

Article XVIa — Participant-Directed Investments

§ 18-1621	Program Authorized.....	18-76
§ 18-1622	Definitions.....	18-76
	(a) Affiliate.....	18-76
	(b) Average Annual Total Return.....	18-76
	(1) In General.....	18-76
	(2) Transitional Rule.....	18-76
	(c) Designated Investment Alternative.....	18-77
	(d) Total Annual Operating Expenses.....	18-77
§ 18-1623	Investment Instructions.....	18-77
	(a) In General.....	18-78
	(b) Restrictions and Procedures.....	18-78
	(1) In General.....	18-78
	(2) Range of Risk and Return Characteristics.....	18-78
	(3) General Frequency Standard.....	18-78
	(4) Core Investment Funds.....	18-78
	(5) Investment Alternative Available to Receive Transfers.....	18-78
	(6) Employer Securities.....	18-79
	(7) Annuity Contracts.....	18-79
	(c) Compliance With Instructions.....	18-79
	(d) Unavailable Investments.....	18-79
§ 18-1624	Core Investment Funds.....	18-79
§ 18-1625	Notice of Limited Liability.....	18-80
§ 18-1626	Disclosure of Plan-Related Information.....	18-80
	(a) General Information.....	18-81
	(b) Administrative Expenses.....	18-81
	(1) Initial and Annual Disclosures.....	18-81
	(2) Quarterly Disclosures.....	18-81
	(c) Individual Expenses.....	18-82
	(1) Initial and Annual Disclosures.....	18-82
	(2) Quarterly Disclosures.....	18-82
	(d) Changes to Disclosed Information.....	18-82

§ 18-1627	Automatic and Periodic Disclosure of Investment-Related Information.....	18-82
	(a) Identifying Information.....	18-83
	(b) Performance Data.....	18-83
	(1) Return Not Fixed.....	18-83
	(2) Fixed Return.....	18-83
	(c) Benchmarks.....	18-83
	(d) Fee & Expense Information.....	18-83
	(1) Return Not Fixed.....	18-83
	(2) Fixed Return.....	18-84
	(e) Internet Web Site Address.....	18-84
	(f) Glossary.....	18-84
	(g) Annuity Options.....	18-84
§ 18-1628	Special Rules Relating to Automatic and Periodic Disclosure of Investment-Related Information.....	18-84
	(a) Annuity Options.....	18-85
	(b) Fixed Return Investments.....	18-85
§ 18-1629	Comparative Format For Furnishing Investment-Related Information.....	18-86
	(a) In General.....	18-86
	(b) Additional Information.....	18-86
	(c) Use of Model Comparative Chart.....	18-86
§ 18-1630	Investment-Related Information to be Provided Subsequent to Investment.....	18-86
§ 18-1631	Investment-Related Information to be Provided Upon Request.....	18-87
§ 18-1632	Miscellaneous Rules Relating to Disclosures.....	18-87
	(a) Fees & Expenses.....	18-87
	(b) Understandable Disclosures.....	18-87
§ 18-1633	Independent Control by Participants.....	18-87
	(a) In General.....	18-88
	(b) Improper Influence.....	18-88
	(c) Concealment of Material Non-Public Facts.....	18-88
	(d) Incompetent Participant.....	18-88
	(e) Transactions Involving a Fiduciary.....	18-88
	(f) Investment Advice.....	18-88
§ 18-1634	Incidents of Ownership Appurtenant to Participant Investments.....	18-88
§ 18-1635	Segregation; Expenses.....	18-88
§ 18-1636	ERISA § 404(c) Requirements.....	18-89

Article XVI A — Participant-Directed Investments

§ 18-1621 Program Authorized.

Participants may direct the Trustees to invest all or a portion of the amounts allocated to their Plan accounts in particular investments in accordance with the provisions of this Article. A Participant may also direct the Trustees to resume responsibility for any portion of such investments. Participant directions shall expire to the extent that amounts which have been so directed are forfeited or distributed, or are invested in investments which are no longer permitted under the participant-directed investment program. Investment directions by a Participant under this Article shall relieve the Administrator and the Trustees of all fiduciary responsibilities in the management of such funds. Beneficiaries and Alternate Payees have the same rights under this Article as Participants.

[Ord. 561 01-29-2020]

§ 18-1622 Definitions.

