No. 25-498

In the Supreme Court of the United States

WINSTON R. ANDERSON, et al.,
Petitioners,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, et al.,
Respondents.

On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX VOLUME I OF III

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TABLE OF CONTENTS

Page

Volume I

Amended Consolidated Complaint filed March 22, 2021 1

Exhibit A – Declaration of Samuel Halpern 239

Exhibit B – Declaration of Dr. Steve Pomerantz 264

Defendants' Request for Judicial Notice in Support of Motion to Dismiss filed May 5, 2021 303

Exhibit 1 – 2013 Summary Plan Description for the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan, and Intel Minimum Pension Plan 316

Volume II

Exhibit 2 – 2015 Summary Plan Description for the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan, and Intel Minimum Pension Plan 429

Exhibit 3 – Intel 401(k) Savings Plan Investment Policy Statement, as amended and restated on January 12, 2017, and Appendix C 553

Exhibit 4 – Global Diversified Fund Fact Sheet (December 31, 2011) 576

Exhibit 5 – Global Diversified Fund Fact Sheet (September 30, 2015) 598

Exhibit 6 – Global Diversified Fund Fact Sheet (December 31, 2017) 614

Exhibit 7 – Global Diversified Fund Fact Sheet (December 31, 2018).....629

Exhibit 8 – Target Date 2045 Fund Fact Sheet (December 31, 2011).....644

Exhibit 9 – Target Date 2035 Fund Fact Sheet (September 30, 2015) 671

Exhibit 10 – Target Date 2015 Fund Fact Sheet (September 30, 2015) 687

Exhibit 11 – Target Date 2035 Fund Fact Sheet (December 31, 2017).....703

Exhibit 12 – Report of the Investors' Committee to the President's Working Group on Financial Markets, "Principles and Best Practices for Hedge Fund Investors" (April 15, 2008).....720

Volume III

Exhibit 13 – U.S. Government Accountability Office Report, "Guidance Needed to Better Inform Plans of the Challenges and Risks of Investing in Hedge Funds and Private Equity" (August 2008) 829

Exhibit 14 – Statement of Barbara Bovbjerg, U.S. Government Accountability Office, "Plans Face Valuation and Other Challenges When Investing in Hedge Funds and Private Equity" (July 20, 2010) 925

Exhibit 15 – Statement of Barbara Bovbjerg, U.S. Government Accountability Office, "Plans Face Challenges When Investing in Hedge Funds and Private Equity" (August 31, 2011) 954

Exhibit 16 – June 3, 2020 Letter of Louis Campagna, Chief of the Division of Fiduciary Interpretations, U.S. Department of Labor Employee Benefits Security Administration (Office of Regulations and Interpretations) to Jon Breyfogle, Esq. of Groom Law Group, Chartered 980

Exhibit 17 – "Target Date Retirement Funds—Tips for ERISA Plan Fiduciaries," U.S. Department of Labor Employee Benefits Security Administration (February 2013).....993

Exhibit 18 – "Intel Custom Target-Date Evolution," PIMCO, DC Dialogue (Volume 9, Issue 3) (March/April 2014).....1001

Exhibit 19 – Morningstar "2018 Target-Date Fund Landscape" (May 7, 2018).....1018

Exhibit 20 – T. Rowe Price Retirement 2015 Fund Fact Sheet (March 31, 2020).....1098

Exhibit 21 – Fidelity Freedom 2035 Fund Summary Prospectus (May 30, 2020) 1106

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. 5:19-cv-04618-LHK
(Consolidated with No. 15-cv-04977-NC & No. 16-cv-00522)

AMENDED CONSOLIDATED COMPLAINT

CLASS ACTION

WINSTON R. ANDERSON, CHRISTOPHER M. SULYMA, and all others similarly situated,

Plaintiffs,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, INTEL RETIREMENT PLANS ADMINISTRATIVE COMMITTEE, FINANCE COMMITTEE OF THE INTEL CORPORATION BOARD OF DIRECTORS, CHRISTOPHER C. GECZY, RAVI JACOB, DAVID S. POTTRUCK, ARVIND SODHANI, RICHARD TAYLOR, TERRA CASTALDI, RONALD D. DICKEL, TIFFANY DOON SILVA, TAMI GRAHAM, CARY KLAFTER, STUART ODELL,

CHARLENE BARSHEFSKY, SUSAN L. DECKER, JOHN J. DONAHOE, REED E. HUNDT, JAMES D. PLUMMER, FRANK D. YEARY, STACY SMITH, ROBERT H. SWAN, TODD UNDERWOOD, AND GEORGE S. DAVIS

Defendants,

and

INTEL 401(K) SAVINGS PLAN and INTEL RETIREMENT CONTRIBUTION PLAN,

Nominal Defendants.

TABLE OF CONTENTS

I. NATURE OF THE ACTION 1
II. JURISDICTION AND VENUE 6
III. PARTIES.....6
A. PLAINTIFFS.....6
B. DEFENDANTS.....7
IV. CLASS ALLEGATIONS.....18
A. Numerosity and Impracticability of Joinder ..18
B. Commonality 19
C. Typicality 20
D. Adequacy.....21
E. Rule 23(b)(1) 21
F. Rule 23(b)(2) 22
G. Rule 23(b)(3) 22
V. FACTUAL ALLEGATIONS.....23
A. Overview of the Plans and the Intel Investment Options 23
1. The 401(k) Savings Plan.....23
2. The Retirement Contribution Plans.....26
3. The Target Date Funds and the Global Diversified Funds 29
a. The Intel Funds.....29

b. The Master Trust Investment Accounts.....30
c. Substantial Increases in Allocations to Non-Traditional Asset Class Accounts Beginning in 2009.....35
4. Fiduciary Responsibilities of the Investment Committee Defendants.....38
B. Benchmarking Investments in Defined Contribution Plans.....39
C. The Investment Committee Defendants Subjected the Plans and Participants to Unnecessary and Imprudent Expenses.....41
D. The Investment Committee Defendants Failed to Monitor and Replace the Asset Allocation Models and Allocation Percentages for the Intel Funds.....69
1. Excessive Allocations to the Non-Traditional Investment Accounts.....69
2. Deviation from Professional Standards for Target Date Funds and Balanced Funds..... 78
3. The Investment Committee Imprudently Invested the TDFs In Hedge Funds 84

4. Significant Investment in Hedge Funds and Private Equity Are Generally Not Suitable For Balanced Funds 88
5. Risks and Costs of Hedge Funds and Private Equity..... 89
a. Hedge Funds.....89
(1) Valuation Risk.....89
(2) Investment Risk. 91
(3) Lack of Liquidity. 91
(4) High Fees 92
(5) Lack of Transparency.....94
(6) Operational Risks 95
b. Private Equity.....97
(1) High Fees, Hidden Fees, and Inflated Fees..... 97
(2) Valuation and Reporting 101
6. Opaque Disclosures.....101
7. The Conflicted & Divergent Interests of the Investment Committee Defendants 103
a. The Investment Committee Defendants Invested the Plans' Assets in Investments Provided by Companies with Which Intel Capital Partnered to Invest in Third-

Party Companies Such as Technology Startups.....103

b. The Investment Committee Invested the Intel Plans' Assets in Hedge Funds to Benefit Intel and Intel Capital's Investment in Companies with Which Intel and Intel Capital Were Conducting Business 107

c. The Investment Committee Defendants Failed to Consider and Address the Interest of Participants in Lower Pay Grades in Connection with the Offset Arrangement Between the DB Plan and the Retirement Contribution Plan.....109

8. Underperformance of the Non-Traditional Investments Accounts 111

9. The Ongoing Failure of Fiduciaries of the Plans to Conduct an Appropriate Investigation 113

a. The Performance of the Plans' Hedge Funds Portfolio in 2008 Was Poor 113

b. The Intel Fiduciaries Should Have Been Aware or Discovered Reports Published Both Before 2011 and After 2011 Undermining the Value of Hedge Funds 114

(1) Before 2011 114

(2) In 2011 and After 121

E. The Administrative Committee Defendants Made Inadequate Disclosures About the Intel Funds and Provided Misinformation About Participants' Accounts and the Intel Funds 126

1. Quarterly Statements Issued for Participants' Plan Accounts 129

2. "Fact Sheets" for the Intel TDFs ... 132

3. Summary Plan Descriptions 134

4. "Intel Retirement Plans Hedge Fund Portfolio Fact Sheets" 136

VI. CLAIMS FOR RELIEF 137

COUNT I 137

COUNT II 141

COUNT III 145

COUNT IV 150

COUNT V 153
COUNT VI 156
COUNT VII.....159
VII. ENTITLEMENT TO RELIEF.....160
VIII. PRAYER FOR RELIEF 161

I. NATURE OF THE ACTION

1. Plaintiffs Winston Anderson and Christopher Sulyma brings this action under Sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3), for breaches of fiduciary duties. This action alleges that the fiduciaries of the Intel 401(k) Savings Plan ("the 401(k) Savings Plan") and the Intel Retirement Contribution Plan ("the Retirement Contribution Plan") (collectively "the Plans") breached their fiduciary duties by investing billions of dollars in retirement savings in unproven and unprecedented investment allocation strategies featuring high-priced, low-performing illiquid and opaque hedge funds and private equity funds. Plaintiffs have been participants in the Plans and bring this action on behalf of a class of similarly situated participants as a class action to recover relief on behalf of the Plans against the Intel Retirement Plans Investment Policy Committee ("the Investment Committee") and its members, the Intel Retirement Plans Administrative Committee ("the Administrative Committee") and its members, the Finance Committee of the Intel Corporation Board of Directors ("the Finance Committee") and its members, and the Chief Financial Officers of Intel Corporation ("the Chief Financial Officers").

2. The Investment Committee designed and implemented retirement investment strategies, a suite of target date portfolios ("Intel TDFs") with a dynamic allocation model (meaning allocations to asset classes changed over time) and a multi-asset portfolio with a fixed allocation model ("Intel GDFs")[1] that deviated greatly

[1] The Global Diversified Fund in the 401(k) Savings Plan is called

from prevailing professional investment standards for such retirement strategies in several critical ways—chief among them investing billions in hedge funds, private equity, and commodities. Then, as investment returns repeatedly lagged peers and benchmarks, the Investment Committee did nothing while billions of dollars in retirement savings were lost. The Investment Committee deviated from the standard of care of similarly-situated plan fiduciaries who select target date funds for their plans that include little or no exposure to these strategies. The Investment Committee (a) failed to properly monitor the performance and fees of the Intel TDFs and Intel GDFs (collectively "the Intel Funds") in the Plans and to properly investigate the availability of lower-cost investment alternatives with similar or superior performance, and (b) failed to properly monitor and evaluate the unconventional, high-risk allocation models adopted for these custom investment options, which excessively allocated assets of the Plans to speculative investments. Additionally, the Administrative Committee failed to provide adequate disclosures associated with the custom investment options' heavy allocation to hedge funds and private equity, and either misinformed or failed to inform participants about the allocation mix of their account balances and the allocation strategy of the custom target-date options. Finally, the Finance Committee and the Chief Financial Officers failed to monitor the Investment and Administrative Committees. As a result of these imprudent decisions and inadequate processes, Defendants caused the Plans and many participants in the Plans to suffer substantial losses in retirement savings.

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the 401K Global Diversified Fund. Collectively, the Global Diversified Fund in the Retirement Contribution Plan and that in the 401(k) Savings Plan are referred to herein as the Intel GDFs.

3. The 401(k) Savings Plan and the Retirement Contribution Plan are both defined contribution plans under ERISA. As a result, the retirement income provided to participants by the Plans depends on employer and employee contributions and the performance of investment options net of fees and expenses. The Investment Committee chooses the investment options available in the Plans and thereby chooses the fees and expenses paid by the Plans and their respective participants.

4. The Investment Committee decided that the Plans should offer customized asset allocation portfolios rather than invest in similar portfolios designed and managed by investment professionals. An asset allocation fund or portfolio invests in several asset classes such as equities from large cap to micro cap, bonds from treasuries to high yield, international securities (both equities and bonds), real estate, etc. Allocation models may be fixed or change over time. Both the Intel TDFs and Intel GDFs are custom asset allocation models. Instead of investing the Plans in asset allocation funds offered by professional asset managers such as Fidelity Investments and Vanguard Group, Inc., the Investment Committee chose to create its own asset allocation models.

5. Until January 1, 2018, the Intel TDFs and GDFs were not actual funds as there was no distinct legal entity such as a mutual fund or collective trust which issued shares or units in the distinct entity that held the investments. Rather, the Intel TDFs and GDFs were allocation models that directed participant savings into various pooled investment funds such as Large Cap, Commodities, Private Equity and Hedge Funds. Each of these pooled investment funds was structured as a collective trust. Effective December 31, 2017, the Intel

TDFs and GDFs were converted from model portfolios to collective investment trusts ("CITs"). Effective January 1, 2018, Global Trust Company ("GTC") was appointed as the trustee for the Intel TDF and GDF CITs, and GTC hired Watson Wyatt Investment Services, Inc., to advise it on asset allocation and sub-advisor selection for the CITs. At least until GTC was appointed, the asset allocation models of the Intel TDFs and GDFs were selected by the Investment Committee. The underlying funds were (and are) held in the Plans' Master Trust Investment Accounts, which are pooled investment accounts representing various asset classes and investment strategies.

6. The Intel GDFs follow a fixed asset allocation model. The model does not shift the percentage of fund assets from one asset class to another.

7. The Intel TDFs follow a dynamic allocation model: The asset allocation changes over time. A target date fund, such as the Intel TDFs, is intended to reallocate assets over time as a participant approaches retirement age. Target date funds are generally offered as a suite of "vintages" in five-year or ten-year intervals where the vintage refers to the date of the fund such as a 2045 fund. The vintage or target date is intended for participants who will reach normal retirement age (i.e., 65) in or around the given year. For example, a participant who reached age 65 in 2046 would generally invest in the 2045 fund.

8. In this case, the Investment Committee created a suite of target date funds starting with 2005 and ending with 2055. The suite also includes a TDF Income Fund for participants who have reached retirement age. When an Intel TDF hits the target date, it has the same allocation model as the TDF Income Fund. Thus, all pre-2020 Intel

TDFs have virtually the same allocation as the income fund.

9. The Intel TDFs were (and are) the default investment alternative in the 401(k) Savings Plan. That means 401(k) Savings Plan participants were forced into the TDFs if they did not make an election. The Intel GDF for many years was the only investment option available in the Retirement Contribution Plan for the overwhelming majority of that plan's participants. Plaintiff Anderson was defaulted into the Intel Target Date 2030, 2035, and 2040 Funds in the 401(k) Savings Plan and the Intel GDF in the Retirement Contribution Plan. Plaintiff Sulyma was defaulted into the Intel Target Date 2045 Fund in the 401(k) Savings Plan and the Intel GDF in the Retirement Contribution Plan.

10. Unlike professionally managed target date funds offered by Fidelity, Vanguard, and others, the Intel TDFs included significant allocations to hedge funds as well as disproportionate allocations to commodities, private equity, and international securities. Similarly, the Intel GDFs included outsize allocation to hedge funds, private equity, and other alternative asset classes as compared to professionally managed fixed asset allocation funds.

11. The Investment Committee was the fiduciary for the Plans responsible for selecting, managing, and monitoring the investment options in the Plans. The Committee created the Intel TDFs and the GDFs (collectively "the Intel Funds") and selected and maintained the Intel Funds as the Plans' investment options. The Committee also developed, chose, and managed the asset allocation model for the Intel Funds, including the asset classes and investment strategies to which the Intel Funds' assets are allocated as well as the allocation percentages. Further, the Committee

designated the Intel TDFs as the default investment options of the 401(k) Savings Plan and the Intel GDF as the default investment option of the Retirement Contribution Plan.

12. The Intel TDFs have consistently charged fees significantly higher than both actively-managed and passively-managed target-date series offered by professional asset managers, but the Intel TDFs had substantially worse performance, both in absolute terms and on a risk-adjusted basis. The actively-managed GDFs have consistently underperformed both actively-managed and passively-managed investment alternatives that were significantly less expensive, both in absolute terms and on a risk-adjusted basis. The Investment Committee failed to properly monitor the performance and fees of the Intel Funds and failed to properly investigate and give appropriate consideration to the availability of lower-cost, better-performing investment alternatives. Instead of using the Plans' bargaining power to negotiate low-cost, better-performing investment options and benefit participants and beneficiaries, the Investment Committee selected and retained the high-cost and underperforming Intel Funds.

13. The Investment Committee adopted and implemented allocation models for the Intel Funds that drastically departed from prevailing standards of professional asset managers by allocating significant portions of the Intel Funds' assets to speculative investments. For example, beginning in 2011, the Investment Committee dramatically altered the asset allocation model for the Intel TDFs by increasing Intel TDFs' investments in hedge funds from about $50 million to $680 million, an increase of 1,300%. Similarly, the Investment Committee increased the Diversified Fund's

exposure to hedge funds and private equity investments starting 2009. During the period from 2009 through 2014, the Intel GDF's investment in hedge funds increased from about $582 million to $1.665 billion, an increase of approximately 286%; the fund's investment in private equity increased from about $83 million to $810 million, an increase of 968%. As of September 2015, between approximately 27 and 37% of each of the Intel TDFs' assets and approximately 56% of the Intel GDFs' assets were allocated to "alternative" investments such as hedge funds, private equity, commodities, and emerging market funds held in the Master Trust Investment Accounts. Comparable target date funds and balanced funds did not allocate their assets anywhere close to the Intel Funds' allocations. The Investment Committee's failure to engage in an adequate process of monitoring the allocation models for the Intel Funds exposed the Plans and their participants to the underperformance of the speculative investments that the Intel Funds were allocated to, and the corresponding underperformance of the Intel Funds, and to the high management and performance fees charged by hedge fund and private equity managers.

14. The result of the Investment Committee's failed attempt to embark on an unprecedented and risky experiment with the Plans' assets is that the Intel Funds have dramatically underperformed professionally managed target date and asset allocation, and participants have paid enormous fees for poor performance. The Plans and their participants have earned significantly less than if the Investment Committee had designed prudent asset allocation funds and/or offered prudent funds by well-established and reputable money managers.

15. Plaintiffs allege six claims on behalf of a class of participants in the Plans who invested in the Intel Funds:

(a) breaches of fiduciary duty under ERISA § 404(a) by the Investment Committee in selecting and monitoring the investment options in the Plans, including monitoring and evaluating on a regular basis the Intel Funds and their performance and fees; (b) breaches of duty under ERISA § 404(a) by the Investment Committee in managing the assets of the Plans, including monitoring and evaluating on a regular basis the asset allocation models and allocation percentages for the Intel Funds; (c) breaches of fiduciary duty under ERISA § 404(a) by the Administrative Committee for failing to provide material and accurate disclosures to participants; (d) violation of ERISA § 102 by the Administrative Committee for issuing Summary Plan Descriptions that failed to disclose and explain the fees, expenses and risks associated with the Intel Funds' asset allocations or the accompanying risks associated with investments in the Intel Funds; (e) breaches of fiduciary duty under ERISA § 404(a) by the Finance Committee and Chief Financial Officers for failing to monitor and remove the Investment Committee and the Administrative Committee; and (f) co-fiduciary liability under ERISA § 405 against all Defendants. Plaintiffs seek relief including a declaration that Defendants breached their fiduciary and co-fiduciary duties, as well as restoration to the Plans losses to participants' accounts that resulted from Defendants' breaches.

II. JURISDICTION AND VENUE

16. This Court has exclusive and subject matter jurisdiction over this action under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and 28 U.S.C. § 1331 because it is an action under ERISA §§ 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3).

17. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because, upon information and belief, most, if not all, of the individual Defendants can be found in this District.

18. Assignment to the San Jose Division is appropriate because Intel is headquartered in Santa Clara County, where much of the complained-of conduct likely occurred.

III. PARTIES

A. PLAINTIFFS

19. Plaintiff Winston R. Anderson is and has been a participant within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the Intel 401(k) Savings Plan ("the 401(k) Savings Plan") and the Intel Retirement Contribution Plan ("the Retirement Contribution Plan") (collectively "the Plans"). Anderson is a former employee of Intel Corporation and a current resident of Arizona. He worked for Intel from 2000 until 2015. As a result of his employment with Intel, he became a participant in the Plans. Anderson is fully vested in his accounts in the Plans. During the relevant period, his accounts in the Plans are and have been invested in the Intel GDF and Intel TDFs. Specifically, during the relevant period, his account in the Retirement Contribution Plan is and has been invested in the Intel Global Diversified Fund, and his account in the 401(k) Savings Plan is and has been invested in the Intel Target Date 2030 Fund, the Intel Target Date 2035 Fund, and the Intel Target Date 2040 Fund.

20. Plaintiff Christopher M. Sulyma is a former employee of Intel Corporation and is a resident of New Mexico. Sulyma worked for Intel from June 2010 until September 2012. During his employment with Intel, Sulyma was a participant within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the 401(k) Savings Plan and

the Retirement Contribution Plan. As a result of his two years of employment, Sulyma was partially vested in his account balance in the Retirement Plan. His account in the Retirement Plan was invested in the Intel Global Diversified Fund. Sulyma was fully vested in his account in the 401(k) Savings Plan. His account in the 401(k) Savings Plan was invested entirely in the Intel Target Date 2045 Fund.

B. DEFENDANTS

Investment Committee Defendants

21. The **Intel Corporation Investment Policy Committee** ("the Investment Committee") is a named fiduciary of the Plans with respect to the management and control of the Plans' assets pursuant to Section 13(a) of the Retirement Contribution Plan as restated effective January 1, 2014 ("the Retirement Contribution Plan Document"), the 401(k) Savings Plan as amended and restated effective January 1, 2014 ("the 401(k) Savings Plan Document"), and Section 1.2(a) of the Retirement Plans Master Trust Agreement Between Intel Corporation, the Investment Committee, and the Plans' trustee State Street Bank and Trust Company ("the Master Trust Agreement). As such, the Investment Committee is a fiduciary of the Plans within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). Pursuant to Section 13(f) of the Retirement Contribution and 401(k) Savings Plan Documents (collectively "the Plan Documents"), the Investment Committee is responsible for designating and evaluating the investment options offered to participants under the Plans. Pursuant to the same provision of the Plan Documents, the Investment Committee has the discretionary authority to appoint and remove the trustee and investment managers for the Plans and conduct periodic reviews of the performance,

costs, and expenses of the Plans' investment options, trustee, investment managers, and outside service providers. As such, the Investment Committee is a fiduciary of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

22. **Christopher C. Geczy** has been a Member of the Investment Committee from 2014 to the present. He has worked as an Adjunct Professor of Finance at The Wharton School at the University of Pennsylvania since 1997 and serves as the Academic Director of Jacobs Levy Equity Management Center for Quantitative Financial Research and Wharton Wealth Management Initiative. He is the Founder, CEO and Chief Investment Officer of Forefront Analytics, where he oversees investment decision-making. Mr. Geczy acts as an editor of the Journal of Alternative Investments and serves on the Advisory Board of the Journal of Wealth Management. Mr. Geczy worked for the Board of Governors of the Federal Reserve System's Division of Research and Statistics in Washington, D.C. He has served on the Economic Advisory Board of NASDAQ. Mr. Geczy is a founding board member of the Mid-Atlantic Hedge Fund Association and former Chairman. According to his LinkedIn Profile, Mr. Geczy lives in the Greater Philadelphia Area.

23. **Ravi Jacob** was a Member of the Investment Committee from at least January of 2010 to at least October 2019. Mr. Jacob was a Corporate Vice President and the Treasurer of Intel from 2005 to October 2019. As Treasurer, Mr. Jacob managed Intel's cash and investments, capital markets activity, currency and other financial risks, credit and collections, retirement assets, and insurance. According to his LinkedIn Profile, Mr.

Jacob lives in the San Francisco Bay Area in Atherton, California.

24. **David S. Pottruck** served as the Chairman of the Investment Committee from at least 2009 until 2018. He was a Member of Intel's Board of Directors from 1998 until 2018. Mr. Pottruck is the Chairman and Chief Executive of Red-Eagle Ventures Inc. located in San Francisco. He served in various high-level executive positions at Charles Schwab Corporation from 1984 to 2004. According to his LinkedIn Profile, David S. Pottruck lives in the San Francisco Bay Area.

25. **Arvind Sodhani** was a Member of the Investment Committee from at least October 2009 to 2016. Mr. Sodhani had been an Executive Vice President of Intel from 2007 to 2016. He was also the President of Intel Capital from 2005 to 2016. Mr. Sodhani oversaw Intel's internal new business incubation, external investments, and mergers and acquisitions. He was Head of M&A and Strategy of Intel Corporation from 1988 to 2015. He served as a Treasurer and Senior Vice President of Intel Corporation from 1988 to 2005. Mr. Sodhani joined Intel-Europe in 1981 as Assistant Treasurer and was promoted to Assistant Treasurer of Intel in 1984. He was subsequently promoted to Treasurer in 1988. During his tenure at Intel, Mr. Sodhani was a Board Member of the NASDAQ Stock Market, Inc. and a Non-Industry Director of Nasdaq OMX Group from 1997 to 2007. In 2016 Mr. Sodhani formed his own venture capital firm, Silver Trail Ventures, that seeks to invest in technology related businesses. According to his LinkedIn Profile, Mr. Sodhani lives in San Francisco, California.

26. **Richard Taylor** was a Member of the Investment Committee from at least October 2009 to 2016. He is the HR Project Manager at Intel and has led Human

Resources since 1999. He oversees all of the human resource policies and programs for the company worldwide. Mr. Taylor joined Intel in 1986 as an Audit Manager in Europe. According to his LinkedIn Profile, Mr. Taylor lives in the Portland, Oregon area.

27. Defendants Christopher Geczy, Ravi Jacob, David S. Pottruck, Arvind Sodhani, Richard Taylor are collectively referred to as the "**Investment Committee Defendants**." Since at least October 29, 2009, the Investment Committee and the Investment Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

Administrative Committee Defendants

28. The **Intel Retirement Plans Administrative Committee** ("the Administrative Committee") is a named fiduciary of the Plans with respect to the operation and administration of the Plans pursuant to Section 13(a) of the Plan Documents and Section 1.2(b) of the Master Trust Agreement. As such, the Administrative Committee is a fiduciary of the Plans within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a). Pursuant to Section 13(e) of the Plan Documents, the Administrative Committee is responsible for preparing and furnishing to participants and beneficiaries a general explanation of the Plans and all other information required to be furnished to them under federal law or the Plans. The Administrative Committee is the named administrator of the Plans. As

such, the Administrative Committee is a fiduciary of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

29. **Terra Castaldi** was a Member of the Administrative Committee from 2015 until October 2018. She was a Senior Director in the Benefits Tax and Legal Department of Intel from 2005 until October 2018. Prior to joining Intel, she was a Partner at Morgan, Lewis & Bockius LLP. According to her LinkedIn Profile, Terra Castaldi lives in the San Francisco Bay Area.

30. **Ronald D. Dickel** was a Member of the Administrative Committee from 2010 to 2015. He was the Vice President of Finance and the Director of Global Tax and Trade at Intel from 2010 until June 2018. Mr. Dickel joined Intel in 2010 as a Vice President and a Director. Prior to his employment at Intel, Mr. Dickel was a Tax Associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP. According to his LinkedIn Profile, Mr. Dickel lives in Los Gatos, California.

31. **Tiffany Doon Silva** has been a Member of the Administrative Committee from 2015 to the present. She is an attorney in the legal department at Intel. Prior to joining Intel, Ms. Silva was an Attorney at Gibson, Dunn & Crutcher LLP from 1995 to 1999. According to her LinkedIn Profile, Tiffany Doon Silva lives in the San Francisco Bay Area.

32. **Tami Graham** was a Member of the Administrative Committee from 2015 until 2018. Ms. Graham was the Director of Global Benefits Design at Intel's Worldwide Compensation and Benefits Group and the Global Benefits Design Manager. She was formerly a member of Intel's HR Legal Group as a legal advisor for the design and administration of Intel's compensation and

benefit programs. According to her LinkedIn Profile, Ms. Graham lives in the Sacramento, California area.

33. **Cary Klafter** was a Member of the Administrative Committee from at least 2009 to 2015. Mr. Klafter was the Corporate Vice President of Legal and Corporate Affairs of Intel from 1996 to 2015. He was elected to serve as the Corporate Secretary in 2003. Prior to joining Intel in 1996, Mr. Klafter was an Associate and Partner with Morrison & Foerster LLP, a law firm, from 1972 to 1996. According to his LinkedIn Profile, Mr. Klafter lives in the San Francisco Bay Area.

34. **Stuart Odell** was a Member of the Administrative Committee from 2015 until 2018. Mr. Odell served as a Director of Retirement Investments and was the Assistant Treasurer in the Treasury Department of Intel from 2000 to 2018. Mr. Odell and his investment team at Intel were responsible for oversight and management of Intel's $14 billion in qualified and nonqualified retirement plan assets. He was a Board Member and Trustee of the San Jose Federated City Employees Retirement System from 2011 to 2015. According to his LinkedIn Profile, Mr. Odell lives in the San Francisco Bay Area.

35. Defendants Terra Castaldi, Ronald Dickel, Ravi Jacob, Tami Graham, Cary Klafter, Stuart Odell, David Pottruck, Tiffany Doon Silva, and Richard Taylor are collectively referred to as the "**Administrative Committee Defendants**." Since at least October 29, 2009, the Administrative Committee and the Administrative Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting

management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

Finance Committee Defendants

36. The **Finance Committee of the Intel Corporation Board of Directors** ("the Finance Committee") is one of the standing committees of Intel's board of directors ("the Board") and is comprised of directors who represent the Board in ensuring that Intel's senior management adequately carries out its responsibility with respect to Intel's capital and investment transactions. With respect to the Plans, pursuant to Section 13(b) of the Plan Documents, at all relevant times until at least March 2016, the Finance Committee was responsible for the appointment, retention, and removal of the members of the Investment Committee and the Administrative Committee. The Finance Committee was authorized to remove, with or without cause, any members of the Investment Committee and the Administrative Committee and required to appoint their successors. Pursuant to Section 13(m) of the Plan Documents and under ERISA, at all relevant times until at least March 2016, the Finance Committee had an ongoing duty to review the continued prudence of its appointments of the Investment Committee and Administrative Committee members. The Investment Committee and the Administrative Committee were required to report to the Finance Committee on an ongoing basis any information as is necessary and appropriate to permit the Finance Committee to carry out that duty. As such, at all relevant times until at least March 2016, the Finance Committee was a fiduciary of the Plans pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

37. **Charlene Barshefsky** was a member of the Finance Committee between 2007 and 2017 and served as the Chair of the Finance Committee between 2009 and 2017. She has been a Member of Intel's Board of Directors since 2004. Ms. Barshefsky is currently a Partner of the law firm Wilmer Cutler Pickering Hale and Dorr LLP, where she is the Chair of the International Trade, Investment and Market Access Practice Group. She serves on the Boards of Directors of American Express Company, The Estée Lauder Companies Inc., and Starwood Hotels & Resorts Worldwide, Inc. Ms. Barshefsky lives in Washington, D.C.

38. **Susan L. Decker** served on Intel's Board of Directors between 2004 and 2016, and on the Finance Committee between 2009 and 2011. Ms. Decker was Intel's Chief Financial Officer from 2000 to 2007, and then President of Yahoo! Inc. from June 2007 to April 2009. According to her Linked-In Profile, Ms. Decker is currently the Chief Executive Officer of Raftr and is a member of the Board of Directors for Vox Media, Inc., Vail Resorts, SurveyMonkey, Costco Wholesale, and Berkshire Hathaway. Ms. Decker lives in San Francisco, California.

39. **John J. Donahoe** was a Member of the Finance Committee from March 2009 to May 2017. He served on Intel's Board of Directors from 2009 to 2017. He has been the Chairman of the Board of Directors of PayPal Holdings, Inc., located in San Jose, California since July 2015. He is a Member of the Advisory Board and Director of eVolution Global Partners, LLC, a global venture capital firm that specializes in early stage investments within the information technology and media sectors. Mr. Donahoe was President and CEO of eBay from March 2008 to July 2015. Since 1982, he worked as Worldwide

Managing Director of Bain & Company, a global management consulting firm, becoming the firm's President and Chief Executive Officer ("CEO") in 1999 to 2005. He has currently been serving as President and CEO of ServiceNow since April 2017. Mr. Donahoe lives in Portola Valley, California.

40. **Reed E. Hundt** was a Member of the Finance Committee from 2010 to at least 2016. Mr. Hundt has served on Intel's Board of Directors since 2001 and is presently on the Audit Committee and Compensation Committee. He has been an advisor to the private equity firm Blackstone Group since 2010. He is also a Principal at REH Advisors, a business advisory firm and CEO of Coalition for Green Capital, both since 2009. He was Chairman of the Federal Communications Commission from 1993 to 1997. Mr. Hundt practiced law at Latham & Watkins LLP from 1975 to 1993. According to his LinkedIn Profile, Mr. Hundt lives in Washington, D.C.

41. **James D. Plummer** was a Member of the Finance Committee from 2006 to May 2017. He has served on Intel's Board of Directors since 2005. He is a Professor and the Dean of the School of Engineering at Stanford University in Stanford, California. He has also been an Independent Director at Cadence Design Systems. Mr. Plummer lives in Portola Valley, California.

42. **Frank D. Yeary** has been a member of Intel's Board of Directors since 2009, and was a member of the Finance Committee from 2009 until at least 2015. Mr. Yeary is an international investment banker. Prior to 2004, he served as the global head of the Technology, Media and Telecom investment banking practice at Salomon Smith Barney. He served at Citigroup as the Global Head of Mergers and Acquisitions from 2004 to July 2008. Mr. Yeary was co-founder and the Executive

Chairman of an advisory firm, CamberView Partners, which is located in San Francisco and describes itself as a "boutique advisory firm that provides public companies with the advice and expertise they need to succeed with their institutional investors." He has served as a member of Executive Council at Cohesive Capital Partners, a co-investment firm that makes "direct investments alongside high quality private equity sponsors that are leading the transactions." Why CamberView, Camberview Partners, http://www.camberview.com/whycamberview/ (last visited October 15, 2015). According to his Linked-in Profile, Frank D. Yeary lives in the San Francisco Bay Area.

43. Defendants Charlene Barshefsky, Susan L. Decker, John J. Donahoe, Reed E. Hundt, James D. Plummer, and Frank D. Yeary are collectively, referred to the "**Finance Committee Defendants**." Since at least October 29, 2009, the Finance Committee and the Finance Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

Chief Financial Officer Defendants

44. According to the 2016 and 2017 Form 5500s for the Plans and pursuant to the resolution of the Intel's Board of Directors, the Plans were purportedly amended effective March 2016 to replace the Finance Committee with the Chief Financial Officer of Intel with respect to the Finance Committee's responsibilities regarding the

appointment, retention, and removal of the members of the Investment and Administrator Committees. Pursuant to Section 13(b) of the Plan Documents and the resolution, effective March 2016, the Chief Financial Officer is responsible for the appointment, retention, and removal of the members of the Investment and Administrative Committees. Effective March 2016, the Chief Financial Officer is authorized to remove, with or without cause, any members of the Investment or Administrative Committee and required to appoint their successors. Pursuant to Section 13(m) of the Plan Documents and under ERISA, effective March 2016, the Chief Financial Officer has an ongoing duty to review the continued prudence of its appointments of the Investment and Administrative Committee members. The Investment and Administrative Committees are required to report to the Finance Committee on an ongoing basis any information as is necessary and appropriate to permit the Chief Financial Officer to carry out that duty. As such, effective March 2016, the Chief Financial Officer is a fiduciary of the Plans pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

45. **Stacy Smith** was the Chief Financial Officer of Intel from October 2007 to September 2016. Mr. Smith originally joined Intel in 1988 and has held positions in Finance, Sales and Marketing, and Information Technology. He became vice president of Sales and Marketing in 2002 and was appointed assistant chief financial officer in March 2006. Mr. Smith retired from Intel in January 2018 and is currently the Non-Executive Chairman of the Board Directors of Autodesk, Inc. He lives in the San Francisco Bay Area.

46. **Robert H. Swan** was the Chief Financial Officer and Executive Vice President of Intel from October 2016 until January 31, 2019. He was named interim chief

executive officer of Intel on June 21, 2018. Mr. Swan oversees Intel's global finance organization, Information Technology and the Corporate Strategy Office. According to his LinkedIn Profile, Robert H. Swan lives in the San Francisco Bay Area.

47. **Todd Underwood** was the Interim Chief Financial Officer of Intel from January 31, 2019 to April 2, 2019. Prior to his January 31, 2019 appointment to CFO, Mr. Underwood was vice president of finance and director of corporate planning and reporting since August 2016.

48. **George S. Davis** has been the Chief Financial Officer of Intel since April 3, 2019. Prior to his April 3, 2019 appointment to CFO, Mr. Davis was the chief financial officer and executive vice president of Qualcomm, Inc.

49. Defendants Stacy Smith, Robert H. Swan, Todd Underwood, and George S. Davis are collectively referred to as the "**Chief Financial Officer Defendants**." Since at least March 2016, the Chief Financial Officer Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their role as the Chief Financial Officer of Intel and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

Nominal Defendants

50. The Intel 401(k) Savings Plan ("the 401(k) Savings Plan") is and at all relevant times has been an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and a "defined contribution plan" or "individual account plan" within the

meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). Intel originally established the 401(k) Savings Plan as part of the Intel Corporation Profit-Sharing Retirement Plan ("the Profit Sharing Plan") effective July 1, 1979. Intel bifurcated the Profit Sharing Plan into the Retirement Contribution Plan and the 401(k) Savings Plan effective January 1, 1996. Prior to January 1, 2011, the 401(k) Savings Plan was known as the Intel Corporation 401(k) Savings Plan. The 401(k) Savings Plan is maintained and sponsored by Intel.

51. **The Intel Retirement Contribution Plan** ("the Retirement Contribution Plan") is and at all relevant times has been an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and a "defined contribution plan" or "individual account plan" within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). Intel established the Profit Sharing Plan effective July 1, 1979, and bifurcated it into the 401(k) Savings Plan and the Retirement Contribution Plan effective January 1, 1996. Prior to January 1, 2011, the Retirement Contribution Plan was known as the Intel Corporation Profit Sharing Retirement Plan. The Retirement Contribution Plan is maintained and sponsored by Intel.

Relevant Non-Parties

52. **Intel Corporation.** Founded in 1968, Intel Corporation ("Intel") is a technology company that designs and builds processors, motherboards, electronic disk, storage, mobile chips and other technologies and devices related to communications and computing, and is headquartered in Santa Clara, California. As of December 31, 2017, Intel had over 102,000 employees worldwide, with approximately 50% of these employees located in the United States. Intel employs significant numbers of

people in California, Colorado, Arizona, New Mexico, Washington, Oregon, Massachusetts, and Utah. Intel is and at all relevant times has been the plan sponsor of the 401(k) Savings Plan and the Retirement Contribution Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B).

53. **Intel Capital Corporation.** Founded in 1991, Intel Capital Corporation ("Intel Capital") is the corporate venture capital division and a subsidiary of Intel. Headquartered in Santa Clara, California, Intel Capital operates as an investment firm that is focused on equity investments related to technology startups, global investments, and mergers and acquisitions. Intel Capital invests in developers and providers of hardware, software, and services worldwide in sectors including cloud and storage, mobility, digital media, security, robotic technologies, and semiconductor manufacturing. According to Intel Capital's website, since 1991, Intel Capital has invested over $12 billion in over 1,500 companies in over 55 countries. Between 1998 and 2016, Intel Capital increased its international investing from less than 5% of its investment dollars to about 42%. In 2016, Intel Capital invested $455 million in 87 companies, including 34 new ones. In 2017, Intel Capital invested $690 million in 87 companies, including 42 new ones. In its history, Intel Capital has contributed billions in cash to Intel.

54. **The Intel Minimum Pension Plan.** The Intel Minimum Pension Plan ("the DB Plan"), formerly known as the Intel Defined Benefit Pension Plan, is and at all relevant times has been an "employee pension benefit plan" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and a defined benefit plan or individual account plan within the meaning of ERISA § 3(35), 29

U.S.C. § 1002(35). The DB Plan and the Retirement Contribution Plan operate as what is known as a "floor offset" arrangement, whereby the DB Plan provides the floor and benefits to be paid are offset to the extent that benefits under the Retirement Contribution Plan are greater than those provided by the DB Plan. The DB Plan is maintained and sponsored by Intel.

55. **Confidential Witness No. 1.** Confidential Witness No. 1 was a participant within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the 401(k) Savings Plan and the Retirement Contribution Plan between at least 2009 and 2016. Confidential Witness No. 1 is a former employee of Intel who worked for Intel from approximately 1987 to 2016 and was as a business analyst in the Information System Department. Between at least 2011 and 2015, Confidential Witness No. 1's account in the Retirement Contribution Plan was invested in the Intel Global Diversified Fund and was invested in the Intel Funds only because he was not able to invest his Retirement Contribution Plan monies in other investments. Between approximately 2011 and 2015, Confidential Witness No. 1 raised issues with Stuart Odell and then Ravi Jacob issues about the poor performance and high expense ratio or fees for the Intel GDF and the Plans' investment in hedge funds. After raising these issues a number of times in writing, Confidential Witness No. 1 was required to attend and did attend an in-person one-on-one meeting with Stuart Odell and Ravi Jacob in approximately April 2015 where these issues were discussed for a couple of hours.

IV. CLASS ALLEGATIONS

56. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class:

> All participants in the Intel Retirement Contribution Plan and the Intel 401(k) Savings Plan, whose accounts were invested in any one of the Intel Target Date Funds, the Intel Global Diversified Fund, or the Intel 401K Global Diversified Fund at any time on or after October 29, 2009.

57. Excluded from the Class are the following persons: (a) Defendants, (b) any fiduciaries of the Plans; (c) any officers or directors of Intel; and (d) any member of the immediate family of and any heirs, successors or assigns of any such excluded party.

A. Numerosity and Impracticability of Joinder

58. Joinder of all members of the Class would be impracticable based on the number and geographic diversity of the members of the Class. Based on the 2018 Form 5500 filed with the Department of Labor, the 401(k) Savings Plan had over 72,000 participants and/or beneficiaries as of December 31, 2018. Most of these participants had their Plan investments in or were defaulted to an Intel Target Date Fund. Based on the most recent Form 5500 filed with the Department of Labor for 2018, the Retirement Plan had over 38,000 participants and/or beneficiaries as of December 31, 2018. The Global Diversified Fund was the only available investment for the vast majority of Retirement Plan participants before January 1, 2015 and continue to be the default investment option of the Retirement Contribution Plan after that date.

59. According to Intel's website, it has locations in at least the following states: Arizona, California, Colorado, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Illinois, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York,

North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. As such, the members of the Classes are also geographically dispersed. The Class satisfies the numerosity requirement because it is composed of thousands of persons, in numerous locations.

B. Commonality

60. Plaintiffs' claims raise common questions that will have common answers for each member of the Class with respect to liability and relief. Some of the common questions of law and fact for the Class include:

A. Whether the Investment Committee was a fiduciary for the Plans;

B. Whether the Investment Committee's fiduciary duties included managing the Plans' assets, selecting, monitoring, and removing or replacing the investment options for the Plans, and monitoring the performance of the investment options and their fees and expenses;

C. Whether the Investment Committee's fiduciary duties included managing the Plans' assets, selecting, monitoring, and replacing the asset allocation strategy adopted for the Intel Funds, selecting, monitoring, and removing or replacing the underlying investments to which the Intel Funds allocated the Plans' assets.

D. Whether the Investment Committee breached its fiduciary duties in selecting the Intel Funds as investments of the Plans including by failing to give appropriate consideration to facts and circumstances relevant to the fees and expenses and performance of the Intel Funds;

E. Whether the Investment Committee breached its fiduciary duties to the Plans and their participants in constructing and managing the Intel Funds including by failing to give appropriate consideration to facts and circumstances relevant to the asset allocation strategy it adopted and implemented for the Intel Funds;

F. Whether the asset allocation models chosen by the Investment Committee for the Intel Funds deviate and deviated from prevailing standards for target date funds and balanced funds;

G. Whether the Investment Committee prudently and loyally selected and managed the underlying funds to which the Intel Funds allocated the Plans' assets;

H. Whether, the Investment Committee breached its fiduciary duties by failing to properly monitor and deciding to keep the Intel Funds as the investments under the Plans and/or control the fees and expenses of the Funds;

I. Whether the Investment Committee breached its fiduciary duties by failing to modify the asset allocation models and/or engage in a proper analysis of the fees and expenses and performance of those models

J. Whether the Plans and their participants suffered losses as a result of the Investment Committee's fiduciary breaches;

K. Whether the Administrative Committee was a named fiduciary for the Plans;

L. Whether the Administrative Committee breached its fiduciary duties to the Plans and their participants by failing to provide adequate

disclosures about the Intel Funds and/or misinforming participants about the Intel Funds;

M. Whether the Administrative Committee issued Summary Plan Descriptions that failed to disclose and explain the risks associated with the Intel Funds' asset allocations or the accompanying risks associated with investments in the Intel Funds;

N. The appropriate remedies for the breaches by the Investment Committee and Administrative Committee.

C. Typicality

61. Plaintiffs' claims are typical of the claims of the Class because his claims arise from the same event, practice and/or course of conduct as other members of the Class. Plaintiffs' claims challenge whether the fiduciaries of the Plans acted consistently with their fiduciary duties and whether their breaches caused losses or otherwise harmed the Plans and their participants. These are claims common to and typical of other Class members. Moreover, these claims seek recovery on behalf of the Plans.

62. Plaintiffs' claims are typical of the claims of the Class because like all participants in the Plans, whose accounts were invested through any of the Intel Target Date Fund, the Investment Committee chose the asset allocation model, the asset classes, and the funds representing the selected asset classes for every Intel TDF, including the Intel Target Date 2030 Fund, the Intel Target Date 2035 Fund, the Intel Target Date 2040 Fund, and the Intel Target Date 2045 Fund in which Plaintiffs invested in the 401(k) Savings Plan.

63. Plaintiffs' claims are typical of the claims of the Class because like all participants in the Plans, whose accounts were invested through any of the Global

Diversified Funds, the Investment Committee chose the asset allocation model, the asset classes, and the funds representing the selected asset classes for the Global Diversified Fund in which Plaintiffs invested in the Retirement Contribution Plan.

D. Adequacy

64. Plaintiffs will fairly and adequately protect the interests of the Class. He is committed to the vigorous representation of the Class.

65. Defendants do not have any unique defenses against Plaintiffs that would interfere with Plaintiffs' representation of the Class.

66. Plaintiffs have engaged counsel with extensive experience prosecuting class actions in general and ERISA class actions in particular.

E. Rule 23(b)(1)

67. The requirements of Rule 23(b)(1)(A) are satisfied in this case. Fiduciaries of ERISA-covered plans have a legal obligation to act consistently with respect to all similarly situated participants and to uniformly act in the best interests of the Plans and their participants. As this action challenges whether Defendants acted consistently with their fiduciary duties to the Plans, prosecution of separate actions by individual members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the fiduciaries of the Plans.

68. The requirements of Rule 23(b)(1)(B) are satisfied in this case. As Administration of the Plans treated all similarly situated participants be treated consistently, whether Defendants fulfilled their fiduciary obligations with respect to the Plans and the Plans' participants in

this action would, as a practical matter, be dispositive of the interests of the other members of the Class regardless of whether they are parties to the adjudication.

F. Rule 23(b)(2)

69. The requirements of Rule 23(b)(2) are met in this action. Defendants have applied the same or substantially similar investment policies and investment options in the Plans that cover all members of the Class. The breaches alleged against Defendants on behalf of the Class relate to policies that applied to all members of the Class. As such, Defendants have acted or refused to act on grounds generally applicable to the Class as a whole.

70. The primary relief sought on behalf of the Class is a determination that Defendants breached their fiduciary duties, a determination of the amount by which those breaches adversely affected the Plans rather than individual members of the Class, and a consequent order requiring Defendants to make good those losses to the Plans. Such relief is accomplished by issuance of a declaration or an injunction and therefore the primary requested relief constitutes final injunctive or declaratory on behalf the Class with respect to the Plans.

G. Rule 23(b)(3)

71. The requirements of Rule 23(b)(3) are also satisfied. The common questions of law and fact concern whether Defendants breached their fiduciary duties to the Plans. Because Class members are those participants whose accounts were invested in the affected investments, common questions related to liability will necessarily predominate over individual questions. Similarly, as relief will be on behalf of and will flow to the Plans, common questions related to remedies and relief will likewise predominate over individual issues.

72. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The losses suffered by many of the individual members of the Classes are relatively small in proportion to the substantial cost to bring this litigation, and it would therefore be impracticable for individual members to bear the expense and burden of individual litigation to enforce their rights. The fiduciaries of the Plans have an obligation to treat all similarly situated participants similarly and are subject to uniform standards of conduct under ERISA. Thus, the members of the Class have an interest in having this action proceed in a single action. As such, no Class member has an interest in individually controlling the prosecution of this matter.

73. Plaintiffs and their counsel are not aware of any other lawsuit filed by any member of the Class concerning this controversy, other than (a) *Sulyma v. Intel Corp. Inv. Policy Comm.*, No. 5:15-cv-04977 (N.D. Cal.), which the Court consolidated with this action, and (b) *Lo v. Intel Corp.*, No. 5:16-cv-00522 (N.D. Cal.), which was consolidated with this action along with the Sulyma action.

74. This District is the most desirable forum for concentration of this litigation because: (1) Intel is headquartered in this District; (2) a number of the actions challenged by this Complaint took place in this District, chiefly, on information and belief, Investment Committee meetings; (3) the Plans are administered in or near this District; (4) many of the employees of the company are located in or near this District; and (5) many of the employees of Intel named as Defendants can be found in this District.

75. Given the nature of the allegations, there are no difficulties likely to be encountered in the management of this matter as a class action.

V. FACTUAL ALLEGATIONS

A. Overview of the Plans and the Intel Investment Options

1. The 401(k) Savings Plan

76. Since it was established, the 401(k) Savings Plan has been amended and restated multiple times. The Plan was amended and restated effective January 1, 2011. Since 2014, the written instrument of the 401(k) Savings Plan has been the 401(k) Savings Plan Document amended and restated effective January 1, 2014.

77. The 401(k) Savings Plan is a contributory defined contribution plan covering eligible United States employees of Intel Corporation and its subsidiaries and affiliates. All employees who become eligible to participate in the 401(k) Savings Plan are automatically enrolled in it pursuant to Section 3(a) of the Plan and the Plan's definition of "Eligible Employee," unless they make an affirmative election not to participate.

78. Benefits provided under the 401(k) Savings Plan are funded by participants' tax-deferred contributions and any discretionary contributions made by Intel, taking into account investment returns and losses as well as expenses.

79. Starting in 2007, Intel began to automatically enroll employees who were eligible to participate in the 401(k) Savings Plan but who had not yet enrolled, unless they opted out by affirmatively electing otherwise during a forty-five day opt-out period. According to Section 3 of the 401(k) Savings Plan Document, such participants were deemed to have elected to contribute 3% of their regular earnings to their 401(k) Plan account, absent an affirmative election otherwise. This contribution then automatically increased by one percentage point each successive year, up to a maximum deferral of 10% of the

participant's pre-tax earnings. Pursuant to Section 3(a)(i) of the 401(k) Plan document, employees who became eligible to participate in the 401(k) Plan on or after January 1, 2013 were also automatically enrolled in the Plan. If such participants did not opt-out within a forty-five day opt-out period, they were deemed to have elected to contribute 6% of their regular earnings to their 401(k) Plan account, absent an affirmative election otherwise. This contribution then automatically increased by two percentage points each successive year, up to a maximum deferral of 16% of the participant's pre-tax earnings.

80. Section 8 of the 401(k) Savings Plan Document sets forth the Vesting and Forfeiture of the Plan. Pursuant to Section 8(a), participants are 100% vested and nonforfeitable in their contributions to their accounts in the Plan. Pursuant to Section 8(a), participants are 100% vested and nonforfeitable in their Retirement Contribution Account, representing the employer's contribution, in the Plan upon the occurrence of any of the following: (a) attainment of age 60; (b) death; (c) total and permanent disability; (d) job elimination; (e) termination of employment as a result of a divestiture. Section 8(c) of the 401(k) Savings Plan Document provides the following vesting schedule for a participant who does not meet any of the above conditions:

Completed Years of Service	Nonforfeitable Percentage
Less than 2	0 (Percent)
2 but less than 3	20 (Percent)
3 but less than 4	40 (Percent)
4 but less than 5	60 (Percent)
5 but less than 6	80 (Percent)

6 or more	100 (Percent)

81. According to its 2015 Form 5500, as of December 31, 2015, the 401(k) Savings Plan had approximately 67,000 participants with account balances and approximately $8.5 billion in total assets. According to its 2016 Form 5500, as of December 31, 2016, the Plan had over 69,000 participants with account balances and approximately $9.74 billion in total assets. According to its 2017 Form 5500, as of December 31, 2017, the Plan had over 71,000 participants with account balances and approximately $ 11.82 billion in total assets. According to its 2018 Form 5500, as of December 31, 2018, the Plan had over 72,000 participants with account balances and approximately $11.67 billion in total assets.

82. Pursuant to Section 12(a) of the 401(k) Savings Plan Document, participants in the 401(k) Savings Plan may direct the investment of their individual account balances into the investment options offered by the Plan and established by the Investment Committee.

83. Among the investment options of the 401(k) Savings Plan are and have been the Intel TDFs and the 401K Global Diversified Fund. The Intel TDFs are the 401(k) Savings Plan's default investment options.

84. The Investment Committee designated and continues to designate the Intel TDFs as the default investment options of the 401(k) Savings Plan. Pursuant to Section 12(a) of the 401(k) Savings Plan Document, for any participant who either enrolls in the Plan or is automatically enrolled in the Plan and fails to make an investment election, his or her deferred compensation is by default invested in a TDF that corresponds to his or her age and assumed retirement age of 65. If a participant at any other time fails to direct how all portions of his or her accounts in the 401(k) Savings Plan are to be invested,

including when an investment option is removed from the Plan's investment lineup, those portions will also by default be invested in a Target Date Fund. For such participants the Intel Target Date Funds is their sole investment.

85. In 2011, Intel mapped existing participant accounts in the 401(k) Savings Plan into the customized Intel TDFs in the 401(k) Savings Plan unless the participants opted out. According to a PIMCO DC Dialogue interview with Stuart Odell, in March/April 2014, approximately two-thirds of existing participants were mapped into the Intel TDFs under this policy.

86. As of 2015, approximately $3.63 billion of the 401(k) Savings Plan's assets were in the Intel TDFs.[2]

2. The Retirement Contribution Plans

87. Since it was established, the Retirement Contribution Plan has been amended and restated multiple times. The Retirement Contribution Plan was amended and restated effective January 1, 2011. Since 2014, the Retirement Contribution Plan has been maintained pursuant to the Intel Retirement Contribution Plan Document amended and restated effective January 1, 2014.

88. Before January 1, 2011, employees were automatically enrolled in the Retirement Contribution Plan as soon as they became eligible to participate pursuant to Section 3(a) of the Plan and the Plan's definition of "Eligible Employee." Effective January 1, 2011, the Retirement Contribution Plan was amended to

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[2] Robert Steyer, *Intel hires manager for target-date, global funds*, Pensions & Investments (June 15, 2015), http://www.pionline.com/article/20150615/PRINT/306159980/intel-hires-manager-for-target-date-global-funds

preclude employees hired on or after January 1, 2011 from participating in the Plan. While this Plan is not available to employees hired on or after January 1, 2011, the Plan continues to cover eligible United States employees of Intel Corporation and its subsidiaries and affiliates who were hired prior to January 1, 2011.

89. The Retirement Contribution Plan is a non-contributory defined contribution plan. Benefits provided under the Retirement Contribution Plan are funded by discretionary contributions by Intel, taking into account investment returns and losses as well as expenses. Pursuant to Section 4(a) of the Intel Retirement Contribution Plan Document, the amounts of any discretionary contributions by Intel to the Retirement Contribution Plan are determined annually by Intel's Board of Directors in its sole and absolute discretion. Participants do not and did not make employee contributions to the Retirement Contribution Plan.

90. Section 8 of the Retirement Contribution Plan Document sets forth the Vesting and Forfeiture terms of the Plan. Pursuant to Sections 8(a) and (b), participants' interests become 100% vested and nonforfeitable upon the occurrence of any of the following: (a) attainment of age 60 (if they became participants after January 1, 1987) or age 55 (if they became Participants on or before January 1, 1987); (b) death; (c) total and permanent disability; (d) job elimination; (e) termination of employment as a result of a divestiture or formation of the Care Innovations Joint Venture. Section 8(c) of the Retirement Contribution Plan Document provides the following vesting schedule for a participant who was an Employee on or after December 31, 2007:

Completed Years of Service	Nonforfeitable Percentage
Less than 2	0 (Percent)

2 but less than 3	20 (Percent)
3 but less than 4	40 (Percent)
4 but less than 5	60 (Percent)
5 but less than 6	80 (Percent)
6 or more	100 (Percent)

For all other participants, the following vesting schedule applies:

Completed Years of Service	Nonforfeitable Percentage
Less than 3	0 (Percent)
3 but less than 4	20 (Percent)
4 but less than 5	40 (Percent)
5 but less than 6	60 (Percent)
6 but less than 7	80 (Percent)
7 or more	100 (Percent)

91. According to its 2015 Form 5500, as of December 31, 2015, the Retirement Contribution Plan had approximately 46,000 participants with account balances and approximately $6.3 billion in total assets. According to its 2016 Form 5500, as of December 31, 2016, the Plan had approximately 42,000 participants with account balances and approximately $6.07 billion in total assets. According to its 2017 Form 5500, as of December 31, 2017, the Plan had approximately 40,000 participants with account balances and approximately $6.59 billion in total assets. According to its 2018 Form 5500, as of December 31, 2018, the Plan had approximately 38,000 participants with account balances and approximately $6.23 billion in total assets.

