

**U.S. DEPARTMENT OF LABOR FORM 5500 SCHEDULE C REPORTING**

**January 2012**

Memorandum To Our Clients and Friends

The Employee Retirement Income Security Act of 1974, as amended (“ERISA”), requires certain employee benefit plans that are subject to Title I of ERISA (“ERISA Plans”) to disclose the compensation paid to their service providers on Schedule C of the Department of Labor’s (“DOL”) Form 5500. In addition to requiring information regarding compensation paid directly by an ERISA Plan, Form 5500 requires ERISA Plans to report “indirect compensation” paid to service providers, such as investment managers, by mutual funds and private investment funds in which the ERISA Plan has invested. This requirement applies even if the mutual fund or private investment fund is not itself subject to ERISA. The 2011 Form 5500 filing is due by July 31, 2012 for calendar year plans, but may be extended until October 15; plans with a June 30 plan year must file their 2011 Form 5500 by April 15, 2012.

Pursuant to the instructions to Form 5500, if the manager of an “Investment Fund”<sup>1</sup> receives only “Eligible Indirect Compensation” and provides a plan administrator with certain disclosures with respect to that compensation, then the plan can utilize an alternative reporting method and merely list the name and employer identification number of the investment manager on Schedule C. “Eligible Indirect Compensation” includes compensation paid from an Investment Fund to its manager (or the manager’s affiliate) such as asset-based management fees, performance fees or allocations, finder’s fees received due to an ERISA Plan’s investment in an Investment Fund and soft dollars generated from trades by an Investment Fund. Brokerage commissions associated with execution costs and other ordinary operating expenses of an Investment Fund are not reportable by ERISA Plans on Schedule C.

If the manager of an Investment Fund receives compensation directly from a plan or receives indirect compensation that is not Eligible Indirect Compensation, this alternative reporting method will not be available and the manager will need to respond to its ERISA Investors’ individual information requests. In particular, if a manager (or any of its employees) receives gifts and/or business entertainment from any third party in connection with services provided to an Investment Fund with ERISA Investors and such gift and/or business entertainment is in excess of a de minimis threshold, such compensation must be reported separately. The de minimis thresholds are explained in Appendix A, attached below.

A manager to an Investment Fund that is a “fund of funds” should provide Schedule C disclosure with regard to its own compensation, gifts and business entertainment but is not required to provide this information regarding its underlying fund investments. An Investment Fund that is filing its own Form 5500 as a Direct Filing Entity (“DFE”) should provide information with respect to the manager’s compensation directly to ERISA Investors rather than report such information on the DFE’s Form 5500.

To assist our clients in responding to Schedule C information requests, we have prepared a Schedule C model disclosure letter for your use, attached below as Appendix B. If no direct compensation nor any non-de-minimis gifts was received in 2011, the attached Schedule C model disclosure letter should include all the information required by the DOL so that your ERISA

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<sup>1</sup> For the purposes of this memorandum, an “Investment Fund” includes mutual funds and private investment funds (whether or not subject to ERISA) and separately managed accounts of ERISA Investors, but excludes private equity funds that meet the requirements to be a “venture capital operating company” or a “real estate operating company”, each as defined in DOL’s plan asset regulation at 29 C.F.R. 2510.101-3.

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Investors may utilize the alternative reporting method for Eligible Indirect Compensation with respect to its investment in your Investment Fund or Funds. With regard to an Investment Fund's use of soft dollars, there are four options in the attached model letter. Please review each option in light of the Investment Fund's soft dollar policy and choose the appropriate one.

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If you have any questions regarding Schedule C reporting, please contact S. John Ryan at (212) 574-1679, Michael O'Brien at (212) 574-1505, Irina Kerzhner at (212) 574-1257 or Frank Mitchell at (212) 574-1368.