For purposes of this Article—

(a) **Affiliate.** The term “Affiliate” shall include:

(1) any person directly or indirectly controlling, controlled by, or under common control with the person. For purposes of this paragraph (1), the term “control” means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person;

(2) any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in ERISA § 3(15)), brother, sister, or spouse of a brother or sister, of the person; **and**

(3) any corporation or partnership of which the person is an officer, director, or partner.

(b) **Average Annual Total Return.**

(1) **In General.** The term “Average Annual Total Return” shall mean the average annual compounded rate of return that would equate an initial investment in a designated investment alternative to the ending redeemable value of that investment calculated with the before tax methods of computation prescribed in Securities and Exchange Commission Form N-1A, N-3, or N-4, as appropriate, except that such method of computation may exclude any front-end, deferred, or other sales loads that are waived for the Participants of the covered individual account plan. Nothing in this Article requires disclosure of returns for periods before the inception of a Designated Investment Alternative.

(2) **Transitional Rule.** For Plan Years beginning before October 1, 2021, if the Administrator reasonably and in good faith determines that it does not have the information on expenses attributable to the Plan that is necessary to calculate, in accordance with paragraph (1), the 5-year and 10-year Average Annual Total Returns for a Designated Investment Alternative

that is not registered under the Investment Company Act of 1940, the Administrator may use a reasonable estimate of such expenses or the most recently reported Total Annual Operating Expenses of the Designated Investment Alternative as a substitute for such expenses, and shall inform Participants of the basis on which the returns were determined.

(c) Designated Investment Alternative. The term “Designated Investment Alternative” shall mean a *specific* investment identified by a Plan Fiduciary as an available investment alternative under the participant-directed investment program. An investment alternative permitted under the participant-directed investment program which is *not* specifically identified by a Plan Fiduciary, such as an investment alternative covered by a general rule that allows Participants to invest in any asset administratively feasible for the Plan to hold and not otherwise prohibited under the program, is *not* a “Designated Investment Alternative”, and the information production and other requirements applicable to Designated Investment Alternatives shall not apply to such a non-specified investment alternative.

(d) Total Annual Operating Expenses. The term “Total Annual Operating Expenses” shall mean:

(1) In the case of a Designated Investment Alternative that is registered under the Investment Company Act of 1940, the annual operating expenses and other asset-based charges before waivers and reimbursements (*e.g.*, investment management fees, distribution fees, service fees, administrative expenses, separate account expenses, mortality and expense risk fees) that reduce the Designated Investment Alternative’s rate of return, expressed as a percentage, calculated in accordance with the required Securities and Exchange Commission form, *e.g.*, Form N-1A (open-end management investment companies) or Form N-3 or N-4 (separate accounts offering variable annuity contracts); **or**

(2) In the case of a Designated Investment Alternative that is not registered under the Investment Company Act of 1940, the sum of the fees and expenses described in the following subparagraphs before waivers and reimbursements, for the Designated Investment Alternative’s most recently completed fiscal year, expressed as a percentage of the Designated Investment Alternative’s average net asset value for that year:

(A) Management fees as described in the Securities and Exchange Commission Form N-1A that reduce the Designated Investment Alternative’s rate of return;

(B) Distribution and/or servicing fees as described in the Securities and Exchange Commission Form N-1A that reduce the Designated Investment Alternative’s rate of return; **and**

(C) Any other fees or expenses not included in subparagraphs (A) or (B) that reduce the Designated Investment Alternative’s rate of return (*e.g.*, externally negotiated fees, custodial expenses, legal expenses, accounting expenses, transfer agent expenses, recordkeeping fees, administrative fees, separate account expenses, mortality and expense risk fees), excluding brokerage costs described in Item 21 of Securities and Exchange Commission Form N-1A.

§ 18-1623 Investment Instructions.

(a) **In General.** The Trustees shall identify a specific fiduciary or agent to receive investment instructions, and all investment instructions must be made through such fiduciary or agent. All Participant investment instructions shall be made on such written forms (or in accordance with such online procedures) as may be prescribed by the Trustees or the identified fiduciary or agent. Instructions may relate to amounts allocated to the Participant's accounts to date and/or to amounts as they are so allocated in the future. Each Participant who is qualified to participate in the participant-directed investment program shall have an opportunity to obtain written confirmation of such instructions.