92. Before January 1, 2015, the investment options provided under the Retirement Contribution Plan

included the Intel GDF as well as some of Intel's TDFs and Intel's stable value fund.

93. Prior to January 1, 2015, only participants in the Retirement Contribution Plan who were aged 50 and over could invest their accounts in any combination of the Intel GDF, the Intel TDFs, and the stable value fund provided under the Plan. According to Section 12(a) of the Retirement Contribution Plan Document, between January 1, 2007 and March 31, 2009, participants over the age of 50 could elect to invest their Plan accounts in an Intel TDF. As of April 1, 2009, participants over the age of 50 were permitted to elect to invest their Plan accounts in an Intel TDF or the Intel Stable Value Fund.

94. Before January 1, 2015, participants in the Plan who were under the age of 50 were not allowed to direct the investment of Intel's contributions on their behalf. Instead, the Investment Committee had the discretionary authority to direct the investment of those contributions. Pursuant to the Investment Committee's direction, before January 1, 2015, contributions made on behalf of participants under the age of 50 were required to be invested in the Intel GDF.

95. Prior to January 1, 2015, because the participants who could invest in the Intel TDFs were limited to those aged 50 and over, the Intel TDFs provided under the Plan were limited to those that corresponded to those participants' ages and assumed retirement age of 65. For example, in 2013, the Target Date Funds offered under the Plan were limited to the Target Date 2005-2025 Funds and the Target Date Income Fund.

96. Effective January 1, 2015, the Retirement Contribution Plan was amended to eliminate non-participant-directed investment in the Intel GDF and allow participants to elect to have their accounts invested

in any of the investment options made available under the Plan regardless of their ages.

97. In approximately 2015, the investment options for the Retirement Contribution Plan was expanded to include all of Intel's TDFs (*i.e.*, the Target Date 2005–2055 Funds and the Target Date Income Fund) so that not only participants aged 50 and over but also participants under 50 can direct the investment of their accounts in an Intel TDF corresponding to their age.

98. The Investment Committee designated and continues to designate the GDF as the default investment option of the Retirement Contribution Plan. To the extent that these contributions are made, they are invested by default in the Intel GDF unless participants elect otherwise. In other words, the Intel GDF becomes the sole investment option of these participants who do not direct their accounts to be invested in other investments options in the Plan.

3. <u>The Target Date Funds and the Global Diversified Funds</u>

a. The Intel Funds

99. The Intel TDFs offered under the 401(k) Savings Plan include the following: (a) Target Date 2005 Fund; (b) Target Date 2010 Fund; (c) Target Date 2015 Fund; (d) Target Date 2020 Fund; (e) Target Date 2025 Fund; (f) Target Date 2030 Fund; (g) Target Date 2035 Fund; (h) Target Date 2040 Fund; (i) Target Date 2045 Fund; (j) Target Date 2050 Fund; (k) Target Date 2055 Fund; and (l) Target Date Income Fund (collectively "401(k) TDFs").

100. The Intel TDFs offered under the Retirement Contribution Plan include the following: (a) Retirement Contribution Target Date 2005 Fund; (b) Retirement Contribution Target Date 2010 Fund; (c) Retirement

Contribution Target Date 2015 Fund; (d) Retirement Contribution Target Date 2020 Fund; (e) Retirement Contribution Target Date 2025 Fund; (f) Retirement Contribution Target Date 2030 Fund; (g) Retirement Contribution Target Date 2035 Fund; (h) Retirement Contribution Target Date 2040 Fund; (i) Retirement Contribution Target Date 2045 Fund; (j) Retirement Contribution Target Date 2050 Fund; (k) Retirement Contribution Target Date 2055 Fund; and (l) Retirement Contribution Target Date Income Fund (collectively "RC TDFs").

101. The Intel TDFs, like other target date funds available in the market, are designed for investors expecting to retire around the year indicated in each Intel TDF's name. As represented in the fund fact sheets, the Intel TDFs are supposed to be managed in such a way that the funds gradually become more conservative over time as they approach their target dates.

102. The Intel GDF offered under the 401(k) Savings Plan is called the "401K Global Diversified Fund." The Intel GDF offered under the Retirement Contribution Plan is called the "Global Diversified Fund."

103. The two Intel GDFs are investment options sharing the same asset allocation model that invest in a mix of asset classes.

104. The Intel TDFs and GDFs offered as investment options under the Plans were, until December 31, 2017, "asset allocation models." As collective investment trusts ("CITs"), since January 1, 2018, the Intel TDFs and GDFs are now structured as funds that issue units to investors.

105. An asset allocation fund is a portfolio consisting of various asset classes such as domestic and international equities as well as bonds and cash equivalents. Asset allocation funds are often structured in such a way that the

portfolio does not directly invest in securities representative of the asset classes but rather invests in underlying funds belonging to the asset classes. Asset allocation funds come in several varieties, which include balanced funds and target date funds.

106. Until December 31, 2017, as asset allocation models or portfolios, the Intel TDFs and the Intel GDFs did not issue shares or units and were not actual funds in which participants in the 401(k) Savings Plan and the Retirement Contribution Plan held shares or units. Rather, each of the Intel Funds was effectively an investment strategy that, pursuant to the asset allocation adopted for that Intel Fund, directed the assets of the Plans invested in that Intel Fund to be allocated to certain underlying funds and provided each participant investing in the Intel Fund with a proportionate interest in those underlying funds. In other words, plan participants whose accounts were invested in any of the Intel Funds held a direct interest in each of the underlying master trust investment accounts described below that in turn held hedge funds, private equity, commodities, etc.

b. The Master Trust Investment Accounts

107. The underlying funds of the Intel Funds that are relevant to this action are held in the Intel Corporation Retirement Plans Master Trust ("the Master Trust"). The Master Trust holds the assets of the 401(k) Savings Plans and the Retirement Contribution Plan as well as the assets of the Intel Minimum Pension Plan, Intel's defined benefit pension plan. The Master Trust includes multiple investment accounts ("the Master Trust Investment Accounts"). The underlying funds in which the Intel Funds invest — or more precisely, to which the assets of the 401(k) Savings Plan and the Retirement Contribution

that are invested in the Intel Funds are allocated — are the Master Trust Investment Accounts.

108. As of December 31, 2014, the Master Trust had nine Master Trust Investment Accounts, which included among other accounts the Hedge Fund Account, the Alternative Investments Account, the Commodities Fund Account, and the Emerging Markets Fund Account collectively "the Non-Traditional Asset Class Accounts"). Prior to 2010, the Alternative Investments Account included hedge funds and commodities in addition to private equity. In 2010, the hedge funds in that Account were moved into two accounts, i.e., an Absolute Return Fund Account and a Long Short Fund Account. Then, in 2011, the Investment Committee merged the two hedge fund accounts into the Hedge Fund Account while at the same time increasing the number of hedge fund managers and increasing the Plans' investments in hedge funds from approximately $750 million to approximately $1.86 billion. The Commodities Fund Account was added in 2010.

109. As of December 2014, the rest of the Master Trust investment Accounts included Global Bond Fund Account (which invested largely in debt securities), International Stock Fund Account (which invested in two international stock funds and equity securities), Small Cap Fund Account (which invested in three small cap funds and small cap equity securities), Stable Value Fund Account (which invested in several guaranteed investment contracts and pooled separate accounts), and U.S. Large Cap Fund Account (which invested in four large cap equity funds) (collectively "the Traditional Asset Class Accounts").

110. In or about May 2015, a portion of the Hedge Fund Account was spun off to form the Growth Oriented Hedge Fund Account and the remaining portion of the

Hedge Fund Account was renamed the Defensive Oriented Hedge Fund Account. The Commodities Fund Account was renamed the Diversified Real Assets Fund Account. As of December 31, 2015, the Master Trust had thirteen Master Trust Investment Accounts, which included among other accounts the Defensive Oriented Hedge Fund Account (formerly the Hedge Fund Account), the Growth Oriented Hedge Fund Account, the Alternative Investments Account, the Diversified Real Assets Fund Account (formerly the Commodities Fund Account), and the Emerging Markets Fund Account (collectively "the Non-Traditional Assets Class Accounts").

111. The Hedge Fund Account invested in hedge fund investment partnerships. As of December 31, 2014, the Master Trust Investment Account had approximately $2.71 billion in total assets.

112. The Defensive Oriented Hedge Fund Account and the Growth Oriented Hedge Fund Account invested in hedge fund investment partnerships. As of December 31, 2015, December 31, 2016, and December 31, 2017, the Defensive Oriented Hedge Fund Account had approximately $915.9 million, $668.1 million, and $691.2 million in total assets, respectively. As of December 31, 2015, December 31, 2016, and December 31, 2017, the Growth Oriented Hedge Fund Account had approximately $1.71 billion, $1.30 billion, and $1.27 billion in total assets, respectively. The two Master Trust Investment Accounts had approximately $2.62 billion in combined assets as of December 31, 2015, approximately $1.97 billion in combined assets as of December 31, 2016, and approximately $1.96 billion in combined assets as of December 31, 2017.

113. The Alternative Investments Fund Account invested in private equity investment partnerships including venture capital and private real estate and natural resources funds. The Master Trust Investment Account had approximately $814.2 million, $1.07 billion, $1.27 billion, and $1.43 billion in total assets as of December 31, 2014, December 31, 2015, December 31, 2016, and December 31, 2017, respectively.

114. The Diversified Real Assets Fund Account invested in commodities funds. The Master Trust Investment Account had approximately $293.31 million, $203.73, and $461.20 million, and $539.06 million in total assets as of December 31, 2014, December 31, 2015, December 31, 2016, and December 31, 2017, respectively.

115. The Emerging Markets Fund Account invested in emerging markets and emerging markets private equity funds. The Master Trust Investment Account had approximately $1.15 billion, $560.05 million, $503.73 million, and $634.09 million in total assets as of December 31, 2014, December 31, 2015, December 31, 2016, and December 31, 2017, respectively.

116. As of December 2015, the rest of the thirteen Master Trust Investment Accounts invested in international stock funds and equity securities, large cap equity funds, small cap equity funds and equity securities, U.S. government securities and bonds, corporate debt securities, and Treasury Inflation-Protected Securities. These accounts included the U.S. Large Cap Stock Fund Account, the U.S. Small Cap Stock Fund Account, the International Stock Fund Account, the Global Equity Fund Account, the Global Bond Fund Account, the Opportunistic Bond Fund Account, the Stable Value Fund Account, and the Treasury Inflation Protected Securities

Fund Account (collectively "the Traditional Asset Class Accounts").

117. The Master Trust Investment Accounts, including the Non-Traditional Investments Accounts, are not investment options offered in the investment lineup of the 401(k) Savings Plan or the Retirement Contribution Plans that participants can choose to direct or not to direct to invest their accounts in. Rather, each of the Intel Funds allocates portions of the participants' accounts invested in that Fund and thus the Plan's assets to the Master Trust Investment Accounts pursuant to the mix of asset classes as determined by that Fund's asset allocation strategy. In other words, if a portion of the participant's account is invested in an Intel Fund, it will be allocated to the Master Trust Investment Accounts based on the asset allocation adopted for that Fund.

118. As of December 31, 2014, the 401(k) Savings Plan and the Retirement Contribution Plan had approximately $7.8 billion and $6.7 billion in total assets, respectively. The assets of the Master Trust Investment Accounts had over $11 billion in combined value. Of that amount, approximately $4.4 billion accounted for the assets of the 401(k) Savings Plan allocated to the Master Trust Investment Accounts, and approximately $6.4 billion accounted for the assets of the Retirement Contribution Plan allocated to the Master Trust Investment Accounts.

119. As of December 31, 2015, the 401(k) Savings Plan and the Retirement Contribution had approximately $8.5 billion and $6.3 billion in total assets, respectively. The assets of the Master Trust Investment Accounts had over $10.5 billion in combined value. Of that amount, approximately $4.5 billion accounted for the assets of the 401(k) Savings Plan allocated to the Master Trust Investment Accounts, and approximately $5.6 billion

accounted for the assets of the Retirement Contribution Plan allocated to the Master Trust Investment Accounts.

120. As of December 31, 2016, the 401(k) Savings Plans and the Retirement Contribution Plan had approximately $9.74 billion and $6.07 billion in total assets, respectively. The assets of the Master Trust Investment Accounts had over $11 billion in combined value. Of that amount, approximately $5.1 billion accounted for the assets of the 401(k) Savings Plan allocated to the Master Trust Investment Accounts, and approximately $5 billion accounted for the assets of the Retirement Contribution Plan allocated to the Master Trust Investment Accounts.

121. As of December 31, 2017, the 401(k) Savings Plans and the Retirement Contribution Plan had approximately $11.82 billion and $6.59 billion in total assets, respectively. The assets of the Master Trust Investment Accounts had over $12 billion in combined value. Of that amount, approximately $5.8 billion accounted for the assets of the 401(k) Savings Plan allocated to the Master Trust Investment Accounts, and approximately $5.1 billion accounted for the assets of the Retirement Contribution Plan allocated to the Master Trust Investment Accounts.

122. The Plans have had and continue to have substantial stakes in the Intel Funds. The majority of the assets of the 401(k) Savings Plan have been and continue to be invested in the Intel Target Date Funds, the Plan's default investment options. The majority of the assets of the Retirement Contribution Plan have been and continue to be invested in the Global Diversified Fund, the Plan's default investment option and the only investment option that accounts of participants under the age of 50 could be invested in before 2015.

123. Until December 31, 2017, the Intel TDFs and the Intel GDFs were not actual funds in which participants in

the 401(k) Savings Plan and the Retirement Contribution Plan hold shares or units. Instead, Intel TDFs were managed pursuant to an asset allocation model. The Investment Committee determined the allocations and selected the underlying Master Trust Investment Accounts to which the Intel TDFs allocated the Plans' and participants' assets, but there was no actual target date fund as a distinct entity issuing shares or units to investors. Rather, each participant was placed in a portfolio managed by the Investment Committee, which provided each such participant with a proportionate interest in the underlying Investment Funds, based on the allocation mandates of the Intel TDF set by the Investment Committee. Thus, the Intel TDFs were effectively an investment management service and were not mutual funds or collective investment vehicles that issue shares or units. Rather, a plan participant held a specifically weighted selection of investments, which weighting changes over time. The Investment Committee designed, maintained, and managed the weighting and chose and managed the selected investments, i.e., the Master Trust Investment Accounts.

124. Likewise, the Investment Committee designed, maintained, and managed the Intel GDPs and dictated the asset allocation model, chose and managed the Master Trust Investment Accounts representing the various asset classes, and chose the investments and investment managers in the Master Trust Investment Accounts including, e.g., the various limited partnerships that make up the Private Equity and Hedge Funds.

c. Substantial Increases in Allocations to Non-Traditional Asset Class Accounts Beginning in 2009

125. The Intel Funds were not "funds" as such but rather a set of portfolios that directs the assets of the 401(k) Savings Plan and the Retirement Contribution Plan into the various Master Trust Investment Accounts. The Plans owned a percentage of each Master Trust Investment Account as shown in Table 1 below. The table lists, on December 31, 2011, respectively, the name of each Master Trust Investment Account, the total assets in the given Investment Account, the 401(k) Savings Plan's percentage ownership of the given Investment Account, the dollar value of the 401(k) Savings Plan's ownership of the given Investment Account, the Retirement Contribution Plan's percentage ownership of the given Investment Account, and the dollar value of the Retirement Plan's ownership of the given Investment Account.[3]

[3] Table 1 represents the Plans' holdings in the Master Trust Investment Accounts, not the Intel TDFs' and the Intel GDPs' dollar and percentage allocations to the Investment Accounts, except as to the Private Equity, Commodities, and Hedge Funds, because the specific dollar and percentage allocations of the Intel TDFs and the Intel GDPs are not available to participants. In other words, Table 1 does not represent the asset allocations of the Intel Funds as such. Using Table 1 for that purpose would understate the percentage allocations to Private Equity, Commodities, and Hedge Funds on December 31, 2011 because the remaining funds were held in part in participant accounts outside of the Diversified Fund and Intel TDF portfolios.

Table 1

Master Trust Investment Account	Assets in Master Trust Investment Account	401(k) Savings Plan %	401(k) Savings Plan $	Retirement Contribution Plan %	Retirement Contribution Plan $
US Large Cap	$1,411,807,722	45.10%	$636,725,283	54.90%	$775,082,439
Int'l Stock	$1,216,444,003	48.10%	$585,109,565	51.90%	$631,334,438
Global Bond	$2,200,337,976	17.30%	$380,658,470	54.00%	$1,188,182,507
US Small Cap	$368,890,696	54.20%	$199,938,757	45.80%	$168,951,939
Em Mkts	$963,325,120	43.20%	$416,156,452	56.80%	$547,168,668
Stable Value	$596,326,952	79.70%	$475,272,581	20.30%	$121,054,371
Private Equity	$348,400,370	0.40%	$1,393,601	99.60%	$347,006,769
Commodities	$385,501,100	36.90%	$142,249,906	63.10%	$243,251,194
Hedge Fund	$1,860,015,367	36.60%	$680,765,624	58.20%	$1,082,528,944

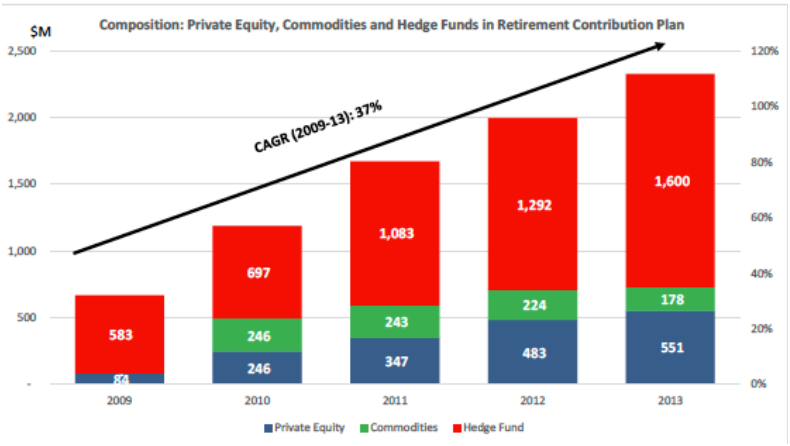
126. The Plans' financial statements filed with the Forms 5500 with the United States Department of Labor reflect similar allocations in 2012 to 2014.

127. Starting in 2009, the Investment Committee began dramatically increasing the Retirement Contribution Plan's investment in private equity, hedge funds, and commodities via the Global Diversified Fund. At the end of 2008, the Intel GDF held approximately 6.17% of its assets, or $214 million, in private equity, hedge funds, and commodities. By the end of 2009, the Intel GDF held approximately 15.33%, or $667 million, of its assets in such investments. In 2010, the Intel GDF's investment in private equity tripled from about $83 million to $245 million. In 2010, the Intel GDF's added an investment in commodities, about $245 million, and its investment in hedge funds increased from approximately $583 million in 2009 to approximately $697 million in 2010. By the end of the year, the Intel GDF held about 22.23% of its assets in commodities, private equity, and hedge funds, or about $1.2 billion. In 2011, the Investment Committee invested even more Intel GDF money into private equity, hedge funds, and commodities, increasing such investments to almost 33% of the fund's portfolio, or approximately $1.67 billion. By the end of 2013, the Intel GDF held

approximately 36.71% of its assets in private equity, hedge funds, and commodities, or approximately $2.4 billion.

128. Between 2009 and 2013, the Investment Committee caused the Intel GDF in the Retirement Contribution Plan to increase its allocation to private equity, hedge funds, and commodities by 595% and increase the dollar value of the Intel GDF investment in such investments from an estimated $214 million to almost $2.33 billion, an increase of 1,088%. These changes in investment allocations in the Intel GDF are detailed in Figure 1 below.

Figure 1



129. Prior to 2011, Defendants called Intel's customized target date portfolios LifeStage Funds. In or around 2011, the Investment Committee restructured and renamed the portfolios, calling them Target Date Funds and adding several additional target date vintages. As part of this new model, beginning in 2011, the Intel TDFs invested a very large percentage of 401(k) Savings Plan TDF assets in hedge funds and commodities, approximately 23% in 2011. The Intel TDFs also adopted

a heavy weighting in international equities in comparison to peer target date funds.

130. As Bill Parish, an independently registered investment advisor, observed in Intel Q4 2013 Earnings – Time to Fix Pension Plan (January 16, 2014), Intel's 401(k) and Retirement Plans "have been infiltrated by hedge funds," commenting that Intel's decision to invest heavily in hedge funds amounted to "institutional gambling with employees['] assets."[4]

131. As The Oregonian newspaper reported on August 30, 2014 in *What's Inside Intel's retirement plans? Hedge funds. Lots of 'em*: "Intel's 401k-type plans are unusual in a couple of ways that aren't comforting to some investors and financial advisers. It's embarked, essentially, on an experiment with nearly $14 billion in worker retirement money for more than 63,000 participants." As this article observed, Intel decided to use "expensive, opaque and potentially risky hedge funds in its main 401k investment options[]" and to "forc[e] company contributions into [hedge funds]."[5]

4. Fiduciary Responsibilities of the Investment Committee Defendants

132. The Investment Committee Defendants had the authority, discretion, and responsibility to select, monitor, and remove or replace investment options in the 401(k) Savings Plan and the Retirement Contribution Plan. Their specific responsibilities and powers included, but were not limited to, (a) making decisions with respect to

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[4] Bill Parish, *Intel Q4 2013 Earnings- Time to Fix Pension Plan*, Bill Parish - Parish & Company Registered Investment Advisor Blog (Jan. 16, 2014), http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-pension-plan/.

[5] Hunsberger, Brent, *What's inside Intel's retirement plans. Hedge funds. Lots of 'em.*, The Oregonian (Aug. 30, 2014),

selecting and removing or replacing investment options for the Plans and selecting and replacing the asset allocation strategy adopted for any of those investment options; (b) monitoring the performance and fees and expenses of the Plans' investment options on a regular basis and removing or replacing any investment options that were imprudent or disloyal; (c) monitoring the asset allocation strategy adopted for any of those investment options and replacing any asset allocation strategy that was imprudent or disloyal; and (d) appointing, monitoring, and removing any investment managers with respect to management of the Plans' investment options or investment of the Plans' assets. It is presently unknown to Plaintiffs whether, how, and to what degree the Investment Committee Defendants retain authority and discretion over the Intel TDFs and GDFs after the appointment of GTC to serve as trustee for the Intel Funds.

133. Specifically, pursuant to the Intel 401(k) Savings Plan Investment Policy Statement and the Intel Retirement Contribution Plan Investment Policy Statement, as amended and restated by the Investment Policy Committee on January 12, 2017, effective from January 12, 2017 (collectively "the Investment Policies"), the Investment Committee has the authority to appoint investment managers or trustees to manage the assets of the Plan and is responsible for reviewing the Plans' investment funds and managers, allocating assets within funds and between managers, and appointing and replacing any such funds or managers. The Investment Committee is also responsible for periodically reviewing performance, costs, and expenses of investment managers and determining the reasonableness of expenses incurred by the Plan taking into account fund expense ratios and fund returns net of expenses (both relative to peer group).

Further, the Investment Committee is responsible for selecting the investments for Plan assets and determining the performance benchmarks, asset allocation, monitoring and rebalancing criteria, and similar metrics applicable to such investment choices.

134. Pursuant to the Investment Policies, the Investment Subcommittee, a subgroup of the Investment Committee as delegated by it, is responsible for investment decisions for Plan assets including decisions relating to definition and development of investment strategies and philosophies of the Investment Committee and/or for the Plans, ratification of manager selection, and manager performance monitoring. The Investment Committee has oversight of the Investment Subcommittee, which is required to report to the Investment Committee on investment activities and decisions on a periodic basis, which is expected to be quarterly.

B. Benchmarking Investments in Defined Contribution Plans

135. Institutional investors and retirement plan fiduciaries routinely use benchmarks when selecting and monitoring investment funds and investment managers. Declaration of Samuel ("Halpern Decl.") ¶ 5, attached hereto as Exhibit A and incorporated herein by reference. Benchmarks are used when deciding whether to add a fund or manager to a set of investment offerings in a defined contribution plan and when monitoring an incumbent fund or manager in a defined contribution plan. Halpern Decl. ¶ 5; Declaration of Steve Pomerantz ("Pomerantz Decl.") ¶¶ 5–6; attached hereto as Exhibit B and incorporated herein by reference.

136. Common benchmarks include: (1) published indices such as the S&P 500; (2) peer groups such as the

categories established by Morningstar, Inc., a leading provider of investment data, and (3) specific peer alternatives within a given asset class. Halpern Decl. ¶¶ 6–7.

137. Morningstar investment data is a common resource used by institutional investors and retirement plan fiduciaries. Intel commissioned Morningstar to prepare fact sheets for investment offerings in Intel's retirement contribution plans, in which Morningstar compared the Intel TDFs, for example, to Morningstar TDF categories. Halpern Decl. ¶¶ 6–7.

138. Determining an appropriate benchmark for a given fund or manager depends largely on the stated investment strategy and the actual investments of the fund (sometimes the stated investment strategy does not match the actual fund investments). For example, a large cap growth fund is generally benchmarked against the S&P 500 (assuming the fund actually invests in large cap growth stocks). Halpern Decl. ¶ 6.

139. Morningstar classifies funds into categories, taking into account stated investment style and objectives, actual investments and asset allocations, and other factors. All the funds within a given Morningstar category share common attributes such that Morningstar groups them together. Morningstar categories include both actively managed funds (were managers pick stocks) and passively managed funds (were the fund simply tracks an index). For example, the large cap category includes actively managed funds picking large cap stocks and passive funds that track the S&P 500 index. The funds within a given category are a set of peer funds within the given asset class. Halpern Decl. ¶ 8; Pomerantz Decl. ¶ 6.

140. Morningstar places target date funds within a main category called "Balanced Funds" and, within that

subcategories by "vintage year", e.g. funds targeted to retirement in different clusters of five and ten-year periods, such as the years 2000–2010, 2011–2015, 2016–2020, etc. Halper Decl. ¶¶ 9–10.

141. Comparing a given target date fund ("TDF") to peer TDFs of the same vintage is standard and reasonable practice for several reasons related to their common goals and features. TDFs generally share the following goals and features: (1) long-term investment vehicle designed for employee-participants who do not want themselves to actively manage their retirement savings; (2) a combination of asset classes, including at least publicly traded equity, fixed income securities and cash; (3) a "glidepath" that specifies a defined, automatic decline in equity exposure over time, as the targeted retirement date approaches; and (4) moderate risk so the vehicle typically meets the definition of Qualified Default Investment Alternative ("QDIA") under Labor Department regulations. TDFs may be compared to specific competing TDFs and to larger peer groups by vintage year published by recognized firms such as Morningstar and S&P (the S&P Target Date Index Series, such as the TDF indices presented in Table 4 of Dr. Pomerantz's declaration). The Morningstar fact sheets commissioned by Intel compared the Intel TDFs to their peers in the Morningstar category for each vintage (i.e., the Intel 2030 Fund was compared to the 2030 vintage peer group).[6] Halpern Decl. ¶ 10; Pomerantz Decl. ¶ 7.

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[6] See Defined Contribution Institutional Investment Association (DCIAA) "Guide to U.S. Department of Labor Tips on Selecting Target Date Funds," Feb. 2014, p. 2; U.S. Department of Labor, "Target Date Retirement Funds—Tips for ERISA Fiduciaries," Feb. 2013, p. 2 (hereafter, "Tips").

142. The Target Date Fund mutual fund market during the relevant period was dominated by a handful large players: Fidelity, Vanguard, and T.Rowe Price. Fidelity offered both passively and actively managed TDF products. These fund families were included in the Morningstar Category for each vintage of TDF and therefore are appropriate peer funds for a given Intel TDF. Pomerantz Decl. ¶ 10.

143. The Intel GDFs invested in global stocks and bonds, making the Morningstar World Allocation Category an appropriate peer group benchmark because the constituent funds allocate to global stocks and bonds. Pomerantz Decl. ¶8. Because the GDFs were allocation funds, meaning they consist of assets in a variety of asset classes, it is appropriate to compare them to a traditional blend of 60% equities and 40% bonds as well, which has long been viewed in the investment community as a "default" benchmark for static allocation funds like the Intel GDFs. *Id.*

C. The Investment Committee Defendants Subjected the Plans and Participants to Unnecessary and Imprudent Expenses

144. In a defined contribution plan, participants' retirement benefits are limited to the value of their own individual accounts, which is based on employee and employer contributions and the gains and losses through investment in the options made available under the plan less expenses. See 29 U.S.C. §1002(34). Excessive fees and poor investment performance will significantly impair the value of a participant's account. Over time, even seemingly small differences in fees and performance can result in vast differences in the amount of benefits available at retirement. U.S. Dep't of Labor, *A Look at 401(k) Plan Fees* 1–2 (Aug. 2013), *available at*

http://www.dol.gov/ebsa/pdf/401kFeesEmployee.pdf (illustrating impact of expenses with example in which 1% difference in fees and expenses over 35 years reduces participant's account balance at retirement by 28%).

145. Multi-billion dollar defined contribution plans such as the 401(k) Savings Plan and the Retirement Contribution Plan have massive bargaining power to negotiate low-cost investment alternatives. As of December 31, 2014, and December 31, 2015, the 401(k) Savings Plan had approximately $7.9 billion and $8.5 billion in assets, respectively. As of December 31, 2014, and December 31, 2015, the Retirement Contribution Plan had approximately $6.7 billion and $6.3 billion in assets, respectively. The 401(k) Savings Plan stands in the top 0.1% of over 530,000 401(k) plans in plan assets. Investment Company Institute, *A Close Look at 401(k) Plans, 2014* ("ICI Study - 2014") at 12, available at https://www.ici.org/pdf/ppr_16_dcplan_profile_401k.pdf.

146. In 2013, in defined contribution 401(k) plans with over $1 billion in assets, the average expense ratio for target-date funds was 0.48% and the average expense ratio for non-target date balanced funds was 0.33%. Investment Company Institute, *A Close Look at 401(k) Plans, 2013*, at 51, *available at* https://www.ici.org/pdf/ppr_15_dcplan_profile_401k.pdf. In 2014, the average expense ratio for target-date balanced funds in plans with over $1 billion in assets was 0.46% and the average expense ratio for non-target date balanced funds was 0.33%. ICI Study - 2014, at 53.

147. The fees charged for investing in the Intel TDFs and the Intel GDFs have been and are significantly higher than the above-mentioned averages and to alternative target-date funds and non-target balanced funds with comparable investment styles and similar or superior

performance. Before the Investment Committee changed the Intel TDF allocations in approximately 2011, the fees for the Intel TDFs ranged from 65 basis points to 71 basis points.[7] Although the fees for the Intel TDFs were already substantially higher than index-based TDFs such as those offered by Vanguard, the increased allocation to hedge funds beginning in 2011 significantly increased the expenses of the Intel TDFs, almost doubling the range of fees to between 130 to 136 basis points. No explanation has been provided justifying or evidencing that the Investment Committee observed sufficiently rigorous, thorough, and documented bases for incurring the significantly higher fees resulting from such exposure to high-fee hedge funds and private equity. To the contrary, investing in high-fee hedge funds and private equity caused the Intel TDFs to consistently and substantially underperform Vanguard's index-based TDFs since 2011.

148. As *What's behind the changes to Intel's worker retirement plans* commented, the Intel TDFs were rising in expenses in contrast to the general trend in the industry, which was lowering expenses.[8] Similar fee reductions during that period were reported by the Investment Company Institute in their fee surveys. Pomerantz Decl. ¶ 12.

149. In 2014, the 12 Intel TDFs in the 401(k) Savings Plan had expense ratios between 1.07 and 1.09%, which exceeded the category average of 0.46% by more than

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[7] Intel 401(k) Savings Plan: Important Plan and Investment-Related Information, Including the Plan's Investment Options, Performance History, Fees and Expenses, at 6-8.

[8] Brent Hunsberger, *What's behind the changes to Intel's worker retirement plans*, The Oregonian (May 2, 2015), http://www.oregonlive.com/finance/index.ssf/2015/05/whats_behind_the_changes_to_in.html.

130%. The Intel GDFs had an expense ratio of 1.25%, which exceeded the category average of 0.33% for non-target date balanced funds by more than 270%. In 2015, the Intel Funds in the 401(k) Savings Plan charged similarly high fees. The Intel Target Date Funds in the Plan had expense ratios between 0.92% and 1.04%, and the 401K GDF had an expense ratio of 1.25%. The Intel Funds in the investment lineup of the Retirement Contribution Plan had the same or similar expense ratios as the Intel Funds in the 401(k) Savings Plan.

150. Department of Labor guidance counsels plan fiduciaries to compare actively managed funds to passive or index funds, including their respective costs and other factors. DoL has long-recognized the "cumulative effect of fees and expenses on retirement savings can be substantial;" that investment fees are by far the largest component of plan fees and expenses; that fiduciaries should "[b]e aware that higher investment management fees do not necessarily mean better performance;" and that actively managed funds generally bear higher fees than passive funds.[9] Thus, the DoL counsels plan fiduciaries to compare competing TDFs on the basis of returns, fees, and asset allocation.

> *… there are considerable differences among TDFs offered by different providers, even among TDFs with the same target date. For example, TDFs may have different investment strategies, glide paths, and investment-related fees. Because these differences can significantly affect the way a TDF performs, it is important that fiduciaries*

[9] "A Look at 401(k) Plan Fees," U.S. Department of Labor, 2019, pp. 7, 9.

understand these differences when selecting a TDF as an investment option for their plan.[10]

Performance of the TDFs

151. First, as noted above, all TDFs share common fundamental traits so it is fair to compare them to one another. Second, these four TDF fund families were within the Morningstar TDF category in 2011 and all years thereafter—the peer group to which Morningstar compared the Intel TDFs.[11] Third, these TDFs were available in the market in 2011 and thereafter. Fourth, two of the fund families consist of passive funds (Vanguard and Fidelity) and two consist of active funds (T. Rowe Price and American Funds), thus providing both types of benchmarks. Fourth, all four fund families are among the most widely-recognized providers in the industry with strong reputations; indeed, according to a 2011 Morningstar report, Fidelity, Vanguard, and T. Rowe Price had about 75% of the TDF market in 2010.[12] The same report ranked American Funds, T. Rowe Price, and Vanguard TDFs in the "top" tier of TDFs as of June, 2011,

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[10] "Tips," p. 1. On the next page of that publication, the DOL similarly states that fiduciaries should consider the investment returns, fees, expenses, asset allocations and glidepaths of different TDFs.

[11] For instance, the March 31, 2014, fact sheet for that particular vintage of the Intel TDFs explains that Morningstar rated that Fund against 133 other TDFs of the same vintage and the section of the fact sheet called "Morningstar Analyst Report" evaluated it against those other TDFs. The TDFs selected by Plaintiffs for purposes of comparison were included within the Morningstar Category for that "vintage." The same is true for all the other benchmarks. In other words, the service provider selected by Intel (Morningstar, which is in the business of benchmarking funds) to evaluate the Intel TDFs benchmarked the Intel TDFs against peer funds, including the peer funds selected by Plaintiffs.

[12] Morningstar Target Date Series, Research Report 2011, p. 4.

suggesting that plan fiduciaries following reasonable and standard practice would have considered them in comparison to a specific fund under consideration or review. For many of the same reasons, the benchmarks presented in paragraph 11 of Dr. Pomerantz's declaration are reasonable and appropriate for the Intel TDFs.

152. The fees for the Intel TDFs were far higher than their dominant target date peers as illustrated by the following Table. Pomerantz Decl. ¶ 11.

Table 2

Fund Family	Asset Weighted Average Expense Ratio 2012	Asset Weighted Average Expense Ratio 2015
Vanguard (passive)	19 bps	7 bps[13]
Fidelity (passive)	15 bps	7 bps
Fidelity (active)	57 bps	50 bps
T. Rowe Price (active)	79 bps	58 bps[14]
Intel TDFs 2012	62–71 bps	92–104 bps

153. The Intel TDFs were also excessively expensive compared to common TDFs in the 401(k) market. Halpern Decl. ¶¶14–15. For example, as of September 2015, the fees for the Intel Funds in the 401(k) Savings were considerably higher — up to 940 % more expensive — than actively-managed and passively-managed investment alternatives with comparable investment styles and with similar or superior performance, as shown by the Table below:

[13] For the Collective Trust found in 401(k) plans.
[14] For the Collective Trust found in 401(k) plans.

Table 3

Intel Fund in 401(k) Savings Plan	**Expense Ratio**	**Passively-Managed / Actively-Managed Alternatives**	**Expense Ratio**	**Fee Excess**
Target Date Income Fund	101 bps[15]	Vanguard Target Retirement Fund - Institutional (VITRX)	10 bps	901%
		Vanguard Target Retirement Fund - Investor (VTINX)	16 bps	531%
		/ T. Rowe Price Retirement Balanced Fund - Investor (TRRIX)	56 bps	80%
Target Date 2005 Fund	101 bps	Fidelity Freedom Index 2005 - Investor (FJIFX)	16 bps	531%
		/ T. Rowe Price Retirement 2005 Investor (TRRFX)	58 bps	74%

[15] The term "bps" is an abbreviation of the phrase "basis points." One basis point is equal to 0.01%, or 1/100th of a percent. Thus, a fee level of 100 basis points translates into fees of 1% of the amount invested. *See* Investopedia, Definition of 'Basis Point (BPS)', *available at* http://www.investopedia.com/terms/b/basispoint.asp (last visited Oct. 12, 2017).

Target Date 2010 Fund	104 bps	Vanguard Target Retirement 2010 Fund - Institutional (VIRTX)	10 bps	940%
		Vanguard Target Retirement 2010 Fund - Investor (VTENX)	16 bps	550%
		/		
		American Funds 2010 Target Date Retirement Fund - R6 (RFTTX)	36 bps	189%
Target Date 2015 Fund	103 bps	Vanguard Target Retirement 2015 Fund - Institutional (VITVX)	10 bps	903%
		Vanguard Target Retirement 2015 Fund - Investor (VTXVX)	16 bps	543%
		/		
		American Funds 2015 Target Date Retirement Fund - R6 (RFJTX)	36 bps	186%
Target Date 2020 Fund	102 bps	Vanguard Target Retirement 2020 Fund - Institutional (VITWX)	10 bps	902%
		Vanguard Target Retirement 2020	16 bps	538%

		Fund - Investor (VTWNX) / American Funds 2020 Target Date Retirement Fund - R6 (RRCTX)	38 bps	168%
Target Date 2025 Fund	100 bps	Vanguard Target Retirement 2025 Fund - Institutional (VRIVX) Vanguard Target Retirement 2025 Fund - Investor (VTTVX) / American Funds 2025 Target Date Retirement Fund - R6 (RFDTX)	10 bps 17 bps 40 bps	900% 488% 150%
Target Date 2030 Fund	96 bps	Vanguard Target Retirement 2030 Fund - Institutional (VTTWX) Vanguard Target Retirement 2030 Fund - Investor (VTHRX) / American Funds 2030 Target Date Retirement Fund - R6 (RFETX)	10 bps 17 bps 42 bps	860% 465% 129%
Target Date	92 bps	Vanguard Target Retirement 2035	10 bps	820%

2035 Fund		Fund - Institutional (VITFX) Vanguard Target Retirement 2035 Fund - Investor (VTTHX) / American Funds 2035 Target Date Retirement Fund - R6 (RFFTX)	 18 bps 43 bps	 411% 114%
Target Date 2040 Fund	92 bps	Vanguard Target Retirement 2040 Fund - Institutional (VIRSX) Vanguard Target Retirement 2040 Fund - Investor (VFORX) / American Funds 2040 Target Date Retirement Fund - R6 (RFGTX)	10 bps 18 bps 43 bps	820% 411% 114%
Target Date 2045 Fund	92 bps	Vanguard Target Retirement 2045 Fund - Institutional (VITLX) Vanguard Target Retirement 2045 Fund - Investor (VTIVX) /	10 bps 18 bps	820% 411%

		American Funds 2045 Target Date Retirement Fund - R6 (RFHTX)	43 bps	114%
Target Date 2050 Fund	92 bps	Vanguard Target Retirement 2050 Fund - Institutional (VTRLX)	10 bps	820%
		Vanguard Target Retirement 2050 Fund - Investor (VFIFX)	18 bps	411%
		/		
		American Funds 2050 Target Date Retirement Fund - R6 (RFITX)	44 bps	109%
Target Date 2055 Fund	96 bps	Vanguard Target Retirement 2055 Fund - Institutional (VIVLX)	10 bps	860%
		Vanguard Target Retirement 2055 Fund - Investor (VFFVX)	18 bps	433%
		/		
		American Funds 2055 Target Date Retirement Fund - R6 (RFKTX)	47 bps	104%
401K Global	125 bps	Vanguard LifeStrategy	20 bps[16]	525%

[16] Vanguard has since reduced the net expense ratio of this fund to 14 bps.

Diversi-fied Fund		Growth Fund - Investor (VASGX) / T. Rowe Price Balanced Fund - Investor (RPBAX)	55 bps	127%

154. The fees charged for the Intel Funds have been far higher than the fees charged for either actively-managed or passively-managed target date funds and balance funds available in the market. In 2017, the expense ratios of the Intel TDFs in the 401(k) Savings Plan fell between 0.82% and 0.95%, which were considerably higher than comparable investment alternatives. For example, Intel Target Date 2015 and 2020 Funds were up to 956% more expensive than comparable investment alternatives offered by Vanguard and up to 171 % more expensive than actively-managed alternatives offered by American Funds. The Intel TDFs in the Retirement Contribution Plan charged similarly high fees, with expense ratios between 0.83 and 0.96%. The expense ratio of the Intel GDF in the 401(k) Savings Plan, which had increased to 1.52% in 2017 from 1.25% in 2015, was also considerably higher than comparable alternatives. So was the Intel GDF in the Retirement Contribution Plan, which had an expense ratio of 1.53%, increased from 0.90% in 2011. In 2018, the expense ratios of the Intel TDFs in the Plans continue to be high, ranging up to 1.01%. As of September 2018, the expense ratio of the Intel GDFs in the 401(k) Savings Plan and the Retirement Contribution Plan have increased to 2.08% and 2.09%, respectively.

155. The fees charged for the Intel Funds have been far higher than the fees charged for either actively-managed or passively-managed investment alternatives with comparable investment strategies or styles and with similar or superior performance. In 2017, the expense ratios of the Intel TDFs in the 401(k) Savings Plan fell between 0.82% and 0.95%, which were considerably higher than comparable investment alternatives. For example, Intel Target Date 2015 and 2020 Funds were up to 956% more expensive than comparable investment alternatives offered by Vanguard and up to 171 % more expensive than actively-managed alternatives offered by American Funds. The Intel TDFs in the Retirement Contribution Plan charged similarly high fees, with expense ratios between 0.83 and 0.96%. The expense ratio of the Intel GDF in the 401(k) Savings Plan, which had increased to 1.52% in 2017 from 1.25% in 2015, was also considerably higher than comparable alternatives. So was the Intel GDF in the Retirement Contribution Plan, which had an expense ratio of 1.53%, increased from 0.90% in 2011. In 2018, the expense ratios of the Intel TDFs in the Plans continue to be high, ranging up to 1.01%. As of September 2018, the expense ratio of the Intel GDFs in the 401(k) Savings Plan and the Retirement Contribution Plan have increased to 2.08% and 2.09%, respectively.

156. The Intel TDFs have significantly higher fees compared to the market in general. Morningstar reports that asset-weighted expense ratios for TDFs have declined 35% since 2009. Morningstar 2018 Target-Date Fund Landscape ("TDF Landscape"), at 15. The Intel TDF fees have gone in the opposite direction, increasing, on average, 24% since 2011, as the Table below illustrates:

Table 4

Intel TDF Vintage	Fee as of 12/31/2011[17]	Fee as of 12/31/2018[18]	% Increase
Income	62 bps	92 bps	46
2005	65 bps	94 bps	45
2010	69 bps	94 bps	36
2015	68 bps	98 bps	44
2020	69 bps	99 bps	43
2025	70 bps	90 bps	29
2030	71 bps	80 bps	13
2035	71 bps	76 bps	7
2040	71 bps	72 bps	1
2045	71 bps	74 bps	4
2050	71 bps	73 bps	3
Avg.	69 bps	86 bps	25

[17] Intel 401(k) Savings Plan: Important Plan and Investment-Related Information, Including the Plan's Investment Options, Performance History, Fees and Expenses.

[18] https://workplaceservices.fidelity.com/mybenefits/navstation/navigation.

EXHIBIT 4.5

Average Expense Ratios of Mutual Funds in 401(k) Plans, 2015

Asset-weighted average expense ratio as a percentage of assets among plans with audited 401(k) filings in the BrightScope database by mutual fund investment objective and plan size

	Equity mutual funds		Balanced mutual funds		Bond mutual funds				
Plan assets	Domestic	International	Target date mutual funds*	Non-target date balanced mutual funds	Domestic	International	Money market mutual funds	Other	Memo: index mutual funds
$1M to $10M	0.81	1.01	0.79	0.80	0.72	0.85	0.16	0.98	0.25
>$10M to $50M	0.68	0.85	0.68	0.64	0.59	0.77	0.17	0.89	0.18
>$50M to $100M	0.55	0.72	0.54	0.50	0.44	0.66	0.16	0.77	0.13
>$100M to $250M	0.52	0.68	0.55	0.45	0.40	0.64	0.15	0.76	0.11
>$250M to $500M	0.49	0.63	0.50	0.42	0.36	0.67	0.15	0.73	0.10
>$500M to $1B	0.45	0.60	0.50	0.39	0.33	0.65	0.14	0.71	0.08
More than $1B	0.36	0.52	0.48	0.32	0.26	0.65	0.13	0.45	0.07
All plans	0.46	0.61	0.53	0.41	0.35	0.67	0.14	0.65	0.09

with fewer than four investment options, more than 100 investment options, or less than $1 million in plan assets are excluded from BrightScope audited 401(k) filings for this analysis. See the callout box on page 55 for a description of the fee analysis.

157. The Morningstar report covers 58 target date fund ("TDF") series offered by professional asset managers. TDF Landscape at 16–17, Ex. 13. The average asset-weighted expense ratio for target date funds at the end of 2017 was 66 basis points. *Id.* at 15. The average Intel TDF fee was 86 basis points, which is higher than 44 of the professionally-managed target date fund series covered by Morningstar. *Id.* at 16–17, Ex. 13. The fourteen providers that had fees exceeding 86 basis points had a collective market share of only 4.38%. *Id.* No provider with more than 5% market share charged more than 73 basis points. *Id.* Only one provider charging more than 86 basis points had market share exceeding 1% (1.67%). *Id.*

158. The differences are even greater when considering the cheapest share class for each target date fund provider—that is the share class large investors like the Plans are most likely to invest in. Every single target date fund provider charges, on average, less than the Intel TDFs. *Id.* at 20, Ex. 16. The Intel TDFs are the most expensive target date funds in the country for large plan investors.

159. The differences are even starker when evaluated from the investors' perspective. On an asset-weighted basis, the average investor paid 47 basis points, *id.* at 17, less than half the average fee for Intel TDFs.

160. Compared to other defined contribution plans which, like Intel's, have over $10 billion in total assets, the fee difference is even more significant. Most such plans use target date funds in a "collective trust" rather than mutual fund structure, allowing them to achieve additional institutional fee savings. These target date funds typically charge fees below 0.20%, including the Blackrock Lifepath Funds (0.08%); Prudential Bright Horizon Funds (0.12%); Vanguard Target Retirement Trust Select Funds (0.05%);

and DFA Life Path Funds (0.06%). The jumbo plans which do use mutual fund TDFs invest in either the actively managed Fidelity Freedom Funds (0.47% for the 2030 Fund) or passively managed Vanguard Index TDFs identified above.

161. By the end of 2017, Intel's Plans had grown even larger, to $1.18 billion. Of the 16 plans closest in size to Intel's — 8 larger and 8 smaller[19] — at that time, 7 used a Blackrock target date product, 3 used Vanguard, and one each use target date products managed by BFA, Prudential, SSgA and Wells Fargo. The remaining 2 used custom target date funds. The fees charged for the Intel TDFs were more than twice (and often more than ten-times) more expensive than the TDFs used by the most comparable plans by size.

Table 5

Plan	Plan Size	Target Date Product	Fee[20]
Citi Retirement Savings Plan	$14.3 billion	BFA Life Path Funds	14 bps
Pfizer Savings Plan	$13.3 billion	Vanguard	5 bps
State Farm 401(k) Savings Plan	$12.6 billion	Vanguard	7 bps
The Dow Chemical Co. Employee's Savings Plan	$12.5 billion	Blackrock Lifepath Index "N"	6 bps

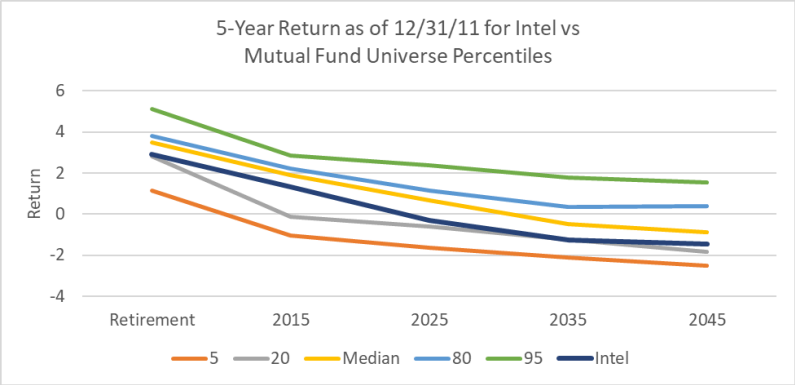
[19] As reported by ERISApedia using 2017 Form 5500s reported to the US DOL

[20] Where fees of the collective trust version of the TDF could not be confirmed, the fees of the publicly available mutual fund equivalent are represented.

3M Voluntary Investment Plan	$12.4 billion	Custom	Unknown
Siemens Savings Plan	$11.9 billion	Blackrock Custom	14 bps
Cisco Systems, Inc. 401(k) Plan	$11.8 billion	Blackrock Index "F"	8 bps
Merrill Lynch & Co., Inc. 401(k) Savings & Investment Plan	$11.8 billion	Blackrock Index "O"	14 bps
Sammons Enterprises, Inc.	$11.8 billion	Vanguard	9 bps
Teamsters/UPS Nat'l 401(k)	$11.5 billion	Prudential Bright Horizon CIT	6 bps
Ford Motor Co. Savings and Stock Investment Plan for Salaried Employees	$11.4 billion	Blackrock "NL"	14 bps
Delta Family Care Savings Plan	$11.4 billion	Blackrock	14 bps
Morgan Stanley 401(k) Plan	$11.3 billion	State Street Global Adv.	29 bps[21]
Unitedhealth Group 401(k) Savings Plan	$11.2 billion	Wells Fargo DJ Target "N"	19 bps
Dupont Retirement Savings Plan	$11.1 billion	Custom	58 bps
Shell Provident Fund	$11.0 billion	Blackrock "F"	8 bps

162. Although participants in the Intel Plans paid high fees, they did not receive superior investment returns. Pomerantz Decl. ¶ 15. For the five-year period ending December 31, 2011, Intel TDFs underperformed the median Morningstar peer for the same vintage across the entire lineup of TDFs.

Figure 2



163. The underperformance persisted (and, indeed, worsened) for the ten-year periods ending in June, 2014, and December, 2018. Pomerantz Decl. ¶ 16.

Figure 3

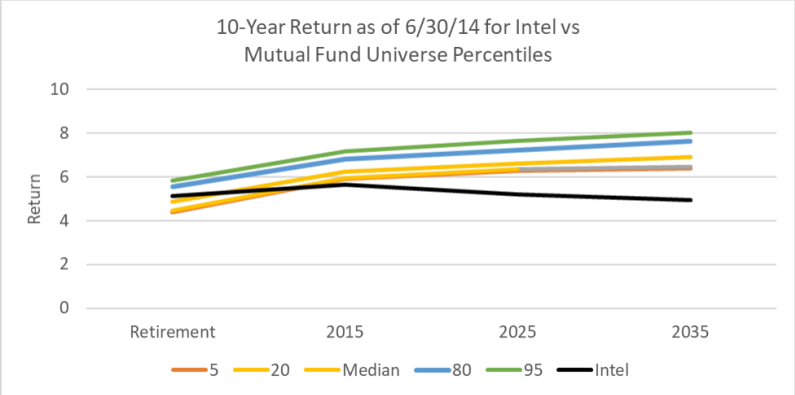
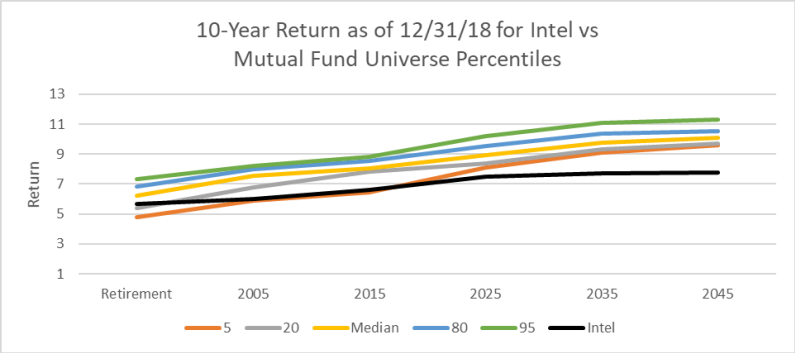


Figure 4



164. In addition to mutual fund comparators, Dow Jones, Morningstar and S&P publish category benchmarks for Target Date Funds. As shown in the Table below, for the five-year period prior to 2011, Intel performed worse than all these indices.

Table 6

	Intel	**Morningstar Lifetime**	**S&P Target Date**	**Dow Jones Target**
Retirement	2.93	4.10	3.12	5.50
2015	1.31	2.31	2.25	3.87
2025	-0.29	0.95	1.31	2.43
2035	-1.26	0.52	0.33	1.22
2045	-1.47	0.48	-0.27	0.88
Average of above	0.24	1.67	1.35	2.78
Difference		(1.43)	(1.10)	(2.54)

165. Several large TDF providers in the market had 5-year track records as of December 2011. The Table below illustrates the comparable return for three of the providers within the universe data above.

Table 7

	Intel	**Fidelity (Active)**	**T. Rowe Price**	**Vanguard**
Retirement	2.93	3.03	2.53	4.86
2015	1.31	1.90	2.11	2.54
2025	-0.29	0.76	1.06	1.27
2035	-1.26	-0.51	0.43	0.27
2045	-1.47	-0.84	0.43	0.24
Average of above	0.24	0.87	1.31	1.84
Difference		(0.62)	(1.07)	(1.59)

166. As of the end of 2018, Intel Target Date 2015, 2020, 2030, 2025, 2035, 2040, and 2045 Funds in the 401(k) Savings Plan generally underperformed comparable alternatives such as those offered by Vanguard in each calendar year between 2011 and 2018, and consistently yielded significantly lower average returns for that same time period, as illustrated by the Table below:

Table 8

	2011 Return	2012 Return	2013 Return	2014 Return	
Intel	-0.31%	9.18%	12.36%	3.75%	
Target Date 2015	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
Fund	-2.08%	6.21%	11.19%	-2.86%	4.86%
	2011 Return	2012 Return	2013 Return	2014 Return	
Vanguard	1.71%	11.37%	13.00%	6.56%	
Target Retirement	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
2015 Fund (VTXVX)	-0.46%	6.16%	11.50%	-2.97%	5.86%

	2011 Return	2012 Return	2013 Return	2014 Return	
Intel	-0.06%	10.05%	12.70%	3.97%	
Target	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
Date 2020 Fund	-1.73%	7.06%	12.71%	-3.56%	5.14%
	2011 Return	2012 Return	2013 Return	2014 Return	
Vanguard	0.60%	12.35%	15.85%	7.11%	
Target	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
Retirement 2020 Fund (VTWNX)	-0.68%	6.95%	14.08%	-4.24%	6.50%
	2011 Return	2012 Return	2013 Return	2014 Return	
Intel	-1.51%	10.86%	12.63%	4.04%	
Target	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
Date 2025 Fund	-1.88%	7.94%	14.63%	-5.13%	5.20%
	2011 Return	2012 Return	2013 Return	2014 Return	
Vanguard	-0.37%	13.29%	18.14%	7.17%	
Target	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
Retirement 2025 Fund (VTTVX)	-0.85%	7.48%	15.94%	-5.15%	6.96%
	2011 Return	2012 Return	2013 Return	2014 Return	
Intel	–[22]	11.32%	12.65%	3.94%	
Target	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
Date 2030 Fund	-2.69%	9.53%	18.72%	-7.66%	5.73%
Vanguard	2011 Return	2012 Return	2013 Return	2014 Return	
Target	-1.27%	14.24%	20.49%	7.17%	
Retirement					

[22] The Intel Target Date 2030 and 2040 Funds do not have full-year performance data for 2011 because they were not available as investments options in the 401(k) Savings Plan until July 1, 2011.