**APPENDIX A**

**TRACKING AND REPORTING GIFTS AND  
BUSINESS ENTERTAINMENT FOR  
SCHEDULE C PURPOSES**

The instructions to Schedule C of Form 5500 (the "Instructions") provide that gifts and business entertainment (hereinafter referred to only as "gifts") provided to a manager of an Investment Fund (or its employees) that are in excess of certain de minimis thresholds must be reported by ERISA Investors in that Investment Fund. To determine whether a gift falls within the de minimis thresholds, the manager must first determine the amount of the gift provided to each recipient. The Instructions provide that gifts from one person to multiple employees of an employer (e.g., an Investment Fund's manager) can be treated as separate compensation for purposes of determining the thresholds. For example, if an Investment Fund's prime-broker provides a \$1000 dinner to five employees of the manager, the prime-broker has made a gift of \$200 to each employee and the manager would allocate \$200 among its investors with respect to that dinner. Once the amount of the gift has been determined, the manager must then allocate that amount to its ERISA Investors. Where a gift is made with respect to services provided to both ERISA and non-ERISA investors of a manager, the DOL has indicated that the value of the gift should be allocated amongst ERISA Investors pro-rata (i.e., based on the percentage of the manager's total assets under management ("AUM") that each ERISA Investor represents). In the above example, a plan investor that represents 5% of the manager's AUM would be allocated a gift of \$10 (5% of \$200).

There are three de minimis thresholds for gifts:

- The first is for gifts from a single source that are allocable to an ERISA Investor and that are valued at less than \$10. Such gifts can be ignored entirely for Schedule C reporting purposes. Promotional gifts of little intrinsic value (e.g., coffee mugs, plaques, calendars) that are intended solely for purposes of displaying a company logo are presumed to be valued at less than \$10.
- The second is for gifts that are valued at \$10 or more but less than \$50. These gifts are only reportable on Schedule C if the aggregate amount of such gifts from the same source in the same year is valued at \$100 or more.
- The third threshold is for any single gift that is valued at more than \$50, which is reportable in any event. It should be noted that gifts in excess of the \$50 threshold also count towards the \$100 threshold above.

For the purposes of this determination, the Instructions provide that gifts from multiple employees of the same employer should be treated as coming from the same source. We also believe that it is appropriate to treat affiliates and related parties as a single "source" when computing the above thresholds related to Schedule C.

Because the relative amount of any gift allocated to an ERISA Investor corresponds to that investor's percentage of the manager's AUM, we recommend adopting a gift and entertainment policy that requires employees to report any gift provided to them that is at least in excess of the amount that would result in an allocation \$10 or more to the manager's largest ERISA investor. This will allow the manager to track the data necessary to determine whether the de minimis threshold has been exceeded with respect to that ERISA Investor and therefore all ERISA Investors. In the event the de minimis threshold is crossed for the largest ERISA Investor, the manager should perform separate calculations for smaller ERISA Investors to determine if gifts must be reported to them as well. Additionally, if an ERISA Investor has a specific gift or entertainment policy, the manager may need to revise its reporting policy to comply with the requirements of that investor.

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The chart below provides the maximum gift amounts that a manager can accept and remain under each threshold at various percentages of AUM. As a general rule, to determine the amount of a gift received by an employee that is allocable to a particular ERISA Investor, multiply the total value of the gift by the applicable percentage of the manager's AUM that the ERISA Investor represents; to determine the amount at which a particular threshold is crossed with respect to an ERISA Investor, divide the relevant threshold amount by the applicable percentage of AUM.

If the ERISA Investor represents this percent of AUM,	then the largest gift that any employee can receive and remain under the \$10 threshold must be less than,	and the largest gift that any employee can receive and remain under the \$50 threshold must be less than,	and all gifts from a single source that are \$10 or more but less than \$50 received in the year must be, in the aggregate, less than
0.1%	\$10,000.00	\$ 50,000.00	\$ 100,000.00
0.2%	\$ 5,000.00	\$ 25,000.00	\$ 50,000.00
0.3%	\$ 3,333.33	\$ 16,666.67	\$ 33,333.33
0.4%	\$ 2,500.00	\$ 12,500.00	\$ 25,000.00
0.5%	\$ 2,000.00	\$ 10,000.00	\$ 20,000.00
0.6%	\$ 1,666.67	\$ 8,333.33	\$ 16,666.67
0.7%	\$ 1,428.57	\$ 7,142.86	\$ 14,285.71
0.8%	\$ 1,250.00	\$ 6,250.00	\$ 12,500.00
0.9%	\$ 1,111.11	\$ 5,555.56	\$ 11,111.11
1.0%	\$ 1,000.00	\$ 5,000.00	\$ 10,000.00
2.0%	\$ 500.00	\$ 2,500.00	\$ 5,000.00
3.0%	\$ 333.33	\$ 1,666.67	\$ 3,333.33
4.0%	\$ 250.00	\$ 1,250.00	\$ 2,500.00
5.0%	\$ 200.00	\$ 1,000.00	\$ 2,000.00
6.0%	\$ 166.67	\$ 833.33	\$ 1,666.67
7.0%	\$ 142.86	\$ 714.29	\$ 1,428.57
8.0%	\$ 125.00	\$ 625.00	\$ 1,250.00
9.0%	\$ 111.11	\$ 555.56	\$ 1,111.11
10.0%	\$ 100.00	\$ 500.00	\$ 1,000.00