(b) Restrictions and Procedures.

(1) **In General.** The Trustees may promulgate nondiscriminatory rules restricting Participant directions to such times, investments, amounts, and features as may be necessary or desirable to avoid undue administrative expenses or complexity in the overall operation of the Participant-directed investment program, *provided* that such rules comply with requirements of this subsection (b) and of § 18-1624. For example, without limiting the foregoing, the Trustees may restrict investment to identified specific investment alternatives.

(2) **Range of Risk and Return Characteristics.** The Trustees shall permit a sufficient number and variety of investment alternatives to provide Participants with a reasonable opportunity to materially affect the potential return on amounts in their accounts and the degree of risk to which such amounts are subject.

(3) **General Frequency Standard.** The rules applicable to any given investment alternative made available under the participant-directed investment program must permit Participants to give investment instructions with a frequency which is appropriate in light of the market volatility to which the investment alternative may reasonably be expected to be subject.

(4) **Core Investment Funds.** The rules applicable to each of the investment alternatives included in the group of "core funds" described in § 18-1624 must permit a Participant to give instructions no less frequently than once within any three month period.

(5) **Investment Alternative Available to Receive Transfers.** Under the rules established by the Trustees, either—

(A) at least *one* of the "core funds" described in § 18-1624 must permit a Participant to transfer *into* that fund as frequently as Participants are permitted to give investment instructions with respect to any investment alternative included in the participant-directed investment program which permits Participants to give investment instructions more frequently than once within any three month period; **or**

(B) with respect to each investment alternative which permits Participants to give investment instructions more frequently than once within any three month period, Participants are permitted to direct their investments *from* such investment alternative *to* a Liquid Investment as frequently as they are permitted to give investment instructions with respect to such investment alternative, **and**, with respect to the Liquid Investment, Participants are permitted to direct investments *from* the Liquid Investment *to* at least *one* of the "core funds" described in § 18-1624 as frequently as they are permitted to give investment instructions with respect to that core fund. For purposes of this subparagraph (B), a "Liquid Investment" is an income producing, low risk, liquid fund, subfund, or account.

(6) **Employer Securities.** The participant-directed investment program shall not permit Participant to directly or indirectly acquire any securities of the Employer or any Related Employer or Affiliate.

(7) **Annuity Contracts.** If the Trustees permit investment in annuity contracts under the participant-directed investment program, an Active Participant may only direct investment in annuity contracts which are on his/her own life.

(c) **Compliance With Instructions.** The fiduciary or agent receiving the instructions shall be obligated to comply with such instructions, unless an instruction, if implemented—

(1) would not be permitted under this Article or would otherwise not be in accordance with the provisions of this Plan;

(2) would not comply with the procedures, limitations, or restrictions established by the Trustees for the participant-directed investment program;

(3) would cause a Fiduciary to maintain the indicia of ownership of any assets of the Plan outside the jurisdiction of the district courts of the United States other than as permitted under the standards of ERISA § 404(b) and 29 C.F.R. § 2550.404b-1;

(4) would jeopardize the Plan's tax qualified status under the Code;

(5) could result in a loss in excess of a Participant's account balance;

(6) would result in a prohibited transaction described in § 18-1805;

(7) would result in the acquisition of a "collectible", as that term is defined in Code § 408(m) and the regulations thereunder;

(8) would generate income that would be taxable to the Plan;

(9) would result in a direct or indirect—

(A) sale, exchange, or lease of property between the Employer or any Affiliate of the Employer and the Plan except for the acquisition or disposition of any interest in a fund, subfund, or portfolio managed by the Employer or any Affiliate of the Employer;

(B) loan to the Employer or any Affiliate of the Employer;

(C) acquisition or sale of any employer real property (as defined in ERISA § 407(d)(2)); or

(D) acquisition or sale of any employer security; or

(10) would violate any applicable law, statute, regulation, rule, order, or decree.

(d) **Unavailable Investments.** In the event the Trustees find that an investment meeting the requirements of this Trust cannot be procured for a Participant under this Article, or a given investment is or becomes unavailable, the Trustees shall report the same to the Participant as soon as practicable and request further instruction.

§ 18-1624 Core Investment Funds.