2030 Fund (VTTVX)	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
	-1.03%	7.85%	17.42%	-5.86%	7.38%
Intel Target Date 2035 Fund	2011 Return	2012 Return	2013 Return	2014 Return	
	-1.91%	11.31%	12.64%	3.95%	
	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
	-2.52%	9.50%	17.60%	-7.24%	5.42%
Vanguard Target Retirement 2035 Fund (VTHRX)	2011 Return	2012 Return	2013 Return	2014 Return	
	-2.24%	15.16%	22.82%	7.24%	
	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
	-1.26%	8.26%	19.12%	-6.58%	7.82%
Intel Target Date 2040 Fund	2011 Return	2012 Return	2013 Return	2014 Return	
	–	11.32%	12.65%	3.94%	
	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
	-2.69%	9.53%	18.72%	-7.66%	5.73%
Vanguard Target Retirement 2040 Fund (VFORX)	2011 Return	2012 Return	2013 Return	2014 Return	
	-2.55%	15.56%	24.37%	7.15%	
	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
	-1.59%	8.73%	20.71%	-7.32%	8.13%
Intel Target Date 2045 Fund	2011 Return	2012 Return	2013 Return	2014 Return	
	-2.20%	11.32%	12.65%	3.97%	
	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return
	-2.72%	9.78%	19.11%	-7.56%	5.54%
Vanguard Target Retirement 2045 Fund (VTIVX)	2011 Return	2012 Return	2013 Return	2014 Return	
	-2.51%	15.58%	24.37%	7.16%	
	2015 Return	2016 Return	2017 Return	2018 Return	Ave. Return

	-1.57%	8.87%	21.42%	-7.90%	8.18%

167. As of the end of 2015, other Intel TDFs in the 401(k) Savings Plan and the Intel TDFs in the Retirement Contribution Plan similarly underperformed Vanguard's alternatives. The GDFs in the Plans also underperformed Vanguard's comparable alternative in the period between 2011 and 2015, with an average annual return of 5.37% at the end of 2015, compared to an average annual return of at least 7.84% of the Vanguard LifeStrategy Growth Fund.

168. The Intel TDFs have continued to underperform comparable investment alternatives. For example, as of December 31, 2016, Intel Target Date 2015, 2025, 2035, and 2045 Funds in the 401(k) Savings Plan all underperformed comparable alternatives by Vanguard, American Funds and T. Rowe Price over available five- and ten-year horizons as illustrated by the Table below:

Table 9

Ave. Annual Returns as of 12/31/2016	Intel Target Date 2015 Fund	Vanguard Target Retirement 2015 Fund (VTXVX)	American Funds 2015 Target Retirement Fund (RFJTX)	T. Rowe Price Retirement Fund 2015 (TRRGX)
5 Year	5.77%	7.22%	8.04%	8.06%
10 Year	3.51%	4.85%	–[23]	5.04%

[23] The 10-year average returns for the American Funds Target Date Funds as of December 31, 2016 are not available because they did not become available until July 13, 2009.

Ave. Annual Returns as of 12/31/2016	Intel Target Date 2025 Fund	Vanguard Target Retirement 2025 Fund (VTTVX)	American Funds 2025 Target Retirement Fund – R6 (RFDTX)	T. Rowe Price Retirement Fund 2025 (TRRHX)
5 Year	6.59%	8.86%	10.40%	9.75%
10 Year	3.09%	5.00%	–	5.32%

Ave. Annual Returns as of 12/31/2016	Intel Target Date 2035 Fund	Vanguard Target Retirement 2035 Fund (VTTHX)	American Funds 2035 Target Retirement Fund – R6 (RFFTX)	T. Rowe Price Retirement Fund 2035 (TRRJX)
5 Year	6.82%	10.15%	11.31%	10.87%
10 Year	2.70%	5.09%	–	5.52%

Ave. Annual Returns as of 12/31/2016	Intel Target Date 2045 Fund	Vanguard Target Retirement 2045 Fund (VTIVX)	American Funds 2045 Target Retirement Fund – R6 (RFHTX)	T. Rowe Price Retirement Fund 2045 (TRRKX)
5 Year	6.84%	10.54%	11.51%	11.14%
10 Year	2.60%	5.27%	–	5.65%

169. As of December 31, 2017, Intel Target Date 2015, 2025, 2035, and 2045 Funds in the 401(k) Savings Plan all underperformed comparable alternatives by Vanguard and T. Rowe Price over available five- and ten-year horizons:

Table 10

Ave. Annual Returns as of 12/31/2017	Intel Target Date 2015 Fund	Vanguard Target Retirement 2015 Fund (VTXVX)	T. Rowe Price Retirement 2015 Fund – Investor (TRRGX)
5 Year	6.16%%	7.25%	7.97%
10 Year	3.99%%	5.23%	5.67%

Ave. Annual Returns as of 12/31/2017	Intel Target Date 2025 Fund	Vanguard Target Retirement 2025 Fund (VTTVX)	T. Rowe Price Retirement 2025 Fund – Investor (TRRHX)
5 Year	7.30%	9.36%	10.06%
10 Year	3.91%	5.79%	6.34%

Ave. Annual Returns as of 12/31/2017	Intel Target Date 2035 Fund	Vanguard Target Retirement 2035 Fund (VTTHX)	T. Rowe Price Retirement 2035 Fund – Investor (TRRJX)
5 Year	8.00%	10.90%	11.53%
10 Year	3.79%	6.18%	6.83%

Ave. Annual Returns as of 12/31/2017	Intel Target Date 2045 Fund	Vanguard Target Retirement 2045 Fund (VTIVX)	T. Rowe Price Retirement 2045 Fund – Investor (TRRKX)
5 Year	8.30%	11.64%	12.03%
10 Year	3.80%	6.56%	7.10%

170. The Intel TDFs have also underperformed other widely-used benchmarks for TDFs, like the S&P Target Date Index. TDF Landscape at 32, Ex. 27 (identifying benchmarks).

171. The Intel TDFs also underperform almost all peer funds on an average and weighted-average basis. Weighted average returns are a useful performance metric because they measure the returns earned by the average investor, as opposed to the returns generated by the average investment manager.

172. The Table below compares the ten-year returns of the Intel TDFs as of year-end 2018 to same-vintage TDFs managed by professional asset managers available in the market during the entire period using average return, weighted average return, and average risk-adjusted return. For example, the Intel 2015 TDF earned 6.62% compared to the average mutual fund which earned 7.60%. Within the group of 13 mutual funds with 10 years of such data, ending December 2018, the Intel performance was in the 83rd percentile. Other vintages fared similar or worse; in some cases, the Intel TDF was the worst performing TDF for that Vintage. The peer returns are based on the cheapest share class.

Table 11

10 Year	Vintage 2000-2010	Vintage 2015	Vintage 2025	Vintage 2035	Vintage 2045	Vintage Retirement
Std. Avg.	7.074	7.605	8.829	9.693	10.041	6.128
Wtd Avg.	8.063	8.288	9.344	10.237	10.461	6.371
# Peers	12	13	19	19	18	19
Intel	**6.01**	**6.62**	**7.52**	**7.71**	**7.79**	**5.59**
Ret v Std	-15%	-13%	-14.8%	-20.5%	-22.4%	-8.8%
Ret v Wtd	-25.5%	-20.1%	-19.5%	-24.5%	-25.5%	-12.2%

Rank	82	83	95	100	100	78

173. The Table above shows that the Intel TDFs underperform the average professional TDF manager by a substantial margin. It also shows that the Intel Plans and their participants did even worse compared to the average TDF investor.

174. The same is true for 2011–2018, as the Table demonstrates below.

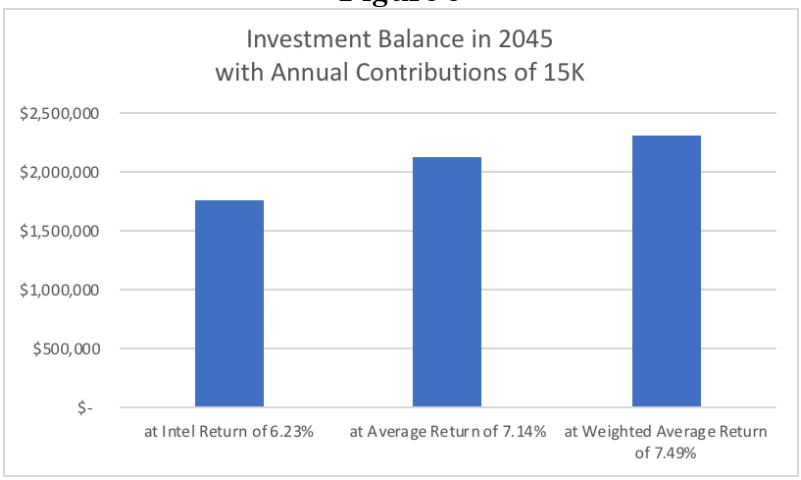
Table 12

2011–2018	Vintage 2015	Vintage 2025	Vintage 2035	Vintage 2045
Std Avg.	5.22	6.09	6.82	7.14
Wtd Avg.	5.83	6.60	7.27	7.49
# Peers	15	21	21	20
Intel	**4.86**	**5.63**	**6.04**	**6.23**
Ret v Std	-6.9%	-7.5%	-11.4%	-12.7%
Ret v Wtd	-16.6%	-14.7%	-16.9%	-16.8%
Rank	73	81	91	95

175. Applying these data to a hypothetical plan participant shows the cumulative impact over a life of retirement savings. Assume a plan participant retiring at age 65 in 2045 who invested $15,000 a year in a 2045 TDF until retirement. Assume also the annualized Intel 2045 TDF, average peer TDF, and weighted average peer TDF from 2011 through 2018 apply going forward to 2045. The

following chart shows the total savings at retirement for the three returns. The average and weighted peer returns yield, respectively, $380,645 and $550,727, more than the projected Intel 2045 TDF return, as the Figure below reflects.

Figure 5



176. Assuming this same hypothetical plan participant begins drawing $150,000 a year starting in 2046 and that her investment is in a TDF Retirement. Assuming the Intel TDF Retirement returns shown in Tables 6 and 7 above from 2046 forward, the participant would run out of money at age 86. Assuming the peer average and peer weighted average returns, at age 86, the participant would still have $2.2 million and $3.5 million, respectively. These data underscore the catastrophic effect of poor investment design by the Investment Committee on retirement savings.

177. The Intel TDFs also fail to measure up on a risk-adjusted basis. Risk-adjusted return is a measure of the return of the investment relative to the risk of the investment. Thus, where two investments have the same

return, the investment that took less risk would have a better risk-adjusted return. All things being equal, an investor would prefer to take less risk to generate the same return. A risk-adjusted return comparison presumably should be more favorable to the Intel TDFs than a standard return comparison because the Intel TDFs purportedly take less risk by investing in hedge funds. But the Intel TDFs perform poorly on a risk-adjusted basis as well. As Table 8, hereinabove, illustrates, in every year from 2012–2017, the Intel TDFs performed poorly compared to Vanguard TDFs and the S&P TDF index for every vintage. The data makes two important points. First, the returns generated by the Intel TDFs are not commensurate with the risk, i.e., the returns should be higher given the level of risk. The Vanguard TDF of the same vintage and the S&P TDF index for the same vintage both deliver more return per unit of risk in every year 2012-2017. Second, the slopes of the Intel TDFs are shallower than the comparables. Specifically, as risk increases, the incremental return of the Intel TDFs is half the incremental return of the comparables. In other words, the more risk the Intel TDFs take, the less value for investors.

Performance of the GDF

178. The Morningstar fact sheet for the Intel GDFs lists two benchmarks: (1) a custom benchmark; and (2) MSCI World. The custom benchmark is not explained and is not replicated in any public data set of which I am aware. MSCI World Index is a global (U.S. and international) stock index derived from large and mid-cap stocks in developed countries.

179. From 2007 to 2011, however, the allocation model of the Intel GDFs shifted from global equities to other strategies such as hedge funds. In addition, the GDF had

material allocations to global bonds. Therefore, by 2011 a more appropriate benchmark index would be the Morningstar World Allocation TR. Halpern Decl. ¶¶ 21–22.

180. The Committee announced yet another benchmark for the GDFs in its November 2014 "Plan IQ" notice to the Plans' participants.[24] That notice informed participants that GDF was in an asset class called "World Allocation."[25] In truth, this benchmark was reasonable and appropriate in 2011-2012 given the heavy allocation to global bonds. Many other funds were available in that same category, including, for instance, American Funds Capital Income Builder, Blackrock Global Allocation, First Eagle Global, Ivy Asset, GMO Global Asset Allocation Fund and others listed in Table 9 of the report of Dr. Steve Pomerantz. Since these funds all fall in the same category as the GDFs, they are reasonable for benchmarking the Intel GDFs' performance.

181. The Committee also used another benchmark for GDF. The "Performance Update" of June 30, 2014, stated that the 401k GDF was in a Morningstar category called "Balanced/Hybrid Funds—International/Growth." The three funds cited in Table 10 of the Pomerantz report are likewise balanced funds and valid peers for purposes of

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[24] Intel Corp. 401(k) Savings Plan/My Plan IQ, Nov. 14, 2014, p. 1.

[25] Morningstar explains that classification this way: "World-allocation portfolios seek to provide both capital appreciation and income by investing in three major areas: stocks, bonds, and cash. While these portfolios do explore the whole world, most of them focus on the U.S., Canada, Japan, and the larger markets in Europe. It is rare for such portfolios to invest more than 10% of their assets in emerging markets. These portfolios typically have at least 10% of assets in bonds, less than 70% of assets in stocks, and at least 40% of assets in non-U.S. stocks or bonds." The Morningstar Category Classifications, April 29, 2016, p. 21.

benchmarking the Intel GDF's performance, fees, asset allocation and other features. These are the T. Rowe Price Balanced Fund (ticker RPBAX), Vanguard's Life Strategy Growth Fund Investor (VASGX) and Vanguard's Life Strategy Moderate Growth Fund Investor (VSMGX). Compared to the GDF's exposure of approximately 70-80% in "global equities," the T. Rowe fund is normally allocated approximately 65% to global (U.S. and foreign) equity and 35% to global fixed income.[26] The Vanguard Growth fund is allocated 80% to global equity and 20% global fixed income, while the Moderate Growth fund is allocated 60%/40%.[27] All three of these funds provide helpful reference points for evaluating value added or subtracted by GDF's different weighting to equity securities and its more exotic, complex, costly and illiquid investment strategies.[28]

182. In addition, it is common practice to compare static allocation funds to a traditional 60/40 equity/bond portfolio which has long been used by retirement planners as a kind of default portfolio. Because the Intel GDFs had a heavy allocation to international equities, a 60% World/40% Bond benchmark is appropriate. Halpern Decl. ¶ 19. Further, because the Intel GDFs were classified as "World Allocation" funds including both global equities and bonds (as explained in Paragraph 22 below), the benchmarks presented in Tables 8 and 9 of Dr.

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[26] See troweprice.com for fuller discussion of the Balanced Fund, including its strategic asset allocation.

[27] See investor.vanguard.com for fuller discussion of the Life Strategy Growth Fund and Moderate Growth Funds, including their strategic asset allocations.

[28] The Moderate Growth Fund is a suitable benchmark for another reason as well: plan fiduciaries often use a traditional asset allocation of 60% equity/40% fixed income as a baseline standard for comparison.

Pomerantz's declaration are reasonable and appropriate. *Id.*

Table 13

	5 yr end 12/11	**5 yr end 6/14**	**10 yr end 6/14**	**10 yr end 12/18**
GDF	-0.94	10.11	4.90	7.40
MSCI WORLD NR	-2.37	14.99	7.25	9.67
Morningstar Global Alloc TR	2.60	11.43	7.69	7.53
60% World / 40% Bond	1.18	10.97	6.35	7.27

183. The only measurement period in which the Intel GDF outperformed any of the three indices was the five-year period ending December 2011, and then only as compared to the MSCI World NR index.

184. The benchmarks listed in Table above are indices. They are useful, commonly used tools for evaluating investment returns but are not products available in the market. Tables 14 and 15 below compare the investment returns of the Intel GDFs to peer group categories and selected peer funds, that is, products an investor might select as an alternative for the subject asset class. These tables present comparisons to the Morningstar World Allocation Category, and selected peers within the category, which reflects the actual asset allocation of the Intel GDFs. The selected peers are those with the most assets under management in the category. The last row in each table shows where the Intel GDF would fall in rank (higher % means lower ranking/worse performance). Table 14 also presents the median return for the category.

For example, in Table 14, for the 5-year period ending December 2011, the Intel GDF performed at the 85th percentile, so 85% of funds in the Morningstar category (with assets over $100 million) performed better.

Table 14

US Fund World Allocation	5 yr end 12/11	5 yr end 6/14	10 yr end 6/14	10 yr end 12/18
GDF	-0.94%	10.11%	4.90%	7.40%
Median peer group return	2.17%	10.98%	7.23%	6.53%
Rank	85%	70%	91%	19%

Table 15

US Fund World Allocation – Largest Comparators	5 yr end 12/11	5 yr end 6/14	10 yr end 6/14	10 yr end 12/18	5 yr end 12/18
GDF	-0.94%	10.11%	4.90%	7.40%	-0.94%
American Funds Capital World Gr&Inc A	-0.93%	14.21%	9.34%	9.04%	3.93%
American Funds Capital Income Bldr A	0.86%	12.35%	7.73%	7.37%	3.28%
PIMCO All Asset Instl	5.64%	10.17%	7.23%	6.53%	2.46%
BlackRock Global Allocation Instl	3.87%	9.88%	8.48%	6.19%	2.10%

First Eagle Global I	4.85%	13.94%	10.70%	8.46%	3.49%
Ivy Asset Strategy I	5.80%	12.01%	12.34%	5.78%	-1.40%
Thornburg Investment Income Builder I	4.12%	14.27%	10.29%	9.47%	3.79%
Wells Fargo Asset Allocation A	2.29%	10.04%	6.62%	5.53%	0.71%
Invesco Global Allocation A	-1.82%	10.81%	3.74%	7.00%	1.77%
Calamos Global Growth & Income I	2.13%	10.95%	7.56%	7.39%	2.52%

185. The Intel GDF underperformed the vast majority of the largest World Allocation Funds across the time periods I measured. For the 10-year period ending June, 2014, the GDF underperformed over 90% of its peers in the US Fund World Allocation Morningstar category.

186. The Table below compares the investment returns of the Intel GDFs to "balanced fund" peer funds.

Table 16

Balanced Funds	5 yr end 12/11	5 yr end 6/14	10 yr end 6/14	10 yr end 12/18
GDF	-0.94%	10.11%	4.90%	7.40%
T. Rowe Price Balanced	2.24%	13.71%	7.58%	9.63%
Vanguard LifeStrategy Growth Inv	-0.19%	14.62%	7.02%	9.51%
Vanguard LifeStrategy	1.53%	12.30%	6.58%	8.17%

Moderate Gr Inv				

187. Much of this underperformance can be traced to unusual asset allocation decisions. The allocation to the "Other" category for the universe of World Allocation Funds in the Morningstar category. The average allocation is approximately 4%. At the 95th percentile, the allocation is in the 20% to 30% range. Prior to 2010, the Intel GDFs also had little allocation to this Other. The amount then steadily grew to current, December 2020, allocations of approximately 35% to Hedge Funds, Private Equity and Real Assets, all of which are classified as Other. As such, the GDF is at the very high end of allocation to Other relative to funds in this category. This difference largely explains why the Intel GDFs have such high fees as compared to peers in the category. Pomerantz Decl. ¶ 28.

188. As the GDF took on more of these "other" investments, namely hedge funds, the acquired fund fee increased. For years for which data exists, the Table below illustrates the fee of the GDF compared to the median fee for the World Allocation category and illustrates how the GDF fee is has been at the extreme end of the range for similar mutual funds.

Table 17

Selected Years	**2011**	**2014**	**2019**
GDF	0.90	1.25	1.92
Median World Allocation Fund	0.79	0.76	0.70
GDF Rank	61%	93%	98%

189. The Intel GDFs have underperformed peer balanced funds. From May 2007, when the Intel GDFs began investing in hedge funds and private equity, through May 2014, the fund underperformed a Vanguard balanced fund, the LifeStrategy Moderate Growth Fund (Ticker: VSMGX), by approximately 50 basis points (.50%) annually.[29] As of June 2015, the Retirement Contribution Plan invested the vast majority of its assets in the Intel GDF – $5.82 billion out of $6.66 billion.[30] Thus, fifty basis points of underperformance annually between May 2007 and May 2014 translates into a loss of over $100 million.

190. The Intel GDFs in the Plans have continued to underperform comparable alternatives. For example, as of December 31, 2016, the two Intel Funds underperformed comparable alternatives by Vanguard and American Funds over available five- and ten-year horizons as illustrated by the Table below:

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[29] Hunsberger, Brent, *What's inside Intel's retirement plans. Hedge funds. Lots of 'em.*, The Oregonian (Aug. 30, 2014), http://www.oregonlive.com/finance/index.ssf/2014/08/whats_inside_intels_retirement.html.

[30] "Intel Corp. moved to external management for two big investment options that house all of the alternative investments in its $14.85 billion defined contribution plans." Steyer, supra note __. As of the end of March 31, 2014, the Intel GDF had approximately 37.59% of its portfolio in commodities, hedge funds, and private equity. Of that, 67.39% was allocated to hedge funds, 17.56% to private equity and venture capital, 11.74% to commodities, and 3.31% to real estate. *401K Global Diversified Fund*, Oregonian Live at 1 (Mar. 31, 2014), http://media.oregonlive.com/finance/other/401K%20Global%20Diversified%20Fund.pdf.

Table 18

Ave. Annual Return as of 12/31/ 2016	401K Global Diversifie d Fund	Global Diversifie d Fund	Vanguard LifeStrateg y Growth Fund (VASGX)	T. Rowe Price Balanced Fund (RPBAX)
5 Year	6.38%	6.86%	9.73%	8.95%
10 Year	2.65%	2.97%	4.65%	5.54%

191. Similarly, as of December 31, 2017, the two Intel GDPs underperformed comparable alternatives by Vanguard and American Funds over available five- and ten-year horizons as follows:

Table 19

Ave. Annual Return as of 12/31/201 6	401K Global Diversifie d Fund	Global Diversifie d Fund	Vanguard LifeStrateg y Growth Fund ((VASGX)	T. Rowe Price Balanced Fund (RPBAX)
5 Year	6.98%	7.54%	10.64%	9.71%
10 Year	3.07%	3.43%	5.75%	6.56%

192. Comparing the Intel GDFs to the broader market for GDFs over the past ten years also shows lagging returns as the Table below demonstrates.

Table 20

10-Yr	US Fund World Large Stock	US Fund Allocation-- 85%+ Equity	US Fund Allocation-- 70% to 85% Equity	US Fund Allocation-- 50% to 70% Equity
Std Avg	9.68	10.45	9.25	8.61
Wtd Avg	9.81	10.09	9.57	9.66
# Peers	118	37	61	138
Intel GDF	**7.4**	**7.4**	**7.4**	**7.4**
Rank	86	98	95	84

193. Low-cost passively- and actively-managed investments with comparable investment styles and similar or superior performance, including comparable target-date and non-target balanced funds, have been and are available in the market as investment options. Instead of using the Plans' bargaining power to negotiate low-cost investment options and benefit participants and beneficiaries, the Investment Committee Defendants selected and retained as the Plans' investment options high-cost Intel target-date and non-target date balanced funds that underperformed available comparable alternatives. Despite the Intel Funds' excessive fees and underperformance, the Investment Committee Defendants designated the Intel TDFs as the default investment options of the 401(k) Savings Plan, and the Intel GDF as the default investment option of the Retirement Contribution Plan.

194. The conduct of the Investment Committee Defendants demonstrates that they failed to perform a

proper investigation of the availability of lower-cost target date funds and balanced funds and/or to select and monitor the Plans' default investment options solely based on the merits of the investment options and in the interest of participants. The Investment Committee Defendants adopted extraordinary asset allocation models at extremely high cost in comparison to the models and costs of professional asset managers. Had the Investment Committee conducted a proper investigation and managed the assets of the Plans, including by selecting and evaluating on an ongoing basis the Intel Funds, in a cost-conscious and prudent manner, the Investment Committee Defendants would have removed the costly and underperforming Intel Funds in favor of investment alternatives with similar or superior performance but with lower expense.

195. By selecting and maintaining the Intel Target Date Funds and the 401K Global Diversified Fund in the 401(k) Savings Plan and designating the Intel Target Date Funds as the default investment options of the 401(k) Savings Plan, the Investment Committee Defendants caused the Plan and many of its participants to pay millions of dollars in excess fees per year.

196. By selecting and maintaining the Intel Target Date Funds and the Global Diversified Fund in the Retirement Contribution Plan and designating the Global Diversified Fund as the default investment option of the Retirement Contribution Plan, the Investment Committee Defendants caused the Plan and many of its participants to pay millions of dollars in excess fees per year.

D. The Investment Committee Defendants Failed to Monitor and Replace the Asset Allocation Models and Allocation Percentages for the Intel Funds

1. Excessive Allocations to the Non-Traditional Investment Accounts

197. The Investment Committee Defendants managed the Intel Funds and dictated the asset allocation model for them with respect to the asset classes and allocation percentages. These Defendants determined the asset classes and the allocation percentages for the Intel Funds and directed the allocation of the Intel Funds' assets to the Master Trust Investment Accounts. They selected the Non-Traditional Investments Accounts' underlying investments and the investment managers for them. The Investment Committee Defendants were responsible for monitoring and evaluating on a regular basis the asset allocation models and allocation percentages adopted and implemented for the Intel Funds as well as the Master Trust Investment Accounts' underlying investments and their investment managers.

198. As of December 31, 2015, and December 31, 2016, the 401(k) Plan had approximately $1.1 billion and $1.2 billion in assets allocated to the Non-Traditional Investments Accounts, respectively. As of December 31, 2015, and December 31, 2016, the Retirement Contribution Plan had approximately $3.0 billion and $2.7 billion in assets allocated to the Non-Traditional Investments Accounts, respectively.

199. Pursuant to the asset allocations adopted and implemented for them, the Intel Funds have allocated and continue to allocate excessive portions of the Intel Funds' assets to the Non-Traditional Investments Accounts, which invest in speculative asset classes such as hedge funds, private equity funds, emerging market funds, and commodities. For example, as of September 2015, each of

the Intel TDFs in the 401(k) Savings Plan was managed in such a way that between 27.46 and 37.20 percent of each fund's assets were allocated to the Non-Traditional Investments Accounts that invested in hedge funds, commodities, and emerging market funds, as shown by the following Table:

Table 21

Intel Target Date Fund	Defensive Oriented Hedge Fund Account	Growth Oriented Hedge Fund Account	Diversified Real Assets & Emerging Market Fund Account	Total Allocation to Non-Traditional Investments Accounts
Income Fund	13.48%	12.90%	3.25%	29.63%
2005	12.34%	11.93%	3.19%	27.46%
2010	13.99%	14.53%	5.63%	34.15%
2015	13.41%	16.07%	7.72%	37.20%
2020	11.80%	15.07%	7.36%	34.23%
2025	9.72%	17.33%	8.70%	35.75%
2030	7.96%	14.19%	11.09%	33.24%
2035	7.47%	13.31%	12.15%	32.93%
2040	2.95%	16.92%	12.17%	32.04%
2045	3.11%	17.82%	13.14%	34.07%
2050	3.01%	16.35%	13.44%	32.80%
2055	3.11%	17.64%	13.57%	34.32%

201. The Intel TDFs in the Retirement Contribution were managed in such a way that the allocations of those funds' assets to the Non-Traditional Investments

Accounts were similarly excessive as the Target Date Funds in the 401(k) Savings Plan.

202. As of September 2015, 56.22% of the assets of Intel GDF in the 401(k) Savings Plan were allocated to the Non-Traditional Investments Accounts that invested in as hedge funds, commodities, and emerging markets funds as well as private equity funds (including venture capital funds and private real estate and natural resources funds), as follows: 10.79% to the Defensive Oriented Hedge Fund Account, 19.32% to the Growth Oriented Hedge Fund Account, 2.34% to the Diversified Real Assets Fund Account, 5.26% to the Emerging Markets Fund Account, and 18.51% to the Alternative Investments Fund Account. Similar or identical percentages of the assets of the Intel GDF in the Retirement Contribution Plan were allocated to these Non-Traditional Investments Accounts.

203. The Intel TDFs have continued to be managed in such a way that excessive amounts of the funds' assets are allocated to the Non-Traditional Investments Accounts. As of March 2017, each of the Intel TDFs in the Plans had between 25.17 and 30.31 percent of the fund's assets allocated to the Non-Traditional Investments Accounts as presented in the Table below:

Table 22

Intel Target Date Fund	Defensive Oriented Hedge Fund Account	Growth Oriented Hedge Fund Account	Diversified Real Assets & Emerging Market Fund Account	Total Allocation to Non-Traditional Investments Accounts
Income Fund	15.74%	3.98%	5.45%	25.17%
2005	16.22%	4.58%	6.01%	27.81%

2010	15.16%	5.45%	6.90%	27.51%
2015	13.20%	9.18%	7.10%	29.48%
2020	10.48%	9.88%	9.07%	29.43%
2025	7.83%	11.14%	11.34%	30.31%
2030	4.75%	11.29%	14.05%	30.09%
2035	3.15%	11.15%	15.15%	29.45%
2040	2.76%	10.78%	15.21%	28.75%
2045	2.80%	10.98%	15.03%	28.81%
2050	2.59%	9.92%	15.29%	27.80%
2055	2.53%	10.30%	15.09%	27.92%

204. The Intel GDFs have continued to be managed in such a way that excessive amounts of the funds' assets are allocated to the Non-Traditional Investments Accounts. As of March 2017, the two Intel Funds allocated 57.18% of their respective assets to the Non-Traditional Investments Accounts, as follows: 6.39%% to the Defensive Oriented Hedge Fund Account, 15.08% to the Growth Oriented Hedge Fund Account, 4.03% to the Diversified Real Assets Fund Account, 4.15% to the Emerging Markets Fund Account, and 27.53% to the Alternative Investments Fund Account.

205. The poor performance of the Intel TDFs and GDFs can be attributed in large measure to the substantial allocations to hedge funds. The weighted average fee for the hedge fund portfolio in which the Intel TDFs and GDFs invest was 1.52% with an additional weighted average performance fee of 21.2%. For example, if the hedge fund portfolio earns a gross return of 6%, the hedge fund managers earn a management fee of 1.52%. Of the remaining 6.00% – 1.52% = 4.48%, the managers earn a performance fee of 0.95% (adjusted for any hurdle requirements), leaving a net return to investors of 3.53%.

In effect, investors pay a fee of 2.46%. In other words, the hedge fund managers collect 41% of the returns in this hypothetical.

Hedge Fund Performance in the Decade Preceding 2011 Raised Many Red Flags

206. Before commencing a heavy allocation to hedge funds in TDFs or a static allocation fund such as the Intel GDFs, a plan fiduciary following standard and reasonable practice would take into account, among other things, the history of hedge fund of funds performance (including their associated fees) and compare those to more traditional asset classes. Halpern Decl. ¶ 25.

207. The HFRI Funds of Funds Composite index is a hedge fund funds-of-funds index broadly reflecting the performance of that investment approach. The hedge fund portfolio in the Intel TDFs and GDFs consisted of hedge funds of funds. Thus, as of 2011, the history of risk and return of the HFRI Composite over a full market cycle was a relevant factor to consider in determining whether to invest in or hold a large allocation to a hedge funds of funds. Halpern Decl. ¶ 26.

208. A plan fiduciary following standard and reasonable practice in 2011 and thereafter would consider whether the high cost and historic performance of hedge fund of funds could plausibly yield a better retirement outcome than a traditional strategic asset allocation. One widely-used, traditional asset allocation model is a 60%/40% equities/bonds portfolio. Halpern Decl. ¶ 27.

209. The analysis below compares a broad bond market index, a broad stock market index and a traditional blend of 60% equity / 40% bonds to the Hedge Fund Research Inc. ("HFRI") Funds of Funds Composite Index. The latter is the same index used by Morningstar in the Hedge Fund Fact sheet it prepared for Intel's hedge fund of funds, in which the Intel TDFs and GDFs

invested. The HFRI Composite is a fund-of-funds index. A fund-of-funds is an investment in a single vehicle that itself invests in a portfolio of hedge funds. The Intel TDFs invested in a hedge funds-of-funds product managed by Intel. This allows for a diversification across hedge fund styles and managers. A description of HFRI Composite Index follows:

HFRI Fund of Funds Composite Index

Fund of Funds invest with multiple managers through funds or managed accounts. The strategy designs a diversified portfolio of managers with the objective of significantly lowering the risk (volatility) of investing with an individual manager. The Fund of Funds manager has discretion in choosing which strategies to invest in for the portfolio. A manager may allocate funds to numerous managers within a single strategy, or with numerous managers in multiple strategies. The minimum investment in a Fund of Funds may be lower than an investment in an individual hedge fund or managed account. The investor has the advantage of diversification among managers and styles with significantly less capital than investing with separate managers. PLEASE NOTE: The HFRI Fund of Funds Index is not included in the HFRI Fund Weighted Composite Index

Pomerantz Decl. ¶ 30.

210. Hedge fund returns compared to traditional capital markets for the period up to 2010 reveals significant structural issues with the performance of hedge funds, as shown in the Figure below. The data in Figure 7 shows, as of 2010 (which data would have been available to investors in 2011), the historical risks and return for the relevant markets. The horizontal axis measures the risk of the investment and the vertical axis measures the annualized return. The sole orange marker represents the HFRI Fund of Funds index, while the blue

markers (and best-fit line) represent traditional investments in equity and fixed income. The right most marker represents a global equity benchmark and the leftmost marker represents the aggregate bond index. A 60-40 blend is also represented.

Figure 7

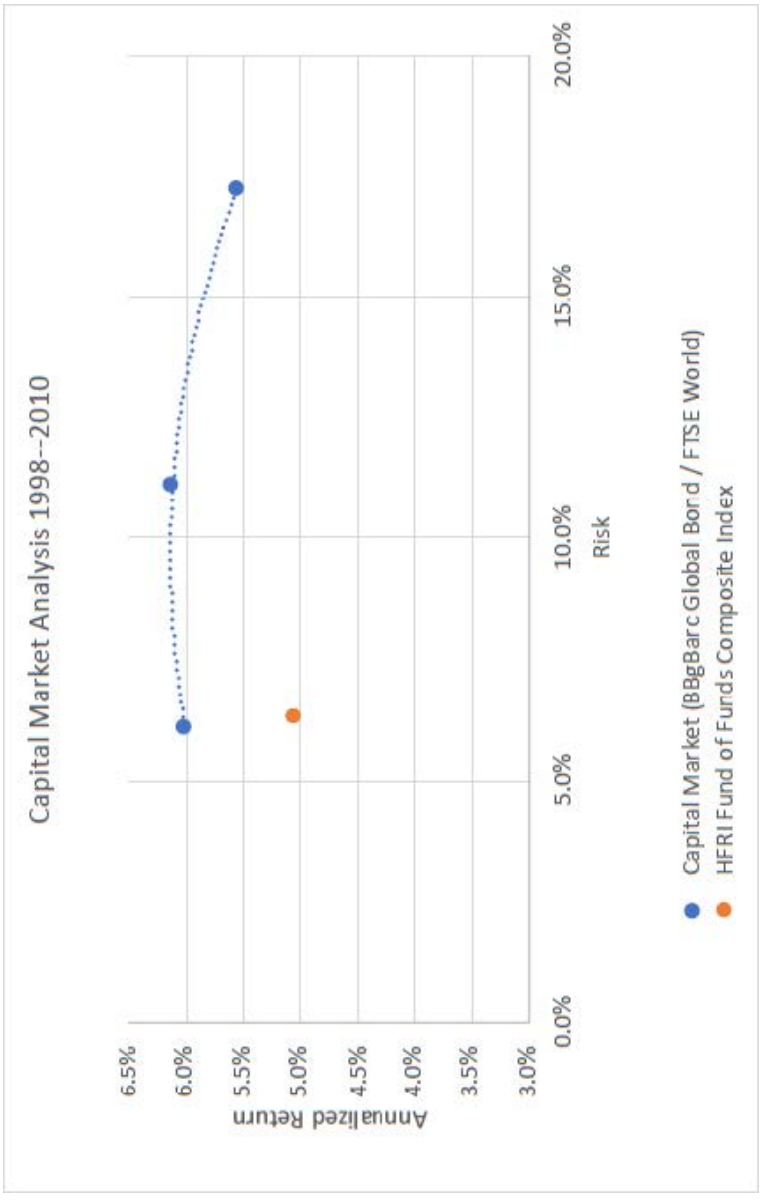

Capital Market Analysis 1998--2010
Annualized Return
6.5%
6.0%
5.5%
5.0%
4.5%
4.0%
3.5%
3.0%
0.0%
5.0%
10.0%
15.0%
20.0%
Risk
Capital Market (BBgBarc Global Bond / FTSE World)
HFRI Fund of Funds Composite Index

Table 22

1998–2010	BBgBarc Global Aggregate TR USD	FTSE All World TR USD	60% stock-40% bond Blend	HFRI Fund of Funds Composite Index
Return	6.0%	5.5%	6.1%	5.0%
Risk	6.1%	17.3%	11.2%	6.4%

Pomerantz Decl. ¶ 31.

211. An assumption, as of 2011, that hedge fund alternatives would deliver a low-risk version of equities was based on the relationships in Table 23 below, where equity underperformed bonds, thus lowering the traditional relationship between risk and return. A closer examination reveals a different picture. The period above is divided into 2 segments, those where equity had a positive return and those where negative. Table 23 below illustrates these results.

Table 23

	# of Months	FTSE All World TR USD	HFRI Fund of Funds Composite Index	Blend
Up Months	93	3.74%	1.22%	2.53%
Percent of Up Performance			33%	68%
Down Months	63	-4.10%	-0.77%	-2.38%
Percent of Down Performance			19%	58%

Pomerantz Decl. ¶32.

212. For example, between 1998 and 2010 there were 93 months of positive equity performance. In those months, the average equity return was 3.74%. Conversely, the HFRI Composite Index earned an average of 1.22% in those months, or only 32.6% of the equity return. In the 63 down months, equity had an average performance of -4.10%, while HFRI Composite Index averaged -0.77%, losing only 19% of the equity average. This Table above shows that over the period covered, the hedge fund index was participating very little in the equity markets. The inclusion of hedge funds in lieu of equity investments left an investor with very limited exposure to the potential appreciation of equity markets. Pomerantz Decl. ¶ 33.

213. The final column of the Table above illustrates that a traditional 60/40 blend (a common benchmark portfolio as explained above), earned 68% of the upside while only suffering 58% of the downside. Again, this data shows that hedge funds were unlikely to outperform a standard portfolio over a full market cycle. Pomerantz Decl. ¶ 34.

214. This analysis reveals that hedge funds are limiting downside risk at the cost of proportionally less upside gain. When equity performs well, hedge fund-of-funds are not appreciating anywhere near as much as equities and in a down market they do not sufficiently outperform equities to compensate for the opportunity losses in an up market. As such, an investor in 2011 would not expect a hedge fund component in any balanced fund to be a superior risk-adjusted substitute for equity. The risk-return analysis above also shows hedge funds were a poor diversifier relative to a simple bond market investment. Furthermore, this analysis does not examine the transparency and illiquidity issues that pertain to hedge funds which should be a further disincentive to an investor. Pomerantz Decl. ¶ 35.

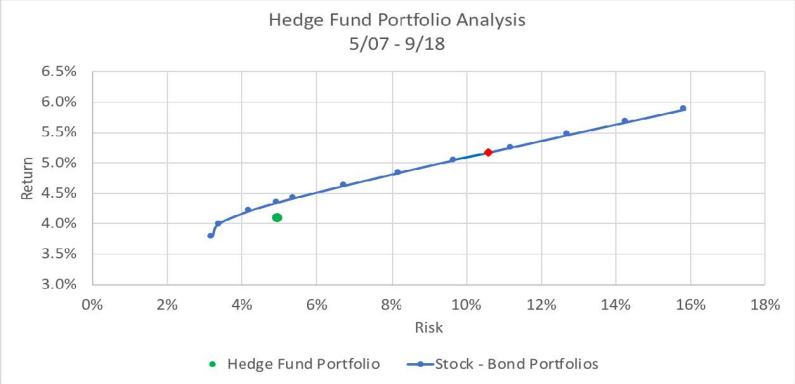
215. Consistent with this observation, in the period 2011–2020 hedge funds woefully underperformed equity, while maintaining their bond-like volatility, as would have been anticipated based on the above. Bear in mind that the period above from 1998–2010 was atypical in the context of the long-term returns for the capital markets. While bonds outperformed stocks during this period, which contained two significant corrections, this would not be expected or anticipated in general. The underperformance of stocks relative to bonds over a 14-year period is extremely rare. Pomerantz Decl. ¶ 35.

216. Tables 22 and 23 above illustrate the risk and return for traditional capital markets (as represented by a global stock index, a global bond index and a 60/40 blend) and the HFRI Fund of Funds index. As illustrated, the Fund of Funds index participated very little, if at all, in the appreciating equity markets. Pomerantz Decl. ¶ 37.

217. The allocation of Intel TDF and GDF assets to the hedge fund portfolio harmed participants. In pursuing a purported risk-mitigation strategy, the Intel Funds gave up the long-term benefit of investing in equity, which delivers superior returns. Even on a risk-adjusted basis, participants fared worse than a simple allocation of stocks and bonds.

218. The analysis that follows in Figure 8 compares the hedge fund portfolio to investments in the equity benchmark "MSCI World Stock" and the fixed income benchmark "BarCap Aggregate Bond Index." These are the two comparators used on the hedge fund portfolio fact sheet. The graph below illustrates the risk return trade-off in terms of allocations to these two benchmarks. The left most values represent lower equity weights, which produce lower returns along with lower risk. The right most values represent the alternative higher equity weight portfolios.

Figure 8



219. The isolated green point represents the behavior of the hedge fund portfolio, which is below the portfolios that consist solely of the benchmarks. Participants would have fared better by investing their hedge fund allocation to a portfolio that was simply 26% in equity and 74% in bonds, in that they would have experienced comparable market risk, with greater return.

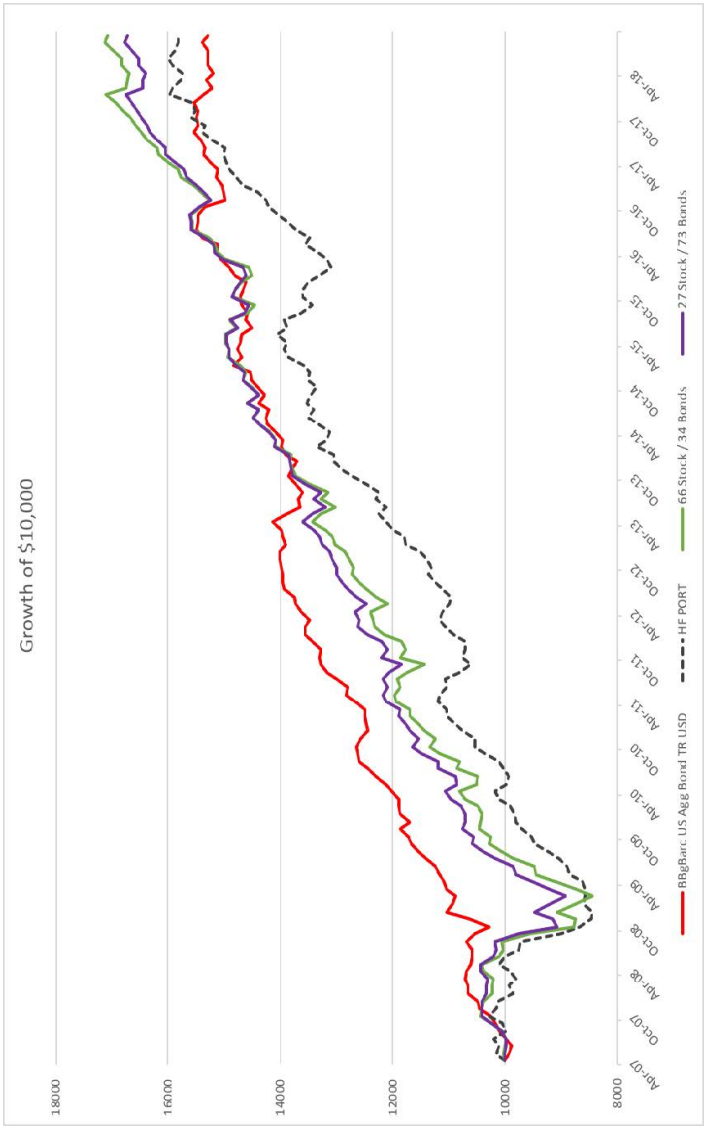
220. The alternate point identified in red to the right of the graph illustrates the typical 401(k) plan allocation which is 66% equity and 34% fixed income.[31] Participants typically choose traditional portfolios that have higher equity weights with commensurately greater return. Investors in the hedge fund portfolio earned 4.2%, while those in traditional capital market investments earned nearly a full percentage point higher.

221. A $10,000 investment in the hedge fund portfolio grew to $15,823, a traditional investment identified above grew to $17,080. As Figure 4 below illustrates, the hedge fund portfolio suffered similar losses to a balanced

[31] EBRI Survey,"401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2014", April 2016, No. 423.

portfolio during the 2007-2008 financial crisis, but failed to appreciate when the rest of the markets did.

Figure 9



2. Deviation from Professional Standards for Target Date Funds and Balanced Funds

222. By overweighting allocations of the Plans' assets to the speculative asset classes represented by the Non-Traditional Investments Accounts, the allocation model for the Intel TDFs deviates and has deviated drastically from prevailing professional asset manager standards for target date funds available in the market.

223. In 2009, the average asset allocations for 2030 target date funds offered by major fund companies are reflected in the Table below:

Table 24

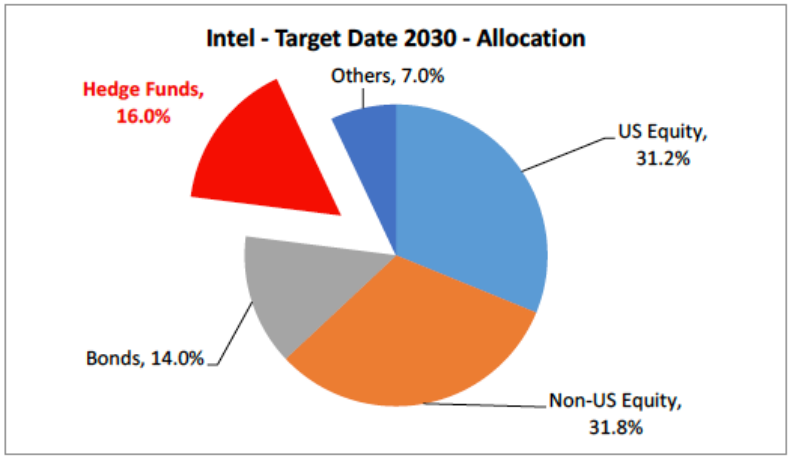
Firm/ Product	US Equity	Non-US Equity	Bond	Cash	Other
Fidelity	48.57%	18.29%	14.28%	4.26%	14.60%
American Century	60.48%	21.52%	6.74%	11.19%	0.07%
American Funds	50.13%	28.59%	11.09%	9.08%	1.10%
John Hancock	60.63%	27.70%	5.49%	5.10%	1.08%
Principal	53.46%	19.63%	23.58%	-0.43%	3.76%
Russell	58.55%	27.60%	7.01%	5.35%	1.48%
T Rowe Price	64.01%	19.96%	10.73%	4.29%	1.01%
Vanguard	68.09%	16.65%	14.28%	0.54%	0.43%
Average	**58.00%**	**22.50%**	**11.70%**	**4.90%**	**2.90%**

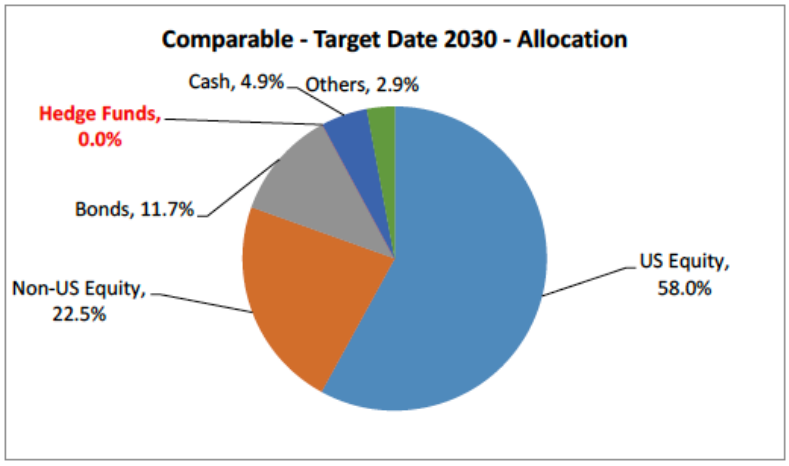
224. By comparison, the Intel 2030 Target Date Fund had approximately 21% of assets allocated to hedge funds and 5% to commodities by 2014.[32] Peer group target date funds (i.e., funds with a "target date" of 2030) do not allocate any assets to hedge funds and very few peer TDFs have even small commodity stakes. Further, peer target date funds allocate 70% of equity assets to U.S. stocks and 30% to foreign whereas the Intel 2030 TDF allocates over 50% of equity investments to foreign stocks.

225. The Figure below compares the asset allocation of the Intel Target Date 2030 Fund as of April 30, 2015 to the average asset allocations of the eight professional investment management firms represented in Table 24 above:

[32] *Target Date 2030 Fund*, Oregonian Live at 2 (March 31, 2014), http://media.oregonlive.com/finance/other/Target%20Date%202030%20Fund-1.pdf.

Figure 10


Intel - Target Date 2030 - Allocation
Hedge Funds, 16.0%
Others, 7.0%
US Equity, 31.2%
Bonds, 14.0%
Non-US Equity, 31.8%


Comparable - Target Date 2030 - Allocation
Cash, 4.9%
Others, 2.9%
Hedge Funds, 0.0%
Bonds, 11.7%
US Equity, 58.0%
Non-US Equity, 22.5%

226. The categories represented in the pie chart for the 2030 Intel TDF in Figure 10 above correlate to the Master Trust Investment Accounts as follows: the "Hedge Funds" category represents the Hedge Fund Account; the "Others" category represents the Stable Value Fund Account, the Private Equity Fund Account, and the Commodities Fund Account; the "U.S. Equity" category represents the U.S. Large Cap Fund Account and U.S. Small Cap Fund Account; the "Non-U.S. Equity" category represents the International Stock Fund Account and the Emerging Markets Fund Account; and the "Bonds" category represents the Global Bond Fund Account. The allocations to these respective categories are based on the allocations represented in a Target Date Funds fact sheet published by Intel with the effective date of April 30, 2015. Exhibit B to the Complaint provides additional comparisons between other Intel TDFs and the average allocations of the eight professional investment management firms represented in Table 24 for the target dates funds of the same year.

227. A target date fund is a hybrid investment that pursues a long-term investment strategy by holding a mix of asset classes such as stocks, bonds, and cash equivalents that is readjusted to become more conservative over the time horizon of the fund, as the fund approaches the date indicated in its name. Under prevailing standards, a target date fund follows a "glide path" or asset allocation path, according to which the assets of the fund is reallocated across asset classes to become more conservative as the target date approaches. The glide path is designed to account for factors affecting the participant's risk profile over time, which include a shorter time horizon before retirement age, fewer chances to make contributions to savings, and greater sensitivity to capital swings.

228. Peer target date funds do not allocate to speculative asset classes in any percentage close to the allocations of the Intel TDFs. The Intel TDFs have continued to allocate their assets to speculative asset classes in substantial percentages. As of September 2015, the Intel Target Date 2035 Fund allocated 20.78% of its assets to the Defensive Oriented Hedge Fund and Growth Oriented Hedge Fund Accounts alone and over 32% in total to the Non-Traditional Investments Accounts. As of June 2017, the Intel Target Date 2035 Fund allocated 14.17% of its assets to the Defensive Oriented Hedge Fund and Growth Oriented Hedge Fund Accounts and over 29% in total to the Non-Traditional Investments Accounts. In contrast, peer target date funds with a target date of 2035 do not allocate assets anywhere close to 29% to these speculative asset classes. For instance, as of June 2017, the American Funds 2035 Target Date Retirement Fund allocated 79.2% to U.S. and non-U.S. equities, 13.2% to bonds, and 7.6% to cash and equivalents, and no assets to hedge funds or commodities. Also, as of August 2017, the Vanguard Target Retirement 2035 Fund allocated about 79% to U.S. and non-U.S. equities and about 21% to bonds, and no assets to hedge funds or commodities. As of September 2017, the Fidelity Freedom 2035 Fund allocated about 11% of its assets to commodities and emerging market funds and the rest of its assets to U.S. and non-U.S. equities and bonds, and allocated no assets to hedge funds.

229. Few professional target date fund providers allocate assets to alternative investments such as hedge funds. Of 51 target date fund providers analyzed by Morningstar, only 8 allocated any assets to alternative investments. TDF Landscape at 37. Of those eight, only one exceeded an allocation percentage of 7.3%, the Putnam RetirementReady product. *Id.*

230. No defined contribution plan with assets exceeding $10 billion invested in the Putnam RetirementReady product.

231. Upon information and belief, none of the 46 other defined contribution plans with assets exceeding $10 billion invested in the Putnam RetirementReady product or any other target date product allocating over 7.3% of its assets to alternative investments. The two that Plaintiffs' Counsel's investigation discovered as including any hedge fund allocation at all included Verizon (less than 2% hedge funds) and HCA (5% allocated to an "Alternative Pool" which may include hedge funds, among other investments).

232. The Intel Global Diversified Funds' substantial allocation (consistently of more than 50% of the funds' assets) to the Non-Traditional Investments Accounts differs markedly from the typical allocation of peer balanced funds. For example, neither the Vanguard LifeStrategy Growth Fund nor the T. Rowe Price Balanced Fund allocates assets more than 2%, if any, to commodities, and allocates no assets to hedge funds or private equity funds.

233. Both before 2011 and after 2011, published reports and studies found that hedge funds pose investment risks not found with traditional investments managed by registered investment companies. **In August 2008**, the United States General Accountability Office ("the GAO") reported in a study that "Hedge Funds Pose Significant Challenges and Risks, Beyond Those Posed by Traditional Investments." U.S. Gov't Accountability Office, *Guidance Need to Better Inform Plans of the Challenges and Risks of Investing in Hedge Funds and Private Equity* (August 2008) ("Aug. 2008 GAO-08-692 Report"), at 22, *available at* https://www.gao.gov/assets/gao-08-692.pdf. For example, registered investment companies are subject to certain strict leverage limits to which hedge funds are not. *Id.* at 23. Whereas hedge funds can use leverage or borrowed money, and often do, to amplify returns, leverage can also magnify losses. Hedge funds lack liquidity as they often require an initial "lock-up" period where investors must commit their money for one-to-two years or more, and capital redemption after the lock-up periods often is limited to one per quarter and requires at least thirty days' notice, as in the case of the hedge funds in the Non-Traditional Investments Accounts. *Id.* at 26. Hedge funds also lack the transparency of publicly traded funds such as mutual funds. In particular, hedge funds lack transparency by design because individual hedge fund managers claim a proprietary interest in their investment strategies. *Id.* at 25-26. Investing in hedge funds carries valuation risk because the underlying holdings and strategies of many hedge funds are often not well known, even to institutional investors like the Plans, making the current value of a retirement plan's investment uncertain. Thus, it is difficult for retirement plan fiduciaries to evaluate hedge funds, including their performance. *Id.*

The GAO also reported in August 2008 that private equity funds pose the same investment and valuation risks and lack transparency and liquidity as hedge funds do. *Id.* at 33-37.

234. **On July 20, 2010**, the GAO relied on issued a report finding again that hedge funds and private equity pose challenges and risks beyond those posed by "traditional investments" such as mutual funds, including investment and valuation risks and lack of transparency and liquidity. Barbara Borbjerg, *Plans Face Valuation and Other Challenges When Investing in Hedge Funds and Private Equity* (July 20, 2010) ("July 2010 GAO-10-915T Report"), at 9-12, *available at* https://www.gao.gov/assets/gao-10-915t.pdf.

235. The GAO issued a report **on August 31, 2011** finding again that hedge funds and private equity pose challenges and risks beyond those posed by "traditional investments" such as mutual funds, including investment and valuation risks and lack of transparency and liquidity. Barbara Borbjerg, *Plans Face Challenges When Investing in Hedge Funds and Private Equity* (August 31, 2011) ("the 2011 GAO Report"), at 6-8, *available a*t http://www.gao.gov/assets/90/82457.pdf. The GAO "relied primarily" **on the Aug. 2008 GAO-08-692 Report and July 2010 GAO-10-915T Report** to prepare its August 31, 2011 report. *Id.* at i.

