Mellon

Legal Department

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Office of Exemption Determinations
Employee Benefits Security Administration
Room N-5700
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210
Attention: IRA Investment Advice RFI

Dear Mr. Ivan Strasfeld:

I have been asked to respond to your letter of December 12, 2006 written to Robert P. Kelly, Chairman, President and Chief Executive Officer of Mellon Financial Corporation ("Mellon"). You have asked that Mellon provide information regarding the use of a computer model to provide investment advice to participants and beneficiaries of IRAs.

Mellon is a financial services corporation and several of its direct and indirect subsidiaries are involved in the provision of trustee and/or investment services to participants and beneficiaries of IRAs. After meeting with the applicable affected groups, Mellon has determined that it does not have a computer model that fits all of the criteria laid out in Section 601(b)(3)(B) of the Pension Protection Act of 2006 (the "PPA"). Mellon is able, however, to provide some information related to the specific questions set forth in the Request for Information published by the Department of Labor in the Federal Register on December 4, 2006 (the "RFI").

Q: 1) Are there computer model investment advice programs for the current year and preceding year that are, or may be, utilized to provide investment advice to beneficiaries of plans described in section 4975(e)(1)(B)-(F) (and so much of subparagraph (G) as relates to such subparagraphs) (hereinafter "IRA") of the Code which:

(a) Apply generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time;

(b) Utilize relevant information about the beneficiary, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments;

(c) Operate in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser;

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(d) **Take into account the full range of investments, including equities and bonds, in determining the options for the investment portfolios of the beneficiary; and**

(e) **Allow the beneficiary, in directing the investment, sufficient flexibility in obtaining advice to evaluate and select investment options.**

A: 1) Mellon is not aware of a computer model that meets the criteria set forth above.

Q: 2, part 1) If currently available computer models do not satisfy all of the criteria described above, which criteria are presently not considered by such computer models?

A: 2, part 1) Mellon is aware of two computer models that meet substantially all of the criteria set forth above:

Model A

Model A (a) does apply generally accepted investment theories; (b) does utilize relevant information about the beneficiary; however, Model A does not include life expectancy, retirement age, other assets or sources of income, and allows some flexibility of investment preferences; (c) operates in a manner that is not weighted in favor of investments offered by the fiduciary adviser, but does limit the universe to eight fund families; (d) does take into account the full range of investments offered by the fund families, including equities and bonds, but does not permit investments such as artwork or wines and does not permit physical investments such as limited partnerships; and (e) does allow the beneficiary sufficient flexibility to evaluate and select investment options, provided at least one investment option is equities.

Model B

Model B (a) does apply generally accepted investment theories; (b) does utilize relevant information about the beneficiary; however, Model B does not include life expectancy, retirement age, other assets or sources of income, and does allow some flexibility of investment preferences; (c) is limited to the investment funds of one fund family; (d) does take into account the full range of investments offered by that fund family, including equities and bonds, but does not permit investments such as artwork or wines and does not permit physical instruments such as limited partnerships; and (e) does allow the beneficiary sufficient flexibility to evaluate and select investment options, provided at least one investment option is equities.

Q: 2, part 2) Would it be possible to develop a model that satisfies all of the specified criteria?

A: 2, part 2) Mellon believes it might be possible to develop such a model but (a) it would include information that may not be relevant such as retirement age and life expectancy, (b) it would be a very large data base and possibly confusing to participants to have a choice of every possible investment option, and (c) it would be expensive to create due to the almost unlimited investment choices.

Q: 2, part 3) Which criteria would pose difficulties to developers and why?

A: 2, part 3) Mellon believes that (a) it would be difficult to include a full range of options due to the magnitude of data, and (b) it would be difficult to compare many funds due to inconsistencies in classifications and possible blending of investment criteria such as in a "life style" fund.

Q: 3) If there are any currently available computer model investment advice programs meeting the criteria described in Q. 1, please provide a complete description.

A: 3) Mellon is not aware of any such computer models.

Q: 4) With respect to programs described in Q. 3, do any such programs permit the IRA beneficiary to invest IRA assets in virtually any investment?

A: 4) Mellon is not aware of any such computer models.

Q: 5, part 1) Are these computer model investment advice programs currently available to IRA beneficiaries that, by design or operation, limit the investments modeled, to a subset of the investment universe?

A: 5, part 1) As discussed in A. 2, Mellon is aware of two programs that limit the investments modeled to a subset of the investment universe.

Q: 5, part 2) Who is responsible for the development of such limitations and how are they developed?

A: 5, part 2) With respect to the Mellon models, Mellon is responsible for the development of the limitations based on the suitability of the investments for the client (is there sufficient opportunity for diversification and risk?), and the practicality of including and updating additional investment options.

Q: 5, part 3) Are any available models that may limit the investments modeled maintained by persons not offering the IRA program?

A: 5, part 3) Mellon has not had an occasion to look in the market for any such programs.

Q: 6) If you offer a computer model investment advice program based on nonproprietary investment products, do you make the program available to IRA accounts:

A: 6) As stated in A.1, Model A contains nonproprietary investment products and is created for both IRA and non-IRA accounts.

Q: 7) What are the investment options considered by computer investment advice programs? What information is considered?

A: 7) Mellon is only able to answer with respect to its models. When considering what investment options to offer in both models, and what fund families to add and maintain in Model A, Mellon utilizes an internal product review committee to consider investment options. The criteria for inclusion includes quality of fund managers, breadth and diversity of product, performance history, and the ability to obtain cooperation and training from the nonproprietary funds in order to properly explain investment option characteristics to potential IRA

beneficiaries. Investment options and fund families are reviewed against this criteria on a quarterly basis.

Q: 8) How should the Department of Labor or a third party evaluate a computer model investment advice program to determine whether the program satisfies the required criteria?

A: 8) Mellon believes that the providers who currently offer investment options to IRA beneficiaries are very conscious of their responsibilities under both ERISA and other SEC regulations addressing investment advisers and/or brokers. The current regulatory environment requires a strong compliance culture and adherence to prescribed regulatory criteria. Mellon does not see a need for extraordinary measures to evaluate compliance with the criteria set forth by the Department. Periodic and routine audits of service providers that provide the various computer model investment advice programs should be sufficient to identify those programs that are non-compliant. Publication of findings will be sufficient to remind other providers of their responsibility to maintain compliant model programs.

Q: 9) How do computer model investment advice programs present advice to IRA beneficiaries? How do such programs allow beneficiaries to refine, amend or override provided advice?

A: 9) Mellon can only respond with respect to the computer models that it currently provides. For both Model A and Model B, Mellon relies on personal contact with the beneficiary to ensure that the beneficiary understands the model and has an opportunity to discuss the modeled portfolio. Generally, there is a broker involved in presenting the information to the beneficiary. Generally, there are several meetings or phone calls with the beneficiary to discuss preferences both when the information is developed initially and after the model has been created. Once the broker is assured that the beneficiary understands the proposal, the beneficiary is asked to sign the proposal and return it to the broker to indicate understanding and acceptance of what is being decided. At any point, the beneficiary is able to request amendments to the proposed model, as explained in response A-2.

Thank you for the opportunity to provide comments. I trust that these answers are responsive to your questions and concerns, but should you have any further questions, please do not hesitate to contact me for further discussion.

Sincerely,

Susan M. Hollingsworth

Susan M. Hollingsworth
Senior Counsel

cc: Robert P. Kelly
Chairman, President and Chief Executive Officer
Mellon Financial Corporation