

## DOL Issues Ruling on Target-Date and Lifecycle Mutual Funds

Changes to the regulation of “target-date” funds have been the subject of speculation over the past year, before and after the joint hearing on June 18, 2009, conducted on the subject by the U.S. Department of Labor (“DOL”) and the U.S. Securities and Exchange Commission. In a related matter, the DOL was asked to address the application of ERISA’s fiduciary standards to target-date or lifecycle mutual funds structured as “funds of funds.” In an advisory opinion dated December 4, 2009, the DOL confirmed that the assets of such target-date or lifecycle mutual funds are not “plan assets” of investing employee benefit plans for purposes of ERISA even if the funds consist of shares of affiliated mutual funds. In addition, the DOL confirmed that the investment advisers to such registered mutual funds and funds of funds are not fiduciaries to the investing plans under ERISA.

By taking these positions, the DOL affirmed the well-settled principle under ERISA that a plan’s investment in a registered investment company generally does not by itself cause such investment company or such investment company’s investment adviser to be a fiduciary or a “party in interest” to such plan for purposes of ERISA. When a plan invests in a security issued by a registered investment company, the assets of such plan are deemed to include such security but are not, solely by reason of such investment, deemed to include any assets of such investment company. In this latest ruling, the DOL noted that ERISA’s legislative history indicates that Congress concluded in 1974 that it was not necessary to apply ERISA’s fiduciary rules to the operation of mutual funds (including funds of funds) in addition to the Investment Company Act’s regulatory scheme.

Although the DOL affirmed the current state of the law in its recent advisory opinion, regulatory and legislative initiatives affecting target-date funds and their use in retirement plans remain under discussion, and have been the subject of additional Congressional hearings.<sup>1</sup> In addition, guidance for benefit plan fiduciaries on the selection and use of target-date funds is expected to be published by the DOL.

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<sup>1</sup> Senate Special Committee on Aging hearing, October 28, 2009.

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## Practice group contacts

If you have questions regarding the information in this legal update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at [www.dechert.com/employeebenefits](http://www.dechert.com/employeebenefits).

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