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LEGAL ALERT

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DOL and SEC Publish Investor Bulletin on Target Date Funds

On May 6, 2010, the Department of Labor (DOL) and the Securities and Exchange Commission (SEC) jointly published a bulletin addressed to retirement plan investors who may be considering investing in target date funds. The bulletin – *Investor Bulletin: Target Date Retirement Funds* (the Bulletin) – is available on both the DOL and SEC Web sites. The Bulletin is one of several steps that the DOL and SEC plan to take to address issues that surfaced from the performance of target date funds in late 2008 and early 2009. That performance, and the role of target date funds as retirement savings vehicles, was the subject of a joint hearing by the DOL and SEC in June 2009.

The Bulletin is positioned as a primer on target date funds for individual investors, and in particular retirement plan participants. The Bulletin explains that:

- Individuals make a range of decisions in saving for retirement, including how to balance the risk of losing money with the desire to increase their returns in light of the facts that inflation may reduce the purchasing power of their savings and that they (and/or their spouses) may live longer than expected.
- Target date funds are designed to make investing for retirement more convenient by automatically changing their asset mix or allocation over time, typically by shifting from an equity-weighted asset allocation to an investment mix weighted more toward bonds.
- Target date funds are often available through 401(k) plans, and some 401(k) plans use target date funds as default investment options for participants who have not selected their investments under their plans.
- There are risks inherent in investments in target date funds. The Bulletin discusses some of the factors prospective investors should consider when evaluating whether a particular target date fund, or target date funds generally, would be right for them, and in particular asserts that:
    - The target date of a target date fund may be a useful starting point in selecting a fund, but investors should not rely solely on the date when choosing a fund or deciding to remain invested in one. Investors should consider the fund's asset allocation over the whole life of the fund.
    - Some target date funds may not reach their most conservative investment mix until 20 or 30 years after the target date. The Bulletin illustrates this point with two graphs.
    - Target date funds with the same target date may have different investment results and may charge different fees.
    - Often target date funds invest in other mutual funds, and fees may be charged by both the target date fund and the underlying mutual funds.
    - A fund with higher costs must perform better than a lower cost fund to generate the same net returns over time.

The DOL and SEC have indicated that their next steps for target date funds will be (i) joint publication of a compliance assistance checklist for plan fiduciaries, (ii) proposed amendments to the ERISA regulations for qualified default investment alternatives requiring enhanced disclosure for plan participants, and (iii) continuing examination of how target date funds are marketed.

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If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Marguerite C. Bateman	202.383.0107	marguerite.bateman@sutherland.com
Adam B. Cohen	202.383.0167	adam.cohen@sutherland.com
David S. Goldstein	202.383.0606	david.goldstein@sutherland.com
Alice Murtos	404.853.8410	alice.murtos@sutherland.com
Robert J. Neis	404.853.8270	robert.neis@sutherland.com
Stephen E. Roth	202.383.0158	steve.roth@sutherland.com
W. Mark Smith	202.383.0221	mark.smith@sutherland.com
William J. Walderman	202.383.0243	william.walderman@sutherland.com
Carol A. Weiser	202.383.0728	carol.weiser@sutherland.com