Throughout the time that a Participant-directed investment program is in effect under this Section, the permitted investment alternatives under the program shall include a group of at least three (3) investment funds—

(a) each of whose underlying assets are diversified so as to minimize the risk of large losses;

(b) each of which has materially different risk and return characteristics;

(c) which in the aggregate enable the Participant by choosing among them to achieve a portfolio with aggregate risk and return characteristics at any point within the range normally appropriate for the Participant;

(d) each of which, when combined with investments in the other funds in the group, tends to minimize through diversification the overall risk of a Participant's portfolio; **and**

(e) each of which is either—

(1) An investment company described in § 3(a) of the Investment Company Act of 1940, or a series investment company described in § 18(f) of the Investment Company Act of 1940, or any of the segregated portfolios of such company;

(2) A common or collective trust fund or a pooled investment fund maintained by a bank or similar institution, a deposit in a bank or similar institution, or a fixed rate investment contract of a bank or similar institution;

(3) A pooled separate account or a fixed rate investment contract of an insurance company qualified to do business in a state; **or**

(4) Any entity whose assets include plan assets by reason of a plan's investment in the entity (such as a "group trust" as defined in Rev. Rul. 81-100).

These investment funds may be Designated Investment Alternatives, or they may merely be permitted without specific identification under a general rule allowing investment in broad categories of assets or in all assets which are administratively feasible for the Plan to hold.

[Ord. 561 01-29-2020]

§ 18-1625 Notice of Limited Liability.

The Administrator (or person designated by the Administrator to act on its behalf) shall provide each Participant who is qualified to participate in the participant-directed investment program with an explanation that the Plan is intended to constitute the kind of plan described in ERISA § 404(c) and 29 C.F.R. § 2550.404c-1, and that the Fiduciaries of the Plan may be relieved of liability for any losses which are the direct and necessary result of investment instructions given by such Participant.

[Ord. 561 01-29-2020]

§ 18-1626 Disclosure of Plan-Related Information.

The Administrator (or person designated by the Administrator to act on its behalf) shall provide to each Participant the following Plan-related information, based on the latest information available to the Plan:

(a) **General Information.** On or before the date on which a Participant can first direct his investments, and at least annually thereafter:

(1) an explanation of the circumstances under which Participants may give investment instructions (including the persons to whom instructions may be given, the times when instructions may be given, and the manner in which instructions may be given;

(2) an explanation of any specified limitations on such instructions under the terms of the Plan, including any restrictions on transfers to or from a Designated Investment Alternative (such as absolute restrictions, minimum investment periods, penalties, or valuation adjustments);

(3) a description of or reference to plan provisions or provisions of the participant-directed investment program relating to the exercise of voting, tender, and similar rights appurtenant to a Participant's investment in an investment alternative, as well as any restrictions on such rights;

(4) an identification of any Designated Investment Alternatives offered under the Plan;

(5) an identification of any designated Investment Managers; **and**

(6) a description of any "brokerage windows," "self-directed brokerage accounts," or similar Plan arrangements that enable Participants to select investments beyond those designated by the Plan. If the participant-directed investment program does not limit the investment alternatives to Designated Investment Alternatives, a general statement of the types of non-identified investments that are permitted and the types which are prohibited, as provided under the rules established for the participant-directed investment program, shall be a sufficient description of such investments, *provided that* Participants are encouraged to obtain and review materials relating to any such non-identified investments prior to actually making an investment.

(b) **Administrative Expenses.**

(1) **Initial and Annual Disclosures.** On or before the date on which a Participant can first direct his investments, and at least annually thereafter, an explanation of any fees and expenses for general plan administrative services (*e.g.*, legal, accounting, recordkeeping), which may be charged against the individual accounts of Participants and are not reflected in the Total Annual Operating Expenses of any Designated Investment Alternative, as well as the basis on which such charges will be allocated (*e.g.*, pro rata, per capita) to, or affect the balance of, each individual account.

(2) **Quarterly Disclosures.** At least quarterly, a statement that includes—

(A) the dollar amount of the fees and expenses described in paragraph (1) that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to the Participant's account for individual services;

(B) a description of the services to which the charges relate (*e.g.*, plan administration, including recordkeeping, legal, accounting services); **and**

(C) if applicable, an explanation that, in addition to the fees and expenses disclosed pursuant this paragraph (2), some of the Plan's administrative expenses for the preceding quarter were paid from the Total Annual Operating Expenses of one or more of the Plan's Designated Investment Alternatives (*e.g.*, through revenue sharing arrangements, Rule 12b-1 fees, sub-transfer agent fees).

