IMPLEMENTING A COMPUTER MODEL
UNDER ERISA § 404 AND § 408 AND IRC 4975

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COMPUTER MODELS

The Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code ("IRC") contain parallel provisions for using a computer model for investment Recommendations[1] and Management[2]. Such computer models replace human judgment in making investment decisions with reliably applied rules based systems that use generally accepted investment theories.

Computer models apply to both employer sponsored ERISA retirement plans ("Retirement Plan") and to all individual retirement accounts ("IRA").

Computer models used for these purposes provide a variety of benefits when certain safe harbor requirements are met.

BENEFITS OF COMPUTER MODELS

Computer model provisions under ERISA and IRC 4975 permit a variety of compensation arrangements while affording protection to the parties involved. The following are some key benefits:

Compensation

- ✓ Broker/Dealers and Registered Representatives continue to earn traditional compensation (such as commissions, 12b-1 fees, revenue sharing, etc.) and is protected from fiduciary liability while still being able to provide investment advice.
- ✓ Enables Registered Representatives to capture rollover assets while still being compensated by the Retirement Plan from which the rollover came.
- ✓ Additional compensation may be earned by providing the computer model.

Protection from Liability

- ✓ Broker/Dealers and Registered Representatives operate under ERISA and IRC safe harbors that relive the fiduciary liability associated with decisions that lead to investment losses.
- ✓ Sponsors of Retirement Plans are also relieved of such fiduciary liability, subject to required selection and monitoring associated with the use of computer models.

Marketing Advantage

- ✓ Registered Representatives can promote the use of the computer model more aggressively than could be done if the representative offered the investment advice personally.

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[1] "*Recommendations*" refers to the compensated investment advice defined in ERISA § 3(21).

[2] "*Management*" refers to the control of investment decisions defined in ERISA § 3(38).

REQUIREMENTS

A computer model may be used in either or both of two constructs:

- ✓ To provide recommendations to Retirement Plan participants and/or IRA account holders as a Fiduciary Adviser.
- ✓ To provide investment management as a Qualified Default Investment Alternative ("QDIA") that is a designated investment option of a Retirement Plan.

Fiduciary Adviser Requirements (IRAs and Retirement Plans)

- ✓ The computer model is offered by an RIA that is responsible for complying with the requirements and operates as either an ERISA § 3(21) investment adviser or an ERISA § 3(38) investment manager.
- ✓ The computer model must be certified by an independent expert.
- ✓ Certain disclosures must be made to recipient of recommendations.
- ✓ Terms of the arrangement must be contained in a written Eligible Investment Advice Agreement ("EIAA").
- ✓ The RIA must be audited annually.
- ✓ The RIA is advised to protect itself from inadvertent fiduciary breaches by undergoing specialized training and using tools that comply with ERISA and general fiduciary standards.

QDIA Requirements

- ✓ The computer model may qualify under an age based, a risk based or a managed account model portfolio. Each of these model portfolio arrangements have specific and detailed requirements.
- ✓ The QDIA must be managed by a qualified ERISA § 3(38) investment manager that has discretion over investment decisions but does not have custody of the assets.
- ✓ The computer model is subject to prudent selection and monitoring by the responsible plan fiduciary.
- ✓ The ERISA § 3(38) investment manager is advised to undergo certification to ensure compliance and to facilitate the required selection and monitoring process.

DALBAR SUPPORT AVAILABLE

DALBAR provides the necessary support to implement a computer model in various constructs:

- ✓ Business Strategy Development
- ✓ Certification and Validation
- ✓ Audits
- ✓ Onsite and Self-study Fiduciary Training (for reps and compliance officers)
- ✓ Templates for Agreements, Disclosures and Documentation
- ✓ Marketing and Web Development

Please complete accompanying request for proposal for pricing, timelines and other details.