

>>FAIRVIEW FLASH REPORT: ERISA Section 408(b)(2) – Fee Disclosure effective July 1, 2012<<

WHAT HAPPENED?	<p>The Department of Labor (“DOL”) issued a new rule Reasonable Contract or Arrangement Under Section 408(b)(2) – Fee Disclosure which becomes effective on July 1, 2012.</p> <ul style="list-style-type: none">• This Rule requires investment advisers and other service providers to deliver disclosures to ERISA plans concerning their services and compensation, both direct and indirect, reasonably in advance of the date the advisory agreement is executed.• If an adviser does not provide the required disclosures, it could result in a prohibited transaction under ERISA regulations. Penalties to the advisers could include disgorgement of its fees, as well as an excise tax.
WHAT DOES THIS MEAN TO YOU?	<p>Advisers should:</p> <ul style="list-style-type: none">• identify current ERISA plan clients• prepare the required disclosures• provide them to ERISA clients before July 1, 2012• establish procedures for providing to ERISA plan clients in advance of account opening <p>Format:</p> <ul style="list-style-type: none">• The rule does not require a particular format, and allows advisers to utilize existing documents such as the advisory agreement and Form ADV as long as they contain the required information. <p>Advisers to private funds:</p> <ul style="list-style-type: none">• The regulations only apply to hedge funds in which an ERISA plan has a direct equity investment. They will not apply to your fund if less than 25% of equity interests are held by ERISA plans or entities whose assets constitute the assets of an ERISA plan.• You may also have the similar disclosure obligations to certain ERISA plan investors.
WHAT ABOUT IRAs?	<ul style="list-style-type: none">• The disclosure requirements under 408(b)(2) do not apply to IRAs.• For private funds, managers must include IRA accounts when testing for the 25% threshold to determine if the private fund is considered “plan assets.”
WHAT WILL YOU HAVE TO DO GOING FORWARD?	<p>Generally, investment advisers and covered service providers must disclose changes to initial information as soon as practicable, but no later than 60 days from when informed of such change. Disclosures of changes to investment-related information are to be made at least annually.</p>