consumers; and (iv) recommendations to improve investor protections in mutual fund advertising and additional information necessary to ensure that investors can make informed financial decisions when purchasing shares.

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In sum, these proposals represent an important step forward in improving disclosures regarding target date funds to retirement plan participants in a way that will make information about such funds more accessible and more understandable for investors. We therefore encourage the DOL to adopt and implement this proposal, with the modest delay we suggest to consider the results of the forthcoming GAO Study, and in harmony with the SEC Proposal.

We would welcome the opportunity to discuss our views with the DOL in greater detail. Please feel free to contact me at (202) 507-4492 or david.schwartz@mfdf.org at any time. Thank you again for the opportunity to comment on these proposals.

Sincerely,

David S. Schwartz
Senior Counsel

cc: Jennifer B. McHugh, Acting Director,
Division of Investment Management,
U. S. Securities and Exchange Commission