236. Significant allocations to hedge funds do not increase diversification of asset classes. Hedge funds themselves are not an asset class so much as esoteric investment strategies often holding widely traded securities.

237. Significant allocations to emerging markets funds and private real estate and natural resources funds also do not provide risk diversification because investments in equities and, in the case of emerging markets, investments in non-U.S. equities, already provide exposure to the sectors represented by these funds. Instead, they expose investors to bets on speculative areas of the markets. Emerging markets are a particularly high-risk area as investments in emerging markets are susceptible to foreign exchange risk, lower liquidity, and political risk, all on top of the overall increase in volatility that comes with investing in developing countries. Investments in commodities are often subject to higher-than-average volatility and the risk of investing through futures contracts, which offer a high degree of leverage.

238. In 2018, a down year in the equity markets where one might expect hedge funds to provide downside protection, hedge funds largely failed to do so. According to a report from Bloomberg, in 2018 the hedge fund industry had its "biggest annual loss since 2011, declining 4.1% on a fund-weighted basis." Hedge Fund Performance in 2018: The Good, Bad, and the Ugly (Jan. 9, 2019), available at https://www.bloomberg.com/news/articles/2019-01-09/hedge-fund-performance-in-2018-the-good-the-bad-and-the-ugly. Similarly, MarketWatch reported that hedge funds outperformed the S&P 500 by a "whisker" in 2018. Hedge funds lose money in 2018 but outperform S&P 500 by a whisker. In other words, in allocating huge percentages of Intel TDF assets to hedge funds, the Plan fiduciaries effectively exchanged years of robust equity returns for one year of a scintilla of outperformance. The result is that the Plan and its participants lost hundreds of millions.

3. The Investment Committee Imprudently Invested the TDFs In Hedge Funds

239. Target date funds are based on two important investment theories: Modern Portfolio Theory ("MPT") and the importance of asset allocation to generating retirement savings.

240. MPT posits that the power of combining securities and asset classes that have low correlations to each other can reduce risk, as measured by the volatility of a portfolio.

241. Brinson, Beebower, and Hood studied the impacts of asset allocation on 91 pension funds over a 10-year period and found that 94% of differences in performance can be explained purely by the asset allocation and only 6% is explained by market timing and security selection.[33] This underscores that trying to achieve excess returns by timing the markets is a generally superfluous strategy when considering a large pool of assets over a long investment horizon covering many market cycles. Market timing and security selection tied to near-term cycles tend to wash out over time.

242. Many hedge funds enable the manager to invest in near-term opportunities without adhering to a stated fund objective. By contrast, mutual funds regulated by the 1940 Act are obligated to state and adhere to their investment objectives. Mutual funds also have stringent fee disclosure requirements.

243. Most target date funds employ a sliding scale of equity, fixed income and cash allocations to provide substantial correlation benefits to market swings. Most off-the-shelf target date funds avoid any meaningful use

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[33] Gary P. Brinson et al., *Determinants of Portfolio Performance*, 42 Financial Analysts Journal 133, 33-138 (1995).

of leverage (as leverage is strictly constrained in 1940 Act funds) and generally employ only minor use of derivatives, usually for proxy or liquidity needs (and typically in the fixed income allocation where bond liquidity is increasingly challenged). Thus, the portfolio manager of a 1940 Act-regulated Target Date Fund has strong guidance as to the exposures he or she will receive when incorporating standard, prospectus-driven mutual funds in a fund-of-fund lineup. Additionally, for index-based target date funds, computer programs dictate strict adherence to the given index and do not afford manager discretion to deviate from guidelines and strategies.

244. Hedge funds involved in event driven and directional bets are generally using either focused security selection or market timing strategies, while distressed (and/or stressed) and value-driven funds are generally security selection funds. Brinson, Beebower and Hood explain that these strategies do not make sense for a retirement investment.

245. Hedge funds have been traditionally limited to "accredited investors" who have over $200,000 in annual income and/or over $1,000,000 in net worth. The reason for limiting investment to those accredited investors is to restrict these investments to those who can afford to lose their invested principal.

246. The hedge funds to which the Intel TDFs have allocated their assets of the Plan purport to have included as many as 21 different hedge funds between at least 2014 and 2018. For example, in 2014, of those hedge funds at least 6 were primarily deemed Multi-Strategy, 5 were deemed Directional, 5 involved Distressed (or Stressed), and 8 were Event Driven. Several listed multiple strategies. The makeup of the hedge funds for 2018 was largely the same. Some of these hedge funds represent the most potentially volatile of hedge fund strategies. Event

driven strategies generally place bets on the chance that a particular market event – such as a merger or a key interest rate change – takes place. If the event does not occur, or if the ramifications are not as impactful, then the leveraging and risk concentration employed will be for naught, and potentially large losses can take place as a result. Distressed strategies tend to seek opportunities with either equity or debt in companies or other entities that are on the verge of a potentially calamitous event – such as a bankruptcy – thus driving the price of their securities down. The hedge fund managers bet the event will not happen and buy in. If the event does happen, the losses are usually deep and permanent. Conversely, if they "short" the event (i.e. a bet on the price of the securities going down) and it does not happen, losses can exceed even the invested principal.

247. A common feature of these strategies is that the managers often employ significant leverage through various means such as borrowing, shorting or the use of derivatives. For hedge funds that commit significant amounts of capital to sustain the collateral requirement through the cycle of the anticipated event, the funds are extremely illiquid. As a result, many hedge funds employ strict constraints around access to invested capital by their investors by requiring months of notice and reserving the right to deny such requests for redemptions at their discretion.

248. The impact or potential impact of the illiquidity of hedge funds on the scale invested in by the Plans is that if the hedge funds refuse to honor redemption requests, the Investment Committee will be forced to sell off other, more marketable investments (*i.e.*, publicly traded securities), thereby increasing the Plans' concentration in hedge funds. There is a significant risk that the lock-up of hedge fund investments will cause selling in traditional

securities and further harm the invested principal of the plan participants.

249. Hedge fund managers often move illiquid or impaired assets out of the main fund into a separate holding vehicle known as a "side pocket." Creating a side pocket is solely within the discretion of the hedge fund manager. As the Wall Street Journal reported as early as 2006, regulators and investors were becoming concerned about the abusive use of side pockets to mask underperformance and inflate manager performance fees.[34] Because side pockets are often used for illiquid investments, hedge fund managers impose onerous withdrawal constraints. In the wake of the 2008 financial crisis, the SEC instituted several enforcement proceedings against hedge fund managers for improper use of side pockets.[35]

250. As the vast majority of former employees will roll their 401(k) investments into an IRA (upon retirement or changing employers) or into a new employer's plan, portability and liquidity are important considerations in constructing and selecting a TDF. Because hedge funds are not liquid and not portable, the substantial allocation to hedge fund investments by the Investment Committee means that participants attempting to liquidate Intel TDF holdings were (and are) at significant risk of being forced to lock-in substantial realized losses during a down or

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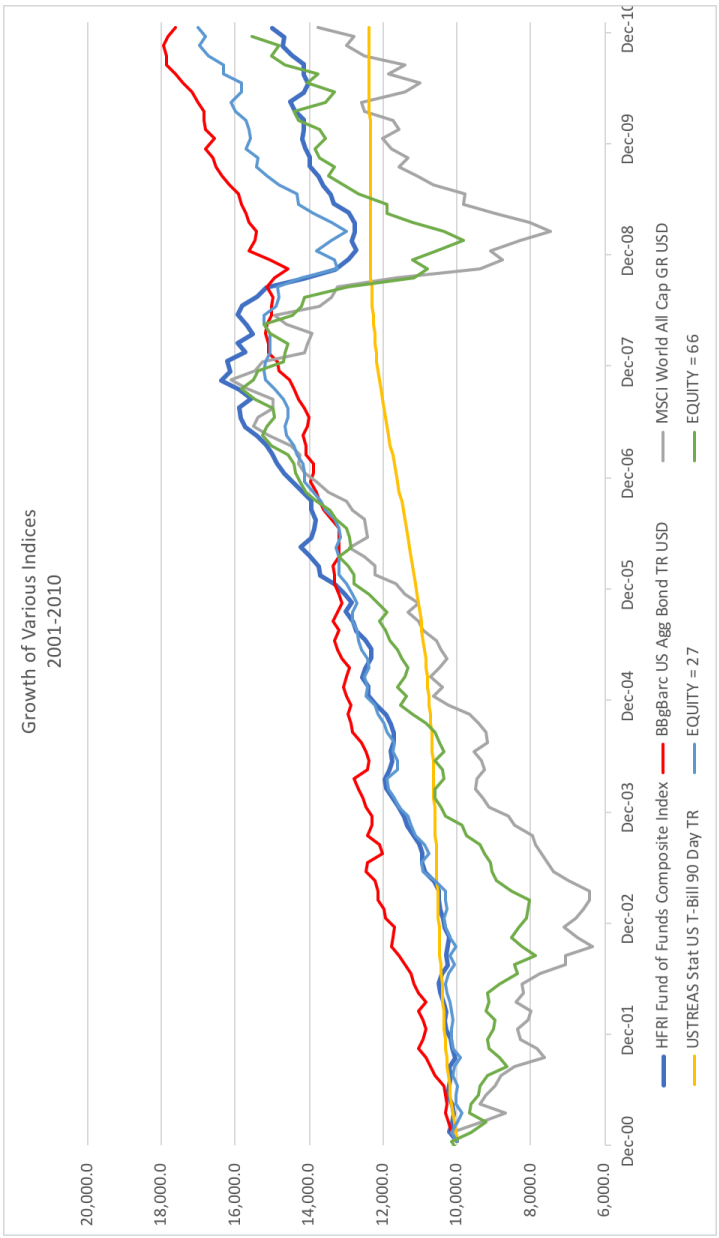
[34] Gregory Zuckerman & Scott Patterson, *"Side Pocket" Accounts of Hedge Funds Studied*, The Wall Street Journal (Aug. 4, 2006) http://www.wsj.com/articles/SB115465505123626547.

[35] *SEC Charges Hedge Fund Managers With Fraudulently Overvaluing Side-Pocketed Assets, Defalcation, and Material Misrepresentation*, U.S. Securities and Exchange Commission (October 19, 2010), http://www.sec.gov/litigation/litreleases/2010/lr21699.htm.

volatile market upon the need to liquidate their investments in the Plans.

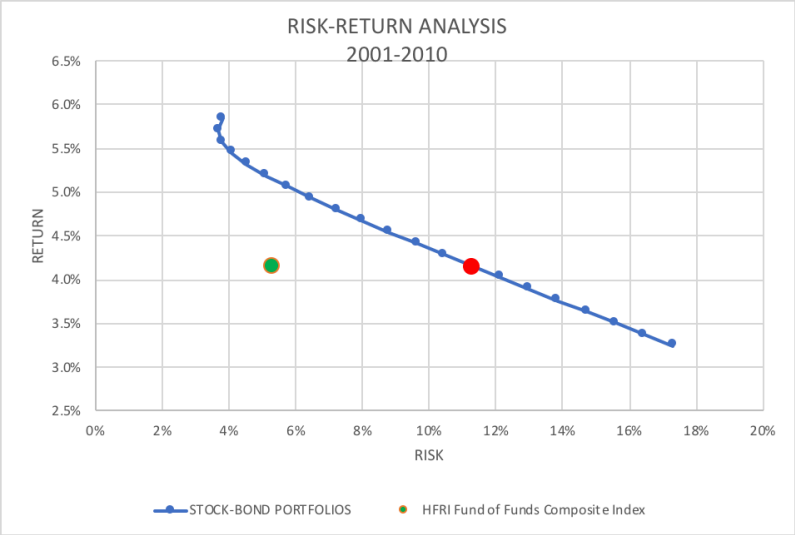
251. As of 2010, the year before the Investment Committee decided to significantly increase Intel TDFs' and GDFs' allocation into hedge funds, it was apparent that hedge fund performance did not warrant investment as an alternative to traditional retirement plan allocations. Consider the historical behavior of a standard hedge fund index relative to traditional investments as of 2010. The results were very similar to what transpired in 2011 and after, as illustrated in Figure 11 below. The annualized return of the HFRI FOF Index was more than 1% below a comparable risk portfolio of stocks and bonds. Investors in a simple portfolio of stocks and bonds earned more than FOF investors, while paying lower fees, with no need for complicated due diligence, and without the need to sacrifice liquidity. The traditional portfolio, allocated 66% to equity, still earned slightly more than the hedge fund index, through a volatile market.

Figure 11


Growth of Various Indices
2001-2010
20,000.0
18,000.0
16,000.0
14,000.0
12,000.0
10,000.0
8,000.0
6,000.0
Dec-00
Dec-01
Dec-02
Dec-03
Dec-04
Dec-05
Dec-06
Dec-07
Dec-08
Dec-09
HFRI Fund of Funds Composite Index
BBgBarc US Agg Bond TR USD
MSCI World All Cap GR USD
USTREAS Stat US T-Bill 90 Day TR
EQUITY = 27
EQUITY = 66

252. The Figure below illustrates that many of the traditional benchmarks outperformed the hedge fund index even though equity markets were very volatile and declined substantially during parts of this period. The declines of 2002 and 2008 did not compromise the long-term effects of the benefits of a traditional portfolio approach. Even over this period, traditional balanced portfolios provided superior returns.

Figure 12



253. The data presented above in Figures 11 and 12 was known to the investment community in 2011 when the Investment Committee decided to bet on hedge funds and was information available to and should have been known by the Investment Committee if they had prudently conducted an appropriate investigation. This data was not known to or disclosed to Plaintiffs or other members of the Class. The risks of investing in hedge funds was known to the Investment Committee in 2011 and should have been known to the Investment Committee and the Administrative Committee; however, such information was not known by or disclosed to Plaintiffs or other members of the Class.

4. Significant Investment in Hedge Funds and Private Equity Are Generally Not Suitable For Balanced Funds

254. Like target date funds, balanced funds in retirement plans need certain levels of liquidity, and volatility.

255. For these reasons, significant investments in hedge funds and private equity generally are not suitable for balanced funds. Few, if any, balanced fund portfolio managers invest in hedge funds and private equity. A prudent investigation by the Investment Committee would have revealed the lack of suitability of significant investments in a balanced fund.

5. Risks and Costs of Hedge Funds and Private Equity

256. Hedge funds and private equity funds are generally structured as investment partnerships. The investors are limited partners and the managers are general partners. Managers are often paid under a "2 and 20" formula, meaning that the manager is paid a fee of 2% of the assets under management and 20% of the profits generated by the fund's investments.

a. *Hedge Funds.*

257. A "hedge fund" pools investor assets to pursue a variety of active management strategies.

258. Hedge funds invest in many different types of assets. Hedge funds "do not constitute an asset class but rather provide access to particular trading strategies that may be employed by specific fund managers."[36] Hedge funds usually are classified according to their investment strategy.

(1) Valuation Risk.

259. Because the investment holdings and investment strategies of many hedge funds are often not well known, even to institutional investors like the Plans, it is difficult for the fund assets to be marked to market. **In both August 2008 and January 2009**, the Investors' Committee, a committee established by the United States President's Working Group on Financial Markets, which consisted of representatives from a broad array of investors and investor advocates, reported:

> Hedge funds are complex investment vehicles that often lack the transparency associated with more conventional investments or investment vehicles. Unlike a publicly traded stock, there is no easily accessible information on a hedge fund's means of producing returns. Unlike mutual funds, hedge funds need not disclose their holdings, and, in the case of some hedge fund strategies, such disclosure would not reveal the types and magnitudes of risks a hedge fund undertakes.

Principles and Best Practices for Hedge Fund Investors, Report of the Investors' Committee to the President's

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[36] Theda R. Haber, et al., Report to the Secretary of Labor: *Hedge Funds and Private Equity Investments*, at 6 (November 2011), http://www.dol.gov/ebsa/pdf/2011ACReport3.pdf.

Working Group on Financial Markets (Apr. 15, 2008) ("Apr. 2008 Principles & Best Practices for Hedge Fund Investors"), at 17, *available at https://www.iasplus.com/en/binary/crunch/0804hedgeinvestorsreport.pdf; Principles and Best Practices for Hedge Fund Investors, Report of the Investors' Committee to the President's Working Group on Financial Markets* (Jan. 15, 2009) ("Jan. 2009 Principles & Best Practices for Hedge Fund Investors"), at 18, *available at* https://www.cftc.gov/sites/default/files/idc/groups/public/@swaps/documents/file/principlespractices.pdf.

260. In both August 2008 and July 2010, the GAO reported:

> Because many hedge funds may own thinly traded securities and derivatives [securities traded infrequently or in low volume] whose valuation can be complex, and in some cases subjective, a plan may not be able to obtain timely information on the value of assets owned by a hedge fund. Further, hedge fund managers may decline to disclose information on asset holdings and the net value of individual assets largely because release of such information could compromise their trading advantage.

Aug. 2008 GAO-08-692 Report at 25; July 2010 GAO-10-915T Report at 9. As such, retirement plans investing in hedge funds "may lack information on both the nature of the specific underlying holdings of the hedge fund, as well as the aggregate value on a day to day basis." *Id.*

261. The GAO again reported in 2011 that "[b]ecause many hedge funds may own [securities traded infrequently or in low volume] and derivatives whose valuation can be complex and subjective, a retirement plan official may not be able to obtain timely information on the value of assets owned by a hedge fund. Further, hedge fund managers may decline to disclose information on asset holdings and

the net value of individual assets largely because the release of such information could compromise their trading strategy."[37] As such, "plan officials may lack information on both the nature of the specific underlying holdings of the hedge fund, as well as the aggregate value on a day-to-day basis." GAO Report at 6.

262. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by or disclosed to Plaintiffs or upon information and belief, other members of the Class.

(2) Investment Risk.

263. Hedge funds pose risks not found with traditional investments managed by registered investment companies. For example, as the GAO reported in August 2008 and July 2010 and then again in August 2011, registered investment companies are subject to strict leverage limits; whereas, hedge funds "can make relatively unrestricted use of leverage."[38] Leverage — essentially borrowed money — "can magnify profits, but can also magnify losses to the fund if the market goes against the fund's expectations."[39]

264. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by or disclosed to Plaintiffs or upon information and belief, other members of the Class.

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[37] Barbara Borbjerg, *Plans Face Challenges When Investing in Hedge Funds and Private Equity* (August 31, 2011) ("GAO Report") at 6, *available at* http://www.gao.gov/assets/90/82457.pdf.

[38] Aug. 2008 GAO-08-692 Report at 23; July 2010 GAO-10-915T Report at 10; GAO Report at 7.

[39] Aug. 2008 GAO-08-692 Report at 23; July 2010 GAO-10-915T Report at 10; GAO Report at 7.

(3) Lack of Liquidity.

265. Hedge funds tend to be illiquid investments, where investor redemptions are severely limited by the hedge fund manager. For example, as the GAO reported in August 2008 and July 2010 and then again in August 2011, hedge funds often require an initial "lock-up" period where investors must commit their money for one or two years, or more. *See* Aug. 2008 GAO-08-692 Report at 26; July 2010 GAO-10-915T Report at 11; GAO Report at 8.

266. In some cases, hedge fund managers may only allow one capital redemption per quarter. Once invested in a hedge fund, it is difficult for an investor to sell its interest in the fund and move to another option. Unlike investments in other vehicles, like mutual funds, a hedge fund investment cannot simply be bought or sold any day of the week.

267. The hedge funds to which the Plans allocate their assets typically require at least thirty days' notice to receive or redeem capital.[40]

268. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by Plaintiffs or upon information and belief by the most participants in these Plans.

(4) High Fees.

269. The hedge funds to which the Plans allocate their assets (each of the Hedge Fund, the Defensive Oriented Hedge Fund, and the Growth Oriented Hedge Fund Investment Accounts managed by Intel is a fund-of-hedge

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[40] Interview Moderated by Stacy L. Schaus, PIMCO Executive Vice President and Defined Contribution Practice Leader with Stuart Odell, Assistant Treasurer of Retirement Investments, Intel Corp., (March/April 2014), http://media.pimco.com/Documents/PIMCO_DC_Dialogue_Odell_Schaus_Mar_Apr_2014.pdf.

funds) charge incentive fees, and inclusion of hedge fund investments in the Plans' portfolios has increased fees.[41]

270. Even without an incentive fee, a two percent annual flat fee on assets under management is up to ten times higher than the average standard wholesale level fees for pension plan investments – for example, 2% versus 0.20%.[42] Indeed, one hedge fund industry expert has calculated that hedge fund managers collected 98% of the profits generated by hedge funds during the years 1998-2010.[43]

271. The high fees of hedge funds can have a significant negative impact on net investment returns. In August 2008, the GAO reported, including the following figure copied below, that under the typical two and twenty fee structure, a 12% return would be reduced to only 7.6% after deduction of fees:

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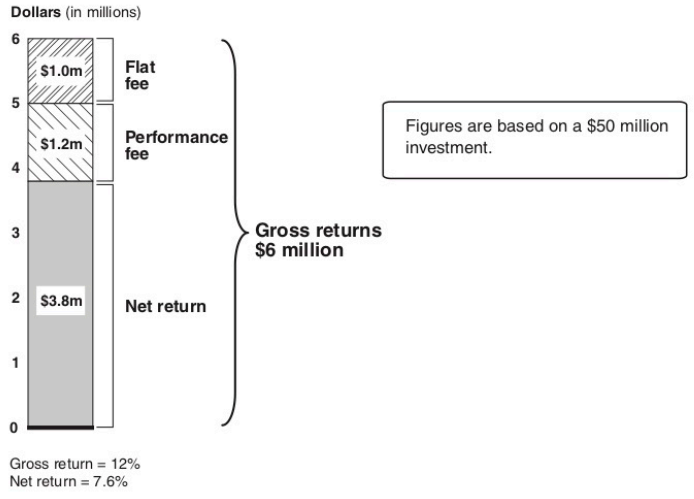
[41] *Id.*

[42] Bill Parish, *Intel Q4 2013 Earnings- Time to Fix Pension Plan,* Bill Parish- Parish & Company Registered Investment Advisor Blog (January 16, 2014), http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-pension-plan/.

[43] Simon Lack, *How The Hedge Fund Industry Has Kept 98% of The Profits In Fees*, SL Advisors: The Hedge Fund Mirage Blog (January 23, 2012), http://www.sl-advisors.com/how-the-hedge-fund-industry-has-kept-98-of-the-profits-in-fees/.

Figure 13

Figure 5: Effect of Hedge Fund Fee Structure on the Returns of an Investment of $50 Million



Source: GAO analysis.

Note: This example assumes a fee structure of 2 percent of assets under management and 20 percent of profits.

Aug. 2008 GAO-08-692 Report at 24-25. The GAO reported the same high fees in July 2010 and August 2011.[44]

272. The Investment Committee purportedly chose to invest in hedge funds in an attempt to achieve at least three goals: (1) to increase diversification of plan assets; (2) to decrease the volatility of the plan's investment performance; and (3) to enhance the plan's performance overall.[45]

273. Many hedge funds do not provide substantial risk reduction or risk diversification for pension plan assets because they are correlated to the equity market. According to data compiled by the hedge fund house AQR,

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[44] July 2010 GAO-10-915T Report at 11 n.14; GAO Report at 8, n. 11.

[45] *401K Global Diversified Fund Fact Sheet*, Mar. 31, 2014 at 3.

the HFRI Fund Weighted Composite Index – a leading hedge fund industry index – was 0.93 correlated with equity markets, or nearly 100% correlated. Often, hedge funds provide insufficient plan visibility into the strategies of their investments to enable an investor to properly understand the risk profile of the investment.

274. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known or disclosed to Plaintiffs or upon information and belief, other members of the Class.

(5) Lack of Transparency.

275. Hedge funds lack the transparency of publicly traded funds such as mutual funds. In particular, hedge funds lack transparency by design, because individual hedge fund managers claim a proprietary interest in their investment strategies. Both the April 2008 and January 2009 reports by the Investors' Committee of the President's Working Group on Financial Markets stated that "[t]here are sometimes legitimate competitive reasons for keeping information confidential, but often there are not." Apr. 2008 Principles & Best Practices for Hedge Fund Investor at 51; Jan. 2009 Principles & Best Practices for Hedge Fund Investors at 55. *The Financial Times* reported in November 2010 that "[t]ransparency is the leading concern investors share about the publicity-shy $1,800bn global hedge fund industry, followed by fees and managers pay." Sam Jones, "Investors Seek Transparency in Hedge Funds," *Financial Times* (Nov. 9, 2010), *available at* http://www.ft.com/intl/cms/s/0/ee29d874-eb5f-11df-b482-00144feab49a.html#axzz1YGLX4PbU.

276. The desire of the hedge fund manager to keep an investment methodology private conflicts with a plan fiduciary's duty to monitor the fund's methodology. As Randall Dodd, Director of the Financial Policy Forum,

testified before the U.S. Department of Labor, Employee Benefits Security Administration: Advisory Council on Employee Welfare and Pension Benefit Plans on September 20, 2006 about hedge funds: "[t]he investment strategies of hedge funds are often not well known, or are so lacking in transparency – even to their own investors […]– that the investors cannot adequately assess the hedge fund investment's contribution to their overall portfolio risk."

277. It is difficult for retirement plan fiduciaries to evaluate the performance of hedge funds because of the variety of hedge fund strategies; the substantial rate of turnover of funds opening and closing; the selection bias created when new funds choose not to report returns until after they have a run of good years; and the survivorship bias created when closed funds simply disappear from hedge fund indices.[46]

278. As the GAO reported in August 2008 and in July 2010, "hedge fund managers may seek to profit through complex and simultaneous positions and can abruptly change their positions and trading tactics in order to achieve desired return as changing market conditions warrant." Aug. 2008 GAO-08-692 Report at 28; July 2010 GAO-10-915T Report, at 9. Thus, "even if hedge fund managers were to provide detailed positions, plan sponsors might be unable to fully analyze and assess the prospective return and risk of a hedge fund. As a consequence, a plan may not be able to independently ascertain the value of its hedge fund investment or fully assess the degree of investment risk posed by its hedge fund investment." Aug. 2008 GAO-08-692 Report, at 25; *see* July 2010 GAO-10-915T Report, at 9. The GAO reported the same in August 2011. GAO Report at 6.

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[46] Haber, *supra* note 21, at 13.

279. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by Plaintiffs or disclosed to Plaintiffs or upon information and belief, other members of the Class.

(6) Operational Risks.

280. Retirement plans investing in hedge funds are also exposed to greater operational risks than presented by traditional investments. As the GAO Report explained, operational risk is the "risk of investment loss because of inadequate or failed internal processes, people, and systems, or problems with external service providers." "Operational problems can arise from a number of sources, including inexperienced operations personnel; inadequate internal controls; lack of compliance standards and enforcement; errors in analyzing, trading or recording positions; or outright fraud."[47]

281. The GAO reported in August 2008 and again in July 2010 that "because many hedge funds engage in active, complex, and sometimes heavily leveraged trading, a failure of operational functions such as processing or clearing one or more trades may have grave consequences for the overall position of the hedge fund." Aug. 2008 GAO-08-692 Report at 27; July 2010 GAO-10-915T Report at 12.

282. Likewise, the Investors' Committee of the President's Working Group on Financial Markets reported both in April 2008 and in January 2009 that "[h]edge fund operational risk is often greater than that of traditional asset managers for a number of reasons, including higher transaction volumes, complexity, use of leverage, financial incentives and potentially leaner staffing in start-up operations." Apr. 2008 Principles & Best Practices for

[47] GAO Report at 8; Aug. 2008 GAO-08-692 Report at 27; July 2010 GAO-10-915T Report at 12.

Hedge Fund Investor at 32; Jan. 2009 Principles & Best Practices for Hedge Fund Investors at 34-35.

283. The GAO reported again in August 2011 that "many hedge funds engage in active, complex, and sometimes heavily leveraged trading, and a failure of operational functions, such as processing or clearing one or more trades, and may have particularly grave consequences for the overall position of the hedge fund." GAO Report at 7-8.

284. Hedge funds are not registered with the SEC and are subject to few regulatory controls. Unlike mutual funds and other registered investment companies in the United States, hedge funds may avoid the registration requirement imposed by the Investment Company Act.[48] As Mr. Dodd explained, the absence of such regulatory controls, coupled with the fact that many hedge funds make it difficult for their assets to be marked to market, make hedge fund investments "especially prone to financial fraud."

285. Hedge fund strategies are often very complex. A prudent fiduciary must be capable of understanding the strategy in order to evaluate whether it is appropriate for investment of retirement plan assets. "[P]articular care should be exercised in due diligence of hedge funds, because of the complex investment strategies they employ; the fact that hedge fund organizations are frequently young and small; their use of leverage and the associated risks; the possibilities of concentrated exposure to market and counterparty risks, and the generally more lightly regulated nature of these organizations."[49] "The process of

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[48] Haber, *supra* note 21.

[49] Gary Bruebaker, *et al.*, *Principles and Best Practice for Hedge Fund Investors*, U.S. Commodity Futures Trading Commission at 14

selecting and monitoring hedge fund investments requires additional resources and continuous support from experienced professionals, which may be substantially more expensive than those required to select and monitor traditional investments. Fiduciaries should understand the effort and costs that will be required, and should commit these resources prior to investing in hedge funds."[50]

286. Even if the plan fiduciary is able to gain visibility of a hedge fund's investment strategy, the detailed holdings of a hedge fund portfolio are not disclosed to individual investors like Plaintiffs and the participants invested in the Intel TDFs and GDFs.

287. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by or disclosed to Plaintiffs or upon information and belief, other members of the Class.

b. *Private Equity.*

288. The term "private equity" refers to a form of alternative investment which uses pooled funds to invest in privately held companies. Investors are generally described as "limited partners."

289. Private equity advisors have been criticized for their valuation practices, such as using a valuation methodology that is different from the one that has been disclosed to investors or changing the valuation methodology from period to period without additional disclosure. Such valuation practices make it exceedingly difficult, if not impossible, to monitor manager performance and evaluate fees accurately where fees are

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(Jan. 15, 2009), http://www.cftc.gov/idc/groups/public/@swaps/documents/file/principlespractices.pdf.

[50] *Id.* at 7.

tied to assets under management and therefore increase as valuations increase.

290. Private equity investments pose several challenges for retirement plans like the Intel Plans. The four largest target date fund providers in the market, BlackRock, Fidelity, T. Rowe Price, and Vanguard, do not include private equity in their target date funds.[51]

291. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by Plaintiffs or upon information and belief by the most participants in these Plans.

(1) High Fees, Hidden Fees, and Inflated Fees.

292. Contracts with private equity managers generally address two forms of manager compensation: a flat fee for all assets under management (generally about 2%), and a "carried interest" fee, which is a percentage of any profits after a "hurdle" has been met. As the GAO reported in August 2008 and in July 2010 and again in August 2011, a typical fee structure in the private equity industry is "two and twenty," where the fee for assets under management is 2% and the incentive fee is 20% of profits above the hurdle. *See* Aug. 2008 GAO-08-692 Report at 34; July 2010 GAO-10-915T Report at 11; GAO Report at 7-8.

293. The private equity funds in the Alternative Investments Account charge incentive fees. An examination of private equity firms by the SEC has found that many private equity managers charge hidden and inflated fees to investors in their funds. According to

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[51] Margaret Collins& Devin Banerjee, *Would You Like Some Private Equity in Your 401(k)?,* Bloomberg Businessweek, (Apr. 4, 2013). http://www.bloomberg.com/bw/articles/2013-04-04/would-you-like-some-private-equity-in-your-401-k.

Andrew Bowden, Director of the SEC's Office of Compliance Inspections and Examinations ("OCIE"), the SEC identified "violations of law or material weaknesses in controls over 50% of the time" at private equity firms. This, according to Mr. Bowden, is "a remarkable statistic."[52] The SEC's examination found that the most egregious violations were in the areas of fees, where the SEC found inadequate disclosures to investors. Examples of hidden or undisclosed fees include:

(a) *Accelerated Monitoring Fees*. Many private equity managers charge monitoring fees to the portfolio companies in the fund. These fees are charged at the portfolio company level, not the fund level, and, thus, are generally invisible to investors. Moreover, private equity managers often force monitoring agreements of ten years or more on the portfolio companies they control. When the portfolio company is sold before the monitoring agreement expires, the private equity manager accelerates the fees for the remaining years of the contract, even though the manager is no longer monitoring the portfolio company. Disclosure of this practice is virtually nonexistent.

(b) *Operating Partners*. Private equity managers often foist "operating partners" or consultants in which they have an interest or affiliation on portfolio companies without the knowledge of investors. The fees collected by the private equity managers via these arrangements are not

[52] Andrew J. Bowden, Director of the Office of Compliance Inspections and Examinations, Spreading Sunshine in Private Equity, Address Before Private Fund Compliance Forum (May 16, 2014). http://www.sec.gov/news/speech/2014--spch05062014ab.html.

disclosed to investors. As Mr. Bowden commented: "Many of these Operating Partners, however, are paid directly by portfolio companies or the funds without sufficient disclosure to investors. This effectively creates an additional "back door" fee that many investors do not expect, especially since Operating Partners often look and act just like other adviser employees. They usually work exclusively for the manager; they have offices at the manager's offices; they invest in the manager's funds on the same terms as other employees; they have the title "partner"; and they appear both on the manager's website and marketing materials as full members of the team. Unlike the other employees of the adviser, however, often they are not paid by the adviser but instead are expensed to either the fund or to the portfolio companies that they advise."[53] Mr. Bowden continues: There are at least two problems with this. First, since these professionals are presented as full members of the adviser's team, investors often do not realize that they are paying for them a la carte, in addition to the management fee and carried interest. The adviser is able to generate a significant marketing benefit by presenting high-profile and capable operators as part of its team, but it is the investors who are unknowingly footing the bill for these resources. Second, most limited partnership agreements require that a fee generated by employees or affiliates of the adviser offset the management fee, in whole or in part. Operating Partners, however, are not

[53] *Id.*

usually treated as employees or affiliates of the manager, and the fees they receive therefore rarely offset management fees, even though in many cases the Operating Partners walk, talk, act, and look just like employees or affiliates."[54]

(c) *Usurping Fee Discounts*. Private equity firms leverage investor capital to obtain discounts on professional and vendor services for themselves, but cause their funds and portfolio companies to use the same professionals and vendors without any discounts.

(d) *Charging undisclosed "administrative" or other fees* not contemplated by the limited partnership agreement.

(e) *Exceeding the limits* set in the limited partnership agreement around transaction fees or charging transaction fees in cases not contemplated by the limited partnership agreement, such as recapitalizations.

(f) *Hiring related-party service providers*, who deliver services of questionable value.[55]

294. The SEC has also found problems in how private equity managers report investment returns. Private equity managers generally report investment performance in the form of a "net internal rate of return" ("IRR"), which is supposed to reflect actual investor profits (or losses). But many managers invest their own money in their funds and that money does not pay fees at the fund level, i.e., the 2% asset fee and the 20% carried interest. Given that fees are a significant factor in net performance, including the manager's fee-free assets in the computation of IRR distorts investor experience because investors actually

[54] *Id.*
[55] *Id.*

receive a lower return. Among the private equity firms that include manager assets in calculating IRR is Apollo Global Management LLC.

295. The high fees of private equity funds can have a significant negative impact on net investment returns. For example, under the typical two and twenty fee structure, a 12% return would be reduced to only 8% after deduction of fees.[56] As the GAO reported in August 2008, "[i]f the gross returns from a private equity fund are not sufficiently high, net returns to investors will not meet the commonly cited goal of exceeding the return of the stock market." Aug. 2008 GAO-08-692 Report at 34. In July 2010, the GAO likewise reported that "[f]or private equity, if the gross returns are not sufficiently high, net returns to investors will not meet the commonly cited goal of exceeding the return of the stock market and, thus, plans will not have earned a premium for assuming the risks inherent in private equity investments." July 2010 GAO-10-915T Report at 11.

296. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by or disclosed to Plaintiffs or upon information and belief, other members of the Class.

(2) **Valuation and Reporting**.

297. The SEC has found deep problems in the way private equity conducts valuations of Portfolio Companies. Common valuation problems identified by the SEC include:[57]

(a) *Advisers using a valuation methodology that is different* from the one that has been disclosed to investors.

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[56] July 2010 GAO-10-915T Report at 11 n.14; GAO Report at 8 n.11.

[57] *Id.*

(b) *Cherry-picking comparables* or adding back inappropriate items to EBITDA — especially costs that are recurring and persist even after a strategic sale — if there are not rational reasons for the changes, and/or if there are not sufficient disclosures to alert investors.

(c) *Changing the valuation methodology* from period to period without additional disclosure — even if such actions fit into a broadly defined valuation policy — unless there's a logical purpose for the change. For instance, the SEC has observed advisers changing from using trailing comparables to using forward comparables, which resulted in higher interim values for certain struggling investments. While making such changes is not wrong in and of itself, the change in valuation methodology should be consistent with the adviser's valuation policy and should be sufficiently disclosed to investors.

298. These valuation practices make it difficult to monitor manager performance and evaluate fees accurately where fees are tied to assets under management and therefore increase as valuations increase.

299. A prudent investigation by the Investment Committee would have revealed such information; however, such information was not known by or disclosed to Plaintiffs or upon information and belief, other members of the Class.

6. Opaque Disclosures

300. The Intel 401(k) Savings Plan disclosure of investment-related information to participants of as June 26, 2012, for example, hid the true nature of the underlying investments of the target date funds. Participants were alternatively told to benchmark the TDFs against either the Barclays Aggregate Bond Index, a pure bond

benchmark, or the MSCI World (N) Index, a pure equity index. Participants were told that their target date funds were becoming "more conservative over time" and that they were subject to equity and fixed income volatility and risks associated with "high yield, small cap and foreign securities" risks, but the disclosures were silent as to any of the risks associated with the TDFs' alternative investments, as described above.

301. The full risks were not disclosed also in the Fund Fact Sheets, which told participants that the alternative investments, including hedge funds, would reduce investment risk while maintaining return potential appropriate for an investor's target retirement date.

302. Moreover, these Fund Fact Sheets misrepresented past performance to create the impressions that performance would be higher. The Fact Sheets reported "simulated" past performance — not the actual past performance of the target date strategies — for all periods before March 31, 2011, which created the appearance of successful long-term results but, in reality, was based on hindsight bias, not actual performance. For example, the March 31, 2014 Fact Sheet for the 2030 TDF showed actual three-year performance trailing its category average by 154 bps per year. However, longer time periods utilized simulated returns infected with hindsight bias, creating the impression that the Fund outperformed its benchmark by a wide margin: 263 bps per year over the prior decade – an impossible feat for a fund to report on March 31, 2014 while reporting an inception date of July 11, 2011.

303. The March 31, 2014 401K GDF Fact Sheet discloses that 37.59% of the Fund is allocated to "Alternative Investments" and 67.39% and 17.56% of the "Alternative Investments" are hedge and private equity investments, respectively. The fact sheet reveals little

about the hedge and private equity fund investments other than describing them in very general terms.

304. Similarly, the March 31, 2014 for the Intel 2030 TDF reveals very little about the investments in hedge funds and private equity. It says how much of the portfolio is allocated to these investments, but nothing about the specific hedge funds held by the Plans such as the fund name, strategy, fees, or investment returns.

305. As for the Hedge Fund Fact sheet for May 2014 (specific to the Hedge Fund Account) in which the Intel Funds invested, it too is opaque and provides no information that would allow a reasonable investor or plan participant to evaluate or assess the prudence of hedge funds chosen for the Plans. The Hedge Fund Fact sheet provides a list of hedge funds that make up the Hedge Fund Account (Funds A – U). But it does not provide the names of the funds, the funds' managers, or the funds' fee and expenses. Instead, it provides a one-sentence description for each fund that is couched in technical and vague investment terms. Fund B, for example, is described as "A directional fund that uses primarily forwards and futures to invest in commodity, credit, currency, equity and interest rate markets around the globe based on the model-driven output generated from research of macroeconomic factors and their influence on these markets." Fund L is described as "A multi-strategy fund that may invest in all asset classes but is primarily known for its expertise as an event driven and relative value manager." And Fund Q is described as "A multi-strategy event driven fund that allocates capital across merger arbitrage, distressed/high yield debt and value equity investments." No reasonable person could decipher this limited and opaque information and reach any conclusions about the prudence of any given hedge fund investment made by the Investment Committee Defendants.

7. <u>The Conflicted & Divergent Interests of the Investment Committee Defendants</u>

a. *The Investment Committee Defendants Invested the Plans' Assets in Investments Provided by Companies with Which Intel Capital Partnered to Invest in Third-Party Companies Such as Technology Startups*

306. Intel Capital has invested in other privately-held companies that compliment Intel's business, such startup technologies. In making these investments since at least 2008 Intel Capital has partnered with investment companies, such as hedge funds and private equity to build a market for and expand consumer use of Intel's processors and other products. While some startups already have an existing relationship with institutional investment companies such as venture capital firms, they do not have such a relationship with the corporate venture division of a large corporation such as Intel. The investment companies that Intel Capital partners have served as an intermediary between Intel Capital and the startups that Intel Capital wants to assess.

307. These privately held companies in which Intel Capital invested to compliment Intel's business require multiple rounds of financing. After an initial round of raising "seed capital," the companies in which Intel Capital invests often need sequential funding. Intel Capital partners with or seeks investment companies such as hedge funds and private equity venture capital firms to help those third-party startups achieve sequential funding.

308. Obtaining sequential funding from hedge funds and private equity benefits Intel Capital in multiple ways. First, additional investment by hedge funds and private equity ensures that the companies in which Intel Capital

has invested have sufficient funding to grow. Second, Intel Capital reduces its own risk by having an outside firm also invest in these companies and allows Intel Capital to use its assets to invest in other companies and thereby diversify its assets and risk. Third, when a hedge fund or private equity investor makes a subsequent investment at price greater than Intel Capital's initial investment, Intel Capital has a reliable method to increase the value of the investment on its own books.

309. As of January 2014, Intel Capital had a global investment syndicate, a ready group of over 30 co-investing companies, to assist in filling out funding rounds for businesses that Intel Capital invested or would invest in.

310. Since at least 2009 the Investment Committee Defendants, including Executive Vice President of Intel and President of Intel Capital Arvind Sodhani and Corporate Vice President Treasurer of Intel Ravi Jacob, invested the assets of the Non-Traditional Investments Accounts, especially the Alternative Investments Fund Account, in the investments of many of the investment companies with which Intel Capital co-invested and partnered to access third-party startups. By investing the Non-Traditional Investments Accounts in these investments, the Investment Committee Defendants helped the co-investing investment companies obtain the funding that they needed to invest in and help the startups generate funding. These investments were designed to and did help Intel Capital and Intel Capital develop and maintain a profitable network of investment companies that could provide Intel Capital and Intel with access to new technology startups and opportunities for market expansion or assist Intel Capital in marketing itself to prospective customers or generating funding for them. Examples of ***some*** of these co-investing investment

companies, the third-party businesses in which Intel Capital and the investment companies co-invested, and the investments that the co-investing investment companies provided and the Non-Traditional Investments Accounts were invested in identified in Table 25:

Table 25

Investment Company that Intel Capital Partnered with	**Third-Party Companies that Intel Capital Targeted and Co-Invested In with Investment Company**	**Investments that Co-Investing Investment Company Offered and that Investment Committee Invested the Intel Plans' Assets in**
Andreessen Horowitz	Airware Coho Data GoodData Maxta Prism Skylabs BlueStacks Ark Kno CoreOS Bromium Clinkle	Andreessen Horowitz Fund III, L.P. Andreessen Horowitz Fund IV, L.P. AH Parallel Fund III, L.P. AH Parallel Fund IV, L.P.
Bain Capital Ventures	Lightbend INRIX HookLogic DocuSign DataSynapse	Bain Capital Asia II, L.P.
Founders Circle Capital	DocuSign Kabam	Founders Circle Capital I., L.P. Founders Circle Opportunities Fund I, L.P.
Kayne Partners	ColdLight Solutions	Kayne Anderson Energy Fund VII, L.P.

		Kayne Anderson Energy Fund V, L.P. Kayne Anderson Real Estate Partners IV
Top Tier Capital Partners	AlienVault VirtusStream	Top Tier Venture Capital V, L.P. Paul Capital Top Tier IV, L.P. Paul Capital Top Tier Special Opportunities Fund, L.P.
Advent International Corporation	Demantra	Advent International Global Private Equity VII B, L.P.
Goldman Sachs Group, Inc.	Kaltura MongoDB Mirantis Cloudian Guavus ScienceLogic Clearwire Veoh Celoxica Tejas Networks India Spectrawatt Virtual Iron Software Platform Solutions Intellon Corporation Cereva Networks	GS Capital Partner VI Parallel, L.P.

	Silknet	
Atomico	FreedomPop Gengo	Atomico Ventures III, L.P.
Axxon Capital	PhotoEx	Axxon Brazil Private Equity II C, L.P.
The Carlyle Group	Cidera Solsoft Skila	Carlyle Partners V, L.P.
General Atlantic	Exent	General Atlantic Investment 2013 Limited Partnership
Oaktree Capital Partners	Plastic Logic	Oaktree European Princl Fd III Limited Partnership
Softbank China Venture Capital	VeriSilicon Holdings	SBCVC Fund III, L.P. SBCVC Fund IV, L.P. SBCVC Fund V, L.P.
SVB Capital	July Systems	SVB Strategic Investors Fund IV, L.P. SVB Strategic Investors Fund V, L.P. Strategic Investors Fund VI-A, L.P. Strategic Investors Fund VII-A, L.P.
TPG Growth, TPG Biotech, and/or TPG Capital	Swrve CardioDx CareDx	TPG Growth III (A), L.P.

BlackRock	Snapdeal	BlackRock Dow Jones-UBS Commodity Index Fund
Tybourne Capital Management	Snapdeal	Tybourne Equity Offshore Fund
Farallon Capital Management	Sohu.com Asit Media Technology	Farallon Capital Institutional Partners, L.P.

311. By investing the Non-Traditional Investment Accounts in the investments provided by the co-investing investing companies and allocating the Intel Funds to these investments, the Investment Committee improperly favored these investments by prioritizing the interests of Intel Capital and Intel over those of the participants in the Plans. Put simply, the Investment Committee used the Plans' assets to promote the investment interests of Intel Capital and Intel at the expense of the participants.

b. The Investment Committee Invested the Intel Plans' Assets in Hedge Funds to Benefit Intel and Intel Capital's Investment in Companies with Which Intel and Intel Capital Were Conducting Business

312. Since at least 2009, Intel and/or Intel Capital invested in the private equity in companies that were in businesses that complimented Intel's business. In the course of investing in these companies, Intel and Intel Capital invested in these companies in the first funding round and then used hedge funds to come in and invest in the same companies as a second round.

313. Using hedge funds to invest in these companies benefited Intel and Intel Capital in at least three ways.

First, investment by hedge funds in these companies provided additional capital to them in which Intel and/or Intel Capital also invested in, without the necessity of Intel or Intel Capital providing additional capital to these companies. Second, Intel or Intel Capital's investment in these companies induced hedge funds to invest in these companies, and investment by hedge funds in these companies allowed Intel to recognize an increase in value to its investments in the same companies. For example, when Intel or Intel Capital came in and invested in the company at $100 per share in Year 1 during the relevant time period, and the hedge fund then came in and invested in the same company at $300 per share (e.g., because Intel or Intel Capital had invested in the company) in Year 3, Intel or Intel Capital recognized an increase to the share price of the company and thus an increase in value to its investment. Third, this increase provided Intel or Intel Capital a basis for increasing the amount of its investments in the companies based on these third-party investments by the hedge funds.

314. Many of the hedge funds that the Investment Committee invested the assets of the Retirement Contribution Plan and the 401(k) Savings Plan in were also the hedge funds that came in and invested in the companies whose businesses complemented Intel's business and that Intel or Intel Capital invested in. By including in the Non-Traditional Investment Accounts these hedge funds, the Investment Committee Defendants, including Executive Vice President of Intel and President of Intel Capital Arvind Sodhani and Corporate Vice President Treasurer of Intel Ravi Jacob, improperly favored these hedge funds to induce them to invest in these companies to provide them with additional capital and to increase the value of Intel and Intel Capital's investment in the same companies, to the benefit of Intel and Intel Capital. As such, the Investment

Committee Defendants selected and monitored the allocation model and allocation percentages for the Intel Funds and the underlying investments in the Non-Traditional Investments Accounts in a manner that benefited Intel and Intel Capital and prioritized their interest over those of the participants in the Plans.

315. After Confidential Witness No. 1 raised with Ravi Jacobs and Stuart Odell issues about the high fees charged for the Intel GDF, the Plans' investment in hedge funds, and the Intel GDF's poor performance, Jacobs and Odell invited Confidential Witness No. 1 to an in-person meeting in 2015 in Santa Clara, California ("the 2015 Meeting). In that meeting, Confidential Witness No. 1 asked Jacob and Odell and Intel to provide information about the hedge funds that the Intel Plans were invested in, including the reasons that the fiduciaries of the Intel Plans selected the hedge funds they did. Ravi and Odell refused to provide the information requested.

c. The Investment Committee Defendants Failed to Consider and Address the Interest of Participants in Lower Pay Grades in Connection with the Offset Arrangement Between the DB Plan and the Retirement Contribution Plan

316. Employees who were hired or transferred to the U.S. (with no prior U.S. service) on or after January 1, 2011 are eligible to participate in the DB Plan. Participation in the DB Plan began on the first day of the calendar quarter coincident with or next following the employee's one year of service with Intel. The amount of a participant's monthly annuity benefit under the DB Plan is determined by a formula based on the participant's final average pay, Social Security-covered compensation, and length of service.

317. The DB Plan and the Retirement Contribution Plan operate as a "floor offset" arrangement. Under that arrangement, if the participant's "minimum pension" benefit, in the form of a monthly annuity, under the DB Plan does not exceed the monthly annuity value of the participant's Retirement Contribution Plan account, the participant will only receive a benefit from the DB Plan and will receive no benefit under the Retirement Contribution Plan. If the monthly annuity value of the participant's Retirement Contribution Plan account is equal to or greater than the monthly annuity benefit provided under the DB Plan, the participant will receive a benefit from the Retirement Contribution Plan only.

318. The compensation of employees at Intel is and has been determined during the relevant time period by the employees' pay grades. Because the minimum pension benefit provided by the DB Plan is based on the employee's compensation, due to their high management positions and higher pay grades, employees such as Ravi Jacob, Arvind Sodhani, and Stuart Odell would almost always receive only the minimum pension benefit under the DB Plan and no benefit under the Retirement Contribution Plan at retirement, regardless of the performance of the Intel GDF or the amount of fees charged for investments in hedge funds and private equity. On the other hand, depending on the performance of the hedge funds in which the Intel GDF was invested and the amount of fees charged for the hedge funds, employees in lower pay grades whose Retirement Contribution Plan accounts were invested in the Intel GDF may not receive the floor minimum pension benefit provided by the DB Plan ***only***, even if the employees have the same length of service as high management employees. As such, employees such as Plaintiffs and Confidential Witness No. 1 would be and were adversely affected by the

poor performance of the hedge funds in the Intel GDF and the high fees charged for those investments and the GDF.

319. In the 2015 Meeting, Confidential Witness No. 1 raised with Jacob and Odell the issue that employees in lower pay grades including Confidential Witness No. 1 were adversely affected by the high fees of the Intel GDF and its poor performance under the floor arrangement between the DB Plan and the Retirement Contribution Plan. Jacob responded that Confidential Witness No. 1 should not be concerned because his pay grade was such that he would only get the floor minimum pension benefit under the DB Plan. Confidential Witness No. 1 then responded that his pay grade was 7 and thus was not high enough to only get the floor benefit under the DB Plan, but an employee like Jacob and Odell, whose pay grade would have been at least 10, would only receive the floor, which meant that they would see no benefit from higher earnings on the Intel GDF or on the Retirement Contribution Plan.

320. Based on the 2015 Meeting and Jacob and Odell's responses to Confidential Witness No. 1, Odell or Jacob had no personal interest in lowering the fees for the Intel GDF or improving the performance of the Intel GDF or the Retirement Contribution Plan because the floor benefits of these executives would always be higher than their Retirement Contribution Plan benefits, given their high pay grades. As a result of their pay grades, none of the Intel employee members of the Investment Committee had any personal interest in whether Intel GDF because the floor benefits of those executives would be higher than the benefits from the Retirement Contribution Plan.

321. By including in the Intel GDF significant allocations to hedge funds and selecting and maintaining that allocation model despite high fees and the poor performance of the GDF, the Investment Committee Defendants, including Jacob and Sodhani, had interests

that diverged from those of other participants because Defendants did not have a personal interest or stake in, but had more personal interests tied to how Intel Capital performed and these conflicts affected their ability to and caused them to fail to discharge their fiduciary duties solely in the interest of all participants.

8. **Underperformance of the Non-Traditional Investments Accounts**

322. The significant allocations to the Non-Traditional Investments Accounts and the associated excessive fees were the primary cause of the Intel Funds' underperformance. In the past six years, the Non-Traditional Investments Accounts performed significantly less well than the Traditional Asset Class Accounts. Between 2011 and 2017, the assets held in the Non-Traditional Investments Accounts approximately fell between 37 and 43% of the assets held in all the Master Trust Investment Accounts. However, where both the Traditional Asset Class Accounts and the Non-Traditional Investments Accounts had a net investment gain, the latter consistently accounted for significantly less than 37% of the combined net gain of all the Master Trust Investment Accounts. For example, in 2013, while the assets held in the Non-Traditional Investments Accounts represented more than 40% of the total assets in the Master Trust Investment Accounts, the net investment gain of the Non-Master Trust Investment Accounts was responsible for only about 30% of the $1.16 billion net investment gain of all the Master Trust Investment Accounts. Similarly, in 2014, although the Non-Traditional Investments Accounts held approximately 43% of the assets in all the Master Trust Investment Accounts, they accounted for only about 22% of the $496 million net investment gain of all the Master Trust Investment Accounts. Similarly, the Non-Traditional Investments Accounts approximately accounted for less

than 30% and 34% of the net investment gain of all the Master Trust Investment Accounts in 2016 and 2017, respectively.

323. Where the Non-Traditional Master Trust Investment Accounts had a net investment loss, the poor performance of the Non-Investment Asset Class Accounts either substantially reduced the gains of the Traditional Asset Class Account and thus the net gain of all the Master Trust Investment Accounts or substantially increased their net loss. In 2011, while the Traditional Asset Class Accounts had a net gain of over $128 million, the Non-Traditional Investments Accounts suffered a net loss of $100 million. The Hedge Fund Account had a loss of over $41 million, the Emerging Markets Fund Account had a loss of over $47 million, and the Commodities Fund Account (which was later renamed the Diversified Real Assets Fund Account) had a loss of over $28 million. The net loss of the Non-Traditional Investment Accounts reduced the net gain of all the Master Trust Investment Accounts to $28 million. In 2015, the Non-Traditional Investments Accounts accounted for at least $93 million of the $106 million net loss of all the Master Trust Investment Accounts. That year, the Growth Oriented Hedge Fund Account, the Emerging Markets Fund Account, and the Diversified Real Assets Fund Account had an investment loss of at least $50 million, $114 million, and $83 million, respectively. In fact, for 2012 and 2014, the Diversified Real Assets Fund Account, which invested in commodities, had also reported an annual net loss. For 2013 and 2014, the Emerging Markets Fund Account had also reported an annual net loss. Between 2011 and 2016, the Master Trust Investment Accounts had a combined net gain of approximately $3.4 billion, of which the Non-Traditional Investments Accounts accounted for no more than 28%. As a result of the heavy allocations to the Non-Traditional Investments Accounts and their

underperformance, the Intel Funds suffered corresponding underperformance and losses of investment returns.

324. What added to the underperformance of the Master Trust Investment Accounts and further contributed to the poor investment returns of the Intel Funds were the high costs of investing in hedge funds and private equity funds, which filled the Non-Traditional Investments Accounts. Hedge funds and private equity funds are generally structured as investment partnerships. Managers for these funds are typically paid under a "two and twenty" compensation structure, that is, a management fee equal to 2% of the assets under management, and an additional incentive or performance fee equal to 20% of any profits on the assets managed. Even without a performance fee, an annual flat fee of 2% or 200 bps on assets under management is excessive and unjustified in the defined contribution plan context where expenses are a key driver in the long-term performance of an investment option. An additional performance fee of 20% on the profits generated further significantly reduces any investment return. GAO Report at 8 n. 11 (reporting that, after fees are deducted, the two-and-twenty compensation structure would reduce a 12% return to only 7.6%). The hedge funds and private equity funds in the Non-Traditional Investments Account charge management and performance fees. As a result of the substantial allocations to the Non-Traditional Investments Accounts, approximately 30% of the assets of each of the Intel TDFs are subject to a performance fee, and approximately 45% of the assets of each of the Intel GDFs are subject to a performance fee. These management and performance fees consistently and substantially decreased the performance of the underlying hedge funds and private equity funds in the Non-Traditional Investments Accounts and reduced

the net investment returns of the already-underperforming Non-Traditional Investments Accounts and thus of the Intel Funds.

