

April 6, 2009

The Honorable Edward M. Kennedy
United States Senate
315 Senate Russell Office Bldg
Washington, DC 20510

Dear Ted,

We have been talking for many years¹ about the outrages perpetrated on the hundred million pensioners in America. The destruction of “real pensions”² though the penalization of Defined Benefit plans reached a crescendo during the last eight years. You will recall that, with Portia’s guidance, we induced the Government Accountability Office to investigate the utter failure of the Department of Labor to enforce pensioners’ rights.³ This they did with tact and skill, but to no effect.

When we were young, someone my age was considered to be an old man, and so I may be excused for being a bit crotchety. The horror of our failed commitment to pensioners is that the intermediaries – trustees, consultants, money managers – have profited to an obscene degree becoming America’s richest people, while the beneficiaries have witnessed the end of real pensions and the destruction of values in their Defined Contribution plans. Jack Bogle, the founder of Vanguard – the largest mutual fund ground in the country, has written decisively and brilliantly about the real returns for the average 401(k) plan investor in the average equity fund:

“Together, the cost penalty, the timing penalty and the selection penalty consumed an amazing 73% of the profit available simply by buying and holding the stock market itself, leaving the average fund stockholder with a mere 27% of the total.”⁴

¹ I find it startling to recollect that our relationship began sixty five years ago in the Seventh Grade at the Fessenden School.

² I consider a real pension to be a finite amount of money guaranteed to an employee by his employer, and, in case of default, the government, in contrast to the defined contribution plan where the entire risk of loss rests with the individual.

³ GAO – 04-749

⁴ John C. Bogle, The Battle for the Soul of Capitalism, (Yale, 2005) at p. 166.

The Honorable Edward M. Kennedy

Page 2

April 6, 2009

Even, I, jaded to the excesses of the market place, am stupefied that the beneficiary actually receives only a quarter of the profits.

The industry furnishing services to pensioners is riddled with conflicts of interest, only the tip of which were apparent from the courageous and energetic prosecutions of former New York State Attorney General Eliot Spitzer. The co-optation of the SEC's division responsible for monitoring and supervising activities under the Investment Company Act is long standing and infamous. Unhappily, the Department of Labor, whose employee benefit plan division I was responsible for some twenty five years ago (under the supervision of Phyllis Borzi, counsel for the House majority committee having jurisdiction and the Assistant Secretary designate) has deteriorated from decent failure in my times to arrogant neglect during the last Presidential Administration.

One might rudely describe the current Employee Benefit Plan structure in the United States as – a welfare plan for service providers. Hopefully, a measure of trust in government can be restored by the current administration. A critical place to start would be a “root and branch” investigation of the stewardship of employee benefit plan assets under ERISA.

Your Friend,

Bob Monks

cc: Portia Wu, Assistant to Senator Edward M. Kennedy
Phyllis Borzi, Assistant Secretary of Labor Designate