(c) Individual Expenses.

(1) **Initial and Annual Disclosures.** On or before the date on which a Participant can first direct his investments, and at least annually thereafter, an explanation of any fees and expenses that may be charged against the individual account of a Participant on an individual, rather than on a plan-wide, basis (*e.g.*, fees attendant to processing Plan loans or Qualified Domestic Relations Orders, fees for investment advice, fees for brokerage windows, commissions, front- or back-end loads or sales charges, redemption fees, transfer fees, and similar expenses, and optional rider charges in annuity contracts) and which are not reflected in the Total Annual Operating Expenses of any Designated Investment Alternative.

(2) **Quarterly Disclosures.** At least quarterly, a statement that includes—

(A) the dollar amount of the fees and expenses described in paragraph (1) that are actually charged (whether by liquidating shares or deducting dollars) during the preceding quarter to the Participant's account for individual services; **and**

(B) a description of the services to which the charges relate (*e.g.*, loan processing fee).

(d) **Changes to Disclosed Information.** If there is a change to the information described in subsections (a), (b)(1), or (c)(1), each Participant must be furnished a description of such change at least thirty (30) days, but not more than ninety (90) days, in advance of the effective date of such change, unless the inability to provide such advance notice is due to events that were unforeseeable or circumstances beyond the control of the Administrator, in which case notice of such change must be furnished as soon as reasonably practicable.

[Ord. 561 01-29-2020]

§ 18-1627 Automatic and Periodic Disclosure of Investment-Related Information.

Except as provided in § 18-1628, the Administrator (or person designated by the Administrator to act on its behalf) shall provide to each Participant the following investment-related information on or before the date on which a Participant can first direct his investments, and at least annually thereafter, based on the latest information available to the Plan and in the format described in § 18-1629:

(a) Identifying Information. Such information shall include:

- (1) The name of each Designated Investment Alternative; **and**
- (2) The type or category of the investment (*e.g.*, money market fund, balanced fund (stocks and bonds), large-cap stock fund, employer stock fund, employer securities).

(b) Performance Data.

(1) **Return Not Fixed.** For Designated Investment Alternatives with respect to which the return is not fixed, the Average Annual Total Return of the investment for 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter) ending on the date of the most recently completed calendar year; as well as a statement indicating that an investment's past performance is not necessarily an indication of how the investment will perform in the future.

(2) **Fixed Return.** For Designated Investment Alternatives with respect to which the return is fixed or stated for the term of the investment, both the fixed or stated annual rate of return and the term of the investment. If, with respect to such a Designated Investment Alternative, the issuer reserves the right to adjust the fixed or stated rate of return prospectively during the term of the contract or agreement, the current rate of return, the minimum rate guaranteed under the contract, if any, and a statement advising Participants that the issuer may adjust the rate of return prospectively and how to obtain (*e.g.*, telephone or Web site) the most recent rate of return required under this Section.

(c) **Benchmarks.** For Designated Investment Alternatives with respect to which the return is not fixed, the name and returns of an appropriate broad-based securities market index over the 1-, 5-, and 10-calendar year periods (or for the life of the alternative, if shorter) comparable to the performance data periods provided under subsection (b)(1), and which is not administered by an Affiliate of the investment issuer, its investment adviser, or a principal underwriter, unless the index is widely recognized and used.

(d) Fee & Expense Information.

(1) **Return Not Fixed.** For Designated Investment Alternatives with respect to which the return is not fixed:

(A) the amount and a description of each shareholder-type fee (fees charged directly against a Participant's investment, such as commissions, sales loads, sales charges, deferred sales charges, redemption fees, surrender charges, exchange fees, account fees, and purchase fees, which are not included in the Total Annual Operating Expenses of any Designated Investment Alternative) and a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part (such as round trip, equity wash, or other restrictions);

(B) the Total Annual Operating Expenses of the investment expressed as a percentage (*i.e.*, expense ratio), calculated in accordance with § 18-1622(d).