9. <u>The Ongoing Failure of Fiduciaries of the Plans to Conduct an Appropriate Investigation</u>

a. *The Performance of the Plans' Hedge Funds Portfolio in 2008 Was Poor.*

325. According to *What's inside Intel's retirement plans? Hedge funds. Lots of 'em*, Steven Odell, Intel's Assistant Treasurer for retirement plan investments, and the Investment Committee members believe that hedge funds can reduce the ups and downs of traditional stock and bond markets.[58]

326. The Investment Committee purportedly included hedge funds in the Plans' asset allocation portfolios to increase diversification and reduce risk. However, the Investment Committee's expressed rationale is based on a fallacious premise: hedge funds should not be considered an independent asset class for purposes of asset diversification. Instead, hedge funds are strategy diversification.

327. Mr. Odell has expressed that he believes hedge funds have good risk-adjusted returns.[59] Yet, Mr. Odell's belief was contradicted by actual performance of the Plans' hedge fund portfolio. Even Mr. Odell conceded that the Plans' hedge fund portfolio did not meet expectations during the 2008 financial crisis—it lost 17% in 2008 as

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[58] Hunsberger, *supra* note 14.

[59] Robert Steyer, *Intel's 401(k) reboot aims for better outcomes,* Pensions & Investments (March 5, 2012), http://www.pionline.com/article/20120305/PRINT/303059972/intels-401k-reboot-aims-for-better-outcomes/M.

compared to a 5.2 percent gain in the Barclay's U.S. Aggregate Bond Index.

328. This should have caused the Investment Committee to reconsider whether, to what extent, and in what form to continue its investments in hedge funds.

329. Based on the Forms 5500 filed with the Department of Labor, the Investment Committee added hedge funds after 2008, raising the number of managers in the hedge fund portfolio from about 10 or 12 to 21 by 2011. Indeed, in 2009, the 401(k) Savings Plan had less than one million dollars in hedge fund investments and the Retirement Contribution Plan had approximately $550 million. By the end of 2011, the 401(k) Savings Plan held $680 million in hedge fund assets, and the Retirement Contribution Plan held approximately $1 billion. In short, the Investment Committee doubled down with the Retirement Contribution Plan and increased the 401(k) Savings Plan's investment from under a million to over $680 million.

b. ***The Intel Fiduciaries Should Have Been Aware or Discovered Reports Published Both Before 2011 and After 2011 Undermining the Value of Hedge Funds.***

330. In addition to the poor performance of the Plans' hedge funds in 2008, numerous studies and reports published in the years *both* before 2011 and in 2011 and after– including before and after the 2008 financial crisis – questioned the value of hedge funds. In light of its own experience with respect to the Plans and the wealth of data available to it, the Investment Committee knew or should have known both before 2011 and in 2011 and after that hedge funds were, at the amount of the investment made by the Plans, an imprudent investment for target date

funds and balanced funds given the cost, performance and risk.

(1) **Before 2011**

331. As explained above, the GAO issued a report **in August 2008** and another report **in July 2010** finding that hedge funds pose investment risks, not found with traditional investments managed by registered investment companies, and those risks include investment, valuation, and operational risks and lack of transparency and liquidity.

332. Unlike more traditional investment products, hedge funds typically charge both a management fee (typically 1-2% and sometimes more) based upon the amount of assets under management ("the Management Fee") and an annual performance fee (typically 20%) based on the success of the fund ("the Performance Fee").[60] The GAO reported **as early as August 2008** that under hedge funds' typical two and twenty fee structure, a 12% return would be reduced to only 7.6% after deduction of fees. *See* Aug. 2008 GAO-08-692 Report at 34; *see also* July 2010 GAO-10-915T Report at 11 n.14; GAO Report at 8, n. 11. Performance-based compensation arrangements with managers may create an incentive to make investments that are riskier or more speculative than would be the case if such arrangements were not in effect. In addition, because performance-based compensation is calculated on a basis that may include unrealized appreciation of assets, compensation may be greater than if such compensation were based solely on realized gains.

333. **By at least 2006**, studies of the performance of alternative investments began to reveal that the returns

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[60] *The New Money Men*, The Economist (Feb. 17, 2005), https://www.economist.com/special-report/2005/02/17/the-new-money-men.

produced by hedge funds – at least after 2000 – did not exceed the investment performance of index-tracking mutual funds (at least once fees were subtracted from performance). Reports of such studies were not buried in some obscure investment newsletter but were widely published in articles such as *Rolling in It: Why Investors should kick up a fuss about hedge-fund fees*, The Economist (Nov. 16, 2006), https://www.economist.com/finance-and-economics/2006/11/16/rolling-in-it and *The New Money Men*, The Economist, Feb. 17, 2005 (citing studies), https://www.economist.com/special-report/2005/02/17/the-new-money-men. As a result, as articles published by no later than 2006 reported, investors in hedge funds were taking greater risks and paying much higher fees for performance that could have been obtained for lower risk and lower fees.

334. As *The Economist* succinctly explained in *Rolling in It*, **by November 2006**, hedge fund managers were receiving "Alpha pay for beta performance." As Narayan Naik of the London Business School noted in that *Economist* article, "pension funds ha[d] been advised to move into hedge funds by consultants," but those consultants had relied on outdated data from the 1990s and biased data regarding performance and returns.[61]

335. As the GAO reported **in August 2008**, surveys conducted of pension funds (both public and private) showed that fewer than half the pension funds surveyed have investments in private equity and about one quarter have investments in hedge funds.[62] Among those pension

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[61] *Rolling in It: Why Investors should kick up a fuss about hedge-fund fees*, The Economist (Nov. 16, 2006), https://www.economist.com/finance-and-economics/2006/11/16/rolling-in-it.

[62] Aug. 2008 GAO-08-692 Report at GAO Report at 13-14.

plans that do invest in hedge funds and/or private equity, the investments generally represent a small share of the total plan assets. According to the August 2008 GAO Report, one survey showed that "the average allocation to hedge funds among plans with such investments was about 4 percent in 2007" and "among plans with investments in private equity, the average allocation was about 5 percent."[63] The August 2008 GAO Report summarized the level of pension plan investments in alternative investments as follows:

> Although the majority of plans with investments in hedge funds or private equity have small allocations to these assets, a few plans have relatively large allocations. . . . . Of the 62 plans that reported investments in hedge funds in 2007, 12 plans had allocations of 10 percent or more and, of those, 3 plans had allocations of 20 percent or more. The highest reported hedge fund allocation was 30 percent of total assets. Large allocations to private equity were even less common. A total of 106 surveyed plans reported investments in private equity in 2007, of which 11 plans had allocations of 10 percent or more and, of those, 1 plan had an allocation of about 20 percent.[64]

The data on hedge fund and private equity allocations set forth in the August 2008 GAO Report was based on a survey conducted by Pension and Investments in 2007 of the largest 200 plans, ranked by combined defined benefit and defined contribution plan assets. Of the 200 plans surveyed, only 133 completed the survey and provided asset allocation information.

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[63] *Id.* at 13.

[64] *Id.* at 13–14.

336. Concerns about hedge fund investments, fees, reporting, and performance are not new but were widely reported before 2011. Hedge fund indices suffer from survivor bias. Hedge funds commonly shut down and experience relatively high attrition rates—about 8.5% fail each year. But these funds are routinely excluded from the indices. Thus, the indices primarily represent the returns of successful hedge funds, not those that fail, which biases returns upwards and lowers apparent downside volatility. Smoothed volatility also lowers correlations to other asset classes, thus falsely supporting the claim that hedge fund performance does not correlate to bonds and equities. Notwithstanding, these flaws, and as noted above, the HFRI Index through 2010 showed that hedge funds of funds were a poor substitute for equites and bonds.

337. Hedge fund returns are self-reported. Many of the worst performing hedge funds do not report returns for obvious reasons. And even successful hedge fund managers may choose only to report the returns of their most successful funds, but not the returns of poor-performers. This problem is described as membership bias. **In October 2009**, the authors of an article reported that their study suggests that misreporting returns by avoiding reporting losses is a widespread phenomenon in the hedge fund industry. Nicholas Bollen & Veronika Pool, "Do Hedge Fund Managers Misreport Returns? Evidence from the Pooled Distribution," *The Journal of Finance* (Oct. 2009), *available at* https://www.jstor.org/stable/27735171?seq=1. Even those funds and managers who do report returns may not do so on a regular basis. Infrequent fund valuations mask volatility where reduced volatility is a primary selling point of hedge funds. For example, a hedge fund that reports performance quarterly can mask extreme swings in valuations over short periods of time.

338. Hedge funds also may hold illiquid investments that are valued at the discretion of the manager. Given that fees are based on assets under management, hedge fund managers have an incentive to inflate valuations to increase fees as well as to boost performance.

339. The various hedge fund indices do not have common standards. Indices differ on the number of funds covered, inclusion criteria, strategy definitions, etc. They even account for membership and survivorship bias differently. For instance, while Tremont Capital Management segments funds into 9 strategies, Hedge Fund Research uses 20 strategies, and the Hennessee Group uses 23 strategies. Inclusion criteria range from minimum assets to proof of an audited statement. Such differences can result in significant variation in performance statistics. As such, even simple comparisons among hedge funds can be misleading.

340. **In 2006,** Vanguard published "Understanding Alternative Investments: A Primer on Hedge Fund Evaluation." Among other things, the 2006 Vanguard report concluded that "[r]eported hedge fund returns contain significant biases that skew conventional mean-variance and regression analysis" and observed that generally hedge funds do not mitigate market risk to the extent expected by investors.[65]

341. According the 2006 Vanguard report, hedge funds can be classified into two basic categories: non-directional and opportunistic. Opportunistic strategies generally seek to overweight or underweight exposure to systematic risk

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[65] Christopher B. Phillips, *Understanding Alternative Investments: A Primer on Hedge Fund Evaluation*, Vanguard Investment Counseling and Research (2006) at 1, 10, https://personal.vanguard.com/pdf/s554.pdf.

factors to exploit general market trends. Non-directional strategies are closest to the original intent of hedge funds, whereby long and short positions are established in securities that bear similar risk factor exposure or securities that don't have similar risk factors, (*e.g.*, long the companies bonds, short the equity). Consequently, security selection is critical. Opportunistic strategies reveal similar mean returns, suggesting investors are exposed to greater than expected risk.[66]

342. According the 2006 Vanguard report, certain non-directional strategies, including convertible arbitrage and fixed income arbitrage, have recorded steeper losses than gains, suggesting that the significant relative downside risk of volatility is asymmetric, which disproportionately costs investors in down markets.[67]

343. According to the 2006 Vanguard report, hedge fund use of leverage and derivatives can cause disproportionate movements in hedge funds returns as compared to underlying asset class returns. These non-linear movements can distort interpretation of mean and variance. And event-driven, convertible arbitrage and fixed income arbitrage strategies have highly negatively skewed returns.[68] "The implications of this are important, because even with [hedge fund] index returns largely self-reported and concentrated on those funds that do not fail, investors remain exposed to significant levels of extreme returns, particularly to the downside. Accounting for survivorship bias and self-reporting would likely increase the non-normality represented in hedge fund indexes. In sum, the experiences of individual and institutional investors probably differ greatly from what might be expected from

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[66] *Id.* at 1, 6, 10.
[67] *Id.* at 10.
[68] *Id.* at 11.

index-level analysis, with investors exposed to greater probabilities of extreme returns."[69]

344. With respect to operational risk, financial experts were reporting **as early as 2008** that operational risk associated with conflicts of interest within the fund and external to the fund can lead to reduced average annualized returns by 1.68%.[70]

345. With respect to actual investor experience, the authors of a study presented in 2009 and published in 2011 concluded that "the real alpha of hedge fund investors is close to zero."[71] In other words, for all the active management and esoteric strategies employed by hedge fund managers, the hedge fund managers add little or no value. "[I]n absolute terms, the dollar-weighted returns [of hedge funds] are reliably lower than the return of the S&P 500 index, and are only marginally higher than the risk-free rate as of the end of 2008."[72] These authors cite to other studies finding small and sporadic alpha in hedge funds, and conclude that actual investor returns are 3 to 7 percent lower than reported hedge fund returns. They responded in 2009 that the actual risk-return profile of hedge fund investors is much worse than investors would expect from observing hedge fund indices.

346. It was well reported **between 2008 and 2010** that in the 2008 financial crisis, hedge funds did not provide the

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[69] *Id.* at 11.

[70] Stephen Brown, *et al.*, *Mandatory Disclosure and Operational Risk: Evidence from Hedge Fund Registration,* Journal of Finance (2008), http://depot.som.yale.edu/icf/papers/fileuploads/2472/original/06-15.pdf.

[71] Ilia D. Dichev & Gewn Yu, *Higher risk, lower returns: What hedge fund investors really earn*, 100 Journal of Financial Economics 248 (July 20, 2009), *available at* http://www.people.hbs.edu/gyu/higherrisklowerreturns.pdf.

[72] *Id.*

hedge that hedge funds managers claimed the funds to provide, with results that are uncorrelated with traditional investments. As the Financial Times reported **at the end of the third quarter of 2008**, by the end of that quarter, hedge funds had lost 9.6% since the start of that year. James Mackintosh, "Hedge Fund Withdrawal Expected by Managers," Financial Times (Sept. 30, 2008), *available at* http://www.ft.com/intl/cms/s/0/ad490a5a-8e87-11dd-9b46-0000779fd18c.html#axzz1YWXgoWXY.

347. In the month of October 2008, prompted by hedge funds' record poor performance, investors redeemed a record $40 billion out of their hedge fund investments. James Mackintosh, "Record 40bn is Redeemed From Poorly Performing Hedge Funds," Financial Times (Nov. 21, 2008), *available at* http://www.ft.com/intl/cms/s/0/f8012178-b76c-11dd-8e01-0000779fd18c.html#axzz1YWXgoWXY. *The Financial Times* reported **in November 2008**: "Hedge funds were hit by more redemptions in October than at any *time* since Chicago-based Hedge Fund Research started compiling figures in 1990, and it predicted worse to come." *Id.* By the end of November 2008, hedge funds lost an average of 19% in 2008. Hedge funds in many cases imposed restrictions on investor withdrawals to support their own survival. James Mackintosh, "Hedge Funds Extend Redemption Ban." Financial Times (Nov. 29, 2008), *available at* http://www.ft.com/intl/cms/s/0/583ea4e4-bd84-11dd-bba1-0000779fd18c.html#axzz1YGLX4PbU.

348. **At the end of the fourth quarter of 2008**, *The Financial Times* reported that investors had redeemed money out of hedge funds following every strategy, even hedge funds that were reporting returns, and that "[h]edge funds lost an average of 19 per cent in the 11 months to the end of November" and "that loss easily eclipses the 1.5 per

cent lost in 2002, the only previous annual loss since records began in 1990." Deborah Brewster, "Money Flows out of Hedge Funds at Record Rate," Financial Times (Dec. 31, 2008), *available at* http://www.ft.com/intl/cms/s/0/8bdfc056-d6db-11dd-9bf7-000077b07658.html#axzz1YWEnMGqo.

349. **In 2010**, Vanguard published a report titled "Do hedge funds hedge? The experience of the Great Recession"[73] that compared the performance of hedge funds to broad market indices and a 60/40 portfolio of equities and bonds from October 2007 through February 2010. During the first part of this period, October 2007 to February 2009, hedge fund strategies declined at about -2% to -1.3%, substantially better than the broader equity indices, but not much better than a 60/40 portfolio, which had monthly returns of -2.3% during the same period.[74] From March 2009 to February 2010, however, the 60/40 portfolio outperformed all hedge fund categories except one. And equity indices outperformed all hedge fund strategies substantially.[75] Moreover, the 2010 Vanguard report reported a high performance correlation between all hedge fund categories, except one, and a 60/40 portfolio. The monthly correlation of the fund-of-hedge-funds index (the Intel Hedge Fund is a fund-of-hedge funds) to a 60/40 portfolio was 0.67 during the period, raising serious questions about whether there was any hedging at all.[76]

350. In sum, the downside performance of hedge funds in 2008, although superior to equity markets, nevertheless

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[73] Geetesh Bhardwaj, Ph.D., *Do hedge funds hedge? The experience of the GreatRecession*, Vanguard Research (2010), https://pressroom.vanguard.com/content/nonindexed/Do_hedge_funds_hedge_the_experience_of_the_great_recession.pdf.

[74] *Id.* at 3.

[75] *Id.*

[76] *Id.* at 3.

disappointed investors and did not provide the hedge that investors expected. Hedge funds failed to do much better than a 60/40 portfolio in 2008, and have done a lot worse since, including in the period March 2009 to 2011, when the Investment Committee significantly increased the Plans' investment in hedge funds.

351. Indeed, institutional investors were questioning the virtues of hedge fund investments just as the Investment Committee substantially increased and continued to substantially increase the Plans' investments in hedge fund investments. A survey of such investors revealed the following:

- 70% of institutional investors were demanding more transparency;
- 80% of respondents reported a desire for better transparency into valuation methodologies;
- Whereas the 2008 respondents ranked poor performance as their #1 concern, by Q1 2010, they ranked "lack of transparency" and "liquidity risk" as their top concerns;
- 72% of investors in hedge funds in 2010 were institutions, not individuals such as retirement plan participants, and the vast majority did so for short time horizons: 94% for 3 years; 52% for 6 years; and only 31% for 10 years or more;
- Only 8% of hedge fund investors sought decreased volatility by investing in hedge funds, suggesting that 92% of investors were well aware that hedge funds would likely introduce more volatility;
- Even amongst this institutional respondent base, nearly 50% allocated less than 10% to hedge funds.[77]

[77] *Institutional Hedge Fund Investing Comes of Age,* SEI (2010),

(2) **In 2011 and After**

352. As reported by *Reuters* on January 7, 2011, in *Hedge Funds Rise in 2010 but lag broader market*, both the Hennessee Group and Hedge Fund Research groups that track performance and asset flows, reported hedge funds gained approximately 10 percent in 2010, but lagged behind the average stock market indexes and fell short of the average stock mutual fund's returns.[78] As reported by Reuters, the S&P 500 index gained 12.8 percent and the average stock mutual fund rose 17.48 percent, according to data from Lipper Inc.

353. Just as the Investment Committee was making huge bets on hedge funds with retirement savings, *The Economist* was reporting on the pitfalls of hedge funds.[79] Among other things, the Economist noted that hedge funds were performing poorly in volatile markets, "the very conditions in which hedge funds are meant to prosper." *The Economist* presented a line chart comparing hedge fund index returns with the S&P 500, which showed extremely high correlation in volatility and performance, thus prompting the caption "Unhedged?"

354. As reported in a 2012 *Economist* article, *Rich Managers, Poor Clients: A Devastating Analysis of Hedge Fund Returns* (citing Simon Lack, *The Hedge Fund Mirage: The Illusion of Big Money and Why It's Too Good*

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https://www.seic.com/IMS/SEI_2011HedgeFundWhitePaper_US.pdf.

[78] Svea Herbst-Bayliss, *Hedge funds rise in 2010 but lag broader market,* Reuters (January 7, 2011), http://www.reuters.com/article/2011/01/07/us-hedgefunds-performance-idUSTRE7063QR20110107.

[79] *Many unhappy returns*, The Economist (Aug. 20, 2011), http://www.economist.com/node/21526326.

to Be True, (2012)), "since 1998, the effective return to hedge-fund clients has only been 2.1% a year, half the return they could have achieved by investing in boring old Treasury bills."[80]

355. According to Simon Lack's 2012 book, *The Hedge Fund Mirage*, because hedge fund managers can choose whether or not to report returns on hedge funds (which are not registered with the SEC) and are motivated to report good returns only to attract investors' attention, this "self-selection bias tends to make the returns of the hedge fund index appear to be higher than they should be." Simon Lack, *The Hedge Fund Mirage* (2012), at 4. Lack noted that "*in 2008 the hedge fund industry lost more money than all the profits it had generated during the prior 10 years*" and observed, despite some rebound in hedge funds' performance in 2009 and 2010, that "perhaps most damning of all, if all the investors had not bothered with hedge funds at all, but had simply put their hedge fund money into Treasury bills, they would have done better, earning 2.3 percent." *Id.* at 12 (emphasis in original).

356. As reported in a *New York Times* article, *How to Pay Millions and Lag Behind the Market* on October 19, 2013, many overseers of public pension funds, desperate to bolster returns and meet ballooning retiree obligations, have turned from traditional investments like stocks and bonds to hedge funds and private equity.[81] In 2013, Benchmark Financial Services, a forensic firm hired by a

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[80] *Rich Managers, poor clients: A devastating analysis of hedge-fund returns,* The Economist: Buttonwood's notebook blog (January 7, 2012), http://www.economist.com/node/21542452.

[81] Gretchen Morgenson, *How to Pay Millions and Lag Behind the Market,* The New York Times (October 19, 2013), http://www.nytimes.com/2013/10/20/business/how-to-pay-millions-and-lag-behind-the-market.html?_r=0.

Rhode Island council of the American Federation of State, County and Municipal Employees, issued a report[82] that concluded that the Rhode Island Pension system's $2 billion investment in high-cost and opaque alternative investments in hedge funds, private equity and venture capital had failed to outperform the pension plan's peer plans.[83]

357. More recently, hedge funds have continued to badly underperform and fail to provide downside market protections. For example, as reported in the New York Times, hedge fund investors suffered deep losses in 2015.[84] Investors in prominent and lesser known hedge funds saw all of 2015's gains wiped out, and were in the red. Pershing Square Capitol Management lost 9.4%; Marcato International had lost 11.6%; Glenview Capital Management was down 13.5%. Because of continued poor performance, investors were withdrawing from hedge funds and causing many hedge funds to close. Preqin, which publishes quarterly reports on hedge fund performance, reported that the third quarter of 2015 was the worst quarter for hedge funds in several years, posting average losses in its benchmark of 4.08%.[85] Thus, the Plans and their

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[82] http://www.ricouncil94.org/Portals/0/Uploads/Documents/Rhode%20Island%20X.pdf.

[83] Benchmark Financial Services, *Rhode Island Public Pension Reform: Wall Street's License to Steal*, Rhode Island Council 94 (October 17, 2013), http://ricouncil94.org/portals/0/uploads/documents/rhode%20island%20x.pdf.

[84] Alexandra Stevenson, *Hedge Fund Assets Decline by Biggest Amount Since Financial Crisis*, New York Times (Oct. 20, 2015), http://www.nytimes.com/2015/10/21/business/dealbook/hedge-fund-assets-decline-by-biggest-amount-since-financial-crisis.html?_r=0.

[85] *The Preqin Quarterly Update*: *Hedge Funds, Q3 2015,* Preqin (2015), https://www.preqin.com/docs/quarterly/hf/Preqin-Quarterly-

respective participants whose accounts were invested in Intel TDFs and the Intel GDFs have continued to suffer substantial losses due to Defendants' breaches of fiduciary duty. A prudent fiduciary would have, at the least, re-evaluated the selection of the investments in hedge funds and private equity, if not begun divesting.

359. Despite the significant risks inherent in investing the Plans' assets in hedge funds, private equity funds, emerging market funds, and commodities, and the high fees charged by hedge fund and private equity fund managers, the Investment Committee Defendants did not replace the allocation model that excessively allocated the Intel Funds' assets to the Non-Traditional Investments Accounts. Despite the underperformance of the Non-Traditional Investments Accounts and the excessiveness of the fees charged by the underlying hedge funds and private equity funds, the Investment Committee Defendants did not remove the Intel TDFs or replace them as the default investment options of the 401(k) Savings Plan and did not remove the Global Diversified Fund or replace it as the default investment option of the Retirement Contribution Plan.

360. The Investment Committee also failed to act prudently when as of April 30, 2015 it retained AllianceBernstein to help manage the Intel Funds. AllianceBernstein was one of the few mutual fund providers that embraced the inclusion of hedge fund-like alternatives in target date funds. According to a performance evaluation by Morningstar published in July 2014, among the target date series provided by 45 target date fund providers, AllianceBernstein's series ranked last in security selection, that is, selecting securities and funds

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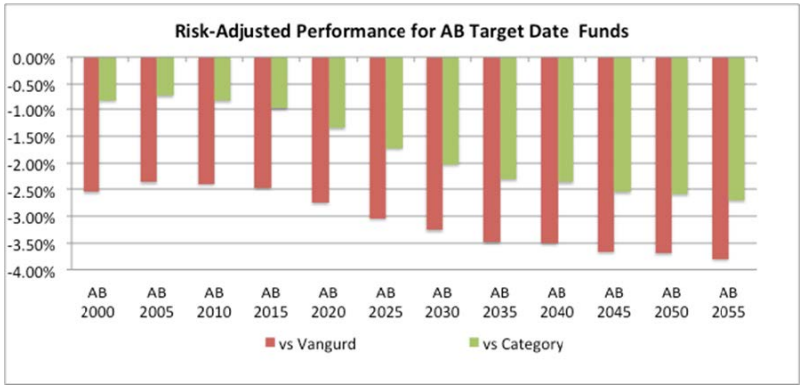
Hedge-Fund-Update-Q3-2015.pdf.

in designing, adjusting, and monitoring the asset allocation of target date funds. *Morningstar 2014 Target-Date Series Research Paper* (July 1, 2014), at 27, *available at* http://corporate.morningstar.com/us/documents/methodology documents/methodologypapers/2014-target-date-series-research-paper.pdf. In fact, shortly after the Investment Committee hired AllianceBernstein to manage the Intel TDFs, AllianceBernstein announced in June 2015 that it was closing its own target date fund offerings after years of poor performance and failure to attract investors.[86] According to Morningstar, AllianceBernstein's entire target date fund family held little over $1 billion in total assets in 2015.[87]

361. Morningstar reported that AllianceBertnstein's "long-term risk-adjusted returns rank among the target-date industry's worst."[88] Figure 14 compares the risk-adjusted returns of the AllianceBernstein TDFs to Vanguard's TDFs and the entire category.

Figure 14



[86] Morningstar AB Retirement Strategy Target-Date Fund Series Report (June 30, 2015).

[87] *Id.*

[88] *Id.*

362. Further, of the three components that Morningstar evaluates to attribute TDF performance, AllianceBernstein ranked last in "Security Selection" of 45 fund families.[89] This means AllianceBernstein was the worst TDF provider of 45 providers covered by Morningstar at picking funds or securities for a TDF fund which is exactly what the Investment Committee hired AllianceBernstein to do for the Intel TDFs. Based on the foregoing and upon information and belief, the Investment Committee did not engage in a prudent process in selecting AllianceBernstein and hired the worst target date fund manager in the country to manage the Intel TDFs. The only possible explanation is that AllianceBernstein alone had endorsed the use of hedge funds for TDFs. Apparently, the Investment Committee replaced AllianceBerstein with GTC after the Intel Funds continued to perform poorly.

363. The conduct of the Investment Committee Defendants demonstrates that they engaged in a defective process of selecting and monitoring the asset allocations for the Intel Funds. It shows that they either did not understand and failed to give appropriate consideration to, or disregarded, the risks of investing in hedge funds, private equity, commodities, and emerging markets funds and heavy allocations of the Intel Funds' assets to the Non-Traditional Investments Accounts. Had the Investment Committee Defendants conducted a proper and impartial investigation of these allocations and their associated risks as well as the Plans' investment consultants including AllianceBernstein, they would not have significantly deviated from prevailing standards by excessively allocating assets of the Intel Funds to the Non-Traditional

[89] Morningstar 2014 Target-Date Series Research Paper, at 27 (July 1, 2014).

Investments Accounts. By failing to conduct such investigation and properly monitor the Intel Funds and the Plans' investment consultants on an ongoing basis and by failing to replace the Plans' default investment options, the Investment Committee Defendants caused tens of millions of losses to the Plans and participants.

E. The Administrative Committee Defendants Made Inadequate Disclosures About the Intel Funds and Provided Misinformation About Participants' Accounts and the Intel Funds

364. The Administrative Committee did not adequately disclose to participants and beneficiaries in the Plans information regarding the risks associated with the Intel Funds' significant allocations to hedge funds and/or private equity or the accompanying risks associated with investment in the Intel Funds. Specifically, the Administrative Committee did not disclose (a) that hedge funds and private equity funds often use leverage, which can magnify losses; (b) that these investments lack liquidity; and (c) that they lack transparency; and (d) that investing in them carries significant valuation risk. The Administrative Committee did not disclose that, as a result of the Intel Funds' significant allocations to hedge funds and/or private equity, the Intel Funds posed those investment and valuation risks and suffered lack of liquidity and transparency.

365. Most people, including the participants in the Plans do not have any prior experience with or a clear understanding about hedge funds or private equity, how those investments operate or the risks associated with investing in hedge funds or private equity. As the Investors' Committee of the United States President's Working Group on Financial Markets reported in 2018,

such investments are only available to investors with specific sophistication and/or wealht:

> Hedge funds often involve complex, illiquid or opaque investments and investment strategies. These investments, however, receive little regulatory oversight. Thus, hedge funds are suitable only for sophisticated and prudent investors who are able to identify, analyze and bear the associated risks, and follow appropriate practices to evaluate, select, monitor, and exit these investments.

Apr. 2008 Principles & Best Practices for Hedge Fund Investors, at 1. Several months later, after hedge funds experienced record poor performance in 2008, the Investors' Committee of the United States President's Working Group on Financial Markets warned in January 2009: "If an investor does not understand the sources of a hedge fund's risk and return and cannot otherwise conduct the due diligence necessary to fully appreciate the risks of an investment, the investor should forego the opportunity." Jan. 2009 Principles & Best Practices for Hedge Fund Investors, at 2.

366. As such, the Administrative Committee knew or should have known that in order fro the average Intel Plan participant to make fully-informed investment decisions as to the Intel Funds, which were heavily allocated to hedge funds and private equity, the Administrative Committee would need to provide participants in the Plans with sufficient information to understand what hedge funds and private equity were and to identify and analyze the risks associated with investing their retirement plan accounts in the Intel Funds. To the extent that the Administrative Committee did not provide such information to Intel Plan participants, it was not appropriate for their retirement plan accounts to be invested in the Intel Funds.

367. According to applicable regulations, 29 C.F.R. § 2550-404a-5(a), "[f]iduciary requirements for disclosure in participant-directed individual account plans" (the "Disclosure Regulation"), the administrator of a participant-directed retirement plan must disclose several types of information to participants in such a plan, both prior to the initial investment and also on an ongoing basis, if there are material changes to the plan's investment options.

368. Under the Disclosure Regulation, the plan administrator – here, the Administrative Committee – must ensure that participants "are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses thereto, to make informed decisions with regard to the management of their individual accounts." 29 C.F.R. § 2550-404a-5(a). Until December 31, 2017, as asset allocation models or portfolios, the Intel TDFs and the Intel GDFs did not issue shares or units and were not actual funds of which participants in the 401(k) Savings Plan and the Retirement Contribution Plan held shares or units. Rather, each of the Intel Funds was effectively an investment strategy that, pursuant to the asset allocation adopted for that Intel Fund, directed the assets of the Plans invested in that Intel Fund to be allocated to certain underlying funds and provided each participant investing in the Intel Fund with a proportionate interest in those underlying funds.

369. Because the Intel TDFs and GDFs were asset allocation models rather than actual share-issuing investments or "funds," the investment funds comprising

the TDF and GDF portfolios were "designated investment alternatives" subject to the Disclosure Regulation.

370. In order to comply with the Disclosure Regulation, the Administrative Committee Defendants had to make the following complete and accurate disclosures, among other things:

a) An explanation of any specified limitations on investment instructions under the terms of the plan, including any restrictions on transfer to or from a designated investment alternative;

b) An identification of any designated investment alternatives offered under the plan;

c) An identification of any designated investment managers;

d) An explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of any designated investment alternative and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis;

e) The name of each designated investment alternative and the type or category of investment; performance and benchmark data for such investment; detailed fee and expense information such as expense ratios; the internet web site address containing information about the designated investment alternative. 29 C.F.R. § 2550-404a-5(c)-(d).

371. Based on the documents provided to Plaintiffs, the Administrative Committee Defendants failed to make any

of the required disclosures listed above, and failed to comply with their duties pursuant to the Disclosure Regulation as a whole, with respect to disclosure of the designated investment alternatives like the Investment Funds underlying the Intel TDFs and Diversified Fund.

372. Based on the documents provided to Plaintiffs, the Administrative Committee Defendants failed to disclose the required information regarding the hedge funds, commodities funds, and private equity funds. These failures to disclose left the majority of participants in the Plans unaware of the true content and character of their retirement savings, because the Intel TDFs were the primary investment options for Intel's 401(k) Savings Plan participants and the Intel GDP was the primary investment option for Retirement Plan participants. Even if participants were provided some information that the Intel Funds included investments in hedge funds and private equity, the plan fiduciaries failed to provide participants with adequate and sufficient information, so that they could make informed intelligent decisions about whether investing in these particular hedge funds and private equity funds was prudent.

1. Quarterly Statements Issued for Participants' Plan Accounts

373. For participants whose accounts in the Plans were invested in any of the Intel Funds, the quarterly statements issued for their accounts did not disclose the risks associated with the Intel Funds' significant allocations to hedge funds and/or private equity or the accompanying risks associated with investment in the Intel Funds. In the glossary provided in the quarterly statements, "stocks" was defined as representing ownership or equity in a company, "bonds" as representing a loan to a corporation or government agency, and "short-

term investments" as including certificate of deposits, Treasury Bills, and money market instruments. The quarterly statements did not mention alternative investment types such as hedge funds and private equity funds or the risks associated with investment in them.

374. The Administrative Committee also failed to provide accurate information material to participants when making informed investment decisions with respect to the Intel Funds. The quarterly account statements issued to participants who invested in the Intel Funds misinformed and/or failed to inform them about the asset allocation of their account balances. Typically, in the form of a pie chart, the quarterly statements incorrectly represented that the participant's combined account balance between the Plans was allocated among three "asset classes" only, that is, stocks, bonds, and short-term investments, despite the fact that each of the Intel Funds also allocated its assets to other types of investments including hedge funds and/or private equity funds. For example, the quarterly statement for the October-December quarter of 2015 for Plaintiff Anderson's accounts represented that Anderson's combined account balance between the two Plans was allocated among stocks, bonds, and "short-term" investments only, in the percentages of 31%, 6%, and 63%, respectively. Anderson's account in the Retirement Contribution Plan was and has been invested in the Global Diversified Fund only, and his account in the 401(k) Savings Plan was and has been invested in the Intel Target Date 2030 Fund, the Intel Target Date 2035 Fund, and the Intel Target Date 2040 Fund only. As of the October-December quarter of 2015, the Intel Target Date 2030, 2035, and 2040 Funds each allocated more than 20% of its assets to the Defensive Oriented and Growth Oriented Hedge Fund Accounts, which invested in hedge funds. As of the same quarter, the Global Diversified Fund allocated about 30% of its assets to

the Defensive Oriented and Growth Oriented Hedge Fund Accounts and about 18% of its assets to the Alternative Investments Fund Account, which invested in private equity funds.

375. Similarly, the quarterly account statements received by Plaintiff Sulyma from the 401(k) Savings Plan described the asset allocation of his 401(k) Savings Plan account as invested approximately 63% in stocks, 16% in bonds, and 21% in "short-term/other" investments, as of December 2011 and again as of December 2012. The term "short-term/other" was not defined on the face of the statements Plaintiff Sulyma received.

376. By stating that Plaintiffs' Plan account balances were allocated to stock, bonds, and short-term investments, the quarterly statements misleadingly represented that Plaintiffs' accounts were allocated to these traditional asset classes only, not also to hedge funds and private equity funds. The statements also misrepresented the percentages with respect to the asset classes to which the Intel Funds in which Plaintiffs' accounts were invested were allocated. Upon information and belief, for the same quarter and other quarters, the quarterly statements issued to Plaintiffs and other participants in the Plans whose accounts were invested in the Intel Funds were similarly misleading in that they misrepresented the mix of asset classes and investment types among which their account balances were actually allocated, inaccurately stated the allocation percentages of their accounts, and failed to disclose that their accounts were also allocated to hedge funds and/or private equity funds.

377. The quarterly statements for Plaintiffs' Plan accounts also misleadingly stated that the specific Intel Funds in which Plaintiffs' accounts were invested were allocated to stocks and bonds only. For example, the

quarterly statement misinformed Plaintiff Anderson that the Intel Target Date 2030 Fund and the Intel Target Date 2040 Fund were each invested in traditional asset classes only, with a 90% allocation to stocks and a 10% allocation to bonds. However, as of the October-December quarter of 2015, the Intel Target Date 2030 and 2040 Funds each allocated more than 20% of its assets to the Defensive Oriented and Growth Oriented Hedge Fund Accounts. Upon information and belief, for the same quarter and other quarters, the quarterly statements issued to Plaintiffs and other participants in the Plans were similarly misleading in that they misrepresented the mix of asset classes and investment types among which the specific Intel Funds in which the participants' accounts were actually allocated, inaccurately stated the allocation percentages of those specific Intel Funds, and failed to disclose that those specific Intel Funds were also allocated to hedge funds and/or private equity funds.

378. Peer target date funds, if they allocate to hedge funds at all, do not allocate their assets to hedge funds in a percentage that is anywhere close to the allocations of the Intel TDFs to hedge funds. Similarly, peer balanced funds do not allocate their assets to hedge funds or private equity funds or do not allocate their assets to hedge funds and private equity funds in a percentage that is anywhere close to the allocations of the Intel GDFs to hedge funds and private equity funds. By representing that participants' accounts that were invested in the Intel Funds were allocated among traditional asset classes only and with respect to at least some of the specific Intel Funds that those Intel Funds were invested in stocks and bonds only, the quarterly statements issued to these participants misrepresented the true asset allocation mix of their accounts, and misleadingly presented the Intel Funds as investment options whose allocation models were in line

with prevailing standards for peer target date and balanced funds, even though the allocation models for the Intel Funds significantly deviated from those prevailing standards.

379. To the extent that they were provided to participants in the Plans, the "fact sheets" for the individual Intel TDFs did not disclose the risks associated with the Intel Funds' significant allocations to hedge funds and/or private equity or the accompanying risks associated with investment in the Intel Funds. The "fact sheets" did not disclose (a) that hedge funds and private equity funds often use leverage, which can magnify losses; (b) that these investments lack liquidity; and (c) that they lack transparency; or (d) that investing in them carries significant valuation risk.

2. "Fact Sheets" for the Intel TDFs

380. To the extent that they were made available to participants in the Plans, the "fact sheets" for the Intel TDFs inaccurately described those Intel Funds and their allocation models. For example, each of the "fact sheets" for the Intel TDFs for the third quarter of 2015 represented that "the Funds are managed to gradually become more conservative over time as they approach their target date." However, contrary to such representations, in 2015, the Intel Target Date 2015-2055 Funds were allocated to hedge funds more heavily, became less conservative, and deviated from prevailing standards for target date funds more significantly as those Intel Funds approached their target dates, as Table 16 shows:

Table 25

Intel Target Date Fund	Allocation to Hedge Funds
2055	20.75%

2050	19.36%
2045	20.93%
2040	19.87%
2035	20.78%
2030	22.15%
2025	27.05%
2020	26.87%
2015	29.48%

381. In fact, as the Intel Target Date 2015 Fund reached its target date in 2015, the Intel Fund had the highest allocation to hedge funds (i.e., 29.48%) among all Intel TDFs. By representing the Intel TDFs as investment options that "are managed to gradually become more conservative over time as they approach their target date," the "fact sheets" misrepresented the allocation strategy adopted for the Intel TDFs, and misleadingly presented the Intel Target Date Funds as investment options whose allocation strategy was in line with prevailing standards for peer target date funds, even though the allocation strategy of the Intel TDFs significantly deviated from prevailing standards.

382. The "fact sheets" dated after the third quarter of 2015 made similar misrepresentations about the allocation strategy adopted for the Intel TDFs. For example, each of the "fact sheets" for the Intel TDFs for the first quarter of 2017 represented that "the Funds are managed to gradually become more conservative over time as they

approach their target date." However, contrary to such representations, in that quarter, the Intel Target Date 2015–2055 Funds were allocated to hedge funds more heavily, became less conservative, and deviated from prevailing standards for target date funds more significantly as those Intel Funds approached their target dates, as Table 17 shows:

Table 26

Intel Target Date Fund	Allocation to Hedge Funds
2055	12.83%
2050	12.51%
2045	13.78%
2040	13.58%
2035	14.30%
2030	16.04%
2025	18.97%
2020	20.38%
2015	22.38%

3. Summary Plan Descriptions

383. To the extent that they were provided to participants in the Plans, the Summary Plan Descriptions for the Plans ("the SPDs") did not disclose the risks associated with the Intel Funds' significant allocations to hedge funds and/or private equity or the accompanying risks associated with investment in the Intel Funds. The

SPDs did not disclose (a) that hedge funds and private equity funds often use leverage, which can magnify losses; (b) that these investments lack liquidity; and (c) that they lack transparency; or (d) that investing in them carries significant valuation risk.

384. Until the 2012 SPD, the SPDs did not even *mention* that the TDFs were invested in hedge funds or private equity. For example, the 2011 SPD describe the TDFs (then called LifeStage Funds) as being invested only in stocks, bonds and stable value. The 20ll SPD describes the balanced fund in the Profit Sharing Plan as being invested in "stock, bond, commodity and other investment funds." The 2011 SPD represented that the TDFs had "lower management expenses and fees than mutual funds."

385. The 2012 SPD finally mentioned that the TDFs included hedge funds (not private equity) but merely stated that "[e]ach [TDF] fund offers a broadly diversified mix of domestic and international stocks and bonds, and includes investments not typically available to individual investors, such as hedge funds and commodities." There is no further explanation of what hedge funds are, their risks or expenses. The 2012 SPD again represented that the TDFs had "lower management expenses and fees than mutual funds." With respect to the Retirement Plan, the 2012 SPD only state that the GDT was "a diversified portfolio comprised of investments in a mix of ***low-cost*** stock, bond, money market and other investment funds." (emphasis added). The 2012 SPD did not disclose the significant investment of the GDF in hedge funds and private equity. The 2012 SPD also misleadingly described all of the investments of the GDF as low-cost although investments in hedge funds and private equity cannot accurately described as low cost.

386. The 2013 SPD again only mentioned in passing that the TDFs included hedge funds (not private equity) by merely stating that "[e]ach [TDF] fund offers a broadly diversified mix of domestic and international stocks and bonds, and includes investments not typically available to individual investors, such as hedge funds and commodities." There is no further explanation of what hedge funds are, their risks or expenses. The 2013 SPD again represented that the TDFs had "lower management expenses and fees than mutual funds." With respect to the Retirement Plan, the 2013 SPD again only states that the GDT was "a diversified portfolio comprised of investments in a mix of ***low-cost*** stock, bond, money market and other investment funds." (emphasis added). The 2013 SPD did not disclose the significant investment of the GDF in hedge funds and private equity. The 2013 SPD also misleadingly described all of the investments of the GDF as low-cost although investments in hedge funds and private equity cannot accurately described as low cost.

387. The 2014 SPD again only mentioned in passing that the TDFs included hedge funds (not private equity) by merely stating that "[e]ach [TDF] fund offers a broadly diversified mix of domestic and international stocks and bonds, and includes investments not typically available to individual investors, such as hedge funds and commodities." There is no further explanation of what hedge funds are, their risks or expenses. Beginning with the 2014 SPD, the SPDs eliminated the representation that the TDFs had "lower management expenses and fees than mutual funds," but provided *no explanation* that the TDFs had *higher* expenses and fees that mutual funds and in fact made no disclosures about the fees and expenses of the TDFs. With respect to the Retirement Plan, the 2014 SPD for the first time disclosed that the GDF was contained "hedge funds, private equity and real assets (e.g.

commodities, real estate and natural resource focused private equity). But the 2014 SPD and subsequent SPDs (available to Plaintiffs) did not provide any explanation about the increased fees and costs or the risks of investing in hedge funds and private equity.

388. While the SPDs expended three paragraphs devoted exclusively to the "Risk of Investing in the Intel Stock Fund," (which invested in Intel stock that was liquid, publicly traded on a national exchange and regulated by the SEC) there was no discussion about the risks of investing in illiquid, opaque, virtually unregulated hedge funds or private equity.

389. The SPDs also misrepresented the allocation strategy adopted for the Intel Target Date Funds. For example, the 2013 SPD represented the Intel TDFs as follows: "While a younger investor may be able to afford to take more risk in order to maximize returns, an investor approaching retirement should reduce his/her risk and choose investments that provide more stability in the portfolio. A Target Date Fund is designed to achieve this balance, because it is adjusted over time to reduce exposure to higher-risk assets, such as stocks and increase exposure to lower risk investments such as bonds and stable value." The 2015 SPD made an almost-identical representation. However, contrary to these representations, the Intel Target Date 2015-2055 Funds were not adjusted over time to reduce exposure to high-risk investments including hedge funds, to which those Intel Funds were heavily allocated. For instance, in 2015, as they approached their target dates, the Intel Target Date 2015-2055 Funds were allocated to hedge funds more heavily, with the allocation of the Intel Target Date 2015 Fund to hedge funds that year culminating at 29.48%, the highest and least conservative among all Intel Target Date Funds. By

representing the Intel TDFs as investment options that were "adjusted over time to reduce exposure to higher-risk assets," the SPD misrepresented the allocation strategy adopted for the Intel TDFs, and misleadingly presented the Intel TDFs as investment options whose allocation strategy was in line with prevailing standards for peer target date, even though the allocation strategy of the Intel TDFs significantly deviated from prevailing standards.

4. "Intel Retirement Plans Hedge Fund Portfolio Fact Sheets"

390. The "Intel Retirement Plans Hedge Fund Portfolio Fact Sheets," which were not actually provided to participants but only made available on a website, did not disclose the risks associated with the Intel Funds' significant allocations to hedge funds or the accompanying risks associated with investment in the Intel Funds. The "fact sheets" did not disclose (a) that hedge funds often use leverage, which can magnify losses; (b) that these investments lack liquidity; and (c) that they lack transparency; or (d) that investing in them carries significant valuation risk.

391. The "Intel Retirement Plans Hedge Fund Portfolio Fact Sheets," which were not actually provided to participants but only made available on a website, provided inconsistent information about the hedge funds to which the Intel Funds were allocated. For example, the "fact sheets" for the quarters ending March 31, 2017 and June 30, 2017 provided inconsistent information about the historical annual performance of the hedge funds. The fact sheet for the quarter ending June 30, 2017 stated that the annual performance of the "Intel Hedge Fund Portfolio" for the years from 2011 through 2016 was -0.54%, 7.41%, 13.41%, 3.31%, 0.21%, and 6.71%, respectively, whereas the fact sheet for the quarter ending March 31, 2017 stated that

the annual performance of the hedge funds for those years was 0.25%, 9.54%, 13.47%, 4.75%, 0.50%, and 6.09%, respectively. The two "fact sheets" also provided inconsistent background information about the individual hedge funds to which the Intel Funds were allocated. Without disclosing the names of the hedge funds, the two "fact sheets" identified them by assigning to each of them a "Fund Identifier" such as "Fund A" and "Fund B," along with a general description of the hedge fund. While the March 31, 2017 fund sheet stated that Fund A and Fund B had fund inception dates of January 1994 and May 2005, respectively, the June 30, 2017 fact sheet stated that Fund A and Fund B had fund inception dates of August 1998 and January 1994, respectively.

392. By failing to disclose the risks associated with the Intel Funds' significant allocations to hedge funds and/or private equity or the accompanying risks associated with investment in the Intel Funds, by either providing misleading information about or failing to provide material information about the fees and expenses charged by the Intel TDFs and GDF compared to mutual funds in the market, by misinforming participants about the allocations of their account balances and of the specific Intel Funds that their accounts were invested in, and by misrepresenting presenting the Intel TDFs as investment options whose allocation strategy was in line with prevailing standards for peer target date funds, the Administrative Committee failed to provide complete and accurate information material to participants when making informed decisions with respect to the Intel Funds. As such, the Administrative Committee deprived participants in the Plans – most or all of whom were laypersons with no knowledge of hedge funds or ability to analyze the associated risks – of material information that the

participants needed to make fully informed investment decisions with respect to the Intel Funds.

VI. CLAIMS FOR RELIEF

Count I

(Violations of ERISA § 404(a) by the Investment Committee in Selecting and Monitoring the Investment Options for the Plans)

393. Plaintiffs repeat and re-allege each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

394. The Investment Committee Defendants were fiduciaries of the Plans under ERISA § 402(a), 29 U.S.C. § 1102(a), and/or ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

395. As fiduciaries of the Plans, the Investment Committee Defendants were required pursuant to ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to act solely in the interest of the participants and beneficiaries of the Plans they served and (A) "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan," and (B) to discharge their duties on an ongoing basis "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

396. ERISA's duty of prudence required the Investment Committee Defendants to give appropriate consideration to those facts and circumstances that, given the scope of their fiduciary investment duties, they knew or should have known were relevant to the particular

investments of the Plans and to act accordingly. 29 C.F.R. § 2550.404a-1.

397. The Investment Committee Defendants had duties to evaluate the investment of the Plans' assets both (a) at the time of the initial decision to invest by evaluating the investments and ensuring those investments were prudent and suitable, including that the investments would likely meet the goals and benchmarks and (b) ongoing duties to manage the Plans' assets by properly evaluating and monitoring the Plans' investment options on a regular and frequent basis and removing or replacing imprudent ones.

398. The Investment Committee Defendants breached their duties of prudence and loyalty with respect to the Plans with respect their initial decision to offer the Intel Funds with significant allocations to Non-Traditional Assets by the following:

a. Failing to properly investigate the availability of, and give appropriate consideration to, lower-cost target date funds with comparable or superior performance as alternatives to the Intel Target Date Funds;

b. Failing to properly investigate the availability of, and give appropriate consideration to, lower-cost balanced funds with comparable or superior performance as alternatives to the Global Diversified Funds;

c. Failing to adequately research and compare the risks, problems and expenses of Non-Traditional Assets and that the historical experience of such Non-Traditional Assets did not actually perform consistent with the Investments Committee's mistaken perception of these Non-Traditional Assets;

d. Designating the Intel Target Funds as the 401(k) Savings Plan's default investment options and the Global Diversified Fund as the Retirement Contribution Plan's default investment option, based on the mistaken beliefs that (i) such Non-Traditional Assets would have good risk-adjusted returns, (ii) such Non-Traditional Assets would reduce the volatility of traditional stock and bond markets better than a traditional equity and bond allocation, (iii) that the excess fees and expenses for and performance of the Intel Funds would be made up by superior performance, and (iv) that such Non-Traditional Assets would result in diversification when the allocations were insufficiently diversified.

399. The Investment Committee Defendants breached their duties of prudence and loyalty with respect to the Plans with respect their decision to continue to offer the Intel Funds with such a significant investment in Non-Traditional Assets and failing to promptly remove any Intel Target Date Funds or Global Diversified Funds because and by the following:

a. Failing to properly monitor and evaluate on a regular basis the performance and fees and expenses of the Intel Funds and the adverse impact of excessive fees and expenses on the long-term performance of the Intel Funds;

b. Failing to properly compare the performance of the Intel Funds with appropriate comparable target date funds that had comparable or superior performance, lower fees and consider

replacing the Intel Target Date Funds with other Funds;

c. Failing to properly compare the performance of, investigate the availability of, and give appropriate consideration to, lower-cost balanced funds with comparable or superior performance as alternatives to the Global Diversified Funds;

d. Failing to properly monitor and evaluate on a regular basis the appropriateness of designating the Intel Target Funds as the 401(k) Savings Plan's default investment options and the Global Diversified Fund as the Retirement Contribution Plan's default investment option, given the fees and expenses for and performance and lack of diversification of the Intel Funds;

e. Failing to implement and employ an ongoing process to control the fees and expenses of the Intel Funds, particularly as the expense ratios of the TDFs and GDFs increased over time while the general trend in the industry was declining fees and expenses for comparable products seeking similar objectives and obtaining superior performance; and

f. Failing to recognize that such heavy concentration of amounts in the Non-Traditional Assets were not properly diversified.

400. In choosing and maintaining the Intel Funds as the investments options of the Plans, the Investment Committee Defendants employed imprudent processes because the persons who served on the Investment Committee would not be affected any lower earnings by the Intel Funds, but would personally benefit by favoring custom Intel Funds that, as alleged above, invest in certain

underlying investments that assist Intel Capital develop and maintain business relationships with certain investment companies to the benefit of Intel Capital and Intel. As a result, the Investment Committee Defendants did not select and continue to maintain the Plans' investment options solely based on their merits and in the interest of the participants, but rather were driven by motivations about how to provide a benefit Intel Capital (and thereby Intel) without any downside risk to their own retirement earnings.

401. The Investment Committee Defendants breached their fiduciary duties to the Plans during each of the meetings of the Investment Committee that took place periodically after the initial decision to offer the Intel Funds as investment options. At each of these meetings, the Investment Committee Defendants could have and should have removed or replaced any of the Intel Funds on the basis of its performance or fees or a combination of both. At each of these meetings, the Investment Committee Defendants failed to do so.

402. Through these actions and omissions, the Investment Committee Defendants have (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

403. As a result of the Investment Committee Defendants' breaches, the Plans, Plaintiffs, and the Plans'

participants and beneficiaries have suffered substantial losses in retirement savings.

Count II

(Violations of ERISA § 404(a) by the Investment Committee and Investment Committee Defendants in Allocating the Intel Funds' Assets)

404. Plaintiffs repeat and re-allege each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

405. The Investment Committee Defendants were fiduciaries of the Plans under ERISA § 402(a), 29 U.S.C. § 1102(a), and/or ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

406. As fiduciaries of the Plans, the Investment Committee Defendants were required pursuant to ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to act solely in the interest of the participants and beneficiaries of the Plans they served and (A) "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan," and (B) to discharge their duties on an ongoing basis "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

407. ERISA's duty of prudence required the Investment Committee Defendants to give appropriate consideration to those facts and circumstances that, given the scope of their fiduciary investment duties, they knew or should have known were relevant to the particular investments of the Plans and to act accordingly. 29 C.F.R. § 2550.404a-1.

408. The Investment Committee Defendants duties to evaluate the investment of the Plans' assets both (a) at the time of the initial decision to invest by evaluating the investments and ensuring those investments were prudent and suitable, including that the investments would likely meet the goals and benchmarks and (b) ongoing duties to manage the Plans' assets by properly evaluating and monitoring the Plans' investment options, including the asset allocations of any custom funds, on a regular and frequent basis and removing or replacing imprudent ones.

409. The Investment Committee Defendants breached their duties of prudence and loyalty with respect their initial decision in 2011 with respect to asset allocation of the Intel Funds by:

a. Adopting and implementing asset allocation models and allocation percentages that excessively allocated assets of each of the Intel Funds to the Non-Traditional Investments Accounts without appropriate consideration of the risks of those allocations including that the historical experience of such Non-Traditional Assets did not actually perform consistent with the Investments Committee's mistaken perception of that performance and lack of diversification;

b. Adopting and implementing asset allocation models and allocation percentages that excessively allocated assets of each of the Intel Funds to the Non-Traditional Investments Accounts based on uninformed or misinformed beliefs of about the performance of those Non-Traditional Investments including that that (i) such Non-Traditional Assets would have good risk-adjusted returns, (ii) such Non-Traditional

Assets would reduce the volatility of traditional stock and bond markets better than a traditional equity and bond allocation, (iii) that the excess fees and expenses for and performance of the Intel Funds would be made up by superior performance, and (iv) that such Non-Traditional Assets would result in diversification when they were not diversified.

c. Adopting and implementing asset allocation models and allocation percentages that resulted in excessive fees charged to each of the Intel Funds based on the uniformed or misinformed perception that the performance of such Non-Traditional Investments would sufficiently out-perform other lower-cost investments that achieve the same result at lower cost;

d. Failing to properly investigate and give appropriate consideration to the risks of allocating the assets of the Plans, with respect to each of the Intel Funds, to hedge funds, private equity, commodities, and emerging markets funds compared to other lower-cost investments that achieve the same result at lower cost;

e. Failing to properly investigate and give appropriate consideration to the risks of allocating the assets of the Plans, with respect to each of the Intel Funds, to the Non-Traditional Investment Accounts pursuant to the allocation percentages adopted or implemented for the Intel Fund and given appropriate consideration to comparable investments that would achieve the same result at lower cost;

410. The Investment Committee Defendants breached their duties of prudence and loyalty with respect their

decision after 2011 with respect to their repeated decisions to maintain the Intel Fund investments in Non-Traditional Investments by:

a. Failing to properly monitor and evaluate on a regular basis the asset allocation models and allocation percentages adopted or implemented for each of the Intel Funds, including with respect to the Intel Funds' actual performance compared to their expected performance and performance objectives and diversification;

b. Failing to explore and give appropriate consideration to prevailing standards for comparable target date funds and balanced funds with respect to fees and performance of the Intel Funds, particularly when those comparable funds had superior performance at lower cost;

c. Failing to properly monitor and evaluate on a regular basis the appropriateness of designating the Intel Target Date Funds as the default investment options of the 401(k) Savings Plan and the Global Diversified Fund as the default investment of the Retirement Contribution Plan, given the asset allocation models and allocation percentages adopted for the Intel Funds, particularly given their high fees and sub-par performance when compared with comparable target date funds or balance funds that had comparable or superior performance, lower fees ;

d. Failing to properly monitor on a regular basis the performance and fees and expenses of the underlying investments in the Non-Traditional Investment Accounts, the adverse impact of the

management and performance fees charged by any of the underlying investments on the long-term performance of the Intel Funds and lack of diversification;

e. Failing to properly monitor and evaluate on a regular basis their consultants, including AllianceBernstein, with respect to the management of the assets of the Plans;

f. Failing to promptly remove or replace their consultants, including AllianceBernstein, that helped contribute to the Intel Funds' excessive allocations to the Non-Traditional Investments Accounts; and

g. Failing to promptly replace any imprudent asset allocation model or allocation percentages for any of the Intel Funds whenever it was prudent to do so.

