

SEC Extends Rule 482 Relief to Non-ERISA Retirement Plans

June 15, 2015

The SEC staff issued a no-action letter on February 18 that is important for many participant-directed individual account retirement plans (including some established under Section 403(b) of the Internal Revenue Code) that are not subject to the Employee Retirement Income Security Act (ERISA). In 2010, the Department of Labor adopted a rule requiring that specified performance and other investment-related information be provided to participants under participant-directed individual account plans that are subject to ERISA. While Rule 482 under the Securities Act permits information about investment companies to be provided to investors without being accompanied or preceded by those companies' full prospectuses, DOL-required disclosures did not comply with all the conditions for reliance on Rule 482. Nevertheless, the SEC staff issued a no-action letter in late 2011 under which it agreed, for ERISA plans, to treat the DOL-required disclosures as if they satisfied the conditions of Rule 482. **The SEC staff's February 18 letter extends that position to cover provision of the same disclosures required by the DOL rule to participants and beneficiaries in plans that are not subject to ERISA, thus permitting reliance on Rule 482 for such disclosures.**

The February 18 letter applies to certain non-ERISA Section 403(b) plans, including those that cover governmental or church employees or that are funded entirely through employee contributions. It also applies to governmental plans established under Section 457(b) of the Code, governmental plans established under Section 401(a), governmental excess benefits arrangements established under Section 415(m), church plans established under Section 401(a), non-governmental plans established under Section 457(b), and non-qualified deferred compensation plans of governmental or tax-exempt entities under Section 409A or 457(f). Where non-ERISA plans offer participants a choice among investment options funding the plan, the staff's February 18 letter will make it easier to provide participants with useful information for comparing the costs and performance of those alternatives.

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