(C) the Total Annual Operating Expenses of the investment for a one-year period expressed as a dollar amount for a \$1,000 investment (assuming no returns and based on the percentage described in subparagraph (B));

(D) a statement indicating that fees and expenses are only one of several factors that Participants should consider when making investment decisions; **and**.

(E) a statement that the cumulative effect of fees and expenses can substantially reduce the growth of a Participant's retirement account and that Participants can visit the Employee Benefit Security Administration's Web site for an example demonstrating the long-term effect of fees and expenses.

(2) **Fixed Return.** For Designated Investment Alternatives with respect to which the return is fixed for the term of the investment, the amount and a description of any shareholder-type fees and a description of any restriction or limitation that may be applicable to a purchase, transfer, or withdrawal of the investment in whole or in part.

(e) **Internet Web Site Address.** An Internet Web site address that is sufficiently specific to provide Participants access to the following information regarding the Designated Investment Alternative:

(1) The name of the Designated Investment Alternative's issuer;

(2) The Designated Investment Alternative's objectives or goals in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(3) The Designated Investment Alternative's principal strategies (including a general description of the types of assets held by the investment) and principal risks in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(4) The Designated Investment Alternative's portfolio turnover rate in a manner consistent with Securities and Exchange Commission Form N-1A or N-3, as appropriate;

(5) The Designated Investment Alternative's performance data described in subsection (b), updated on at least a quarterly basis, or more frequently if required by other applicable law; **and**;

(6) The Designated Investment Alternative's fee and expense information described in subsection (d).

(f) **Glossary.** A general glossary of terms to assist Participants in understanding the Designated Investment Alternatives, or an Internet Web site address that is sufficiently specific to provide access to such a glossary along with a general explanation of the purpose of the address.

(g) **Annuity Options.** If a Designated Investment Alternative is *part of* a contract, fund, or product that permits Participants to allocate contributions towards the *future* purchase of a stream of retirement income payments guaranteed by an insurance company, the information set forth in § 18-1628(a)(1) through (7) with respect to the annuity option, to the extent such information is not otherwise included in investment-related fees and expenses described in subsection (d).

§ 18-1628 Special Rules Relating to Automatic and Periodic Disclosure of Investment-Related Information.

(a) **Annuity Options.** In the case of a Designated Investment Alternative that is a contract, fund, or product that permits Participants to allocate contributions towards the current purchase of a stream of retirement income payments guaranteed by an insurance company, the Administrator (or person designated by the Administrator to act on its behalf) shall provide the following information with respect to each such option *in lieu of* the information required by § 18-1627(a) through (e):

- (1) The name of the contract, fund, or product;
- (2) The option's objectives or goals (*e.g.*, to provide a stream of fixed retirement income payments for life);
- (3) The benefits and factors that determine the price (*e.g.*, age, interest rates, form of distribution) of the guaranteed income payments;
- (4) Any limitations on the ability of a Participant to withdraw or transfer amounts allocated to the option (*e.g.*, lock-ups) and any fees or charges applicable to such withdrawals or transfers;
- (5) Any fees that will reduce the value of amounts allocated by Participants to the option, such as surrender charges, market value adjustments, and administrative fees;
- (6) A statement that guarantees of an insurance company are subject to its long-term financial strength and claims-paying ability; **and**
- (7) An Internet Web site address that is sufficiently specific to provide Participants access to the following information:
 - (A) The name of the option's issuer and of the contract, fund, or product;
 - (B) Description of the option's objectives or goals;
 - (C) Description of the option's distribution alternatives/guaranteed income payments (*e.g.*, payments for life, payments for a specified term, joint and survivor payments, optional rider payments), including any limitations on the right of a Participant to receive such payments;
 - (D) Description of costs and/or factors taken into account in determining the price of benefits under an option's distribution alternatives/guaranteed income payments (*e.g.*, age, interest rates, other annuitization assumptions);
 - (E) Description of any limitations on the right of a Participant to withdraw or transfer amounts allocated to the option and any fees or charges applicable to a withdrawal or transfer; **and**
 - (F) Description of any fees that will reduce the value of amounts allocated by Participants to the option (*e.g.*, surrender charges, market value adjustments, and administrative fees).