411. In initially choosing and then continuing to maintain the asset allocations for the Intel Funds, the Investment Committee Defendants employed disloyal and imprudent processes because the persons who served on the Investment Committee would not be affected by any lower earnings by the Intel Funds, but would personally benefit by including numerous underlying investments in the Non-Traditional Investments Accounts because, as alleged above, investing in those underlying investments helped Intel Capital develop and maintain business relationships with certain investment companies to benefit Intel Capital and Intel. As a result, the Investment Committee Defendants did not design and continue to the asset allocation models based on their merits and in the interest of the participants, but rather were driven by motivations about how to provide a benefit Intel Capital

(and thereby Intel) without any downside risk to their own retirement earnings.

412. The Investment Committee Defendants breached their fiduciary duties to the Plans during each of the meetings of the Investment Committee that took place after the initial design of the asset allocation models. At each of these meetings, with respect to each of the Intel Funds, the Investment Committee Defendants could have and should have modified and/or replaced its asset allocation model and allocation percentages on the basis of their imprudence. At each of these meetings, the Investment Committee Defendants failed to do so.

413. Through these actions and omissions, the Investment Committee Defendants have (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

414. As a result of the Investment Committee Defendants' breaches, the Plans, Plaintiffs, and the Plans' participants and beneficiaries have suffered substantial losses through the loss of return that would have been earned by the prudent investment of the Plans' assets.

Count III

(Violations of ERISA §§ 404(a)(1)(A) and 404(a)(1)(B) by the Administrative Committee Defendants for Failure to Make Adequate and Accurate Disclosures)

415. Plaintiffs repeat and re-allege each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

416. The Administrative Committee Defendants were fiduciaries of the Plans under ERISA § 402(a), 29 U.S.C. § 1102(a), and/or ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

417. As fiduciaries of the Plans, the Administrative Committee Defendants were required pursuant to ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to act solely in the interest of the participants and beneficiaries of the Plans they served and (A) "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan," and (B) to discharge their duties on an ongoing basis "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

418. An ERISA fiduciary's duty of loyalty and prudence under ERISA § 404(a)(1)(A) and (B) includes a duty to disclose and inform. Those duties not only require that a fiduciary comply with the specific disclosure provisions in ERISA, but also include (a) a duty not to misinform, (b) an affirmative duty to inform when the fiduciary knows that silence might be harmful and (c) a duty to convey complete and accurate information material to the beneficiaries' circumstances, even when the beneficiaries have not specifically asked for the information.

419. The Ninth Circuit has recognized that a participant in an ERISA plan is entitled to know exactly where he stands with respect to the plan, including the benefits to which he or she may be entitled, the circumstances which

may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted.

420. The Ninth Circuit has recognized that a fiduciary's disclosure obligations in ERISA § 404(a) are informed by the common law of trusts. ERISA §404(a) incorporates the trust law duty to communicate to the beneficiaries all material facts in connection with the transaction which the trustee knows or should know and the duty imposed on a trustee to provide an accounting to the participants and beneficiaries. A fiduciary must furnish financial information to its principal upon demand. Restatement (Second) of Trusts §§ 172–73 (1959). A trustee has a duty to account to beneficiaries of the trust and may be compelled to render financial data upon failure to provide such information. Restatement (Second) of Trusts § 172 comment c (1959).

421. The Administrative Committee Defendants knew or should have known that information provided to Plan participants contained affirmative misrepresentations about the composition of the Intel TDFs and GDFs and, moreover, also knew or should have known that their failure to provide accurate information about the composition of the Intel TDFs and GDFs might cause harm to Plan participants.

422. The Administrative Committee Defendants knew or should have known that the disclosure materials they provided to participants:

a. did not disclose (a) that hedge funds and private equity funds often use leverage, which can magnify losses; (b) that these investments lack liquidity; and (c) that they lack

transparency; and (d) that investing in them carries significant valuation risk;

b. did not disclose that, as a result of the Intel Funds' significant allocations to hedge funds and/or private equity, the Intel Funds posed those investment and valuation risks and suffered lack of liquidity and transparency;

c. incorrectly represented that the participant's combined account balance between the Plans was allocated among three "asset classes" only, that is, stocks, bonds, and short-term investments, despite the fact that each of the Intel Funds also allocated its assets to other types of investments including hedge funds and/or private equity funds; and

d. contained misrepresentations regarding the allocation strategy adopted for the Intel Funds.

423. The Administrative Committee Defendants breached their duties of loyalty and prudence with respect to the Plans by, *inter alia*, failing to disclose the following material information to participants and beneficiaries:

a. Failing to adequately disclose to participants in the Plans the risks associated with the Intel Funds' significant allocations to hedge funds and private equity funds and/or the accompanying risks associated with investment in the Intel Funds;

b. Providing in the quarterly statements issued to participants in the Plans whose accounts were invested in any of the Intel Funds (i) inaccurate information about the mix of asset classes and investment types among which the participants'

accounts were actually allocated, and about the corresponding allocation percentages, and (ii) the misinformation that the specific Intel Funds in which the participants' accounts were invested were allocated to stocks and bonds only, not also to hedge funds and/or private equity funds;

c. In the "fact sheets" for the Intel Target Date Funds, misrepresenting the Intel Target Date Funds as investment options that "are managed to gradually become more conservative over time as they approach their target date," despite the fact that the Intel Target Date Funds were managed to become more heavily allocated to hedge funds and thus less conservative as they approached their target dates;

d. In the SPDs, misrepresenting the Intel Target Date Funds as investment options that were "adjusted over time to reduce exposure to higher-risk assets," despite the fact that the Intel Target Date Funds were managed to become more heavily allocated to hedge funds and thus less conservative as they approached their target dates;

e. In the quarterly statements issued to participants in the Plans whose accounts were invested in any of the Intel Funds, misrepresenting Intel Funds as investment options whose allocation models were in line with prevailing standards for peer target date and balanced funds;

f. In the "fact sheets" for the Intel Target Date Funds and in the SPDs, misrepresenting the Intel Target Date Funds as investment options

whose allocation models were in line with prevailing standards for peer target date funds;

g. Providing in the "Intel Retirement Plans Hedge Fund Portfolio Fact Sheets" inconsistent information about the background and performance of the hedge funds to which the Intel Funds were allocated.

424. Through these actions and omissions, the Administrative Committee Defendants have failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plans and to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B).

425. Consistent with their obligations under ERISA § 404(a)(1)(A) and (B), the Administrative Committee Defendants were required to ensure that participants "are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses thereto, to make informed decisions with regard to the management of their individual accounts." 29 C.F.R. § 2550-404a-5(a) (the "Disclosure Regulation").

426. Because the Intel TDFs and GDFs were asset allocation models rather than actual share-issuing investments or "funds," the investments funds comprising

the TDF and GDF portfolios were "designated investment alternatives" subject to the Disclosure Regulation.

427. The Administrative Committee Defendants failed to comply with the requirements of the Disclosure Regulation, 29 C.F.R. § 2550-404a-5(c)-(d), and ERISA §404(a) by failing to:

a) Provide an explanation of any specified limitations on investment instructions under the terms of the plan, including any restrictions on transfer to or from designated investment alternatives contained within the Intel Funds;

b) Identify the hedge funds and the private equity funds contained within the Intel Funds as designated investment alternatives offered under the plan;

c) Identify designated investment managers for the hedge funds and the private equity funds contained within the Intel Funds;

d) Provide an explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of designated investment alternatives like hedge funds and the private equity funds contained within the Intel Funds and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis, for investment in such funds;

e) Provide the name of each of the hedge funds and the private equity funds contained within the Intel Funds and the type or category of investment; performance and benchmark data for each such investment; detailed fee and expense information

such as expense ratios; the internet web site address containing information about such designated investment alternative.

428. The Administrative Committee failed to adequately disclose to participants and beneficiaries in the Plans information regarding risks, fees and expenses associated with such hedge funds and private equity funds. Although the Administrative Committee disclosed information regarding the allocation strategy of the Intel Funds, it failed to provide the required disclosure for the hedge funds and private equity funds in which the Plans invested pursuant to the allocation models for the Intel Funds. Among other things, the Administrative Committee failed to provide adequate disclosures about: the arrangements between the Plans and the hedge fund and private equity funds, including the fees and expenses and the investment strategies and holdings for each fund; and the identity of the private equity and hedge fund firms and individual managers.

429. As a result of the Administrative Committee Defendants' actions and omissions, Plaintiffs and the Plans' participants (a) were not adequately informed about the risks associated with the Intel Funds' significant allocations to hedge funds and private equity funds or the accompanying risks associated with investment in the Intel Funds, and (b) were not provided accurate and consistent information about the asset mix and allocation percentages of their Plan accounts and about the Intel Funds' allocation models and their significant deviation from prevailing standards for target date and balanced funds.

430. As a result of the Administrative Committee Defendants' failure to provide accurate that was material to making informed decisions with respect to the Intel Funds, Plaintiffs and the Class suffered financial losses by

incurring excessive fees and expenses and through the loss of returns that would have been earned on prudent investment of the Plans' assets.

431. Where, as here, a fiduciary has breached its duty to provide accurate information about the holdings of a trust to the participants and beneficiaries of the trust, the participants and beneficiaries (and in fact, "any person financially interested in the trust administration") are entitled to compel the trustee and other fiduciaries of the Plan to provide such financial information.

432. Additionally, as a result of Defendants' omissions, and/or incomplete and misleading disclosures, Plaintiffs and the Class are entitled remedial and equitable relief against the Administrative Committee, such as corrective disclosures and/or removal of the Administrative Committee as fiduciaries.

Count IV

(Violation of ERISA § 102(a), 29 U.S.C. § 1022(a) Against the Administrative Committee Defendants)

433. Plaintiffs incorporate and re-allege by reference each of the foregoing paragraphs as if fully set forth herein.

434. ERISA § 102(a), 29 U.S.C. § 1022(a), requires Summary Plan Descriptions (SPDs) to "be written in a manner calculated to be understood by the average plan participant" and to "be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan."

435. The DOL Regulations implementing ERISA § 102, 29 C.F.R. § 2520.102-2(a), reiterate that the SPD "shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan."

29 C.F.R. § 2520.102-2(a) specifies that in order to fulfill these requirements, the plan administrator must "tak[e] into account such factors such as the level of comprehension and education of the typical participants in the plan and the complexity of the terms of the plan." 29 C.F.R. § 2520.102-2(a) further explains that an SPD "will usually require … the elimination of long, complex sentence. . .[and] the use of clarifying examples and illustrations" to make the terms of the SPD understandable to the average participant. 29 C.F.R. § 2520.102-2(b) requires that "[t]he advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations."

436. The Administrative Committee Defendants violated ERISA § 102(a), 29 U.S.C. § 1022(a) and the DOL Regulations implementing § 102 by preparing SPDs that

(a) Failed to disclose that TDFs or GDF were invested in hedge funds or private equity

(b) Misrepresented that the TDFs and GDF was low cost or had lower fees and expenses compared to mutual funds;

(c) Failed to disclose that the TDFs and GDF had higher fees and expenses as a result of the Investment Committee's decision to invest the assets in hedge funds and private equity;

(d) Failed to disclose and explain the risks associated with the Intel Funds' significant allocations to hedge funds and/or private equity or the accompanying risks associated with investment in the Intel Funds.

(e) Did not disclose (a) that hedge funds and private equity funds, to which the Intel Funds have been significantly allocated, often use

leverage, which can magnify losses; (b) that these investments lack liquidity; and (c) that they lack transparency; or (d) that investing in them carries significant valuation risk;

(f) Misrepresenting the allocation strategy adopted for the Intel Target Date Funds as reducing exposure to higher risk investments over time, when in fact the actual allocations of the Intel TDF portfolios were not adjusted to reduce exposure to high-risk hedge funds as they approached their maturity dates.

437. The Administrative Committee Defendants also violated ERISA § 102(a), 29 U.S.C. § 1022(a) and the DOL Regulations implementing § 102 because the SPDs did not provide examples and illustrations to clarify any of these risks associated with the underlying hedge funds and/or private equity funds of the Intel Funds and thus with the Intel Funds themselves.

438. Because of the Administrative Committee's violations of ERISA § 102(a) and the DOL Regulations implementing it, Plaintiffs and the Class were prevented from ascertaining (a) the risks associated with the Intel Funds' significant allocations to hedge funds and private equity funds or the accompanying risks associated with investment in the Intel Funds and (b) whether these assets are being invested and managed in accordance with prevailing standards for target date and balanced funds.

439. As a result of Defendants' omissions, and/or incomplete and misleading disclosures, Plaintiffs and the Class have incurred losses by foregone opportunities to make alternative uses of their retirement savings, including by investing those savings in alternatives that have not borne the risks and suffered the losses incurred by the Intel Funds.

440. Additionally, as a result of Defendants' omissions, and/or incomplete and misleading disclosures, Plaintiffs and the Class are entitled remedial and equitable relief against the Administrative Committee, such as corrective disclosures and/or removal of the Administrative Committee as fiduciaries.

Count V

(Violations of ERISA § 404(a) by the Finance Committee and Chief Financial Officer Defendants for Failure to Monitor Other Fiduciaries)

441. Plaintiffs repeat and re-allege each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

442. The Finance Committee Defendants were fiduciaries of the Plans under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because, pursuant to Section 13 of the Plan Documents, until at least March 2016, the Finance Committee Defendants were responsible for appointing and removing members of the Investment Committee and the members of the Administrative Committee and for periodically monitoring their performance.

443. The Chief Financial Officer Defendants were fiduciaries of the Plans under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because, pursuant to Section 13 of the Plan Documents and the resolution of Intel's Board of Directors, effective March 2016, the Chief Financial Officer of Intel was responsible for appointing and removing members of the Investment Committee and the members of the Administrative Committee and for periodically monitoring their performance.

444. As fiduciaries of the Plans, the Finance Committee Defendants and the Chief Financial Officer Defendants were and/or continue to be required pursuant to ERISA §

404(a)(1), 29 U.S.C. § 1104(a)(1), to act solely in the interest of the participants and beneficiaries of the Plans they served and (A) "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan," and (B) to discharge their duties on an ongoing basis "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

445. Under ERISA, a fiduciary charged with the authority to select and remove other fiduciaries or who, as a practical matter, in fact appoints other fiduciaries, has an ongoing duty to monitor the performance of those persons whom the fiduciary is empowered to remove. A monitoring fiduciary must, at reasonable intervals, ensure that the fiduciary it has appointed is acting in compliance with the terms of the applicable plan, acting in accordance with ERISA and applicable law, and satisfying the needs of the plan. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the management and investment of the plan assets. A monitoring fiduciary must take prompt and effective action to protect the plan and participants when the monitored fiduciaries fail to perform their obligations.

446. The Finance Committee Defendants and Chief Financial Officer Defendants were and/or continue to be monitoring fiduciaries under ERISA. Each of the Finance Committee Defendants and Chief Financial Officer Defendants was and/or continues to be individually and collectively responsible for periodically monitoring the performance of each of the Investment Committee

Defendants and for the removal of any of them who failed to perform his or her fiduciary duties.

447. The Finance Committees Defendants breached their fiduciary duties by, *inter alia*,

a. Failing to monitor the Investment Committee and the Administrative Committee, to evaluate their performance, or to have a system in place for doing so, and standing by idly as the Plans suffered significant losses as a result of their appointees' imprudent actions and omissions with respect to the Plans;

b. Failing to monitor the Investment Committee Defendants' fiduciary processes, which would have alerted any prudent fiduciary to the potential breach because of the excessive fees and consistent underperformance of the Intel Funds or because of the excessive allocations of the Intel Funds' assets to the Non-Traditional Investments Accounts;

c. Failing to monitor their Investment Committee appointees to ensure that they considered the ready availability of comparable non-Intel custom funds, including lower-cost target date funds and balanced funds with similar or superior performance or the ready availability of other less expensive, better-performing asset allocation strategies for the Plans' assets invested in the Intel Funds;

d. Failing to monitor their Administrative Committee appointees to ensure that they provided adequate disclosure of material and accurate information to participants and did

not misinform them about the investments and allocations of their accounts in the Plans;

e. Failing to remove Investment Committee appointees whose performance was inadequate in that they continued to maintain imprudent investment options that charged excessive fees and did not perform as well as comparable alternatives, all to the determent of the Plans and participants' retirement savings; and

f. Failing to remove Investment Committee appointees whose performance was inadequate in that they continued to maintain an imprudent asset allocation strategy for the Plans' investment options, all to the detriment of the Plans and participants' retirement savings.

g. Failing to remove Administrative Committee appointees whose performance was inadequate in that they provided inadequate disclosures (or no disclosures) to participants about the investments in hedge funds and private equity, the fees and expenses associated with the Intel Funds and the risks associated with the Intel Funds' heavy allocations to hedge funds and private equity funds, misinformed them about and mischaracterized the allocations of their account balances and the allocation strategy of the Intel Target Date Funds.

448. Through these actions and omissions, the Finance Committee Defendants and the Chief Financial Officer Defendants have (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive

purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

449. As a result of the Finance Committee Defendants' and the Chief Financial Officers' breaches, the Plans, Plaintiffs, and the Plans' participants and beneficiaries have suffered substantial losses through the payment of excessive fees and the loss of return that would have been earned by the prudent investment of the Plans' assets.

Count VI

(Co-fiduciary Liability Under ERISA § 405 Against All Defendants)

450. Plaintiffs repeat and re-allege each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

451. ERISA § 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability, which he may have had under any other provision of ERISA, if

> (1) The participates knowingly in or knowingly undertakes to conceal an act or omission of such other fiduciary knowing such act or omission is a breach;
>
> (2) by his failure to comply with ERISA § 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
>
> (3) he knows of a breach by another fiduciary and fails to make reasonable efforts to remedy it.

452. Defendants were fiduciaries of the Plans within the meaning of ERISA § 402(a), 29 U.S.C. § 1102(a), ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Defendants knew of each breach of fiduciary duty alleged herein arising out of the excessive and imprudent investment of the assets of the Plans in alternative investments. Yet, they knowingly participated in fiduciary breaches, breached their own duties enabling other breaches, and/or took no steps to remedy other fiduciary breaches.

453. The Finance Committee Defendants knew what the investment lineups of the Plans consisted of and what the fees charged for the Intel Funds were, were aware of the risks associated with the Intel Funds' heavy allocations to alternative investments including hedge funds, private equity funds, commodities, and emerging markets funds, and knew that the Intel Funds were heavily allocated to such alternative investments represented by the Non-Traditional Investments Accounts, because, until at least March 2016, the Finance Committee was responsible for reviewing the continued prudence of its Investment Committee appointments, and because the Investment Committee selected and maintained the Intel Funds and the asset allocation strategy for them, and was responsible for periodically reporting to the Finance Committee about its actions.

454. The Finance Committee Defendants knew that the Administrative Committee did not disclose to participants the risks associated with the Intel Funds' heavy allocations to hedge funds and/or private equity funds and that the Administrative Committee provide misinformation about the allocation mix of participants' Plan accounts, the management and allocation strategy of the Intel Target Funds, and the hedge funds to which the Intel Funds were allocated, because, until at least March 2016, the Finance

Committee was responsible for reviewing the continued prudence of its Administrative Committee appointments, and because the Administrative Committee was responsible for disclosing material and accurate information to participants and ensuring the accuracy of periodic account statements issued to participants, and was responsible for periodically reporting to the Finance Committee about its actions.

455. The Chief Financial Officer Defendants knew what the investment lineups of the Plans consisted of and what the fees charged for the Intel Funds were, were aware of the risks associated with the Intel Funds' heavy allocations to alternative investments including hedge funds, private equity funds, commodities, and emerging markets funds, and knew that the Intel Funds were heavily allocated to such alternative investments represented by the Non-Traditional Investments Accounts, because, effective March 2016, the Chief Financial Officer of Intel was responsible for reviewing the continued prudence of its Investment Committee appointments, and because the Investment Committee selected and maintained the Intel Funds and the asset allocation strategy for them, and was responsible for periodically reporting to the Chief Financial Officer about its actions.

456. The Chief Financial Officer Defendants knew that the Administrative Committee did not disclose to participants the risks associated with the Intel Funds' heavy allocations to hedge funds and/or private equity funds and that the Administrative Committee provide misinformation about the allocation mix of participants' Plan accounts, the management and allocation strategy of the Intel Target Funds, and the hedge funds to which the Intel Funds were allocated, because, effective March 2016, the Chief Financial Officer of Intel was responsible for

reviewing the continued prudence of its Administrative Committee appointments, and because the Administrative Committee was responsible for disclosing material and accurate information to participants and ensuring the accuracy of periodic account statements issued to participants, and was responsible for periodically reporting to the Chief Financial Officer about its actions.

457. Each member of the Investment Committee knew what the investment lineups of the Plans consisted of and what the fees charged for the Intel Funds were, and knew that the Plan assets invested in the Intel Funds were heavily allocated to the alternative investments represented by the Non-Traditional Investments Accounts, because the Investment Committee selected and maintained the Intel Funds and the asset allocation strategy for them.

458. Each member of the Administrative Committee knew what the allocation models of the Intel Funds were and knew that the Intel Funds were not only allocated to stocks and bonds and were heavily allocated to non-traditional investment types including hedge funds and/or private equity funds, because the Administrative Committee was responsible for ensuring that periodic account statements issued to participants did not misinform them about the allocations of their accounts and material and accurate information about the Plans' investment options were provided.

459. Each member of the Investment Committee knew that the "fact sheets" for the Intel Target Date Funds provided misinformation about the management and allocation strategy of the Intel Target Date Funds because, starting in 2015, AllianceBernstein assisted in providing the contents of these "fact sheets" and the Investment

Committee was responsible for monitoring and evaluating AllianceBernstein.

460. Despite this knowledge, the Finance Committee Defendants, the Chief Financial Officer Defendants, the Investment Committee Defendants, and the Administrative Committee Defendants failed to act to remedy the violations of ERISA alleged in Counts I through IV.

461. As such, each member of the Investment Committee is liable for the breaches by the other Investment Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

462. As such, each member of the Administrative Committee is liable for the breaches by the other Administrative Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

463. As such, each member of the Finance Committee is liable for the breaches by the other Finance Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

464. As such, each member of the Finance Committee is liable for the breaches by the other Finance Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

465. As such, each of the Chief Financial Officer Defendants is liable for the breaches by the other Chief Financial Officer Defendant pursuant to ERISA § 405(a)(1) and (2).

466. As such, each of the Defendants is liable for breaches by the Investment Committee Defendants and the Administrative Committee Defendants pursuant to Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

Count VII

(Failure to Provide Documents Upon Request Pursuant to ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), & 29 C.F.R. § 2550.404a-5 Against the Administrative Committee Defendants) On Behalf of Plaintiff Anderson Individually

467. Plaintiffs repeat and re-allege each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

468. ERISA § 104(b)(4), 29 U.SC. § 1024(b)(4), provides that the administrator of an employee benefit plan "shall, upon written request of any participant or beneficiary, furnish a copy" of certain enumerated documents as well as "other instruments under which the plan is established or operated" to the requesting participant or beneficiary within 30 days of the Request.

469. In the Ninth Circuit, the documents that a plan administrator must provide pursuant to ERISA § 104(b)(4) are those that allow the participant to "know[ ] exactly where he stands with respect to the plan—what benefits he may be entitled to, what circumstances may preclude him from obtaining benefits, what procedures he must follow to obtain benefits, and who are the persons to whom the management and investment of his plan funds have been entrusted."

470. Plaintiff Winston Anderson sent a letter to the Intel Corporation Retirement Plans Administrative Committee requesting that the Plan provide specified documents pursuant to ERISA §§ 104(b) and 404(a)(1)(A), 29 U.S.C. §§ 1024(b) and 1104(a)(1)(A), and 29 C.F.R. §2550.404a-5 on April 19, 2017. The letter was sent by certified mail and was delivered to the Administrative Committee on April 25, 2017. On or about June 6, 2017, Mr. Anderson received a FedEx envelope containing two

documents entitled "Intel 401(k) Savings Plan (As Amended and Restated Effective January 1, 2014)", and "Intel Minimum Pension Plan (As Amended and Restated Effective January 1, 2011)," respectively. None of the other documents requested by Anderson were included. Mr. Anderson received no further response from the Administrative Committee for six months.

471. Mr. Anderson sent another letter to the Intel Corporation Retirement Plans Administrative Committee by certified mail on December 15, 2017. Mr. Anderson's December 15 letter reiterated that ERISA requires a response to his April 19, 2017 letter within thirty days, and that the April 19 letter requested "not only 'plan documents' but also, among others, the latest updated summary plan descriptions, any summaries of material modifications to the Plans, the latest full annual reports for the Plans, and documents setting forth the investment policies or guidelines concerning the investments of the Plans or appointing or removing any fiduciaries of the Plans, as well as documents relating to each of the investment options offered under either of the Plans and their fees and expenses." Because the Administrative Committee had not furnished these documents within thirty days of Anderson's April 19 letter, Plaintiff Anderson requested that the Committee "***immediately*** provide me with the rest of the documents requested in my April 19, 2017" letter. Nonetheless, the Intel Administrative Committee failed to provide the remainder of the requested documents for an additional two months, delaying its ultimate response until February 23, 2018.

472. Pursuant to ERISA § 502(a)(1)(A) a participant may sue for the relief provided in ERISA § 502(c). Pursuant to ERISA § 502(c), 29 U.S.C. § 1132(c), "[a]ny administrator . . . who fails or refuses to comply with a

request for any information which such administrator is required by [ERISA] to furnish" by mailing the requested material to "the requesting participant . . . within 30 days after such request" may be liable for up to $110 per day in civil penalties. As a result of the failure to produce the requested documents, the Intel Retirement Plans Administrative Committee is liable for the penalties available under ERISA § 502(c).

VII. ENTITLEMENT TO RELIEF

473. By virtue of the violations set forth in the foregoing paragraphs, Plaintiffs and the members of the Class are entitled to sue each of the fiduciary Defendants pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), for relief on behalf of the Plans as provided in ERISA § 409, 29 U.S.C. § 1109, including for recovery of any losses to the Plans, the recovery of any profits resulting from the breaches of fiduciary duty, and such other equitable or remedial relief as the Court may deem appropriate.

474. By virtue of the violations set forth in the foregoing paragraphs, Plaintiffs and the members of the Class are entitled pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), to sue any of the Defendants for any appropriate equitable relief to redress the wrongs described above.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray that judgment be entered against Defendants on all claims and requests that the Court award the following relief:

A. A declaration that the Defendants breached their fiduciary duties under ERISA;

B. An order compelling each fiduciary found to have breached his/her/its fiduciary duties to the Plans to jointly and severally restore all losses to the Plans

that resulted from the breaches of fiduciary duty, or by virtue of liability pursuant to ERISA § 405;

C. An order requiring (a) the disgorgement of profit made by any Defendant, (b) a declaration of a constructive trust over any assets received by any breaching fiduciary in connection with his/her/its breach of fiduciary duties or violations of ERISA, (c) an order requiring the Plans to divest themselves of investments in hedge funds, private equity, commodity funds, and emerging markets funds, or (d) any other appropriate equitable monetary relief, whichever is in the best interest of the Plans;

D. Ordering, pursuant to ERISA § 206(d)(4), 29 U.S.C. § 1056(d)(4), that any amount to be paid to or necessary to satisfy any breaching fiduciary's liability can be satisfied, in whole or in part, by attaching their accounts in or benefits from the Plans;

E. Removing any breaching fiduciaries as fiduciaries of the Plans and permanently enjoining them from serving as a fiduciary of any ERISA-covered plan in which Plaintiffs or any member of the Class is a participant or beneficiary;

F. Awarding a surcharge against the Administrative Committee Defendants and requiring that an accounting of the Intel Funds' allocations to hedge funds and private equity funds be provided to all participants;

G. Appointing an independent fiduciary, at the expense of the breaching fiduciaries, to administer the Plans and the management of the Plans' investments and/or selection of investment options and/or to oversee the divestment of the Plans' investments in the Non-Traditional Investments Accounts;

H. Ordering the Plans' fiduciaries to provide a full accounting of all fees paid, directly or indirectly, by the Plans;

I. Award Plaintiffs Winston Anderson and Christopher Sulyma statutory penalties in the amount of $110 per day, per violation, for the failure to provide each of the requested documents that the Administrative Committee failed to provide within the time periods prescribed by ERISA § 104, 29 U.S.C. §1104.

J. Awarding Plaintiffs and the Class their attorneys' fees and costs pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), the common benefit doctrine and/or the common fund doctrine;

K. Awarding pre-judgment and post-judgment interest; and

L. Awarding such other remedial or equitable as the Court deems appropriate.

Dated: March 22, 2021

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 5:19-cv-04618-LHK
(Consolidated with No. 15-cv-04977-NC &
No. 16-cv-00522)

WINSTON R. ANDERSON, CHRISTOPHER M. SULYMA, and all others similarly situated,

Plaintiffs,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, FINANCE COMMITTEE OF THE INTEL CORPORATION BOARD OF DIRECTORS, ET AL.

Defendants,

and

INTEL 401(K) SAVINGS PLAN and INTEL RETIREMENT CONTRIBUTION PLAN,

Nominal Defendants.

DECLARATION OF SAMUEL HALPERN

1. I have been retained by Plaintiffs in *Anderson, et al. v. Intel Corporation Investment Policy Committee, et al,* Case No. 19-CV-04618-LHK (N.D. Cal.) to evaluate whether the benchmarks alleged in Plaintiffs' complaint are appropriate and reasonable for the Intel Target Date Funds ("Intel TDFs") and the Intel Global Diversified Fund ("GDFs") for purposes of investment returns, fees, and asset allocation.

2. My résumé describing my qualifications on the relevant investment issues here is attached as Exhibit A to this declaration. My opinions stated herein are based on over 40 years of experience as a private sector investment professional and executive and (early in my career) a practicing attorney concentrating on ERISA-covered investment decisions. My legal experience includes working in the Solicitor's Office of the U.S. Department of Labor in the late 1970s and early 1980s, litigating actions to enforce ERISA's fiduciary duty provisions. My investment career began in the mid-1980's with the broker dealer, investment bank and asset manager Bear, Stearns & Co.

3. Most of my professional experience concerns investors and investments regulated by ERISA, including 401(k) plans. The primary focus of my career has been providing investment services to fiduciaries overseeing ERISA plan investments (such as investment committees, boards of trustees and other decision-makers comparable to the Intel Investment Policy Committee) through my firm as (i) an institutional investment consultant and "investment advice fiduciary" to ERISA plans under 29 U.S.C. §3(21)(A); (ii) an "independent fiduciary" for ERISA plans; (iii) an investment manager under ERISA, 29 U.S.C. §1002(38); and/or (iv) a named fiduciary under

29 U.S.C. §1102. This work includes extensive experience with the central investment considerations and circumstances involved in this matter, specifically, selecting and monitoring target date funds and balanced funds for defined contribution plans.

4. The opinions and observations expressed in this declaration are preliminary and without the benefit of discovery.

Using Market Indices, Peer Groups, and Peers as Benchmarks Is Standard Industry Practice

5. When selecting or monitoring a given investment fund for a defined contribution plan, it is standard and reasonable practice for plan fiduciaries to consider and compare the fund under consideration or review to alternative peer funds available in the market, the peer group for the given fund category (e.g., Large Cap, Small Cap, High Yield Bond), and relevant market-based indices such as the S&P 500.[1]

6. Peer funds are commonly identified by the market index applicable to their type of investment category, as identified by the fund managers, a recognized data base such as Morningstar, Inc., or analysis by a fiduciary or

[1] See, e.g., Morningstar, "Peer Groups as Benchmarks," at http://newsmorningstar.com/classroom2/course.asp?docId=2904&page=4; and "Indexes as Benchmarks," at https://news.morningstar.com/classroom2/course.asp?docId=2904&page=3&CN=COM. A combination of benchmarks helps with evaluating both individual fund accounts and entire portfolios. See, e.g., "Total Portfolio Benchmarking," at https://meketa.com/wp-content/uploads/2012/10/Total-Portfolio-Benchmarking-FINAL.pdf (hereafter, "Meketa Benchmarking;") and Governance and Investment of Public Pension Assets: Practitioners' Perspectives, Rajkumar and Dorfman editors, World Bank, 2011, including chapter titled "Key Ingredients in Developing Operational Policies and Procedures," Samuel Halpern (hereafter, "Key Ingredients.")

investment consultant. For instance, funds benchmarked against the S&P 500 Index may in that respect be peers and to that extent comparing them against both that benchmark and each other is commonly reasonable and appropriate. An additional conventional way of defining peers is in terms of sharing a similar type of investment strategy or investing in similar types of assets. In that case, the basis for similarity is commonly a combination of the asset class or (more precisely, subclass) involved and the "style" or "discipline" involved. For instance, funds investing in large capitalization domestic equity securities may form a peer group and those investing in investment grade fixed income securities may form another.[2]

7. A common, highly respected resource for conducting this kind of benchmarking analysis is Morningstar, Inc., which publishes data about funds available in the market and groups peer funds by category. In my experience, plan fiduciaries often rely on Morningstar data. Indeed, I understand that Intel (I use the term Intel to refer to the company and the defendants in this lawsuit collectively) commissioned Morningstar reports for the Intel TDFs and the Intel GDFs.

8. Morningstar explains its classification system as follows:[3]

> *The Morningstar Category™ classifications were introduced in 1996 to help investors make meaningful*

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[2] For a general discussion of peer groups as benchmarks see, e.g., Morningstar publication, "Key Factors for Evaluating Mutual Funds," July 30, 2020, at https://www.morningstar.com/articles/990067/key-factors-for-evaluating-mutual-funds.

[3] "Morningstar Category Classifications, April 29, 2016. https://morningstardirect.morningstar.com/clientcomm/Morningstar_Categories_US_April_2016.pdf

comparisons between mutual funds. Morningstar found that the investment objective listed in a fund's prospectus often did not adequately explain how the fund actually invested. For example, many funds claimed to be seeking "growth," but some were investing in established blue-chip companies while others were seeking growth by investing in small-cap companies.

The Morningstar Category classifications solved this problem by breaking portfolios into peer groups based on their holdings. The categories help investors identify the top-performing funds, assess potential risk, and build well-diversified portfolios. Morningstar regularly reviews the category structure and the portfolios within each category to ensure that the system meets the needs of investors.

In the United States, Morningstar supports 64 categories, which map into four broad asset classes (U.S. Stock, International Stock, Taxable Bond, and Municipal Bond). The primary and secondary indexes listed with each category are used in Morningstar's tools and reports to show performance relative to a benchmark.

Target Date Funds of the Same Vintage Year Are Commonly Used as Peers Groups

9. One of Morningstar's main categories is called "Balanced Funds" and within that category is a subcategory of target date funds. Morningstar then breaks down target date funds by "vintage year," e.g., funds targeted to retirement in different clusters of five and ten-year periods, such as the years 2000-2010, 2011-2015, 2016-2020, etc.

10. Comparing a given target date fund ("TDF") to peer TDFs is standard and reasonable practice for several

reasons related to their common goals and features. TDFs generally share the following goals and features: (1) long-term investment vehicle designed for employee-participants who do not want themselves to actively manage their retirement savings; (2) a combination of asset classes, including at least publicly traded equity, fixed income securities and cash; (3) a "glidepath" that specifies a defined, automatic decline in equity exposure over time, as the targeted retirement date approaches; and (4) moderate risk so the vehicle typically meets the definition of Qualified Default Investment Alternative ("QDIA") under Labor Department regulations. TDFs may be compared to specific competing TDFs and to larger peer groups by vintage year published by recognized firms such as Morningstar and S&P (the S&P Target Date Index Series, such as the TDF indices presented in Table 4 of Dr. Pomerantz's declaration). The Morningstar fact sheets commissioned by Intel compared the Intel TDFs to their peers in the Morningstar category for each vintage (i.e., the Intel 2030 Fund was compared to the 2030 vintage peer group).[4]

11. It is also standard and reasonable practice to compare TDFs of a given vintage year that are actively managed to those that are passively managed. Actively managed TDFs are constructed with underlying funds whose investment managers make active decisions to buy and sell select securities that may vary from the composition of the market index benchmark, in an effort to outperform that benchmark. The underlying funds of

[4] See Defined Contribution Institutional Investment Association (DCIAA) "Guide to U.S. Department of Labor Tips on Selecting Target Date Funds," Feb. 2014, p. 2; U.S. Department of Labor, "Target Date Retirement Funds—Tips for ERISA Fiduciaries," Feb. 2013, p. 2 (hereafter, "Tips").

passively managed TDFs, by contrast, seek to mirror the composition of an index such as the S&P 500 and to track (but neither exceed nor lag) its performance. The premise of active management is that it can deliver alpha. Alpha is, in short, risk-adjusted returns above those from a passive strategy. Active managers seek to justify higher fees than passive managers on the promise of alpha. After all, paying higher active management fees seems unwarranted without a reasonable expectation of outperforming a lower cost passive fund. However, history demonstrates that over full market cycles, passively-managed funds in major public markets generally produce higher net returns for investors than actively-managed ones and that "positive alpha" (excess risk-adjusted return) from active management, net of all fees and costs, is extremely difficult to produce.[5] Thus, many investors conclude that given the common expectation of higher net returns from passive management, the higher fees of active management are unwarranted. For these reasons, fiduciaries following common investment standards and practices routinely compare active strategies to passive funds in the same asset class or subclass to determine whether there exists a sufficiently reasonable expectation of alpha to warrant the higher fee. Indeed, Morningstar includes both passive and active funds in its categories, including its TDF category.

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[5] See, e.g., "Luck vs. Skill in the Cross-Section of Mutual Fund Returns," Fama and French, JOURNAL OF FINANCE, Vol LXV, No. 5, Oct. 2010, pp. 1915-1947; "S&P Indices vs. Active funds (SPIVA) Scorecard," S&P INDEX RESEARCH AND DESIGN, Year-End 2010, at https://www.spglobal.com/spdji/en/documents/spiva/spiva-us-year-end-2010.pdf. Please note the dates of these sources; the conclusion that passive commonly outperforms active was well-documented early in the Class Period.

12. For similar reasons, Department of Labor guidance counsels plan fiduciaries to compare actively managed funds to passive or index funds, including their respective costs and other factors. DoL has long-recognized the "cumulative effect of fees and expenses on retirement savings can be substantial;" that investment fees are by far the largest component of plan fees and expenses; that fiduciaries should "[b]e aware that higher investment management fees do not necessarily mean better performance;" and that actively managed funds generally bear higher fees than passive funds.[6] Thus, the DoL counsels plan fiduciaries to compare competing TDFs on the basis of returns, fees, and asset allocation.

> … *there are considerable differences among TDFs offered by different providers, even among TDFs with the same target date. For example, TDFs may have different investment strategies, glide paths, and investment-related fees. Because these differences can significantly affect the way a TDF performs, it is important that fiduciaries understand these differences when selecting a TDF as an investment option for their plan.*[7]

The TDFs Plaintiffs Selected Are Appropriate Benchmarks for the Intel TDFs

13. Plaintiffs selected several benchmarks for evaluating the Intel TDFs: select TDFs, both active and passive, offered by preeminent providers; and peer group categories as determined by Morningstar.

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[6] "A Look at 401(k) Plan Fees," U.S. Department of Labor, 2019, pp. 7, 9."

[7] "Tips," p. 1. On the next page of that publication, the DOL similarly states that fiduciaries should consider the investment returns, fees, expenses, asset allocations and glidepaths of different TDFs.

14. For several reasons, widely-used TDFs including those offered by Vanguard, T. Rowe Price, American Funds, and Fidelity Management, are appropriate benchmarks for the Intel TDFs regarding both selection and monitoring.

15. First, as noted above, all TDFs share common fundamental traits so it is fair to compare them to one another. Second, these four TDF fund families were within the Morningstar TDF category in 2011 and all years thereafter—the peer group to which Morningstar compared the Intel TDFs.[8] Third, these TDFs were available in the market in 2011 and thereafter. Fourth, two of the fund families consist of passive funds (Vanguard and Fidelity) and two consist of active funds (T. Rowe Price and American Funds), thus providing both types of benchmarks. Fourth, all four fund families are among the most widely-recognized providers in the industry with strong reputations; indeed, according to a 2011 Morningstar report, Fidelity, Vanguard, and T. Rowe Price had about 75% of the TDF market in 2010.[9] The same report ranked American Funds, T. Rowe Price, and Vanguard TDFs in the "top" tier of TDFs as of June, 2011, suggesting that plan fiduciaries following reasonable and

[8] For instance, the March 31, 2014, fact sheet for that particular vintage of the Intel TDFs explains that Morningstar rated that Fund against 133 other TDFs of the same vintage and the section of the fact sheet called "Morningstar Analyst Report" evaluated it against those other TDFs. The TDFs selected by Plaintiffs for purposes of comparison were included within the Morningstar Category for that "vintage." The same is true for all the other benchmarks. In other words, the service provider selected by Intel (Morningstar, which is in the business of benchmarking funds) to evaluate the Intel TDFs benchmarked the Intel TDFs against peer funds, including the peer funds selected by Plaintiffs.

[9] Morningstar Target Date Series, Research Report 2011, p. 4.

standard practice would have considered them in comparison to a specific fund under consideration or review. For many of the same reasons, the benchmarks presented in paragraph 11 of Dr. Pomerantz's declaration are reasonable and appropriate for the Intel TDFs.

16. The peer group categories used by Plaintiffs and presented in Dr. Pomerantz's report also are commonly used benchmarks for selection and monitoring the Intel TDFs. Each peer group category was independently constructed by Morningstar for each vintage of a given TDF family. And, as noted, Intel commissioned Morningstar to prepare fact sheets for plan participants that compared the Intel TDFs to the Morningstar peer group categories.

Benchmarking the Global Diversified Funds Entails Two Levels of Benchmarks

17. Background concepts about benchmarking help in determining reasonable comparators for evaluating the Intel GDFs' performance, fees, asset allocation and other features. An initial concept is that benchmarking a fund like GDF operates on at least two fundamental levels. Each seeks to evaluate a different portfolio feature and the two in tandem may provide additional insights beyond what either alone can provide.

18. The first level benchmark is high-level, using only the broadest asset classes; the second or lower level uses narrower, more specific asset classes and asset subclasses. The high-level asset classes typically include only very broad categories of publicly traded securities such as global equities and fixed income. This high-level benchmark is constructed using passive components for each asset class, e.g., a passive global equity benchmark and a passive global fixed income benchmark. On a lower, more particularized level, are asset classes and subclasses tailored to the

specific subparts of the portfolio in question (here, the Intel GDFs). Though these may fall within the high level, broad categories of global equities and fixed income, they are more tightly defined, e.g., domestic equities, domestic fixed income, international (meaning foreign) equities and fixed income, and perhaps "alternatives" such as real estate, private equity, commodities, and hedge funds. Also on this lower level are asset subclasses within domestic equity such as large cap domestic stocks, mid cap stocks and small cap stocks. As with the higher level, the benchmarks on the lower level typically consist of passive indices representative of each component.

19. The high level of broad asset classes provides a fundamental baseline for evaluating the construction and performance of a portfolio as a whole. For global funds like the Intel GDFs, the high level reflects a straightforward, low-cost approach for the entire portfolio—a simple standard for evaluating the effectiveness of adding and paying for more complex, exotic and expense approaches, including active asset management. For instance, a 60% allocation to an index of global stocks and 40% to a global bond index is a plausible high-level benchmark for a global asset allocation fund such as the Intel TDFs because a 60/40 blend is a longstanding, standard asset allocation for an investment portfolio. Further, because the Intel GDFs were classified as "World Allocation" funds including both global equities and bonds (as explained in Paragraph 22 below), the benchmarks presented in Tables 8 and 9 of Dr. Pomerantz's declaration are reasonable and appropriate.

20. Including the lower level of more tailored asset classes and subclasses assists in evaluating the effectiveness of each component against its respective benchmark. For instance, including the Russell 2000 small cap index as one component of the overall blended index for

the GDFs enables an analyst or fiduciary to evaluate the performance of that one component in isolation.[10]

Benchmarks the Committee Chose for GDFs—MSCI World Index

21. In fact, the Committee benchmarked the Intel GDFs against both a high-level and a low-level benchmark. In 2014, the lower level benchmark, labelled "Benchmark 1- Blended Benchmark," consisted of allocations to passive indices proportionately weighted to the portfolio's various components, such as domestic large and small cap equities, international equities, domestic and international fixed income, hedge funds, private equity, commodities and real estate.[11] On that same 2014 fact sheet, Benchmark 2 was the MSCI World Index, NR.[12] Although it was the stated

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[10] To illustrate how these concepts work in practice, take a simplified example using a fund roughly akin to Intel's GDFs. Assume that on the high level its strategic asset allocation is 75% global equity and 25% global fixed income. Assume next, that over time, its portfolio actually tightly adhered to those strategic targets. Finally, assume that its actual investment performance over some meaningful period of time nevertheless materially lagged the top-level benchmark. Applying the second, lower level of benchmarking may disclose that the cause for that underperformance was (hypothetically) the small cap component, if, for instance, it performed extremely poorly compared to the Russell 2000—so poorly that it dragged down the overall performance of the entire portfolio. For a fuller discussion of relevant concepts involving benchmarking, see Meketa Benchmarking and Key Ingredients, at 96-97.

[11] E.g., see the fact sheet from March 31, 2014, p. 2, in section titled "Index Composition."

[12] The publicly traded stocks composing this index are issued by large and mid-sized companies from numerous developed market countries around the world. See, "MSCI World Index (USD) at https://www.msci.com/documents/10199/149ed7bc-316e-4b4c-8ea4-43fcb5bd6523. "NR" means "net returns" and "USD" means the

benchmark, MSCI World is a global equity index, but the Intel GDFs had material allocations to global bonds by 2011-2012. Thus, for the reasons explained below, other benchmarks were more tailored to the GDFs.

Other Benchmarks the Committee Chose for GDF—World Allocation and Balanced

22. The Committee announced yet another benchmark for the GDFs in its November 2014 "Plan IQ" notice to the Plans' participants.[13] That notice informed participants that GDF was in an asset class called "World Allocation."[14] In truth, this benchmark was reasonable and appropriate in 2011-2012 given the heavy allocation to global bonds. Many other funds were available in that same category, including, for instance, American Funds Capital Income Builder,

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returns are expressed in terms of U.S. dollars. Calculating investment returns on stocks issued by companies domiciled in foreign countries requires taking into account local taxes for non-residents, like a U.S.-based investment fund. The returns on the "NR" index reflect the impact of paying such taxes. By contrast, the version of MSCI using gross (G) returns, reinvests not just a portion but all dividends, based on the amount paid to residents of the country of the company paying the dividends. See, Morningstar Principia "Index Abbreviations," at www.advisor.morningstar.com/principia/pdf/prn_indexabbreviations_1011.pdf; and see MSCI Europe Daily_Net Total Return Index, at https://etf.invesco.com/sites/default/files/documents/MSCI%20Europe%20Index%20-%20location%20of%20index%20rules.pdf

[13] Intel Corp. 401(k) Savings Plan/My Plan IQ, Nov. 14, 2014, p. 1.

[14] Morningstar explains that classification this way: "World-allocation portfolios seek to provide both capital appreciation and income by investing in three major areas: stocks, bonds, and cash. While these portfolios do explore the whole world, most of them focus on the U.S., Canada, Japan, and the larger markets in Europe. It is rare for such portfolios to invest more than 10% of their assets in emerging markets. These portfolios typically have at least 10% of assets in bonds, less than 70% of assets in stocks, and at least 40% of assets in non-U.S. stocks or bonds." The Morningstar Category Classifications, April 29, 2016, p. 21.

Blackrock Global Allocation, First Eagle Global, Ivy Asset, GMO Global Asset Allocation Fund and others listed in Table 9 of the report of Dr. Steve Pomerantz. Since these funds all fall in the same category as the GDFs, they are reasonable for benchmarking the Intel GDFs' performance.

23. The Committee also used another benchmark for GDF. The "Performance Update" of June 30, 2014, stated that the 401k GDF was in a Morningstar category called "Balanced/Hybrid Funds—International/Growth." The three funds cited in Table 10 of the Pomerantz report are likewise balanced funds and valid peers for purposes of benchmarking the Intel GDF's performance, fees, asset allocation and other features. These are the T. Rowe Price Balanced Fund (ticker RPBAX), Vanguard's Life Strategy Growth Fund Investor (VASGX) and Vanguard's Life Strategy Moderate Growth Fund Investor (VSMGX). Compared to the GDF's exposure of approximately 70-80% in "global equities," the T. Rowe fund is normally allocated approximately 65% to global (U.S. and foreign) equity and 35% to global fixed income.[15] The Vanguard Growth fund is allocated 80% to global equity and 20% global fixed income, while the Moderate Growth fund is allocated 60%/40%.[16] All three of these funds provide helpful reference points for evaluating value added or subtracted by GDF's different weighting to equity securities and its more exotic, complex, costly and illiquid investment strategies.[17]

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[15] See troweprice.com for fuller discussion of the Balanced Fund, including its strategic asset allocation.

[16] See investor.vanguard.com for fuller discussion of the Life Strategy Growth Fund and Moderate Growth Funds, including their strategic asset allocations.

[17] The Moderate Growth Fund is a suitable benchmark for another reason as well: plan fiduciaries often use a traditional asset

The HFRI Composite Index Is Relevant To Considering a Hedge Fund of Funds Allocation

24. Before commencing a heavy allocation to hedge funds in TDFs or a static allocation fund such as the Intel GDFs, a plan fiduciary following standard and reasonable practice would take into account, among other things, the history of hedge fund of funds performance (including their associated fees) and compare those to more traditional asset classes.

25. As reflected in Dr. Pomerantz's declaration, Plaintiffs have presented the performance of the HFRI Funds of Funds Composite index as indicative of the performance of hedge funds of funds. The hedge fund portfolio in the Intel TDFs and GDFs consisted of hedge funds of funds. Thus, as of 2011, the history of risk and return of the HFRI Composite over a full market cycle was a relevant factor to consider in determining whether to invest in or hold a large allocation to a hedge funds of funds.

26. A plan fiduciary following standard and reasonable practice in 2011 and thereafter would consider whether the high cost and historic performance of hedge fund of funds could plausibly yield a better retirement outcome than a traditional strategic asset allocation. One widely-used, traditional asset allocation model is a 60%/40% equities/bonds portfolio, which Dr. Pomerantz employs in Table 13.

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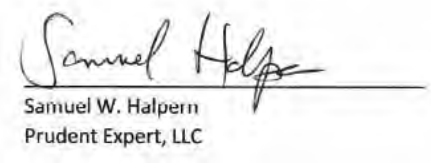
allocation of 60% equity/40% fixed income as a baseline standard for comparison.

Dated: March 22, 2021 Respectfully submitted,



Samuel W. Halpern
Prudent Expert, LLC

Exhibit A

PRUDENT EXPERT, LLC
Samuel W. Halpern
Luray, V.A./Washington, DC.

EXPERIENCE AND EXPERTISE OF SAMUEL W. HALPERN

www.PrudentExpertLLC.com

Samuel Halpern has over 40 years' experience with financial and fiduciary aspects of institutional investing, especially regarding ERISA-covered funds. He has concentrated on institutional investing for more than 30 years through investment consulting, acting as an ERISA independent fiduciary and serving as an expert witness, after an initial 10 years as a litigation lawyer, handling investment cases governed by ERISA's fiduciary responsibility provisions. Over the years, Mr. Halpern helped establish, build, manage and eventually sell a prominent investment advisory firm; advised a wide range of institutional investors regarding nearly all facets of their investment programs and practices; and led his firm's work as an ERISA "independent fiduciary" regarding employer securities, employer real estate and other assets. He has also served extensively as a testifying expert in ERISA litigation and led investment teams assisting counsel as a non-testifying expert.

With this extensive, combined experience, Mr. Halpern is especially well-qualified to testify as an expert regarding standards of investment due diligence for fiduciaries investing across a wide range of investments and situations.

Investment Advisory Experience—Consulting and Independent Fiduciary

In 1986, Mr. Halpern joined the broker dealer and investment bank Bear, Stearns & Co. to help shape and launch a new, wholly-owned, registered investment advisory subsidiary named Bear Stearns Fiduciary Services, Inc. Over the ensuing 10 years, as the firm's Executive Vice President and General Counsel, he helped establish its suite of investment advisory services, develop clients, advise those clients on their investment portfolios and manage the business.

The firm's primary services were twofold. First, was investment consulting to ERISA-covered funds and other institutional investors, including advice on investment policy; asset allocation; selecting and monitoring investment managers and other types of investment due diligence; measuring and evaluating investment performance, risks and costs; investment best practices; new investment ideas; and investment governance. Second, the firm acted as an independent fiduciary, with discretionary responsibility for investment decisions when the regular fiduciaries confronted conflicts of interest, involving, for instance, in kind contributions, employer securities, employer real estate and other party in interest transactions, for defined benefit and defined contribution plans, including ESOPs.

In 1996, he and his business partner purchased the firm from Bear Stearns and renamed it Independent Fiduciary Services, Inc. Over the next 15 years, as President of IFS and a member of its Management Committee, Mr. Halpern helped guide the firm's growth as an investment consultant and independent fiduciary, to over 35 employees and assets under advisement or management of approximately $25

billion. Integrally involved in the firm's day to day investment advisory services, he led numerous teams of investment consultants, advising a wide range of institutional clients regarding their investment programs, including single and multiemployer ERISA pension, 401k and health benefit plans; public pension funds; substantial personal trusts and other institutional clients. He also served as Chairman of the Investment Committee, responsible for the firm's formal, final investment decisions when exercising discretionary fiduciary responsibility over entire investment portfolios or particular assets.

In 2011, IFS sold substantially all its assets to a wholly owned subsidiary of the public company Arthur J. Gallagher (NYSE:AJG) and became the primary component of what is now known as Gallagher Fiduciary Advisors, LLC. From the time of that sale until transitioning in early 2014 to the successor he helped select, Mr. Halpern was president of the Washington/Newark branch of GFA, centrally involved in integrating the firm with the larger Gallagher organization, guiding GFA's business and delivering its full range of services as investment consultant and discretionary or independent fiduciary. During his last year with Gallagher, as Executive Vice President, he helped manage the transition, continued advising a wide range of clients on their investment programs and practices and continued serving as Chairman of the firm's Investment Committee. He retired from Gallagher in January 2015 and in February 2015 began business as Prudent Expert, LLC.

Areas of Expertise

With his extensive, combined investment and fiduciary background, Mr. Halpern is highly experienced with investment due diligence and many other aspects of institutional (particularly ERISA) investing.

- *Range of investments*. Over the years, Mr. Halpern has dealt with publicly traded securities (equities and fixed income, including qualifying and non-qualifying employer securities), marketable "alternative" assets (e.g., hedge fund of funds, multi-asset class vehicles), real estate (equity and debt) and a wide range of other private or illiquid assets (e.g., private debt and equity, restricted stock, unregistered warrants, bankruptcy claims, etc.). Across these asset classes and subclasses, he has been heavily involved in selecting and evaluating investment management firms for separately managed accounts and various investment vehicles (limited partnerships, mutual funds, commingled funds, insurance company separate accounts, etc.) as well as monitoring the risks and performance of such investments over time.
- *Range of investors*. These include corporate and Taft Hartley (single and multiemployer) ERISA plans; defined benefit pension plans, defined contribution plans (401K, ESOP and "annuity" funds) and welfare funds (including VEBAs); as well as public pension funds, sovereign wealth funds, union treasuries and other institutional investors.
- *Investment consulting and independent fiduciary*. Mr. Halpern has led numerous consulting teams at IFS and GFA advising clients on their entire, diversified investment programs, including, for instance, advising on investment policy, asset allocation and diversification, manager due diligence (including both separately managed accounts and pooled vehicles such as mutual funds

and commingled funds on a 401k platform), measuring and monitoring investment risk and expense, brokerage and trading practices and related matters. He also led the firm's role as a discretionary independent fiduciary to many other ERISA plans, e.g., The Ford Motor Subaccount of the United Auto Workers Retiree Medical Fund (unregistered warrants and private notes), Kaiser Aluminum VEBA (restricted stock and bankruptcy claims), Pan American World Airways Pension Plans (in kind contribution and leaseback of employer real estate) and many others. Many of these assignments involved employer securities (equity, warrants and debt) as well as employer real estate.

- *Testifying and nontestifying expert.* Since forming Prudent Expert, LLC, Mr. Halpern has often served as a testifying and nontestifying expert in investigations and litigation concerning ERISA-covered investing. Previously, he led several teams at IFS/GFA that advised legal counsel as a nontestifying expert, regarding a range of other ERISA funds and types of investments.
- *Investment governance*. Mr. Halpern has advised a wide range of clients on investment governance, including domestic clients (e.g., Nestle in the U.S. Pension Trust) and - either directly or through the Asian Development Bank or World Bank-- foreign institutional investment funds in China, Sri Lanka, Thailand and Brunei.
- *Investment best practices*. Mr. Halpern was instrumental in developing IFS' "Operational Review" services-- investment best practice studies of major institutional investors, including ERISA

defined benefit and 401k plans as well as public pension funds. These studies evaluated asset allocation; selection and monitoring of investment managers and pooled vehicles such as mutual funds; due diligence practices more broadly; risk management; and related matters. For approximately 20 years, he led numerous IFS/GFA teams, conducting such studies, regarding approximately $1 trillion in assets. These Operational Reviews concerned corporate and multiemployer ERISA pension and 401k plans as well as numerous statewide and other large public pension funds (including, for instance, the Texas Teacher Retirement System, New York City Bureau of Asset Management, New Jersey Division of Investments, Oregon Division of Investments, Virginia Retirement System and many others).

