

# THE WALL STREET JOURNAL.

SATURDAY, NOVEMBER 13, 2010

© 2010, Dow Jones & Company, Inc. All Rights Reserved

## Shining a Light On Murky 401(k) Fees

By ELEANOR LAISE

Investors hoping to keep track of their retirement plans' costs have just won an important victory. But their battle is far from over.

After a yearslong effort, the U.S. Department of Labor last month unveiled final rules requiring 401(k) plans to give workers detailed breakdowns of fees deducted from their accounts. Yet fund firms and retirement-plan providers are still fighting hard to fend off new restrictions on the murkiest of mutual-fund expenses: so-called 12b-1 fees.

The fees, which many funds both in and out of retirement plans levy on investors, range up to 1% of assets and take a bite directly out of returns. While they are included in fund expense ratios and disclosed in prospectuses, they can be used to cover a grab bag of costs, from advertising to compensating financial advisers.

### OVERHAULING 12B-1 FEES

The Securities and Exchange Commission, which has questioned whether investors fully understand the charges and what they are covering, proposed this summer to overhaul the fees. The changes would split today's 12b-1 fees into more recognizable parts designated as "marketing and service" or "ongoing sales charges," subject them to new limits and discard the nebulous 12b-1 moniker altogether.

Even the fund industry agrees that the fees can be confusing to investors. But in a flood of letters to the SEC in recent weeks, fund firms and retirement-plan service providers have criticized the proposal and asked regulators to make special exceptions for the 401(k) industry.

Until now, it has been tough for participants to tally 401(k)-plan fees. When the new Labor Department rules kick in about a year from now, many workers should start seeing the actual dollar amount of fees deducted from their accounts. Plans also must explain what

those fees are covering, whether it be individual expenses, such as loans, or administrative charges, such as legal and accounting services.

"The thing that will surprise people the most will be the noninvestment charges on there," such as fees that go toward plan audits or attorneys, says Ryan Alfred, president of 401(k) data provider BrightScope Inc. Workers will need to keep a close eye on their account statements, because some service providers may bill only once a year, he says.

Ultimately, plan participants paying attention to the new fee information on their account statements will help drive down costs, 401(k) experts say.

"Any asset-based fees are likely to shock the executives who tend to have larger balances," says Lou Harvey, president of financial-services market research firm Dalbar Inc. "If the head of sales calls up human-resources screaming, they're likely to go shopping for a plan."

In addition to the disclosure plan, regulators are also proposing limits on 12b-1-type fees.

In its 12b-1 overhaul, the SEC proposes to cap funds' marketing and service fees at 0.25% of assets annually, with any charges in excess of that treated as an ongoing sales charge and subjected to strict limits. The funds would have to disclose fees within these buckets in their prospectuses and investor transaction confirmations. In the retirement-plan world, 12b-1 fees often go to the firms that do record keeping and account maintenance.

In calling for 12b-1 fee reform in a speech late last year, SEC Chairman Mary Schapiro asked whether the fees "result in investors overpaying for services or paying for distribution services that they may not even know they are supposed to be getting." Such fees totaled \$9.5 billion last year, up from just a few million when they were first allowed in 1980.

### ASKING FOR EXEMPTIONS

The 401(k) industry is asking the SEC for exemptions from some of the rules. Share classes offered only in retirement plans should be allowed to charge up to 0.75%, says Spark Institute Inc., a group of retirement-plan service providers. The group also says that, given the Labor Department's new fee-disclosure rules, the SEC shouldn't impose additional fund-fee disclosure requirements within retirement plans.

The changes could cause some plans, particularly smaller ones that tend to use funds with higher 12b-1 fees, to seek out higher-cost or less-regulated investment options, the fund industry says.

But some industry analysts say the SEC proposal doesn't go far enough. "The whole industry has become too reliant" on 12b-1 fees, says Karen Dolan, director of fund analysis at investment researcher Morningstar Inc. The 12b-1 bucket is "an easy place to throw in miscellaneous expenses."

Instead of quibbling over the regulatory details, some 401(k) experts suggest, plans can simply seek out funds that don't charge 12b-1 fees. When fund assets are being used to compensate plan service providers, BrightScope's Mr. Alfred says, "it's hard to figure out who's getting paid what."

Write to Eleanor Laise at [eleanor.laise@wsj.com](mailto:eleanor.laise@wsj.com)