

MEMORANDUM

May 12, 2010

TO: Clients

FROM: Stephen M. Saxon
Ellen M. Goodwin

RE: DOL/SEC Issue Target Date Fund Guidance

The U.S. Department of Labor ("DOL") and the Securities and Exchange Commission ("SEC") jointly issued a short "Investor Bulletin" to investors and plan participants regarding target date funds late last week. The Bulletin is attached for your convenience. The purpose of the guidance is to assist investors and participants in understanding the operations and risks of investing in so-called "target date" investment funds. We understand that this is the first of several target date fund-related projects under development. A second piece, which DOL anticipates issuing in the next month or so, will be tips for fiduciaries in selecting target date funds for their retirement plan investment portfolios. DOL also intends to amend the DOL's QDIA regulations to enhance the information provided to participants in connection with plans that utilize a target date fund as the plan's default investment. In addition, the SEC is considering issuing proposed rules regulating target date funds.

Target date funds are being offered as investment options in 401(k) and other participant-directed retirement plans more and more commonly. In part, this is because the DOL's qualified default investment alternative ("QDIA") regulations identified them as one of the types of investments that may limit a fiduciary's liability in connection with investing participant account balances without affirmative participant instructions. See 29 C.F.R. § 2550.404c-5(e)(1). The guidance explains that target date funds (also called "target retirement date funds" and "lifecycle

funds") are often mutual funds that are designed to serve as long-term investments for investors with a certain retirement date in mind. Target Date Funds are frequently named with reference to a particular target retirement date (e.g., the "2020 Fund").

In large part, the Investor Bulletin emphasizes the importance of evaluating the fund's investment strategy, underlying investments, how those investments will change over time, and the risks involved before investing in one. The guidance explains that it is important to review the funds' prospectus or other information, because similarly dated target funds offered by different managers may have different investment strategies and risks. The guidance also identifies a number of additional factors that investors should consider in deciding whether target date funds are a right for them, including:

- Whether the investor is comfortable playing a hands-off, rather than active, role in managing investments,
- The fund's fees and how they will impact return over time;
- Whether the investor's risk tolerance is consistent with the fund's underlying asset mix over time;
- How the investor's other assets are invested, and whether target date funds may fit the investor's overall investment portfolio; and
- Whether the fund's asset allocation at retirement is consistent with the investor's plans for withdrawal or continued investment at that time.

As noted, we expect to see more from the DOL and SEC regarding Target Date Funds in the coming months, although some target date fund initiatives could be delayed because of the demands of health care reform guidance.