(b) **Fixed Return Investments.** In the case of a Designated Investment Alternative with respect to which the return is fixed for the term of the investment, the Administrator (or person

designated by the Administrator to act on its behalf) shall, *in lieu of* complying with the requirement of § 18-1627(e), provide an Internet Web site address that is sufficiently specific to provide Participants access to the following information regarding the Designated Investment Alternative:

- (1) The name of the Designated Investment Alternative's issuer;
- (2) The Designated Investment Alternative's objectives or goals (*e.g.*, to provide stability of principal and guarantee a minimum rate of return);
- (3) The Designated Investment Alternative's performance data described in § 18-1627(b)(2), updated on at least a quarterly basis, or more frequently if required by other applicable law; **and**
- (4) The Designated Investment Alternative's fee and expense information described in § 18-1627(d)(2).

[Ord. 561 01-29-2020]

§ 18-1629 Comparative Format For Furnishing Investment-Related Information.

(a) **In General.** The Administrator (or person designated by the Administrator to act on its behalf) shall provide the information required under § 18-1627 or § 18-1628 in a chart or similar format that is designed to facilitate a comparison of such information for each Designated Investment Alternative available under the Plan, that prominently displays the date, and that includes):

- (1) A statement indicating the name, address, and telephone number of the Administrator (or person(s) designed by the Administrator to act on its behalf) to contact for the provision of the information required by § 18-1631 (relating to Investment-Related Information to be Provided Upon Request);
- (2) A statement that additional investment-related information (including more current performance information) is available at the listed Internet Web site addresses (*see* § 18-1627(e), § 18-1628(a)(7), and § 18-1628(b)); **and**
- (3) A statement explaining how to request and obtain, free of charge, paper copies of the information required to be made available on a Web site pursuant to § 18-1627(e), § 18-1628(a)(7), and § 18-1628(b).

(b) **Additional Information.** Nothing in this Article shall preclude the Administrator (or person designated by the Administrator) from including additional information that the Administrator (or designee) determines appropriate for such comparisons, provided such information is not inaccurate or misleading.

(c) **Use of Model Comparative Chart.** The Administrator (or person designated by the Administrator) shall be deemed to have satisfied the requirements of this Section if it uses and accurately completes the model comparative chart in the Appendix to 29 C.F.R. § 2550.404a-5.

[Ord. 561 01-29-2020]

§ 18-1630 Investment-Related Information to be Provided Subsequent to Investment.

The Administrator (or person designated by the Administrator to act on its behalf) shall furnish to each investing Participant, subsequent to an investment in a Designated Investment Alternative, any materials provided to the Plan relating to the exercise of voting, tender, and similar rights appurtenant to the investment, to the extent such rights are passed through to such Participant under the terms of the Plan.

[Ord. 561 01-29-2020]

§ 18-1631 Investment-Related Information to be Provided Upon Request.

The Administrator (or person designated by the Administrator to act on its behalf) shall furnish to each investing Participant, either at the times specified in § 18-1627 or upon request, the following information related to Designated Investment Alternatives—

(a) Copies of prospectuses (or, alternatively, any short-form or summary prospectus, the form of which has been approved by the Securities and Exchange Commission) for the disclosure of information to investors by entities registered under either the Securities Act of 1933 or the Investment Company Act of 1940, or similar documents relating to Designated Investment Alternatives that are provided by entities that are not registered under either of these Acts;

(b) Copies of any financial statements or reports, such as statements of additional information and shareholder reports, and of any other similar materials relating to the Plan's Designated Investment Alternatives, to the extent such information is provided to the Plan;

(c) A statement of the value of a share or unit of each Designated Investment Alternative as well as the date of the valuation; **and**

(d) A list of the assets comprising the portfolio of each Designated Investment Alternative which constitute "plan assets" within the meaning of 29 C.F.R. § 2510.3-101, and the value of each such asset (or the proportion of the investment alternative which it comprises).

[Ord. 561 01-29-2020]

§ 18-1632 Miscellaneous Rules Relating to Disclosures.

(a) **Fees & Expenses.** Except as otherwise explicitly required under this Article, in any disclosure of information by the Administrator to Participants under this Article, fees and expenses may be expressed in terms of a monetary amount, formula, percentage of assets, or per capita charge.

(b) **Understandable Disclosures.** The information required to be prepared by the Administrator for disclosure under this Article shall be written in a manner calculated to be understood by the average Plan Participant.