Legal Practice—ERISA Litigation

With his prior experience as a litigation lawyer, Mr. Halpern understands the practical and tactical aspects of serving as an expert consultant and witness.

In 1975-76, Mr. Halpern clerked for Senior District Court Judge Luther Youngdahl, of the U.S. District Court for the District of Columbia, and also served as a motions clerk to the U.S. Court of Appeals for the District of Columbia Circuit.

In early 1977, he joined the litigation staff of the Plan Benefits Security Division of the U.S. Department of Labor, responsible for nation-wide enforcement of what was then a new statute—the Employee Retirement Income Security Act. In early ERISA litigation, he helped develop standards for investing by ERISA fiduciaries, including due diligence processes and criteria for investing in private market assets such as employer stock and real estate. These cases typically

entailed preparing and cross-examining expert witnesses regarding various aspects of investment due diligence. Among other matters he handled on behalf of the Secretary of Labor are several reported cases, including:

- Marshall v. Teamsters 282 Pension Trust, 458 F. Supp.986 (E.D.N.Y. 1978) (imprudent construction loan)
- Donovan v. Mazzola, 2 EBC 2115 (N.D. Cal. 1981), aff'd, 716 F.2d 1226 (9th Cir. 1983), cert denied, 464 U.S. 1040 (1984) (objective standards for prudence in real estate investing, portfolio diversification, selection of service providers)
- Donovan v. Cunningham, 541 F. Supp. 276 (S.D. Tex. 1982), rev'd , 716 F.2d 1455 (5th Cir. 1983) (ESOP purchasing private company employer stock)

After leaving the Department in 1982, Mr. Halpern continued concentrating on ERISA investing with a labor-side labor law firm, based in Washington. This included litigation from both a plaintiff's and defense perspective, as well as counselling ERISA fiduciaries on investment decisions and investment products. His reported cases from this period include:

- Arakelian v National Western, 680 F. Supp.440 (D.D.C. 1987) (due diligence regarding investing in group annuity contracts)
- Fink v. NS&T Bank , 772 F.2d 951 (D.C. Cir. 1985)(due diligence regarding profit sharing plan's investment in private company employer stock)

Publications

Over the years, Mr. Halpern has written on numerous aspects of institutional investing. Within the last 10 years, this includes a chapter titled "Key Ingredients in

Developing Operational Policies and Procedures," in Governance of Public Pension Assets, Rajkumar and Dorfman (editors), World Bank, 2010.

Education

Mr. Halpern graduated Phi Beta Kappa from Brown University in 1972, earning a Bachelor of Arts degree with a combined major in Political Science and an interdisciplinary humanities program. During his junior year in college, he attended the London School of Economics. In 1975, he earned his law degree from the George Washington National Law Center in Washington, D.C.

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 5:19-cv-04618-LHK
(Consolidated with No. 15-cv-04977-NC &
No. 16-cv-00522)

WINSTON R. ANDERSON, CHRISTOPHER M. SULYMA, and all others similarly situated,

Plaintiffs,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, FINANCE COMMITTEE OF THE INTEL CORPORATION BOARD OF DIRECTORS, ET AL.

Defendants,

and

INTEL 401(K) SAVINGS PLAN and INTEL RETIREMENT CONTRIBUTION PLAN,

Nominal Defendants.

DECLARATION OF DR. STEVE POMERANTZ

I, Steve Pomerantz, declare as follows:

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.

2. I have been retained by Plaintiffs in *Anderson, et al. v. Intel Corporation Investment Policy Committee, et al*, Case No. 19-CV-04618-LHK (N.D. Cal.) to identify benchmarks for Intel Target Date Funds ("Intel TDFs") and Intel Global Diversified Funds ("Intel GDFs") for purposes of investment returns, fees, and asset allocation and to present comparisons of the Intel TDFs and GDFs to such benchmarks for various periods.

3. My résumé describing my qualifications on the relevant investment issues here is attached as Exhibit A to this declaration.

4. The opinions and observations expressed in this declaration are preliminary and without the benefit of discovery.

Benchmark Selection

5. In my experience, institutional investors, including retirement plan fiduciaries, use several common benchmarks for any given fund under consideration or review, including published indices (e.g., the S&P 500), peer or category groups (representing a group of funds in the same asset class available in the market), and select individual funds (often those offered by the largest and most well-established fund families such as Fidelity Investments, T. Rowe Price, and Vanguard Group).

6. Morningstar, Inc. maintains a well-respected database of mutual funds and constructs "categories" consisting of peers in the same asset class. Morningstar does not simply rely on how a fund manager classifies a given fund when deciding the category in which to place it, but, rather, looks at various other factors such as actual asset allocation and various financial metrics. The specific funds within a given Morningstar category can be said to be peers of funds in that asset class. Morningstar categories include both actively managed and passive, index-tracking funds. For example, the Morningstar Large Cap Growth Category includes both actively managed funds and index funds tracking the S&P 500. In other words, Morningstar considers active and passive funds within the same asset class as belonging to the same category and as peers. Thus, Morningstar categories are widely used for benchmarking against a peer group as well as selected individual peer funds.

7. When a specific fund under consideration or review is not included in a Morningstar category group, as was the case with the Intel TDFs and GDFs because they were not available in the broader market, one can identify the appropriate category by the subject fund's asset class and its selected benchmark. Here, for example, the Intel TDFs are target date funds. Therefore, the relevant Morningstar categories are the TDF categories for each vintage, e.g., the TDF 2035 Category for the 2035 Intel TDF. By the same token, the individual funds within the Morningstar TDF 2035 Category are peers of one another and the 2035 Intel TDF.

8. The relevant Morningstar categories for the Intel GDFs are less obvious. One way to identify the relevant category is to identify the Morningstar category that benchmarks against the same index as does the subject

fund. Here, Intel benchmarked the Intel GDF to MSCI World, which was the benchmark for the Morningstar World Large Stock category. By 2011-2012, MSCI World, however, is not a plausible benchmark because the Intel GDFs had made material allocations to non-equity assets and MSCI World is an equity index. The Morningstar World Allocation Category is a better and more appropriate benchmark as the funds in this category are allocation funds investing in global stocks and bonds like the Intel GDFs. Therefore, the World Allocation Category is an appropriate peer group benchmark, as are individual funds within the category. Further, because the Intel GDFs are allocation funds, meaning that they consist of assets in a variety of asset classes, it is appropriate to compare them to a traditional 60/40 equities/bond portfolio, which has long been viewed in the investment community as a "default" benchmark for static allocation funds.

9. Regarding indices, there are several published target fund indices commonly used by investment advisors and institutional investors. Those are detailed below.

Comparators for Intel's Target Date Funds

10. Looking at publicly available peers, the target date fund market was, during the relevant period, dominated by a handful of large players, including Fidelity, Vanguard, and T.Rowe Price. Fidelity offers both passively managed and actively managed target date products. These fund families were included in the Morningstar Category for each vintage of TDF and therefore are appropriate peer funds for a given Intel TDF.

11. The fees for these industry leading mutual fund alternatives were:

Fund Family	Asset Weighted Average Expense Ratio 2012	Asset Weighted Average Expense Ratio 2015
Vanguard (passive)	19 bps	7 bps[1]
Fidelity (passive)	15 bps	7 bps
Fidelity (active)	57 bps	50 bp
T.Rowe Price (active)	79 bps	58 bps[2]
Intel TDFs 2012	62–71 bps	92–104 bps

12. Fees for TDFs declined after 2012, and average fees within 401(k) plans are lower than for the TDF wider market, which includes many retail investors. The ICI/Brightscope 401k survey identifies that the average fee for TDFs in all plans was 53 bp in 2015.

[1] For the Collective Trust found in 401(k) plans.
[2] For the Collective Trust found in 401(k) plans.

FIGURE 1

EXHIBIT 4.5

Average Expense Ratios of Mutual Funds in 401(k) Plans, 2015

Asset-weighted average expense ratio as a percentage of assets among plans with audited 401(k) filings in the BrightScope database by mutual fund investment objective and plan size

	Equity mutual funds		Balanced mutual funds		Bond mutual funds				
Plan assets	Domestic	International	Target date mutual funds*	Non-target date balanced mutual funds	Domestic	International	Money market mutual funds	Other	Memo: index mutual funds
$1M to $10M	0.81	1.01	0.79	0.80	0.72	0.85	0.16	0.98	0.25
>$10M to $50M	0.68	0.85	0.68	0.64	0.59	0.77	0.17	0.89	0.18
>$50M to $100M	0.55	0.72	0.54	0.50	0.44	0.66	0.16	0.77	0.13
>$100M to $250M	0.52	0.68	0.55	0.45	0.40	0.64	0.15	0.76	0.11
>$250M to $500M	0.49	0.63	0.50	0.42	0.36	0.67	0.15	0.73	0.10
>$500M to $1B	0.45	0.60	0.50	0.39	0.33	0.65	0.14	0.71	0.08
More than $1B	0.36	0.52	0.48	0.32	0.26	0.65	0.13	0.45	0.07
All plans	0.46	0.61	0.53	0.41	0.35	0.67	0.14	0.65	0.09

	Equity mutual funds		Balanced mutual funds		Bond mutual funds				
Number of plan participants	Domestic	International	Target date mutual funds*	Non-target date balanced mutual funds	Domestic	International	Money market mutual funds	Other	Memo: index mutual funds
Fewer than 100	0.66	0.86	0.65	0.71	0.58	0.78	0.14	0.88	0.16
100 to 499	0.59	0.77	0.58	0.55	0.48	0.74	0.15	0.69	0.14
500 to 999	0.53	0.71	0.55	0.48	0.42	0.67	0.16	0.76	0.11
1,000 to 4,999	0.49	0.65	0.52	0.44	0.37	0.65	0.15	0.74	0.10
5,000 to 9,999	0.42	0.57	0.53	0.39	0.32	0.65	0.14	0.51	0.08
10,000 or more	0.39	0.54	0.52	0.33	0.29	0.66	0.13	0.56	0.07
All plans	0.46	0.61	0.53	0.41	0.35	0.67	0.14	0.65	0.09

* A target date fund typically rebalances its portfolio to become less focused on growth and more focused on income as it approaches and passes the target date of the fund, which is usually included in the fund's name.

Note: The sample is 15,110 plans with $1.4 trillion in mutual fund assets. BrightScope audited 401(k) filings generally include plans with 100 participants or more. Plans with fewer than four investment options, more than 100 investment options, or less than $1 million in plan assets are excluded from BrightScope audited 401(k) filings for this analysis. See the callout box on page 55 for a description of the fee analysis.

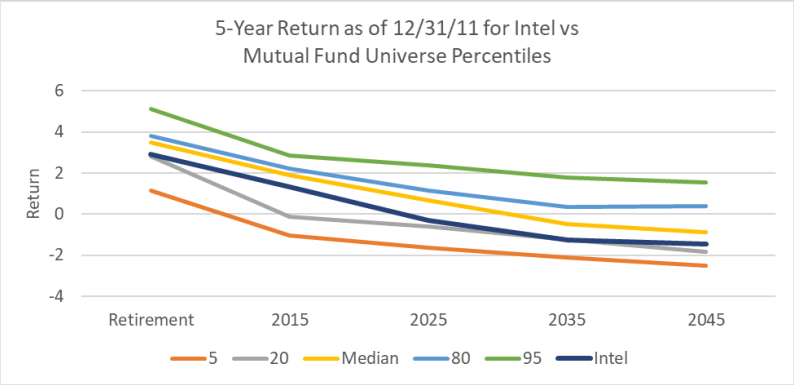
13. ICI/Brightscope also identify a range of fees paid. Compared to the 53 bp average, the 10th percentile was approximately 20 bp and the 90th percentile was approximately 75 bp.

FIGURE 2

14. By comparison, the Intel TDF funds were charging over 100 bp, approximately double the average paid by the universe of 401k plans surveyed.

15. Meanwhile, the Intel TDFs underperformed TDF alternatives available in the market (based on the Morningstar Category). As illustrated in Table 1 below, for all vintages, the Intel TDF returns were below median and most were close to the bottom fifth of TDFs by return, within their respective Morningstar Category as of 12/31/2011. Each vintage is (bottom row) ranked separately for this analysis.

TABLE 1



16. The underperformance of Intel's TDF product continued. As illustrated in Tables 2 and 3 below, returns were consistently below median and were often below the 5th percentile for the later vintages. This was the case as of June 2014 and December 2018.

TABLE 2

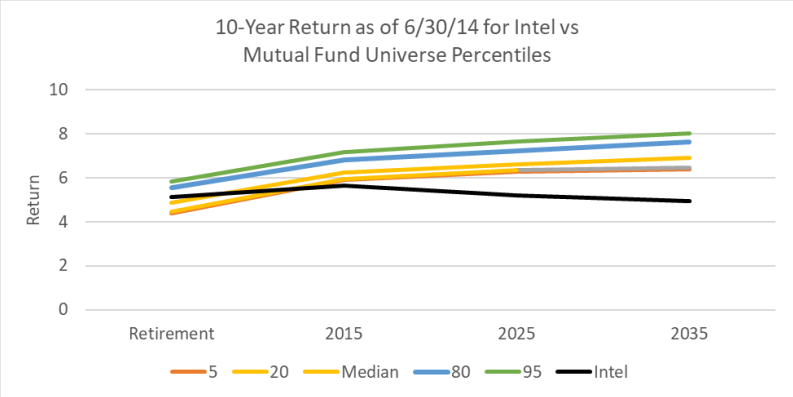
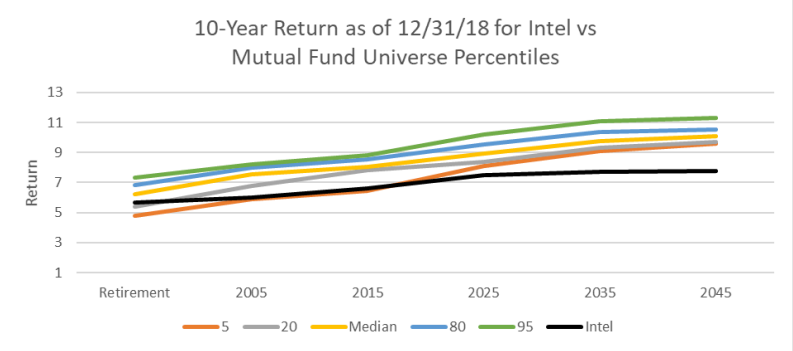


TABLE 3



17. In addition to mutual fund comparators, Dow Jones, Morningstar and S&P publish category benchmarks for Target Date Funds. As shown in Table 4 below, For the five-year period prior to 2011, Intel performed worse than all these indices.

TABLE 4

	Intel	Morning-star Lifetime	S&P Target Date	Dow Jones Target
Retirement	2.93	4.10	3.12	5.50
2015	1.31	2.31	2.25	3.87
2025	-0.29	0.95	1.31	2.43
2035	-1.26	0.52	0.33	1.22
2045	-1.47	0.48	-0.27	0.88
Average of above:	0.24	1.67	1.35	2.78
Difference		(1.43)	(1.10)	(2.54)

18. Several large TDF providers in the market had 5-year track records as of December 2011. Table 5 below illustrates the comparable return for three of the providers within the universe data above.

TABLE 5

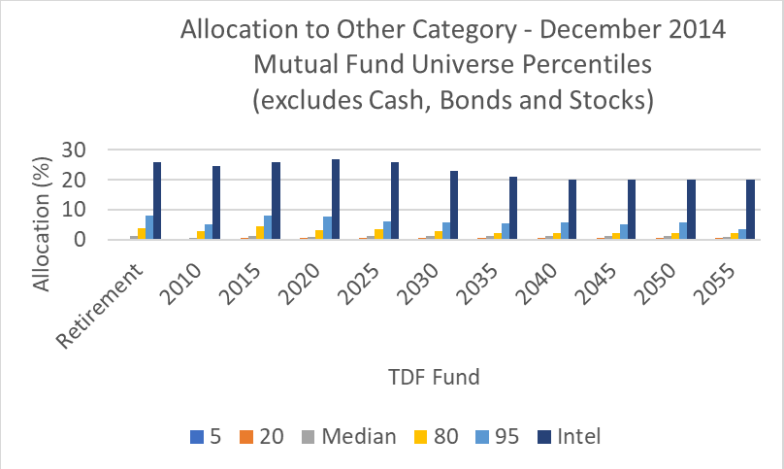
	Intel	Fidelity (Active)	T. Rowe Price	Vanguard
Retirement	2.93	3.03	2.56	4.86
2015	1.31	1.90	2.11	2.54
2025	-0.29	0.76	1.06	1.27

2035	-1.26	-0.51	0.43	0.27
2045	-1.47	-0.84	0.43	0.24
Average	0.24	0.87	1.31	1.84
Difference		(0.62)	(1.07)	(1.59)

19. As shown above, Intel's Target Date Funds consistently underperformed benchmarks and market-leading peers selected by other 401(k) plan fiduciaries, and did so at higher cost.

20. Intel's Target Date Fund managers made extremely unusual asset allocation decisions. Generally, asset allocations are reported as Stock, Bonds and Cash, with a small percentage reserved for a catch-all "other" category that typically includes real assets, commodities, hedge funds, private equity, and other alternative investments. As illustrated in Table 6 below, Intel's allocation to "other" assets was highly unusual, approximately 10 times larger than the median target date fund and 3 times larger than the other outliers representing the 5% of target date funds with the highest "other" allocations.

TABLE 6



Comparators for Intel's GDF

21. The Morningstar fact sheet for the Intel GDFs lists two benchmarks: (1) a custom benchmark; and (2) MSCI World. The custom benchmark is not explained and is not replicated in any public data set of which I am aware. MSCI World Index is a global (U.S. and international) stock index derived from large and mid-cap stocks in developed countries.

22. From 2007 to 2011, however, the allocation model of the Intel GDFs shifted from global equities to other strategies such as hedge funds. Therefore, by 2011 a more appropriate benchmark index would be the Morningstar Global Allocation TR.

23. In addition, it is common practice to compare static allocation funds to a traditional 60/40 equity/bond portfolio which has long been used by retirement planners as a kind of default portfolio. Because the Intel GDFs had a heavy

allocation to international equities, a 60% World/40% Bond benchmark is appropriate.

TABLE 7

	5 yr end 12/11	**5 yr end 6/14**	**10 yr end 6/14**	**10 yr end 12/18**
GDF	-0.94	10.11	4.90	7.40
Morningstar Global Alloc TR	2.60	11.43	7.69	7.53
60% World / 40% Bond	1.18	10.97	6.35	7.27

24. The Intel GDF underperformed both indices in every period measured except against 60/40 over the 10-year period ending 12/18.

25. The benchmarks listed in Table 7 above are indices. They are useful, commonly used tools for evaluating investment returns but are not products available in the market. Tables 8 and 9 below compare the investment returns of the Intel GDFs to peer group categories and selected peer funds, that is, products an investor might select as an alternative for the subject asset class. I presented comparisons to the Morningstar World Allocation Category, and selected peers within the category, which reflects the actual asset allocation of the Intel GDFs. The selected peers are those with the most assets under management in the category. The last row in each table shows where the Intel GDF would fall in rank (higher % means lower ranking/worse performance). I also present the median return for the category. For example, in Table 8, for the 5-year period ending December 2011, the Intel GDF performed at the 85th percentile, so 85% of funds in the Morningstar category (with assets over $100 million) performed better.

TABLE 8

US Fund World Allocation	**5 yr end 12/11**	**5 yr end 6/14**	**10 yr end 6/14**	**10 yr end 12/18**
GDF	-0.94%	10.11%	4.90%	7.40%
Median peer group return	2.17%	10.98%	7.23%	6.53%
Rank	85%	70%	91%	19%

TABLE 9

US Fund World Allocation	5 yr end 12/11	5 yr end 6/14	10 yr end 6/14	10 yr end 12/18
GDF	-0.94%	10.11%	4.90%	7.40%
American Funds Capital World Gr&Inc A	-0.93%	14.21%	9.34%	9.04%
American Funds Capital Income Bldr A	0.86%	12.35%	7.73%	7.37%
PIMCO All Asset Instl	5.64%	10.17%	7.23%	6.53%
BlackRock Global Allocation Instl	3.87%	9.88%	8.48%	6.19%
First Eagle Global I	4.85%	13.94%	10.70%	8.46%
Ivy Asset Strategy I	5.80%	12.01%	12.34%	5.78%
Thornburg Investment Income Builder A	4.12%	14.27%	10.29%	9.47%
Wells Fargo Asset Allocation A	2.29%	10.04%	6.62%	5.53%
Invesco Global Allocation A	-1.82%	10.81%	3.74%	7.00%
Calamos Global Growth & Income I	2.13%	10.95%	7.56%	7.39%

26. Thus, the Intel GDFs underperformed the vast majority of the largest World Allocation Funds across the time periods I measured. For the 10-year period ending June, 2014, the GDFs underperformed over 90% of its peers in the US Fund World Allocation Morningstar category.

27. Table 10 below compares the investment returns of the Intel GDFs to "balanced fund" peer funds.

TABLE 10

Balanced Funds	5 yr end 12/11	5 yr end 6/14	10 yr end 6/14	10 yr end 12/18
GDF	-0.94%	10.11%	4.90%	7.40%
T. Rowe Price Balanced	2.24%	13.71%	7.58%	9.63%
Vanguard LifeStrategy Growth Inv	-0.19%	14.62%	7.02%	9.51%
Vanguard LifeStrategy Moderate Gr Inv	1.53%	12.30%	6.58%	8.17%

28. Much of this underperformance can be traced to unusual asset allocation decisions. The average allocation is approximately 4%. At the 95th percentile, the allocation is in the 20% to 30% range. Prior to 2010, the Intel GDFs also had little allocation to this Other. The amount then steadily grew to current, December 2020, allocations of approximately 35% to Hedge Funds, Private Equity and Real Assets, all of which are classified as Other. As such, the GDF is at the very high end of allocation to Other relative to funds in this category. This difference largely explains why the Intel GDFs have such high fees as compared to peers in the category.

29. As the GDF took on more of these "other" investments, namely hedge funds, the acquired fund fee increased. For selected years, for which data exists, I have illustrated the fee of the GDF compared to the median fee for the World Allocation category. I also illustrate how the GDF fee is has been at the extreme end of the range for similar mutual funds.

FIGURE 3

Selected Years	**2011**	**2014**	**2019**
GDF	0.90	1.25	1.92
Median World Allocation Fund	0.79	0.76	0.70
GDF Rank	61%	93%	98%

HEDGE FUND RETURNS PRIOR TO 2010

30. The analysis below compares a broad bond market index, a broad stock market index and a traditional blend of 60% equity / 40% bonds to the Hedge Fund Research Inc. ("HFRI") Funds of Funds Composite Index. The latter is the same index used by Morningstar in the Hedge Fund Fact sheet it prepared for Intel's hedge fund of funds, in which the Intel TDFs and GDFs invested. The HFRI Composite is a fund-of-funds index. A fund-of-funds is an investment in a single vehicle that itself invests in a portfolio of hedge funds. The Intel TDFs invested in a hedge funds-of-funds product managed by Intel. This allows for a diversification across hedge fund styles and managers. A description of HFRI Composite Index follows:

HFRI Fund of Funds Composite Index

Fund of Funds invest with multiple managers through funds or managed accounts. The strategy designs a diversified portfolio of managers with the objective of significantly lowering the risk (volatility) of investing with an individual manager. The Fund of Funds manager has discretion in choosing which strategies to invest in for the portfolio. A manager may allocate funds to numerous managers within a single strategy, or with numerous managers in multiple strategies. The minimum investment in a Fund of Funds may be lower than an investment in an individual hedge fund or managed account. The investor has the advantage of diversification among managers and styles with significantly less capital than investing with separate managers. PLEASE NOTE: The HFRI Fund of Funds Index is not included in the HFRI Fund Weighted Composite Index

31. Hedge fund returns compared to traditional capital markets for the period up to 2010 reveals significant structural issues with the performance of hedge funds, as shown in Table 11 below. The data in Figure 4 shows, as of 2010 (which data would have been available to investors in 2011), the historical risks and return for the relevant markets. The horizontal axis measures the risk of the investment and the vertical axis measures the annualized return. The sole orange marker represents the HFRI Fund of Funds index, while the blue markers (and best-fit line) represent traditional investments in equity and fixed income. The right most marker represents a global equity benchmark and the leftmost marker represents the aggregate bond index. A 60-40 blend is also represented.

FIGURE 4

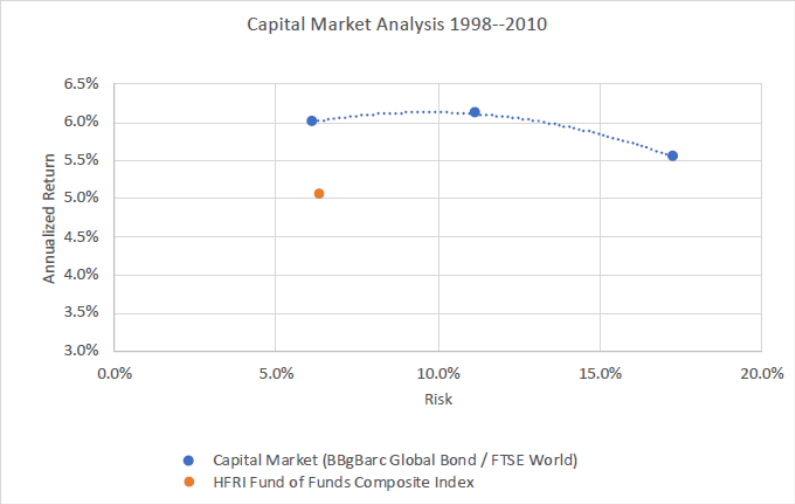


TABLE 11

1998–2010	BBgBarc Global Aggregate TR USD	FTSE All World TR USD	60% stock-40% bond Blend	HFRI Fund of Funds Composite Index
Return	6.0%	5.5%	6.1%	5.0%
Risk	6.1%	17.3%	11.2%	6.4%

32. An assumption, as of 2011, that hedge fund alternatives would deliver a low-risk version of equities was based on the relationships in Table 12 below, where equity underperformed bonds, thus lowering the traditional relationship between risk and return. A closer examination reveals a different picture. The period above is divided into 2 segments, those where equity had a positive return and those where negative. Table 12 below illustrates these results.

TABLE 12

	# of Months	FTSE All World TR USD	HFRI Fund of Funds Composite Index	Blend
Up Months	93	3.74%	1.22%	2.53%
Percent of Up Performance			33%	68%
Down Months	63	-4.10%	-0.77%	-2.38%
Percent of Down Performance			19%	58%

33. For example, between 1998 and 2010 there were 93 months of positive equity performance. In those months, the average equity return was 3.74%. Conversely, the HFRI Composite Index earned an average of 1.22% in those months, or only 32.6% of the equity return. In the 63 down months, equity had an average performance of -4.10%, while HFRI Composite Index averaged -0.77%, losing only 19% of the equity average. This shows that over the period covered, the hedge fund index was participating very little in the equity markets. The inclusion of hedge funds in lieu of equity investments left an investor with very limited exposure to the potential appreciation of equity markets.

34. The final column illustrates that a traditional 60/40 blend (a common benchmark portfolio as explained above), earned 68% of the upside while only suffering 58% of the downside. Again, this data shows that hedge funds were unlikely to outperform a standard portfolio over a full market cycle.

35. What we see from this analysis is, as expected, hedge funds, are limiting downside risk, but at the cost of proportionally less upside gain. When equity performs well, hedge fund-of-funds are not appreciating anywhere near as much as equities and in a down market they do not sufficiently outperform equities to compensate for the opportunity losses in an up market. As such, an investor in 2011 would not expect a hedge fund component in any balanced fund to perform in line with equity. The risk-return analysis above shows hedge funds were a poor diversifier relative to a simple bond market investment. Furthermore, this analysis does not examine the transparency and illiquidity issues that pertain to hedge funds which should be a further disincentive to an investor.

36. Consistent with this observation, in the period 2011–2020 hedge funds woefully underperformed equity, while maintaining their bond-like volatility, as would have been anticipated based on the above. Bear in mind that the period above from 1998–2010 was atypical in the context of the long-term returns for the capital markets. While bonds outperformed stocks during this period, which contained two significant corrections, this would not be expected or anticipated in general. The underperformance of stocks relative to bonds over a 14-year period is extremely rare.

37. Similar to the above, the graph below illustrates the risk and return for traditional capital markets (as represented by a global stock index, a global bond index and a 60/40 blend) and the HFRI Fund of Funds index. As illustrated, the Fund of Funds index participated very little, if at all, in the appreciating equity markets.

FIGURE 5

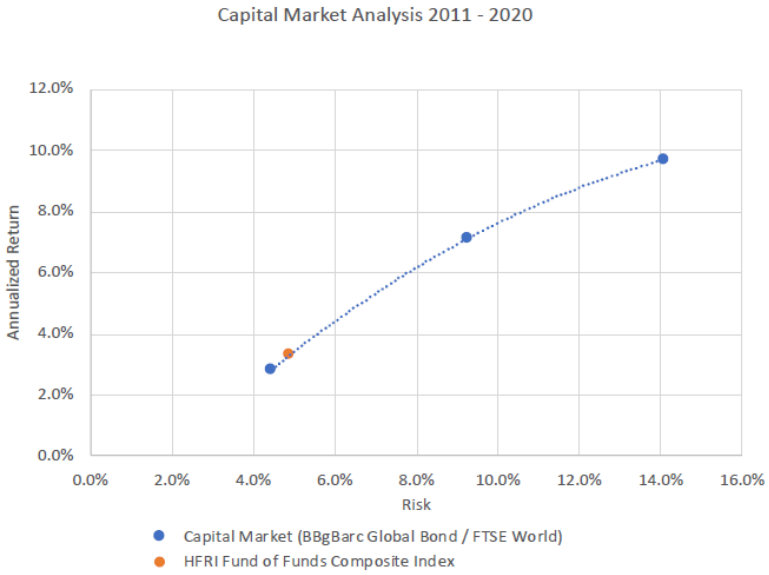


TABLE 13

	BBgBarc Global Aggregate TR USD	FTSE All World TR USD	60-40 Blend	HFRI Fund of Funds Composite Index
Return	2.8%	9.7%	7.1%	3.3%
Risk	4.4%	14.1%	9.2%	3.9%

38. The consistent picture here is that hedge funds deliver a risk-return profile more akin to bonds than anything else, but at much greater cost.

I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed at New York, New York this 22nd day of March, 2021.

_____

Dr. Steve Pomerantz

Exhibit A

Steve Pomerantz Ph.D.

LICENSES

Dr. Pomerantz has held numerous NASD licenses including the Series 3, 7, 24 and 63. In addition, he is a FINRA-trained arbitrator.

EDUCATION

Dr. Pomerantz received a Ph.D. in Mathematics from the University of California at Berkeley in 1986. His thesis was in the area of Non-Linear Partial Differential Equations. In 1981 he received a Bachelor of Arts in Mathematics from Queens College of the City University of New York.

TEACHING EXPERIENCE

Dr. Pomerantz has held adjunct professor positions at Stevens Institute of Technology, the College of Saint Elizabeth, Saint Peter's College, Saint Joseph's College and the City University of New York teaching courses in Finance, Operations Research, Mathematics, Statistics and Probability.

PRIOR WORK EXPERIENCE

Steve Pomerantz LLC 2000-
Investment Management Consultant

Various assignments in research, portfolio management and risk management for: Insurance Companies, Family Offices, Traditional and Alternative Investment Advisors. Consulting and Testifying expert.

Managing Director. 2013-2014
Duff & Phelps LLC
Litigation Support

Director of Quantitative Research 1992-2000
Weiss Peck & Greer LLC
Provided quantitative decision support to all investment management areas of the firm including equity, fixed income, alternatives, asset allocation, client servicing and firmwide risk management.

Vice President 1990-1992
Nomura Securities International
Cross-market trader in all fixed income and mortgage derivative markets.

Vice President 1988-1990
Citibank - Consumer Banking Group
Asset liability management for consumer banking division and internal mortgage portfolio.

Vice President 1987-1988
Morgan Stanley
Development and trading of dynamic hedging strategies in equity, interest rate, commodity and currency markets.

Vice President 1986-1987
Bank of America
Model development for bond analysis and exotic currency options.

ARTICLES PUBLISHED

MUTUAL FUND ADVISORY FEES: SPONSORS GAME THE SYSTEM AS WATCHDOGS SLUMBER. Ohio State Business Law Journal, Forthcoming

IT'S NOT COMPLICATED – INVESTING FOR EVERYONE

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PRESENTATIONS

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EVOLVING RISK CONCEPTS AND TOOLS
InfoVest – February 2010

USING STYLE ANALYSIS TO CALCULATE VAR
MPI Conference – March 2008

RISK MANAGEMENT FOR HEDGE FUNDS AND FUND OF FUNDS
ICI Economic Consulting – January 2005

AN APPLICATION OF ASSET ALLOCATION
IRR Fund of Funds Forum – September 2002

APPEARANCES

Deposition in Bernard vs BNY Mellon, N.A., Western District of Pennsylvania, Investment Analysis, March 2021

Deposition in Reetz vs Lowe's Companies, Inc., Western District of North Carolina, 401(k) Analysis, November 2020

Deposition in Myers vs Seventy Seven Energy, Inc.., Western District of Oklahoma, Investment Analysis, October 2020

Deposition in Baird vs BlackRock Institutional Trust Co., Northern District of California, 401(k) Analysis, August 2020

Deposition in Feinerg vs T. Rowe Price Group Inc., District of Maryland, 401(k) Analysis, June 2020

Deposition in Banks vs Northern Trust, Northern District of California, Investment Analysis, November 2019

Deposition in Moitoso vs FMR LLC, Northern District of California, 401(k) Analysis, August 2019

Direct and Cross-Examination in Swan Global Investments vs Brookstone Capital Management, AAA, Analysis, December 2018

Deposition in Re: SunTrust Banks, Inc., US District Court – Northern District of Georgia, 401(k) Analysis, December 2018

Deposition in Re: Northrop Grumman, US District Court – Central District of California, 401(k) Analysis, October 2018

Deposition in Quatrone vs Gannett Co., Inc. , Eastern District of Virginia, Investment Analysis, July 2018

Deposition in Cryer vs Franklin Resources, Northern District of California, 401(k) Analysis, July 2018

Deposition in Moreno vs Deutsche Bank, Southern District of New York, 401(k) Analysis, December 2017

Deposition in Urakhchin vs Allianz, Central District of California, 401(k) Analysis, October 2017

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Direct, Cross and Deposition in Chill vs Calamos, Southern District of New York, Mutual Fund Fee Analysis, September 2017, November 2018

Deposition in Henderson vs BNY Mellon, District of Massachusetts, Investment Analysis, August 2017

Deposition in Wood vs Prudential Life Insurance, District of Connecticut, Stable Value Analysis, July 2017

Deposition in Lehman Brothers vs FHLBNY, Southern District of New York, Investment Analysis, February 2017

Deposition in Ellis vs Fidelity Investments, District of Massachusetts, Stable Value Analysis, January 2017

Deposition, Direct and Cross Examination in Brotherston vs Putnam Investments LLC, District of Massachusetts, 401(k) Analysis, December 2016, April 2017

Deposition in Rozo vs Principal Life Ins. Co., Central District of California, Stable Value Fund Management, October 2016

Deposition in McClure vs Russell. Investment Mgmt Co., District of Massachusetts, Mutual Fund Fee Analysis, February 2016

Deposition in Teets vs Great-West Life & Annuity Ins. Co., District of Colorado, Stable Value Management, January 2016, March 2017

Direct, Cross-Examination and Deposition in Andrew Sassine vs Fidelity Management and Research Co., Commonwealth of Massachusetts – Superior Court, Investment Management, October 2015, April 2016

Deposition in American Chemicals & Equipment, Inc. vs Principal Management Co, US District Court – Southern District of Iowa, Mutual Fund Fee Analysis, October 2015

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Deposition, Direct and Cross-Examination in Foutz al v. Arborgen. et al, State of South Carolina –County of Dorcester, Employee Options Analysis, December 2014

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New York– Court of Claims, December 2012

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. 5:19-cv-04618-LHK
(Consolidated with 5:16-cv-00522-LHK, 5:15-cv-04977-LHK)

DEFANDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS

WINSTON R. ANDERSON, CHRISTOPHER M. SULYMA, and all others similarly situated,

Plaintiffs,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, ET AL.

Defendants.

NOTICE OF MOTION AND STATEMENT OF RELIEF SOUGHT

PLEASE TAKE NOTICE THAT on September 23, 2021, at 1:30 p.m., or as soon thereafter as the matter may be heard, in the United States District Court for the Northern District of California, San Jose Division, in Courtroom 8, Fourth Floor, 280 South First Street, San Jose, California, before the Hon. Lucy H. Koh, Defendants will request that, in evaluating Defendants' motion to dismiss the Amended Consolidated Complaint, the Court take judicial notice of, or deem incorporated by reference, the documents identified below and attached to the Declaration of Vidya Mirmira as Exhibits 1 through 21.

Sixteen of these documents were included in Defendants' prior Request for Judicial Notice ("Request," ECF No. 100), which the Court granted ("Order," ECF No. 109 at 7-9). The other five are substantially similar to those documents (for example, additional Fund Fact Sheets or government publications) and are incorporated by reference or subject to judicial notice in connection with the Amended Consolidated Complaint ("Complaint," ECF No. 113) for the same reasons as detailed in Defendants' prior Request. These documents are as follows:

- Exhibit 1: 2013 Summary Plan Description for the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan, and Intel Minimum Pension Plan. *This document was designated Exhibit 1 in the prior Request.*
- Exhibit 2: 2015 Summary Plan Description for the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan, and Intel Minimum Pension

Plan. *This document was designated Exhibit 2 in the prior Request.*.

- Exhibit 3: Intel 401(k) Savings Plan Investment Policy Statement, as amended and restated on January 12, 2017, and Appendix C. *This document (apart from Appendix C) was designated Exhibit 3 in the prior Request.*
- Exhibit 4: Global Diversified Fund Fact Sheet (December 31, 2011). *This document was designated Exhibit 4 in the prior Request.*.
- Exhibit 5: Global Diversified Fund Fact Sheet (September 30, 2015). *This document was designated Exhibit 5 in the prior Request.*
- Exhibit 6: Global Diversified Fund Fact Sheet (December 31, 2017). *This document was designated Exhibit 6 in the prior Request.*
- Exhibit 7: Global Diversified Fund Fact Sheet (December 31, 2018).
- Exhibit 8: Target Date 2045 Fund Fact Sheet (December 31, 2011). *This document was designated Exhibit 7 in the prior Request.*
- Exhibit 9: Target Date 2035 Fund Fact Sheet (September 30, 2015). *This document was designated Exhibit 8 in the prior Request.*
- Exhibit 10: Target Date 2015 Fund Fact Sheet (September 30, 2015). *This document was designated Exhibit 9 in the prior Request.*
- Exhibit 11: Target Date 2035 Fund Fact Sheet (December 31, 2017). *This document was designated Exhibit 10 in the prior Request*.
- Exhibit 12: Report of the Investors' Committee to the President's Working Group on Financial

Markets, "Principles and Best Practices for Hedge Fund Investors" (April 15, 2008).

- Exhibit 13: U.S. Government Accountability Office Report, "Guidance Needed to Better Inform Plans of the Challenges and Risks of Investing in Hedge Funds and Private Equity" (August 2008).
- Exhibit 14: Statement of Barbara Bovbjerg, U.S. Government Accountability Office, "Plans Face Valuation and Other Challenges When Investing in Hedge Funds and Private Equity" (July 20, 2010).
- Exhibit 15: Statement of Barbara Bovbjerg, U.S. Government Accountability Office, "Plans Face Challenges When Investing in Hedge Funds and Private Equity" (August 31, 2011). *This document was designated Exhibit 12 in the prior Request.*
- Exhibit 16: June 3, 2020 Letter of Louis Campagna, Chief of the Division of Fiduciary Interpretations, U.S. Department of Labor Employee Benefits Security Administration (Office of Regulations and Interpretations) to Jon Breyfogle, Esq. of Groom Law Group, Chartered. *This document was designated Exhibit 13 in the prior Request.*
- Exhibit 17: "Target Date Retirement Funds—Tips for ERISA Plan Fiduciaries," U.S. Department of Labor Employee Benefits Security Administration (February 2013). *This document was designated Exhibit 14 in the prior Request.*
- Exhibit 18: "Intel Custom Target-Date Evolution," PIMCO, DC Dialogue (Volume 9, Issue 3) (March/April 2014). *This document was designated Exhibit 15 in the prior Request.*

- Exhibit 19: Morningstar "2018 Target-Date Fund Landscape" (May 7, 2018). *This document was designated Exhibit 16 in the prior Request.*
- Exhibit 20: T. Rowe Price Retirement 2015 Fund Fact Sheet (March 31, 2020). *This document was designated Exhibit 17 in the prior Request.*
- Exhibit 21: Fidelity Freedom 2035 Fund Summary Prospectus (May 30, 2020).

MEMORANDUM OF POINTS AND AUTHORITIES

In conjunction with their prior motion to dismiss, Defendants requested that the Court find certain documents incorporated by reference in the prior complaint. *See* Order at 7-8. Defendants further requested that the Court take judicial notice of certain other documents. *Id.* The Court "agree[d] that [these] Exhibits" were "properly incorporated by reference" and "proper subjects of judicial notice," and accordingly granted Defendants' request. *Id.* at 9. Defendants now respectfully request the same finding here as to sixteen documents addressed in the prior Request, as well as five similar documents. These documents are incorporated by reference in the Complaint, or subject to judicial notice, for the same reasons as previously set out in the Court's Order.

IX. LEGAL STANDARD

As the Court previously explained:

> The Court may take judicial notice of matters that are either "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Moreover, courts may

> consider materials referenced in the complaint under the incorporation by reference doctrine, even if a plaintiff failed to attach those materials to the complaint. *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). Public records, including judgments and other publicly filed documents, are proper subjects of judicial notice. *See, e.g.*, *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007). However, to the extent any facts in documents subject to judicial notice are subject to reasonable dispute, the Court will not take judicial notice of those facts. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

Order at 8. Courts commonly find plan-related materials incorporated by reference in ERISA cases. *See*, *e.g.*, *Fisher v. Secchitano*, 2020 WL 1068873, at *5-6 (D. Or. Feb. 3, 2020), *report and recommendation adopted*, 2020 WL 1068068 (D. Or. Mar. 5, 2020), *aff'd*, 833 F. App'x 141 (9th Cir. 2021).

X. ARGUMENT

As in the Court's prior Order, the documents discussed below are incorporated by reference in the Complaint or properly subject to judicial notice.

Exhibits 1 and 2. Exhibits 1 and 2 are the 2013 and 2015 Summary Plan Descriptions ("SPDs") for the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan, and Intel Minimum Pension Plan. The Court found these documents incorporated by reference in the prior complaint. *See* Order at 9. As before, these Exhibits are

incorporated by reference because they form the basis of Counts III and IV alleging insufficient or misleading disclosures, and because they are referred to extensively in the Complaint, including through quotations and discussions similar to those in the prior complaint. *See* Compl. ¶¶ 383-389; *see also id.* ¶¶ 423.d, 436-437 (Counts III & IV); *compare* ECF No. 95 ¶¶ 314-315, 347.d, 366. The SPDs are further incorporated by reference in the Complaint as they explain the operation of the Minimum Pension Plan, *see, e.g.*, Ex. 2 at 21-24,[1] which the Complaint now relies on in connection with Counts I and II. *See* Compl. ¶¶ 54, 316-321.

Exhibit 3. Exhibit 3 is the Intel 401(k) Savings Plan Investment Policy Statement, which the Court found incorporated by reference in the prior complaint. *See* Order at 9.[2] Exhibit 3 "establishes the investment beliefs, investment objectives, policies and guidelines for the management of the assets of the Plan," Ex. 3 at 3, including the investment policies, allocation strategy, and benchmarking for the Intel Global Diversified Fund ("GDF") and the Intel Target Date Funds ("TDFs"). *Id.* at 5, 12-15.

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[1] All exhibit pincites refer to the page numbering branded on each exhibit.

[2] Exhibit 3 includes Appendix C to the Investment Policy Statement. As the Investment Policy Statement explains, the appendix provides "[m]ore detailed monitoring and benchmarking detail" with regard to the TDFs and GDF. Ex. 3 at 10. Given the Complaint's inclusion of allegations regarding benchmarks for the TDFs and GDF, *see, e.g.*, Compl. ¶¶ 135-143, and its acknowledgement that such benchmarks "depend[] largely on the stated investment strategy and the actual investments of the fund," Compl. ¶ 138, Appendix C to the Investment Policy Statement, like the Investment Policy Statement itself, is incorporated by reference in the Complaint.

As before, Exhibit 3 is incorporated by reference because it forms the basis of Plaintiffs' claims in Counts I, II, IV, V, and VI. *See* Compl. ¶ 69 (asserting "[t]he breaches alleged against Defendants" relate to the "investment policies"); *id.* ¶¶ 398-399, 410-411 (Counts I & II, alleging imprudence in TDFs' asset allocation); ¶ 436.f (Count IV, alleging SPDs "[m]isrepresent[ed] the allocation strategy adopted for the Intel Target Date Funds"); *id.* ¶ 447.f-g (Count V, asserting duty to remove fiduciaries who allegedly "continued to maintain an imprudent asset allocation strategy" or "mischaracterized . . . the allocation strategy of the Intel Target Date Funds"); *id.* ¶¶ 453-459 (Count VI, asserting failure to act despite alleged awareness of "the asset allocation strategy" of the GDF and TDFs and allegedly misleading information regarding the "allocation strategy of the Intel Target Date Funds"); *compare* ECF No. 95 ¶¶ 67, 324, 335, 360.f-g, 366, 371-375, 377.

Exhibit 3 is also incorporated by reference because, as before, it is referred to extensively in the Complaint, both explicitly, through a detailed recitation of its provisions, and implicitly, through reference to the investment strategy or "investment style[]" it sets out. *See* Compl. ¶¶ 133, 147, 153, 193; *compare* ECF No. 95 ¶¶ 131, 136, 139, 163.

Exhibits 4, 5, 6, 7, 8, 9, 10, and 11. Exhibits 4 through 11 are quarterly Fund Fact Sheets for the GDF and TDFs 2015, 2035, and 2045. The Court found Exhibits 4-6 and 8-11 incorporated by reference in the prior complaint, *see* Order at 9; Exhibit 7 is an additional GDF Fund Fact Sheet dated December 31, 2018. As before, these Exhibits are incorporated by reference because Fund Fact Sheets for the GDF and TDFs form the basis of Plaintiffs' claim in Count III alleging insufficient or misleading disclosures

(and provide information regarding performance and fees that form the basis of Plaintiffs' claims in Counts I and II), and also because they are referred to extensively in the Complaint, including through quotations and discussions similar to those in the prior complaint. *See* Compl. ¶¶ 101, 137, 141, 151 n.11, 178, 226, 301-302, 304, 379-382; *id.* ¶ 423.c & f (Count III); *see also* Compl., Exhibit A (Declaration of Samuel Halpern) ¶¶ 10, 15 n.8, 16, 21 & n.11; Compl., Exhibit B (Declaration of Dr. Steve Pomerantz) ¶ 21; *compare* ECF No. 95 ¶¶ 99, 184, 250-251, 253, 310-313, 347.c.

Exhibit 12. Exhibit 12 is the Report of the Investors' Committee to the President's Working Group on Financial Markets dated April 15, 2008, titled "Principles and Best Practices for Hedge Fund Investors." Like Exhibit 15 (discussed below), which the Court previously found incorporated by reference, *see* Order at 9, Exhibit 12 is a government publication that is referred to extensively in the Complaint, including through quotations and specific discussions of its contents. *See* Compl. ¶¶ 259, 275, 282, 365. Accordingly, Exhibit 12 is incorporated by reference.

Exhibits 13, 14, and 15. Exhibits 13, 14, and 15 are publications from the U.S. Government Accountability Office issued in August 2008, July 2010, and August 2011, respectively. The Court found Exhibit 15 incorporated by reference in the prior complaint. *See* Order at 9. As with Exhibit 15 in the prior complaint, these Exhibits are incorporated by reference because they are referred to extensively in the Complaint, including through quotations and specific discussions of their contents. *See* Compl. ¶¶ 233, 335 (Ex. 13); *id.* ¶ 234 (Ex. 14); *id.* ¶¶ 261, 283, 324 (Ex. 15); *id.* ¶¶ 260, 295, 331 (Exs. 13 & 14); *id.* ¶¶ 235, 263, 265, 271, 278, 280, 292, 332 (Exs. 13, 14, & 15);

compare ECF No. 95 ¶¶ 191, 214 & n.22, 216 & nn.23-24, 224 & n.29, 232 & n.32, 244 & n.41, 261, 271 & nn. 48-50 (discussing or citing Exhibit 15).

Exhibit 16. Exhibit 16 is a June 3, 2020 letter from Louis Campagna, Chief of the Division of Fiduciary Interpretations within the Employee Benefits Security Administration's Office of Regulations and Interpretations, a division of the U.S. Department of Labor, to Jon Breyfogle, Esq. of Groom Law Group, Chartered. The Court previously found this document properly subject to judicial notice. *See* Order at 9. As before, Defendants request that the Court take judicial notice of the fact that the U.S. Department of Labor has issued an Information Letter concluding that private equity investments may appropriately be included in the portfolios of defined contribution plans governed by ERISA. Ex. 16 at 3-5.

Exhibit 17. Exhibit 17 is a February 2013 guidance document prepared by the U.S. Department of Labor's Employee Benefits Security Administration, titled "Target Date Retirement Funds—Tips for ERISA Plan Fiduciaries." The Court previously found this document properly subject to judicial notice. *See* Order at 9. The Complaint now expressly relies on Exhibit 17, including by incorporating a lengthy quotation from it. Compl. ¶¶ 141 n.6, 150 & n.10. Thus, Exhibit 17 is both incorporated by reference and a proper subject of judicial notice as to the fact that the U.S. Department of Labor has provided guidance to plan fiduciaries regarding factors to consider in selecting target date funds for their plans. Ex. 17 at 1.

Exhibit 18. Exhibit 18 is an article from the March/April 2014 edition of the PIMCO publication DC Dialogue, titled "Intel Custom Target-Date Evolution." The Court found this document incorporated by reference

in the prior complaint. *See* Order at 9. The Complaint retains without alteration the same references to this Exhibit as the prior complaint. *See* Compl. ¶¶ 85, 267 & n.40; *compare* ECF No. 95 ¶¶ 83, 220 & n.25. Accordingly, as before, this Exhibit is incorporated by reference.

Exhibit 19. Exhibit 19 is the Morningstar publication "2018 Target-Date Fund Landscape." The Court found this document incorporated by reference in the prior complaint. *See* Order at 9. The Complaint retains essentially the same references to this Exhibit as the prior complaint. *See* Compl. ¶¶ 156-159, 170, 229; *compare* ECF No. 95 ¶¶ 141-44, 151, 187. Accordingly, as before, this Exhibit is incorporated by reference.

Exhibits 20 and 21. Exhibit 20 is the T. Rowe Price Retirement 2015 Fund Fact Sheet dated March 31, 2020. Exhibit 21 is the Fidelity Freedom 2035 Fund Summary Prospectus dated May 30, 2020. The Court previously found Exhibit 20 a proper subject of judicial notice, *see* Order at 9, and Exhibit 21 is a second example of the same type of document: a publicly available description of the strategies and objectives of funds Plaintiffs claim to be appropriate comparators to the funds at issue here. As publicly available documents "the accuracy of which is not reasonably subject to dispute," these Exhibits are properly subject to judicial notice. *Kipling v. Flex Ltd.*, 2020 WL 2793463, at *7 (N.D. Cal. May 29, 2020) (taking judicial notice of publicly available investor presentations, earnings calls, and SEC filings); *see also In re Eventbrite, Inc. Sec. Litig.*, 2020 WL 2042078, at *6-7 (N.D. Cal. Apr. 28, 2020) (taking judicial notice of publicly available prospectus). As to Exhibit 20, Defendants request that the Court take judicial notice of the fact that the stated objective of the T. Rowe Price Retirement 2015 Fund is to "seek[] the highest total return over time consistent with

an emphasis on both capital growth and income." Ex. 20 at 1. As to Exhibit 21, Defendants request that the Court take judicial notice of the fact that the stated objective of the Fidelity Freedom 2035 Fund is to "seek[] high total return until its target retirement date" and "[t]hereafter . . . seek high current income and, as a secondary objective, capital appreciation." Ex. 21 at 2.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that, in connection with their motion to dismiss, the Court consider the documents attached to the Mirmira Declaration as Exhibits 1 through 21.

Dated: May 5, 2021 Respectfully submitted,

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EXHIBIT 1

2013 Summary Plan Description

Intel 401(k) Savings Plan
Intel Retirement Contribution Plan
Intel Minimum Pension Plan

January, 2013

The information contained herein has been provided by Intel Corporation and is solely the responsibility of Intel Corporation. The information in this SPD is also available in Chapter 18 of the 2013 Pay, Stock and Benefits Handbook.

Chapter 18

Retirement Programs

Topic	Page
Retirement Savings Plan	
Intel Retirement Plans	18.1
401(k) Savings Plan	18.2
Retirement Contribution Plan and Minimum Pension Plan	18.15
Loans and Withdrawals While Employed	18.24
Distributions after Separation of Employment	18.29
Other Plan Information and Benefits	18.43
Filing a Claim	18.48
General Information	18.49

Chapter 18
Retirement Programs

This chapter provides the Summary Plan Description (SPD) for the Retirement Plans offered through the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan, and Intel Minimum Pension Plan.

Retirement Savings Plan

Intel Retirement Plans

Summary Plan Description
Intel Retirement Plans (IRP)
Plan Eligibility

Summary Plan Description

This Summary Plan Description (SPD) contains valuable information about when you are eligible to participate in the Intel U.S. retirement plans, your plan benefits, your distribution options and many other features of the Plans. You should take the time to read this SPD to get a better understanding of your rights and obligations in the Plans.

This SPD describes the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan, and Intel Minimum Pension Plan benefits and obligations as contained in the Plan Documents, which govern the operation of the Plans. If the language in this SPD and the Plan Documents conflict, the Plan Documents always govern.

This SPD describes the current provisions of the Plans which are designed to comply with applicable legal

requirements. The Plans are subject to federal laws, such as ERISA (Employee Retirement Income Security Act), the Internal Revenue Code, and other federal and state laws which may affect your rights. The provisions of the Plans are subject to revision due to a change in laws or due to pronouncements by the Internal Revenue Service (IRS) or Department of Labor (DOL). Intel may also amend or terminate these Plans at any time at its discretion. If the provisions of the Plans that are described in this SPD change, you will be notified.

Intel Retirement Plans (IRP)

The Intel Retirement Plans (IRP) is comprised of three plans:

- Intel 401(k) Savings Plan ("401(k) Savings Plan")
- Intel Retirement Contribution Plan ("Retirement Contribution Plan")
- Intel Minimum Pension Plan ("Minimum Pension Plan')

These Plans have been designed to be a partnership between you and Intel, with each playing an important role in enabling you to save and prepare for your future retirement. Intel's retirement benefits add to Social Security and your income from other sources to help you attain your retirement goals.

Prior to January 1, 2011, the above Plans were formerly known as:

- Intel Corporation 401(k) Savings Plan
- Intel Corporation Profit Sharing Plan
- Intel Corporation Defined Benefit Pension Plan

Plan Eligibility

In general, you are eligible to participate in the Plans provided you are:

- Employed by Intel or a participating Intel subsidiary as a U.S. employee (includes those U.S. employees on expatriate assignments)
- Not a member of a collective bargaining unit
- Not a college intern or summer intern status employee
- Not an international service employee (inpatriate)
- Not otherwise excluded (persons not classified by Intel as employees are excluded, whether or not they are or may be common law employees of Intel)

Refer to the specific retirement plan sections for additional eligibility and/or service requirements for each Plan. The Plans are available to eligible employees of Intel Corporation and its subsidiaries that have been designated to be a Participating Company. The following subsidiaries are Participating Companies: Intel International, Intel Massachusetts, Inc., Intel Europe Companies, Intel Americas, Inc., Intel Resale Corp., Intel Federal LLC, and Intel Mobile Communications North America Inc.

Not all employees who meet the above eligibility rules may participate in some of the Plans.

401(k) Savings Plan

Topics

401(k) Savings Plan Overview
Eligibility and Participation
Enrolling in the 401(k) Savings Plan

Vesting in the 401(k) Savings Plan Contributions
Rollovers and Transfers from Other Plans
Investment Options

401(k) Savings Plan Overview

The 401(k) Savings Plan provides a long-term savings vehicle that allows you to put aside a portion of your eligible pay. Your participation in the 401(k) Savings Plan is crucial to saving for an adequate retirement. The earlier you make a commitment to your retirement savings, the greater benefit you will derive from your 401(k) Savings Plan account. For employees hired after January 1, 2011 the 401(k) Savings Plan account includes Intel's discretionary retirement contributions.

