

December 2005 / Special Alert

A legal update from Dechert's Employee Benefits and Executive Compensation and Financial Services Groups

Proposed Legislation: Plan Asset Rule

The U.S. Senate recently passed a bill that would effect a number of pension-related changes. However, the bill does not contain any provisions that would modify the ERISA plan asset regulation. The U.S. House of Representatives, on the other hand, has been considering for some time a bill that does contain provisions that would modify the ERISA plan asset regulation. This bill was passed by the House on December 15, 2005.

Under the House bill, the threshold of benefit plan investor participation at which a fund's assets would be deemed to constitute plan assets would be raised from 25% to 50%. The testing would still be done on a class by class basis, and the testing still would exclude "controlling persons."

Another change from current law under the bill is that if the 50% threshold is reached or exceeded, only the percentage of the fund's assets held by benefit plan investors would be treated as plan assets (e.g., when the fund invests in

another fund). Further, the bill would change the definition of "benefit plan investor" to mean only plans subject to Title I of ERISA or Section 4975 of the Code; thus, the bill would change who is a "benefit plan investor" and would exclude non-U.S. plans and U.S. governmental plans. Therefore, if this provision of the bill were to become law, funds would no longer have to identify plans not subject to Title I of ERISA or Section 4975 of the Code.

It is anticipated that the proposed legislation will be taken up in committee early in 2006. However, at this point, since the plan asset-related provisions are not contained in the Senate bill there still is a significant question whether any such provisions will be a part of any legislation that ultimately is passed and signed by the President.



This update was authored by Susan M. Camillo (+1 617 728 7125; susan.camillo@dechert.com).

Additional practice group contacts

For further information, contact the author, one of the attorneys listed or any Dechert LLP attorney with whom you are in regular contact. Visit us at www.dechert.com/employeebenefits or www.dechert.com/financialservices.

Karen L. Anderberg
London
+44 20 7775 7313
karen.anderberg@dechert.com

Susan M. Camillo
Boston
+1 617 728 7125
susan.camillo@dechert.com

Douglas P. Dick
Newport Beach
+1 949 442 6060
douglas.dick@dechert.com

Peter D. Astleford
London
+44 20 7775 7860
peter.astleford@dechert.com

Timothy M. Clark
New York
+1 212 698 3652
timothy.clark@dechert.com

Robert W. Helm
Washington
+1 202 261 3356
robert.helm@dechert.com

Stuart Martin

London
+44 20 7775 7542
stuart.martin@dechert.com

George J. Mazin

New York
+1 212 698 3570
george.mazin@dechert.com

Michael J. McDonough

London
+44 20 7775 7495
michael.mcdonough@dechert.com

John V. O' Hanlon

Boston
+1 617 728 7111
john.ohanlon@dechert.com

Frederick H. Sherley

Charlotte
+1 704 339 3100
frederick.sherley@dechert.com

Brian S. Vargo

Philadelphia
+1 215 994 2880
brian.vargo@dechert.com

David A. Vaughan

Washington
+1 202 261 3355
david.vaughan@dechert.com

Kathleen Ziga

Philadelphia
+1 215 994 2674
kathleen.ziga@dechert.com



www.dechert.com

U.S.

Boston
Charlotte
Harrisburg
Hartford
New York
Newport Beach
Palo Alto
Philadelphia
Princeton
San Francisco
Washington, D.C.

U.K./Europe

Brussels
Frankfurt
London
Luxembourg
Munich
Paris

© 2005 Dechert LLP. All rights reserved. Materials have been abridged from laws, court decisions, and administrative rulings and should not be considered as legal opinions on specific facts or as a substitute for legal counsel.