[Ord. 561 01-29-2020]

§ 18-1633 Independent Control by Participants.

(a) **In General.** The Trustees shall not interfere with the exercise of independent control by Participants regarding transactions related to the participant-directed investment program (including, without limitation, the acquisition or disposition of investments, and the exercise of any voting, tender, and similar rights appurtenant to a Participant's ownership interest in an investment alternative).

(b) **Improper Influence.** No Plan Fiduciary or Plan sponsor shall subject any Participant to improper influence with regard to any transaction related to the participant-directed investment program.

(c) **Concealment of Material Non-Public Facts.** No Plan Fiduciary shall conceal any material non-public facts regarding an investment from a Participant, *unless* the disclosure of such information by the Plan Fiduciary to the Participant would violate any provision of federal law or any provision of state law which is not preempted by ERISA.

(d) **Incompetent Participant.** No Plan Fiduciary shall accept the instructions of any person whom the Plan Fiduciary knows is legally incompetent.

(e) **Transactions Involving a Fiduciary.** In the case of any transaction permitted under the participant-directed investment program and this Article which involves the sale, exchange, or leasing of property between the Plan and a Plan Fiduciary or an Affiliate of a Plan Fiduciary, or a loan to a Plan Fiduciary or an Affiliate of a Plan Fiduciary, the Participant shall not be required to pay more than, or shall not receive less than, "adequate consideration" (as defined in ERISA § 3(18) and the regulations thereunder) in connection with the transaction. (In general terms, "adequate consideration" for a security traded on a registered national securities exchange is the prevailing price on such market; for a security not so traded for which there is a generally recognized market, the current offering price for the security; and for an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by the Plan Fiduciary.)

(f) **Investment Advice.** Neither the Employer nor any Plan Fiduciary should provide any investment advice to a Participant related to the participant-directed investment program.

[Ord. 561 01-29-2020]

§ 18-1634 Incidents of Ownership Appurtenant to Participant Investments.

The Trustees may provide each Participant who has a Plan account invested in whole or in part in any investment directed by the Participant under this Article with a reasonable opportunity to give instruction with respect to voting, tender, or similar rights appurtenant to the Participant's ownership interest in that investment. To the extent that the Trustees do not pass through such rights to Participants, they shall not be protected from fiduciary liability with respect to the exercise or non-exercise of those rights.

[Ord. 561 01-29-2020]

§ 18-1635 Segregation; Expenses.

The portion of any Participant's Plan accounts which are invested according to Participant instructions under this Article shall be segregated from the rest of the Trust Fund. Such portion shall not share in any gains or losses of the general Trust Fund, but shall instead reap the benefits and bear the expenses of the segregated investments. Where more than one Participant is investing in the same investment, it is not necessary that the assets allocable to each Participant be physically segregated from those of other Participants, so long as they are segregated from other investments and the Trustees maintain adequate records to disclose the portions of the investment associated with each Participant. The Plan and Trust may charge a Participant's account for the reasonable expenses of carrying out investment instructions, *provided* that procedures are established to periodically inform the Participant of the actual expenses incurred with respect to his/her individual account.

[Ord. 561 01-29-2020]

§ 18-1636 ERISA § 404(c) Requirements.

Although this Plan is not subject to ERISA Title I, Part 4 fiduciary requirements, the Participant-directed investment program established under this Article is generally intended to satisfy the requirements established by the U.S. Department of Labor for "ERISA § 404(c) plans", and this Plan shall be deemed to incorporate by reference all requirements for ERISA § 404(c) plans not otherwise stated, except to the extent the Plan's language clearly evidences an intent not to follow a particular requirement. (*Cf.* 29 C.F.R. § 2550.404c-1 and § 2550.404a-5.) Nonetheless, any failure by a Plan Fiduciary to satisfy any of the provisions of this Article that are designed to comply with requirements for ERISA § 404(c) plans, shall not subject the Plan, any Fiduciary, or the Employer to any liability to any Participant, Alternate Payee, or Beneficiary *except* to the extent such liability would exist under Pennsylvania law for a municipal government retirement plan even if the ERISA § 404(c) plan requirements had not been included in this Article, and for those purposes it shall be deemed that such provisions are not included in this Plan.

[Ord. 561 01-29-2020]