**APPENDIX B**

**Schedule C Reporting Template**

**[NAME OF FUND[s]]**

**U.S. Department of Labor Form 5500 Information**

**Schedule C - Eligible Indirect Compensation (as of [DATE])**

**Investor: [INVESTOR NAME]**

Our records indicate that you represent [Name of Investor], an ERISA investor in the [Name of Fund[s]] ([each a] [the] "Fund"). To assist you and your Form 5500 preparers in completing the 20\_\_ Form 5500 for [Name of Investor], we are providing you with the following information.

**Service Provider Information**

[Name of Investment Manager], the Investment Manager to the Fund, whose Employee Identification Number is [ ] is providing you with the following disclosures and references which are intended to satisfy the requirements the U.S. Department of Labor's alternative reporting option for "Eligible Indirect Compensation" in Part 1 of the Schedule C to Form 5500 with respect to this investment in the Fund.

**Fees**

The Investment Manager receives a management fee from the Fund that is based on the net asset value of the Fund [and a performance fee or allocation that is based on the appreciation of the Fund]. For more information regarding the formulas for determining these fees and/or allocations, as well as the other ordinary operating expenses of the Fund, please refer to the Offering Memorandum, and for specific detail regarding the Fund's 20\_\_ fees and expenses, please refer to the Fund's 20\_\_ Audited Financial Statements.

**Research and Soft Dollars**

[The Fund has no soft dollar arrangements.]

[The Investment Manager receives proprietary research and brokerage services, within the meaning of Section 28(e) of the Securities Exchange Act, from certain broker-dealers that execute trades for all of the Investment Manager clients, including the Fund. Proprietary research generally includes access to company executives, conferences, analysis, forecasts, and in-house research. This type of research does not have an identifiable value and is provided based on total trading activity of the Investment Manager for all its clients. The following brokers were the principal providers of propriety research in 20\_\_: [list brokers]]

[The Investment Manager receives third-party and/or proprietary research and brokerage services, within the meaning of Section 28(e) of the Securities Exchange Act, from certain broker-dealers that execute trades for all of the Investment Manager clients, including the Fund. It is estimated that, during 20\_\_, brokerage commissions on transactions for the Fund and all of the Investment Manager other clients generated \$[ ] in soft dollar credits. The following brokers were the principal providers of third party soft-dollar credits and/or proprietary research in 20\_\_0: [list brokers and credit amounts, if possible]

[The Investment Manager receives third-party and/or proprietary research, and brokerage and non-brokerage services and/or credits from certain broker-dealers that execute trades for all of the Investment Manager clients, including the Fund, under "soft-dollar" agreements or arrangements. It is estimated that, during 20\_\_, brokerage commissions on transactions generated \$[ ] in soft dollar credits. The following brokers were the principal providers of third party soft-dollar credits and/or proprietary research in 20\_\_: [list brokers and credit amounts, if possible]]

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## **Gifts and Entertainment**

The Investment Manager has not received gifts or entertainment exceeding the U.S. Department of Labor de minimis thresholds for any plan investor in 20\_\_\_. The Investment Manager made this determination after examining the total amounts of gifts and entertainment reported by all employees of the Investment Manager and the value of the gift and entertainment allocated pro-rata to each ERISA investor on the basis of its investment and Investment Manager's total assets under management as of December 31, 20\_\_\_.