Eligibility and Participation

All regular U.S. employees employed by Intel or a participating Intel subsidiary, including those on expatriate assignments outside the U.S., may participate in the 401(k) Savings Plan.

You are not eligible to participate if you are:

- A member of a collective bargaining unit
- A college intern or summer intern status employee
- An international service employee (inpatriate)
- Otherwise excluded—that is, not classified by Intel as an employee

For employees hired or transferred to the U.S. (with no prior U.S. service) on or after Jan. 1, 2011, any discretionary retirement contribution made by Intel will be made to your 401(k) account and it will be invested

based on the future contribution election you have on file in your account at the time the contribution is made. If you have no future investment election on file, the contribution will be invested in a 401(k) Target Date Fund based on your approximate year of retirement at age 65. Once an investment election is made, you may change investment elections for future contributions, for existing balances already in your account, or for both future contributions and existing balances.

You begin participation for purposes of the Retirement Contribution benefit on the first day of the quarter coincident with or next following one year of service with Intel.

Enrolling in the 401(k) Savings Plan

You may enroll at any time on or after the date that you are eligible to participate. When you enroll, your payroll contributions to the 401(k) Savings Plan will commence as soon as is administratively feasible, generally within one to two pay periods. You are not required to enroll in order to receive Intel's discretionary retirement contributions into the 401(k) Savings Plan or the Retirement Contribution Plan benefit. See "Retirement Contribution Plan" in this chapter for more information about eligibility in the Intel Retirement Contribution Plan.

If you are hired after Jan. 1, 2013, you will be automatically enrolled in the 401(k) Savings Plan 45 days after your hire date at a pre-tax contribution rate of 6% of your regular pay. Your contributions will be invested in a Target Date Fund based on your age and assumed retirement at age 65; however you can choose a different contribution rate or investment option or you can opt-out of the plan. Payroll contributions begin within one or two pay periods from the time you are enrolled.

If you are hired after Jan. 1, 2011, you will be automatically enrolled in the 401(k) Savings Plan 45 days after your hire date at a pre-tax contribution rate of 3% of your regular pay. Your contributions will be invested in a Target Date Fund based on your age and assumed retirement at age 65; however you can choose a different contribution rate or investment option or you can opt-out of the plan. Payroll contributions begin within one or two pay periods from the time you are enrolled.

If you do not wish to contribute to the 401(k) Savings Plan, you must change your contribution rate to 0% within the first 45 days after your hire date. See "Resources" in this chapter for online and phone enrollment tools.

Vesting in the 401(k) Savings Plan

You are always 100% vested in your contributions and any rollovers made to your 401(k) Savings Plan account.

Employees who were hired after Jan. 1, 2011 receive a discretionary retirement contribution in their 401(k) Savings Plan account. The following vesting schedule applies to the Intel Retirement Contribution benefit.

Completed Years of Service	Percent Vested
Fewer than 2	0%
2 but less than 3	20%
3 but less than 4	40%
4 but less than 5	60%
5 but less than 6	80%
6 or more	100%

How Service is Determined

Your length of service with Intel plays a key role in determining your vesting. For purposes of counting vesting service only, all service with Intel and any U.S. or foreign subsidiary directly or indirectly owned at least 80% by Intel (the "Intel Controlled Group") is counted. The 401(k) Savings Plan begins counting service on your date of hire. If you have previous service as an Intern or International service employee, that service counts towards determining your vesting. If you have previous service as a contingent (leased) employee or you are an acquired employee, contact Get HR Help to determine if your previous service is counted. If you leave the Intel Controlled Group and are later rehired, see the "Participation and Vesting upon Re-Employment" section for further information.

A year of service is defined as a period of 12 consecutive months during which you receive pay from a member of the Intel Controlled Group, including normal periods of absence for vacations, holidays, and temporary approved leaves. For purposes of determining your initial eligibility for a Retirement Contribution , you will receive credit for a year of service after you have completed 365 days without a break in service of 12 months or more. If you leave the Intel Controlled Group but return to service within a 12-month period, you will be considered to have been continuously in service with the Intel Controlled Group during the period of absence.

Regardless of your service, you will be 100% vested in your Retirement Contribution benefit if you meet any of the following conditions:

- You are employed by Intel while you are age 60 or older

- You are receiving benefits from the Intel Long-Term Disability Plan while permanently and totally disabled as defined by the Long-Term Disability Plan under its "Any Occupation" definition. See Pay, Stock and Benefits Handbook, Chapter 14, Disability Plans for additional information.
- You are employed by Intel at the time of your death

Additional Special Vesting Rules

If Intel eliminates your job through a redeployment or VSP action which results in the termination of your employment with Intel, and comparable jobs are not available within Intel, you may be eligible for full vesting in the Retirement Contribution benefit. If you are eligible for full vesting, your 401(k) Savings Plan account will reflect the vesting change as soon as possible after the Plan passes a special non-discrimination test. If the Plan fails the special non-discrimination test, full vesting cannot be granted and will be reconsidered during the next regular annual non-discrimination test. To be eligible, you must be in good standing with Intel and your job elimination generally cannot be as a result of a divestiture. Intel will determine good standing, comparable jobs, and other terms necessary to apply this special vesting schedule based on uniform definitions. This special vesting schedule is subject to IRS nondiscrimination testing.

If you terminate employment with Intel as a result of a Divestiture, and you accept a job offer from, and become an employee of, the acquiring company on the agreed upon hire date, you may be eligible for full vesting in the

Retirement Contribution benefit. If you are eligible for full vesting, your 401(k) Savings Plan account will reflect the vesting change as soon as possible after the Plan passes a special non-discrimination test. If the Plan fails the special non-discrimination test, full vesting cannot be granted and will be reconsidered during the next regular annual nondiscrimination test.

Contributions

There are different methods of contributing to the 401(k) Savings Plan.

- **Pre-tax and Roth 401(k) (after-tax) contributions**
  Contributions to the 401(k) Savings Plan may be made on a pre-tax, Roth 401(k) (after-tax) or a combination of pre-tax and Roth 401(k) basis.
- **Pre-tax contributions**
  Pre-tax contributions are deducted from your eligible pay before income taxes are taken out. Pre-tax contributions can lower the amount of current income taxes you pay each pay period. You pay no taxes on pre-tax contributions and earnings until your account is distributed. See "Federal Income Tax Considerations" in this chapter for additional information.
- **Roth 401(k) (after-tax) contributions**
  Roth 401(k) contributions are made on an after-tax basis and deducted from your eligible pay after income taxes are taken out. Your take home pay will be less because income taxes must be withheld and paid on your Roth 401(k) contributions. Earnings

accumulate on your Roth 401(k) contributions and are distributed federal income tax free if the distribution is a qualified distribution. See "Federal Income Tax Considerations" in this chapter for additional information. (Note: Roth 401(k) contributions are made to your Intel 401(k) Savings Plan account, Roth 401(k) is not a separate Plan from the 401(k) Savings Plan.)

Example of pre-tax and Roth 401(k) contributions: Assume that you earn $75,000 annually, or $3,125 semi-monthly, and elect to contribute 8% on a pre-tax and Roth 401(k) basis. The following table illustrates the difference in take home pay between pre-tax and Roth 401(k) contributions. This hypothetical example is based solely on Federal income tax rate of 25%. No other payroll deductions are taken into account.

Example		**Pre-tax Contribution**	**Roth 401(k) (after-tax)**
a)	Semi-monthly Income	$3,125	$3,125
b)	Pre-Tax Contribution @ 8%	$250	
c)	Federal Income Taxes @ 25%	$718.75	$781.25
d)	After-Tax Contribution @ 8%		$250
e)	Take Home Pay (a-b-c-d)	$2,156.25	$2,093.75

You should consult the advice of a tax advisor to determine if pre-tax or Roth 401(k) contributions are best for you.

N**ote:** Eligible participants who are residents of Puerto Rico are not eligible to defer contributions to the Roth 401(k) source under current tax laws.

Contribution elections

You may make a separate pre-tax or Roth 401(k) contribution election for each of the following eligible pay types:

- Regular pay (base pay, overtime, geographic salary differentials and shift premiums)
- Bonus (EB, ECBP, ICAP and EOIP) and commission pay
- Vacation and personal absence cash-out pay (non-exempt employees.) This does not apply to regular vacation pay

Note: The Bonus/Commission and Vacation/Personal Absence cash-out contribution election options were added to the Plan in July 2011. When the new options were added to the Plan, they reflected your current contribution percentage elections you have on file with Fidelity for your regular pay and will remain until you change your contribution elections.

Contribution percentage limits

You may contribute from 1% up to a 50% maximum (in whole percentages) for each of the eligible pay types on a pre-tax and/or Roth 401(k) basis. Contributions are made through automatic payroll deductions. The combined total of all your contribution elections are capped at the IRS

annual dollar limit. When you reach the maximum allowable contribution amount in a given year, payroll deductions will cease for that year.

IRS annual dollar limit

The IRS contribution limit is $17,500 for 2013.

The total combined amount of pre-tax and/or Roth 401(k) contributions made by you to the 401(k) Savings Plan, and any other 401(k) Plan in which you participated, in one calendar year cannot exceed the annual IRS limit. Contributions to the 401(k) Savings Plan are monitored, and if necessary stopped, by Intel U.S. Payroll. Your year-to-date contributions are reflected in the detail of your paycheck. .You will need to sum the total of your contributions in order to determine your year-to-date contributions. Please see "My Paystub Dictionary of Terms" under the related links within your paycheck or see "Resources" in this chapter for the paycheck deduction codes.

In your first year of employment with Intel, it is your responsibility to monitor your combined year-to-date contributions for all 401(k) Plans in which you participated to ensure you do not exceed the annual IRS limit. Before your combined annual 401(k) contributions reach the annual IRS limit, you will need to reduce your 401(k) Savings Plan contribution percentage to zero for the remainder of the year. Your contribution percentage is not automatically restarted in the new calendar year. You will need to elect to restart your contributions.

If your combined contributions exceed the annual IRS limit, you will need to request a refund from either your prior employer's plan or the 401(k) Savings Plan. The deadline to request a refund from the 401(k) Savings Plan

is March 1 for contributions made in the previous year. Refunds from the 401(k) Savings Plan should be requested through the Fidelity Service Center. You are required to provide copies of all W-2s (including Intel) for the year you are requesting to be refunded. If you fail to request a refund of the excess contribution, you may be taxed a second time when the excess amount is ultimately distributed from the 401(k) Savings Plan.

If you joined Intel as a result of a Mergers and Acquisitions (M&A) action, please confirm with your Intel Human Resources representative that Intel U.S. Payroll is monitoring the IRS limit for you.

Starting, changing, or stopping contributions

You may start, change, or stop your contributions at any time. Allow one to two pay periods for the changes to become effective. See "Resources" in this chapter for online tools and phone numbers.

Military Leave make-up contributions

If you are reinstated to an active/eligible status under the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), you may make additional contributions to the 401(k) Savings Plan upon return from a qualified military service leave. The military leave make-up contributions are subject to the IRS annual dollar limits that would have been in place had you remained actively employed during the period of covered military service. These make-up contributions may be made over a period of five (5) years from the date you return from military leave, or three times the length of qualified military service, whichever is shorter. Make-up contributions must be made through payroll

deductions from your eligible pay. Any make-up contribution percentage you elect will be taken from your paycheck in addition to any existing payroll deductions.

If you are eligible to receive the discretionary Intel retirmenet contribution to your Intel 401(k) Savings Plan account, you will receive a retirement contribution based on any eligible compensation paid to you during your military leave (such as eligible bonuses or military adjustment pay) as well as on the eligible compensation you would have received had you not entered military service. The retirement contribution will be made to your Plan account at the annual cycle, typically late January/early February, even if you are on a qualified military leave at the time of the annual contribution is made

Annual Increase Program

The Annual Increase Program (AIP) allows you to automatically increase your pre-tax contributions each year. You may elect an annual (whole) percentage increase from 1% to 3% and designate the date on which the increase would take effect. Your contributions will automatically increase each year by the percentage you elected on the closest payroll cycle date until your contribution percentage reaches 10%. You may change or stop the AIP election at any time. AIP is not available for Roth 401(k) contributions.

If you were hired after Jan. 1, 2013, you will be automatically enrolled in the AIP. Your contribution rate will increase by 2% of your regular pay each April 1 to a maximum of 16%. You may change the percentage by which your contributions will automatically increase each year to 2% or 3%, or you may opt-out of the AIP at any time.

If you were hired after Jan. 1, 2011, you are automatically enrolled in the AIP. Your contribution rate will increase by 1% of your regular pay each April 1 to a maximum of 10%. You may change the percentage by which your contributions will automatically increase each year to 2% or 3%, or you may opt-out of the AIP at any time.

Catch-up Contributions

If you are (or will be) at least 50 years of age by the end of a calendar year, you may elect to defer additional catch-up contributions to the 401(k) Savings Plan. Generally, a catch-up contribution is a deferral contribution in excess of the IRS annual dollar limit. You may elect to defer (a whole percentage) from 1% up to 50% of regular pay in catch-up contributions at any time during the calendar year. Catch-up contributions can be made on a pre-tax or Roth 401(k) basis. Unless you have reached the IRS annual limit of $17,500 for 2013 before enrolling in catch-up contributions, payroll deductions will be taken simultaneous with regular 401(k) and/or Roth 401(k) contributions. The catch-up limit is $5,500 for 2013.

Note: If you elect to make 401(k) and catch-up contributions at the same time, but don't reach the IRS annual limit, a portion of your catch-up contributions will be converted to regular 401(k) contributions, so that you reach the IRS annual limit. Whatever is not converted remains as catch-up contributions; however, it may be less than the annual catch-up limit.

Highly compensated employees: Highly compensated employees (HCEs) are generally those whose pay is among the top 20% of Intel employees. For 2012, HCEs were those who earned more than $165,332 with Intel in 2011. The 401(k) Savings Plan is required to

compare the average percentage of compensation deferred by HCEs with that of the non-HCE employees during and after the plan year. If the margin between the average deferral percentage of HCEs against the non-HCE employees is greater than what the Tax Code permits, then the deferrals of HCEs may have to be limited, refunded, or both.

Annual aggregate limit: The combined total of your 401(k) Savings Plan and Intel discretionary Retirement Contributions cannot exceed an annual aggregate limit set by the Tax Code. Catch-up contributions are excluded from this combined limit. The annual aggregate limit in 2013 is $51,000, or 100% of taxable compensation, whichever is less.

Retirement Contributions to the 401(k) Savings Plan

Intel's retirement contribution is a discretionary contribution determined annually by the board of directors. The board of directors sets the retirement contribution percentage after considering labor market competitive factors. If you are an eligible participant (hired after January 1, 2011), your share of this contribution is determined according to the following formula:

Your annual eligible pay	X	Percentage determined by Intel's board of directors	=	Your annual Retirement Contribution

In this calculation, pay includes your regular base pay plus certain bonuses, commissions, overtime, geographic salary differentials (GEOs), shift differential, compressed workweek schedule (CWW), and other premiums you receive after becoming eligible for the Intel retirement contribution. In accordance with federal tax law, pay in excess of $255,000 (in 2013, as adjusted annually for

changes in the cost of living), will not count in the allocation of retirement contribution.

You will generally not be eligible for a contribution if you terminate employment before the end of the year (12/31) unless you satisfy the retirement eligibility requirements, terminate employment because of permanent and total disability as defined under Intel's LTD policy, or die. If you terminate employment with Intel in the month of December as a result of a redeployment or VSP action. and comparable jobs are not available within Intel, you may be eligible for a pro-rated contribution. To be eligible, you must be in good standing with Intel and your job elimination generally cannot be as a result of a divestiture. Intel will determine good standing, comparable jobs, and other terms necessary to apply this special rule based on uniform definitions.

Retirement contributions and investment earnings accumulate in the Plan on a tax-deferred basis until the money is paid out to you.

Rollovers and Transfers from Other Plans

If you are eligible to participate in the 401(k) Savings Plan, you may roll over an eligible retirement plan distribution, provided the distribution meets the specific Tax Code and Plan requirements. Generally, eligible retirement plans include:

- Individual retirement accounts under Tax Code Section 408
- Qualified retirement plans under Tax Code Section 401(a)
- Tax-exempt entity plans under Tax Code Section 403(b)
- Governmental plans under Tax Code Section 457

In addition, the Plan will accept rollovers from conduit IRAs (rollover IRAs), non-conduit IRAs (traditional IRAs, Simplified Employee Pension plans (SEP-IRAs)), and SIMPLE IRA distributions (made more than two years from the date you first participated in the SIMPLE IRA). Once these balances have been rolled into the 401(k) Savings Plan, they must follow the terms and conditions of the 401(k) Savings Plan. Eligible rollover distributions do not include required minimum payments under Tax Code Section 401(a)(9), any distribution that is one of a series of substantially equal periodic payments made for your life expectancy (or the joint life expectancy of you and your beneficiary), hardship withdrawals, or distributions of after-tax or Roth 401(k) dollars.

Investment Options

You have a choice of investment options for your contributions to the 401(k) Savings Plan. You may split your investment in any whole percentage increments among any of the investment options offered under the 401(k) Savings Plan.

This overview is intended to give you only a broad overview of each investment category. You should not base your investment decisions solely on these investment category descriptions. Within each investment category are a number of investment funds from which to choose. You should review the fund prospectus and/or fund fact sheet available at Fidelity's NetBenefits website for each of the funds in which you are interested. Those documents provide information about the Fund's investment strategy, expenses, and operation (including any trade limitations).

Investment categories— Target Date Funds, Core Funds, and Fidelity BrokerageLink®

The following are general descriptions of the investment categories offered in the 401(k) Savings Plan. Choose from the available funds in one or all investment categories to build your portfolio. To view the available funds, most recent fund performance, or the Morningstar quarterly fund fact sheets for the Target Date and Core Funds, visit Fidelity's NetBenefits website or call the Fidelity Service Center. To research the funds available in Fidelity BrokerageLink, visit www.Fidelity.com or call the Fidelity Service Center. See "Resources" in this chapter for current URL and phone numbers.

Target Date Funds

Target Date Funds provide a single fund approach to investing based on your age and approximate date of retirement at age 65. The number, as in Target Date 2045, represents the approximate year when you plan to start withdrawing your benefits. Each fund offers a broadly diversified mix of domestic and international stocks and bonds, and includes investments not typically available to individual investors, such as hedge funds and commodities. They are professionally managed, continuously monitored, and automatically rebalanced for you.

While a younger investor may be able to afford to take more risk in order to maximize returns, an investor approaching retirement should reduce his/her risk and choose investments that provide more stability in the portfolio. A Target Date Fund is designed to achieve this balance, because it is adjusted over time to reduce exposure to higher-risk assets, such as stocks and increase

exposure to lower risk investments such as bonds and stable value.

The Target Date Income Fund and the 401K Global Diversified Fund do not include numbers, or "years."

- **The Target Date Income Fund** is a conservative balanced fund which may be appropriate for investors who are retired and is comprised of domestic and international equity, global bond and short-term investments, hedge funds, and commodities
- **The 401K Global Diversified Fund** is a balanced investment fund comprised of domestic and international equity, global bond and short-term investments, hedge funds, private equity, and real assets (e.g. commodities, real estate & natural resource-focused private equity). This fund replicates the asset allocation mix of the Global Diversified Fund in the Retirement Contribution Plan

Unlike mutual funds, the Target Date Funds are available only under Intel plans and not to the general public. With no marketing costs and other cost savings, they generally have lower management expenses and fees than mutual funds. Because these funds are not quoted on a public exchange, they do not have "ticker" symbols, and therefore cannot be looked up in the newspaper or on the Internet.

To select the appropriate Target Date Fund for you, review your risk tolerance and investment time horizon, and choose the fund that represents the approximate year when you plan to start withdrawing your benefits. For additional information about performance of the Target Date Funds, refer to the Morningstar fund fact sheets on Fidelity's NetBenefits website.

Core Funds

Core Funds enable you to build your own portfolio from a broad range of investment choices representing all the major asset classes, including short term investments, bond funds and domestic and international stock and the Intel Stock Fund. If you invest in Core Funds, you should monitor your portfolio and rebalance at least once a year to ensure you have the appropriate investment mix.

For additional information about the performance of funds in the Core Fund line-up, refer to the Morningstar fund fact sheets on Fidelity's NetBenefits website.

Fidelity BrokerageLink*

The Fidelity BrokerageLink* is most suitable for people who prefer a wider choice of funds because they actively research, review, trade, and rebalance their portfolio. A BrokerageLink account is a brokerage account that allows you to invest your 401(k) savings in a broad range of Fidelity and non-Fidelity mutual funds: 4,500 mutual funds and exchange traded funds (ETFs). Of these, 1,650 mutual funds and 25 ETFs have no transaction fees; others have fees.

If you invest through BrokerageLink, you should actively and regularly review, monitor, and rebalance to ensure you have the appropriate investment mix. You are responsible for the management of your Fidelity BrokerageLink account. This is a personal, private account with Fidelity offered through the 401(k) plan. Intel and the Investment Policy Committee do not monitor or determine the funds in your BrokerageLink account.

Additional information regarding the commission structure, fact sheet, and account application are available on the Fidelity NetBenefits website. See the "Resources" section in this chapter for online and phone enrollment tools.

Note: If you redirect money from your BrokerageLink account to your 401(k) Savings Plan account, it will be invested in the Invesco Government & Agengy until you make an election to invest it differently.

Intel Stock Fund

Assets in the Intel Stock Fund available in the 401(k) Savings Plan are invested primarily in Intel common stock. A subsidiary of Fidelity, acting as an agent of the Plan's trustee, purchases the common stock on the open market, based upon participant investment instructions.

- There is a 20% limitation on how much you can invest in the Intel Stock Fund. No more than 20% of your future 401(k) deferrals can be invested in the Intel Stock Fund
    - Example: If you withhold 10% of your paycheck for 401(k), only 20% of your total 401(k) deferral (2% of your paycheck) can go into the Intel Stock Fund
- You cannot exchange money into the Intel Stock Fund from another investment if the value of the Intel Stock Fund will exceed 20% of your total 401(k) balance
    - Example: If you have a 401(k) account balance of $100,000, when the Intel Stock fund portion of the total exceeds $20,000, you will be blocked from moving (exchanging) funds into the Intel Stock Fund

Free$tock

If you were a Plan member before 1987, contributions that were invested solely in Intel stock are referred to as Free$tock. If you have Free$tock, you have the option of exchanging your investment from Intel stock to any of the 401(k) Savings Plan's investment options.

Risk of investing in the Intel Stock Fund

Because assets in the Intel Stock Fund are invested primarily in Intel common stock, the return on any investment in the Intel Stock Fund will be primarily dependent upon changes in the market price of Intel common stock and any dividends paid on the common stock. In turn, changes in the market price of Intel common stock are substantially dependent upon the financial performance of Intel and the market's perception of Intel's future potential financial performance. Many factors may affect Intel's financial performance and the market's perception of its future financial performance. In addition, as a result of the absence of diversification in the Intel Stock Fund, it is generally a more risky investment than other funds available under the 401(k) Savings Plan, many of which are significantly more diversified. You should recognize that any investment option, including the Intel Stock Fund, could decline in value, which could mean a loss of value in your plan account.

The Intel Stock Fund will incur costs that will affect the overall return of the Fund. Among other potential costs, the Intel Stock Fund may be required to pay a management fee for the purchase of the shares of Intel common stock and may be required to pay brokerage fees to the brokers who actually buy and sell the shares on the

open market. The Intel Stock Fund also will incur fees in connection with satisfying various accounting and legal requirements. In addition, the Intel Stock Fund may hold small amounts of cash or other short-term investments for liquidity purposes. Because of the expenses borne by the Intel Stock Fund and the fact that it may hold assets other than Intel common stock, returns on the Intel Stock Fund will vary from the performance of Intel common stock (INTC). Any or all of these factors may have a substantial effect on the overall return of the Intel Stock Fund offered in the 401(k) Savings Plan.

In considering whether to allocate plan assets and contributions to the Intel Stock Fund, carefully review the information in Intel's periodic reports on Form 8-K, quarterly reports on Form 10-Q, annual reports on Form 10-K, and other reports and documents filed with the SEC. Copies of these reports can be obtained from Intel's website at www.INTC.com, the SEC at (800) SEC-0330 or www.sec.gov, or by calling Intel's transfer agent, Computershare Investor Services, at (800) 298-0146.

Dividends paid on the Intel Stock Fund

If you invest any portion of your 401(k) Savings Plan account in the Intel Stock Fund, you have the right to elect to receive in cash any dividends earned on the common stock in the Intel Stock Fund that is allocated to your account. You may change your dividend election payment at any time, but at least 10 days in advance of a dividend payment for such change to take effect. Otherwise, the change in election will apply to the next following payment. Cash dividend payments of less than $10 will automatically be reinvested in your account unless you select electronic funds transfer (EFT) as the payment method. If you do not elect to receive dividends in cash,

the dividends earned on the common stock in the Intel Stock Fund will be reinvested in the Intel Stock Fund. Because of the time it takes to process and settle securities transactions and to reinvest cash dividends, changes in your account balance in the Intel Stock Fund during the days preceding or following the ex-dividend date—the date on which the right to receive cash dividends, stock dividends, and stock splits vests—may affect whether shares are credited to your account as a result of the dividend or stock split. The portion of the 401(k) Savings Plan that is invested in the Intel Stock Fund is considered an employee stock ownership plan (ESOP).

Allocation of shares in the Intel Stock Fund

Shares purchased in the open market on any given day are allocated to your account and the accounts of other participants for whom shares are being purchased on that day based upon the following: (1) the amount being invested in the Intel Stock Fund on behalf of each such account; and (2) the daily weighted average purchase price of open market purchases. The weighted average purchase price for any given day is calculated by dividing the aggregate price of all purchases on that day by the number of shares purchased. You will be considered the owner of the shares of Intel common stock allocated to your account for purposes of any matters submitted to the stockholders for a vote. Any vote that you submit on behalf of your Intel Stock Fund shares will be kept confidential. When reporting voting results for the Intel Stock Fund shares, the report will only show the aggregate vote for all Intel Stock Fund shares that are voted. The number of shares of Intel common stock allocated to your account will be reflected on your 401(k) Savings Plan account statement.

Currently, The Intel Stock Fund is a daily share accounted fund. A daily share accounted fund is an investment option in which participants' accounts reflect ownership of the underlying stock rather than ownership of units in the fund itself. If transaction requests for daily share accounted funds are requested before 4 p.m. (Eastern) on a business day, the transactions typically will receive the weighted average purchase price or sale price on the following business day. Otherwise, it will receive the weighted average purchase price or sale price on the second business day after the transaction is received. The weighted average purchase price for any given day is calculated by dividing the aggregate price of all purchases for the daily share accounted fund (less any transaction fees) on that day by the number of shares purchased. Similarly, the weighted average sale price on any given day is calculated by dividing the aggregate price of all sales on behalf of the daily share accounted fund (less any transaction fees) on that day by the number of shares sold. There is currently a three-day settlement period after the purchase or sale date for this fund.

In determining whether to allocate assets to the Intel Stock Fund and how much to allocate, you should carefully consider the level of your participation in the other Intel stock benefit plans and the fact that your overall compensation is already substantially tied to Intel's performance. Certain of the other investment options that invest in stocks may also invest in Intel's common stock, although any such holdings are typically limited to no more than 5% of the Fund's assets.

Investment election information

The Investment Policy Committee reserves the right without advance notice, and on a temporary or permanent

basis, to do the following: add, change, or remove one or more investment option(s) under the 401(k) Savings Plan (except for the Intel Stock Fund), change the dates on which elections can be made or on which elections become effective, and to limit the number of changes you may make to your contribution selections during any calendar year.

When you elect to contribute to the 401(k) Savings Plan, you must select one or more investment options for your contributions. This election will apply to your entire contribution; you cannot make a separate investment election for different contribution types (pre-tax, Roth 401(k), Retirement Contribution, etc.) in your 401(k) account.

For employees hired after Jan. 1, 2011: Any discretionary retirement contribution made by Intel will be made to your 401(k) account and it will be invested based on the future contribution election you have on file in your account at the time the Intel contribution is made. If you have no future investment election on file, the contribution will be invested in a 401(k) Target Date Fund based on your approximate year of retirement at age 65. Once an investment election is made, you may change investment elections for future contributions, for existing balances already in your account, or for both future contributions and existing balances.

Your investment election for existing balances will also apply to your entire existing balance in your account. Investment election changes may be made on a daily basis, subject to each fund's policy regarding frequent trading restrictions and short-term redemption fees. Some investment funds limit frequent transfers in and out of the fund aimed at

making short-term gains (called "market timing") to prevent incurring excessive costs and negatively affecting the return of the fund. Intel has adopted an excessive trading policy consistent with rules that Fidelity--Intel's provider of retirement administrative services--has implemented. The policy applies to the frequency of trading in and out of the investment choices offered in the 401(k) Savings Plan fund lineup. To view Intel's excessive trading policy, visit Fidelity's NetBenefits website. See the "Resources" section for additional information.

If you direct any portion of your 401(k) Savings Plan account to Fidelity BrokerageLink, you have the option to set up a standing order to direct your future contributions directly to your BrokerageLink account. Standing orders are currently limited to the available mutual funds and do not include ETFs. You should review the commission schedule and/or call the Fidelity Service Center to understand any fees that are applicable to the transactions you make on the investment funds in your BrokerageLink account.

Subject to the limitations on investments in the Intel Stock Fund, you may invest 100% of your future contributions in any of the investment options, or you may split your investment in minimum increments of 1% among any combination of the investment options. You may also make an exchange of your existing balance in increments of 1% or a specific dollar amount (except in the Intel Stock Fund).

The investment options under the 401(k) Savings Plan, each have different investment objectives, and consequently, different elements of risk and potential for growth. Before deciding how to invest your account, you need to assess your own tolerance for risk in view of your

long-term plans and the length of time you expect to continue working.

The 401(k) Savings Plan is intended to operate as an ERISA Section 404(c) plan. The Plan offers participants and beneficiaries the opportunity to exercise control over the assets contributed and accumulated on their behalf by allowing them to choose the manner in which these assets will be invested from a broad range of investment alternatives. This means that you or your beneficiaries may not hold Intel, the Plan's service providers, or any of their respective employees or agents liable as plan fiduciaries for any losses sustained in your account that are the result of your exercise of control over how your contributions are to be invested. In other words, you bear the risk of the performance of your directed investments, even if that performance is poor. Plan fiduciaries will not provide advice as to how you manage your investments in your account under the Plan. Accordingly, for advice on how the assets in your account should be invested, you should consult an investment advisor.

You may obtain the following additional information concerning the investment options available under the 401(k) Savings Plan by visiting Fidelity NetBenefits or by calling the Fidelity Service Center (see "Resources" in this chapter for online and phone number information.):

- A description of the annual operating expenses of each available investment fund (e.g., investment management fees, administrative fees, transaction costs) which reduce the rate of return to participants and beneficiaries, and the aggregate amount of such expenses expressed as a percentage of average net assets of the designated investment option

- Copies of any prospectuses, financial statements and reports, and of any other materials relating to the investment funds available under the Plan to the extent this information is provided to the Plan
- A list of assets comprising the portfolio of each investment fund which constitutes "plan assets" within the meaning of ERISA
- Information concerning the value of shares or units in each investment fund, as well as past and current investment performance of such alternatives, determined, net of expenses, on a reasonable and consistent basis
- Information concerning the value of shares of mutual funds held in your account

When you plan your asset allocation strategy for your 401(k) Savings Plan account, you should consider how your Intel Retirement Contribution Plan account, if applicable, is invested, and how any other assets you may hold are invested, to assure that you are well diversified in your overall asset allocation. You are strongly encouraged to read all of the fund descriptions and disclosure materials relating to the investment options under the Plans.

Retirement Contribution Plan and Minimum Pension Plan

Topics

Retirement Contribution Plan and Minimum Pension Plan Overview

Eligibility and Participation

How Service is Determined

Vesting in the Retirement Contribution Plan and Minimum Pension Plan

Retirement Contribution Plan contributions

Minimum Pension Plan Benefits

Qualified Supplemental Employee Retirement Plan (QSERP)

Pension Benefit Guaranty Corporation (PBGC)

Retirement Contribution Plan and Minimum Pension Plan Overview

The Retirement Contribution Plan is Intel's contribution toward your retirement savings. Any discretionary retirement contribution is made on a tax-deferred basis and deposited typically in late January or early February for the preceding year's eligibility period.

The Minimum Pension Plan may provide eligible employees an age 65 minimum pension benefit if their Retirement Contribution Plan account balance does not provide a minimum level of retirement income as determined by the pension formula. Many eligible employees will not receive a pension benefit based on the balance in their Retirement Contribution Plan account.

Eligibility and Participation

You are eligible to participate in the Retirement Contribution Plan and Minimum Pension Plans upon satisfying the conditions outlined in the "Plan Eligibility" section in this chapter and the service requirements below.

If you were hired before Jan. 1, 2011, Intel's discretionary contribution towards your retirement

will be made to your Retirement Contribution Plan account.

If you were hired or you transferred to the U.S. (with no prior U.S. service) on or after Jan. 1, 2011, you are not eligible for the Intel Retirement Contribution Plan or the Minimum Pension Plan. However, any discretionary Intel retirement contribution will be made to your Intel 401(k) Savings Plan account.

You begin participation in the Retirement Contribution Plan and Minimum Pension Plans on the first day of the calendar quarter coincident with or next following one year of service with Intel.

Example: Employee date of hire Aug. 8, 2009

- Employee participation begins Oct. 1, 2010
- Discretionary retirement contribution, if any, contributed in Feb. 2011 for one quarter (Q4) in 2010 (prorated). Discretionary retirement contribution, if any, contributed in Feb. 2012 for full plan year in 2011

How service is determined

Your length of service with Intel plays a key role in determining your eligibility. For purposes of counting service only, all service with Intel and any U.S. or foreign subsidiary directly or indirectly owned at least 80% by Intel (the "Intel Controlled Group") is counted. The Retirement Contribution Plan and Minimum Pension Plans begin counting service on your date of hire. If you have previous service as an Intern or International service

employee, that service counts towards determining your eligibility. If you have previous service as a contingent (leased) employee or you are an acquired employee, send a request to Get HR Help on Circuit to determine if your previous service is counted. If you leave the Intel Controlled Group and are later rehired, see "Participation and Vesting upon Re-Employment" in this chapter for further information.

A year of service is defined as a period of 12 consecutive months during which you receive pay from a member of the Intel Controlled Group, including normal periods of absence for vacations, holidays, and temporary approved leaves. For purposes of determining your initial eligibility, you will receive credit for a year of service after you have completed 365 days without a break in service of 12 months or more. If you leave the Intel Controlled Group but return to service within a 12-month period, you will be considered to have been continuously in service with the Intel Controlled Group during the period of absence.

Vesting in the Retirement Contribution Plan and Minimum Pension Plan

Vesting refers to the percentage of an account or benefit that you have earned, based on your length of service with Intel, and will not forfeit if you terminate employment.

The following vesting schedule applies to participants who are active employees as of Dec. 31, 2007, or later.

Completed Years of Service	Percent Vested
Fewer than 2	0%
2 but less than 3	20%
3 but less than 4	40%
4 but less than 5	60%
5 but less than 6	80%
6 or more	100%

The following vesting schedule applies to participants who terminated employment prior to Dec. 31, 2007, with a vested Retirement Contribution Plan account balance or vested Minimum Pension benefit.

Completed Years of Service	Percent Vested
Fewer than 3	0%
3 but less than 4	20%
4 but less than 5	40%
5 but less than 6	60%
6 but less than 7	80%
7 or more	100%

Regardless of your service, you will be 100% vested in all of your Retirement Contribution and Minimum Pension Plan benefits if you meet any of the following conditions:

- You are employed by Intel at age 60 or older

- You are receiving benefits from the Intel Long-Term Disability Plan while permanently and totally disabled as defined by the Long-Term Disability Plan under its "Any Occupation" definition
- You are employed by Intel at the time of your death

Additional special vesting rules:

- If you were an active employee on Jan. 1, 1987, 100% vesting in your Retirement Contribution Plan account balance is automatic when you reach age 55 rather than age 60
- If Intel eliminates your job through a redeployment or VSP action which results in the termination of your employment with Intel, and comparable jobs are not available within Intel, you may be eligible for full vesting in the Retirement Contribution Plan. If you are eligible for full vesting, your Retirement Contribution Plan account will reflect the vesting change as soon as possible after the Plan passes a special non-discrimination test. If the Plan fails the special non-discrimination test, full vesting cannot be granted and will be reconsidered during the next regular annual non-discrimination test. To be eligible, you must be in good standing with Intel and your job elimination generally cannot be as a result of a divestiture. Intel will determine good standing, comparable jobs, and other terms necessary to apply this special vesting schedule based on uniform definitions. This special vesting schedule is subject to IRS nondiscrimination testing. This special vesting rule is not available in the Minimum Pension Plan

- If you terminate employment with Intel as a result of a divestiture, and you accept a job offer from and become an employee of the acquiring company on the agreed upon hire date, you may be eligible for full vesting in the Retirement Contribution Plan. If you are eligible for full vesting, your Retirement Contribution Plan account will reflect the vesting change as soon as possible after the Plan passes a special non-discrimination test. If the Plan fails the special non-discrimination test, full vesting cannot be granted and will be reconsidered during the next regular annual nondiscrimination test. This special vesting rule is not available in the Minimum Pension Plan. If your Retirement Contribution Plan account was fully vested as a result of redeployment, VSP, or divestiture and you are rehired by Intel at a later date, eligibility for any future contributions and vesting will be determined based on the Plan's eligibility and vesting rules at the time of your rehire taking into account your actual service.

Participation and vesting upon reemployment

If you leave Intel but are later rehired, you may need to satisfy additional eligibility requirements before you can resume participation.

Length of Service + break	Participation for Retirement Contribution Plan and Minimum Pension	Vesting for Retirement Contribution Plan and Minimum Pension
If a participant left and break plus service was less than or equal to 365 days	Participation begins the first day of the calendar quarter coincident with or	Benefits vest by counting all service and breaks

	next following the date at which service + break = 365 days	
If a participant left and break was less than 365 days and total service was greater than or equal to 365 days	Participation begins the first day of the calendar quarter coincident with or next following the date at which service + break = 365 days; or if this is met in a calendar quarter preceding date of retire, participation begins upon return to Intel as an eligible employee	Benefits vest by counting all service and breaks
If a participant left and break was greater than or equal to 365 days but less than five years and total service was less than 365 days	Participation begins the first day of the calendar quarter coincident with or next following the date at which total service = 365 days	Benefits vest by counting all service
If a participant left and break was greater than or equal to 365 days but less than five years and total service was equal to	Participation begins the first day of the calendar quarter coincident with or next following the date at which total service = 365 days;	Benefits vest by counting all service

or greater than 365 days	or if this is met in a calendar quarter preceding date of retire, participation begins upon return to Intel as an eligible employee	
If a participant left and break was greater than five years and last date of termination (DOT) is after Jan. 1, 1987, and total service was equal to or greater than three years	Participation begins upon return to Intel as an eligible employee	Benefits vest by counting all service
If a participant left and break was greater than five years and last DOT is after Jan. 1, 1987, and total service was less than three years	Participation begins the first day of the calendar quarter coincident with or next following latest date of hire (DOH) plus 365 days	Benefits vest by counting all service after the last DOH

Retirement Contribution Plan Contributions

Intel's Retirement Contribution Plan contribution is a discretionary contribution determined annually by the board of directors. The board of directors sets the retirement contribution percentage after considering labor market competitive factors. If you are an eligible

participant, your share of this contribution is determined according to the following formula:

Your annual eligible pay	X	Percentage determined by Intel's board of directors	=	Your annual Retirement Contribution

In this calculation, eligible pay includes your regular base pay plus certain bonuses, commissions, overtime, geographic salary differentials (GEOs), shift differential, compressed workweek schedule (CWW), and other premiums you receive after becoming eligible for the Retirement Contribution Plan. In accordance with federal tax law, pay in excess of $255,000 (in 2013, as adjusted annually for changes in the cost of living), will not count in the allocation of retirement contribution.

You will generally not be eligible for a contribution if you terminate employment before the end of the year (12/31) unless you satisfy the retirement eligibility requirements, terminate employment because of permanent and total disability as defined under Intel's LTD policy, or die. If you terminate employment with Intel in the month of December as a result of a redeployment or VSP action, and comparable jobs are not available within Intel, you may be eligible for a pro-rated contribution. To be eligible, you must be in good standing with Intel and your job elimination generally cannot be as a result of a divestiture. Intel will determine good standing, comparable jobs, and other terms necessary to apply this special rule based on uniform definitions.

Retirement contributions and investment earnings accumulate in the Plan on a tax-deferred basis until the money is paid out to you.

Retirement Contribution while on Military

If you are an eligible participant and are on a qualified military leave under the provisions of the Uniformed Services Employment and Reemployment Rights Acto of 1994 (USERRA), you will receive a retirement contribution based on any eligible compensation paid to you during your military leave (such as eligible bonuses or military adjustment pay) as well as on the eligible compensation you would have received had you not entered military service. The retirement contribution will be made to your Plan account at the annual cycle, typically late January/earlier February, even if you are on a qualified military leave at the time of the annual contribution is made.

Investment of Retirement Contribution Plan Contributions

For employees hired before Jan. 1, 2011, Intel directs the investment of your Retirement Contribution Plan contributions on your behalf. Contributions are invested in the Global Diversified Fund. The fund is a diversified portfolio comprised of investments in a mix of low-cost stock, bond, money market and other investment funds. The Global Diversified Fund is not a mutual fund but a collective investment fund that pools the assets of tax qualified employee benefit plans into a single fund with a common objective. Additional information and a Morningstar fund fact sheet is available on Fidelity's NetBenefits website. See "Resources" in this chapter for additional information.

Retirement Contribution LifeStages Program

If you are (or will be) at least 50 years of age by the end of a calendar year you have the opportunity to participate in Retirement Contribution LifeStages Program. This plan feature enables you to invest your Retirement Contribution Plan account in one of the Retirement Contribution Target Date Funds or Stable Value fund. This program is designed for participants who have separated from employment with a vested Retirement Contribution Plan balance, who are at or near retirement and may need their Retirement Contribution money in the near term, or for participants and beneficiaries who want a more conservative investment option.

You may change investment elections for future contributions, for existing balances already in your Plan account, or for both future contributions and existing balances. Investment election changes may be made on a daily basis, subject to the Intel excessive trading policy.

For information on the available investment funds, excessive trading policy or to make exchanges visit Fidelity's NetBenefits website or call the Fidelity Service Center. See "Resources" in this chapter for additional information.

Minimum Pension Plan Benefits

The amount of the Minimum Pension Plan benefit is determined by a formula that is based on your final average pay, Social Security covered compensation and length of service when you separate employment with Intel.

This formula results in a monthly benefit at age 65, which is compared to the monthly annuity equivalent of

your Retirement Contribution Plan account balance. The amount, if any, by which the Minimum Pension Plan monthly benefit exceeds the monthly annuity value of your Retirement Contribution Plan account, is your minimum pension benefit.

If the monthly annuity value of your Retirement Contribution Plan account produces a benefit that is equal to or greater than the pension formula, you will receive your benefit from the Retirement Contribution Plan only.

Calculating the Minimum Pension benefit

The formula for calculating your minimum pension from the Plan at normal retirement is the sum of:

0.75% of final average pay plus

0.65% of excess final average pay

times your years of service with Intel (up to 35 years)

minus the Annuity Value of your Retirement Contribution Plan account

The result equals your minimum pension benefit.

If the result of the formula is less than or equal to zero, you receive only the value of your Retirement Contribution Plan account. You may request a pension estimate by calling the Fidelity Service Center.

Final average pay

This is the average of your highest five consecutive years of pay in the last 10 years during which you were an eligible participant in the Plan. If your eligibility in the Plan is fewer than five years, this number will be your average pay during all your years of participation. Pay in

excess of $255,000 (in 2013, as adjusted annually for changes in cost of living) will not count in the pension calculation.

Excess final average pay

This is the excess of your final average pay over the average maximum compensation taken into account for Social Security benefits, based on tables provided by the IRS during a 35-year period, which ends in the year you reach age 65. This part of the formula is intended to provide additional retirement income for the portion of your pay not covered by Social Security benefits.

Years of service

This is the total number of years of service, as defined in the "How Service is Determined" section, that have been credited to you since your date of hire. The maximum service that will be credited by the Plan is 35 years.

Annuity value of your Retirement Contribution Plan account

When you retire, the final balance of Intel's contributions (plus earnings) in your Retirement Contribution Plan account will be converted into a lifetime annuity value for calculation purposes. The calculation is based on your age when you retire and some assumptions about interest and mortality that are defined by the Plan. Due to IRS regulations, this actual annuity benefit may differ significantly from the annuity that can be purchased by transferring your Retirement Contribution Plan balance into the Minimum Pension Plan as described in

the “Annuity options” section of the Distriribution after Separation of Employment chapter. .

Example of a pension calculation: The annuity value of your Retirement Contribution Plan account is adjusted to reflect the fact that pension benefits are paid monthly.

Assume the person in this example is age 65 at retirement and has:

	Example 1			Example 2
Final average pay	$94,000		Final average pay	$94,000.00
Years of service	**20 years**		Years of service:	**5 years**
Average maximum Social Security covered compensation:	$67,205.00		Average maximum Social Security covered compensation:	$67,205.00

First, calculate the monthly value of the Retirement Contribution Plan Account:

Retirement Contribution Plan account balance after 20 years of Intel contributions and market returns	$300,000		Retirement Contribution Plan account balance after **5** years of Intel contributions and market returns	$37,000
Divide by the current annuity factor. (This example uses an annuity factor from 2012. The actual annuity factor can change quarterly.)	194.3124		Divide by the current annuity factor. (This example uses an annuity factor from 2012. The actual annuity factor can change quarterly.)	194..3124
Monthly value of Retirement Contribution Plan account	$1,543.91		Monthly value of Retirement Contribution Plan account	$190.42

Next, calculate the monthly retirement benefit under the minimum pension formula:

Final average pay	$94,000		Final average pay	$94,000..00
Multiply by	.75%		Multiply by	.75%
	$705.00			**$705.00**
Excess final average pay ($94,000 - $67,205)	$26,795.00		Excess final average pay ($94,000 - $67,205)	$26,795.00

Multiply by	.65%		Multiply by	.65%
	$174.17			**$174.17**
Add the two benefit factors together ($705.00 + $174.17)	$879.17		Add the two benefit factors together ($705.00 + $174.17)	$879.17
Multiply by years of service	20 years		Multiply by years of service	5 years
	$17,583.40			**$4,395.85**
Divide by 12 to get the minimum monthly pension benefit from the formula	$1,465.28		Divide by 12 to get the minimum monthly pension benefit from the formula	$366.32
Subtract the monthly value of the Retirement Contribution Plan account balance:	$1,543.91		Subtract the monthly value of the Retirement Contribution Plan account balance:	$190.42
Monthly benefit paid from Pension Plan	**$0.00**		Monthly benefit paid from Pension Plan	**$0.00**

Example 1: If your Retirement Contribution Plan account produces a higher benefit, as in Example 1, you receive your Retirement Contribution Plan account and no benefit from the Minimum Pension Plan. The Retirement Contribution Plan account balance of $300,000 could be paid out as a lump sum or as an annuity payable

each month from the Minimum Pension Plan. Due to IRS regulations for calculating annuities from Retirement Contribution Account balances that are transferred into the Minimum Pension Plan, this annuity amount will differ from the $1,543.91 annuity amount that was subtracted from the Minimum Pension Plan benefit.

Example 2: If the minimum pension benefit formula produces a higher benefit, as in Example 2, you receive your Retirement Contribution Plan account balance and the difference between the Retirement Contribution Plan annuity value ($190.42) and Minimum Pension Plan annuity ($366.32) calculations of $175.90, payable each month from age 65 until death. This benefit may be payable at different times and in different forms. See "Distributions after Separation of Employment" in this chapter for more information on your distribution options.

Time of retirement – normal, early, late

The Pension Plan formula assumes you will retire at age 65, but you have the option of retiring before or after that age. If you terminate employment on or before age 65 and do not elect otherwise, distribution will commence not later than March 1 of the calendar year after you reach age 65. In this case your minimum pension will be computed using your final average pay, years of service, and Retirement Contribution Plan account balance at the time you terminated employment. The amount of your benefit from the formula will also be increased, using interest and mortality assumptions defined by the Plan, to reflect the delay in commencing your benefit after your attainment of age 65.

- **Normal retirement (age 65)**

Retirement at age 65 is considered normal retirement.

- **Early retirement (before age 65)**

  Once you terminate employment, you can begin receiving your retirement benefits at any time prior to age 65. The minimum pension benefit calculation will use your final average pay, years of service, and Retirement Contribution Plan account balance as of the date you terminate. Your benefit from the formula will be reduced, using interest and mortality assumptions defined by the Plan, to reflect the longer period of time you will likely be receiving monthly payments. If you meet one of the special early retirement definitions when you begin your benefit, the calculation could result in a slightly higher benefit. To be eligible for early retirement, you must be age 55 or older and have completed at least 15 years of service, or the combined total of your age plus your length of service (both calculated in completed, whole years) must be equal to or greater than the number 75

- **Late retirement (after age 65)**

  You may elect to work beyond age 65, which is considered "late" retirement. If you do, you will continue to accrue service, and your minimum pension will be computed using your final average pay, years of service, and Retirement Contribution Plan account balance at the time you actually retire. The amount of your benefit from the formula will also be increased, using interest and mortality assumptions defined by the Plan, to reflect the shorter period of time you will likely be receiving monthly payments

When you retire

Intel will calculate your Minimum Pension Plan benefit using your actual service, final average pay, and Retirement Contribution Plan balances as of your last day at Intel. You will be eligible to receive a retirement contribution for the year you retire (provided a contribution is made that year), and your retirement benefit may include that contribution.

- If your Retirement Contribution Plan balance produces a higher benefit than the pension formula, you will receive paymentof your Retirement Contribution Plan account balance only, in the distribution form that you elect
- If the pension formula produces a higher benefit, you will receive a lifetime annuity or a lump-sum distribution from the Minimum Pension Plan and receive a distribution of your Retirement Contribution Plan account balance based on the benefit option you select.

Qualified Supplemental Employee Retirement Plan (QSERP)

QSERP provides additional benefits from the Plan that offset certain benefits from the Sheltered Employee Retirement Plus (SERPLUS) plan. Employees who had a vested SERPLUS balance of at least $5,000 on Dec. 31, 2003, were eligible to participate. QSERP is added to the amount of any minimum pension benefit. Since QSERP is part of the Minimum Pension Plan, all of the same rules and regulations apply. For more information call the Fidelity Service Center or contact Global Retirement at Retirement.Services@Intel.com

Pension Benefit Guaranty Corporation (PBGC)

Your pension benefits under the Intel Minimum Pension Plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. If the Plan terminates (ends) without enough money to pay all benefits, the PBGC will step in to pay pension benefits. Most people receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits.

The PBGC generally covers Normal and Early Retirement benefits and certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) benefits greater than the maximum guaranteed amount set by law for the year in which the Plan terminates; (2) some or all of benefit increases and new benefits based on Plan provisions that have been in place for fewer than five years at the time the Plan terminates; (3) benefits that are not vested because you have not worked long enough for the company; and (4) benefits for which you have not met all of the requirements at the time the plan terminates.

Even if certain of your benefits are not guaranteed, you still may receive some of those benefits from the PBGC depending on how much money your Plan has and on how much the PBGC collects from employers.

For more information about the PBGC and the benefits it guarantees, ask your plan administrator or contact the PBGC's Technical Assistance Division, 1200 K Street N.W., Suite 930, Washington, D.C. 20005-4026 or call (202) 326-4000; this is not a toll-free number. TTY/TDD users may call the federal relay service toll-free at (800) 877-8339 and ask to be connected to (202) 326-4000.

Additional information about the PBGC's pension insurance program is available through the PBGC's Website on the Internet at www.pbgc.gov.

Note: The 401(k) Savings Plan and Retirement Contribution Plan are not subject to the PBGC insurance protection. Assets in these Plans are held in trust by the Plans' Trustee.

Loans and Withdrawals While Employed

Topics

Loans and Withdrawals Overview
Loans
401(k) Savings Plan Withdrawals Retirement Contribution Plan Withdrawals

Loans and Withdrawals Overview

The 401(k) Savings Plan and Retirement Contribution Plan include a loan feature and certain in-service withdrawal provisions. These allow you access to your vested plan account balances while you are an active employee on U.S. Payroll (active employees who permanently transfer to a country outside the U.S., former employees, beneficiaries, and former spouses of employees are not eligible for these provisions).

- The loan feature allows you to borrow against your vested account balances. Loans are available for any reason. Loans have an advantage over in-service withdrawals as you are generally not taxed on the loan proceeds unless your loan violates IRS requirements

- The in-service withdrawal provision is available on certain account sources or for severe financial reasons, such as hardship withdrawal. Certain restrictions and taxes may apply to in-service withdrawals

It is recommended that you consult a tax advisor before requesting a loan or in-service withdrawal.

Loans

What you can borrow

You are permitted to borrow up to the lesser of $50,000 or 50% of your vested account balance. Funds withdrawn do not share in the Plan's investment gains or losses, but interest paid on the loan will be credited directly to your accounts. The minimum amount you can apply for is $500. You may take loans from either the 401(k) Savings Plan or the Retirement Contribution Plan, but you may have only two loans outstanding at one time: two from the 401(k) Savings Plan, two from the Retirement Contribution Plan, or one from each Plan. The following borrowing limitations apply:

- You may not borrow from the 401(k) Savings Plan an amount that would cause your loans outstanding under the 401(k) Savings Plan to exceed 50% of your vested balance under the 401(k) Savings Plan
- You may not borrow from the Retirement Contribution Plan an amount that would cause your loans outstanding under the Retirement Contribution Plan to exceed 50% of your vested balance under the Retirement Contribution Plan.

The maximum amount of the combined balance of all loans that you have outstanding under all Intel retirement plans cannot exceed $50,000, minus the highest balance

outstanding on all loans at any single time in the last 12 months. If you were hired at Intel from an M&A or subsidiary, participated in their retirement plans, and have an outstanding loan against that Plan account, that outstanding loan balance will count towards the $50,000 limit in the Intel Plans.

When you request a loan, you must choose whether you would like to have the loan proceeds taken from the 401(k) Savings Plan or the Retirement Contribution Plan, if you have loan amounts available under each Plan. The loan amounts available under the 401(k) Savings Plan and under the Retirement Contribution Plan will be different, and you may take loans from either Plan, or both Plans. When you request a loan from the 401(k) Savings Plan, you may either choose the fund(s) you would like the loan proceeds taken from or the loan proceeds will be taken pro rata across all funds. One additional day (trade + 1 day) is required to process your loan request if you are invested in the Intel Stock Fund, regardless if loan proceeds are requested from the Intel Stock Fund. See "Investment Options" in this chapter for more information on the Intel Stock Fund as a daily share accounted fund. Participants who invest in certain investment options are subject to redemption fees if the minimum holding period requirement is not met. A short-term redemption fee may be charged if the loan proceeds are taken from these funds before you have satisfied the fund's applicable holding period. If all or a portion of your 401(k) Savings Plan account is invested in funds in Fidelity BrokerageLink, you will be required to transfer the necessary amount back to the Invesco Government & Agency Portfolio before your loan can be processed. For additional information on redemption fees on these funds, view the investment information on Fidelity's NetBenefits website or call the Fidelity Service Center.

Loan provisions

Loans are generally granted for periods of up to four years (nine years for buying or building your primary residence), and are secured by either your vested 401(k) Savings Plan account balance or your vested Retirement Contribution Plan balance.

Loans requested from your Retirement Contribution Plan require notarized spousal consent if you are married.

The loan amount will bear a fixed rate of interest equal to the prime rate plus 1% as reported by Reuters on the last business day of each month. The interest you pay on the loan is credited directly to your plan account. The interest paid on a plan loan is not tax deductible.

A one-time $35 loan application fee will be assessed on each application, and a quarterly processing fee of $3.75 will be deducted from the account from which your loan was taken during each quarter that the loan is outstanding. If all or the majority of your 401(k) Savings Plan account is invested in Fidelity BrokerageLink, you will be required to maintain a small balance in the 401(k) Savings Plan investment fund(s) in order for the quarterly fees to be deducted from your Plan account balance.

Loan repayments are made through regular after-tax payroll deductions. As long as you are receiving a paycheck from U.S. Payroll, you cannot stop your loan repayments for any reason, including bankruptcy. You may also prepay your loan in part or in full. If you have two loans outstanding, one loan must be fully repaid before you will be allowed to initiate a new loan. There is a 30-day waiting period from the date an existing loan is paid until you can request a new loan. There is no waiting

period between loan requests when applying for a second loan when only one existing loan is outstanding. All loan repayments and interest will be invested according to your current investment choices for contributions.

If you leave Intel, go on leave, transfer to a non-participating subsidiary, or are transferred to a non-U.S. site, you may continue to make loan payments directly to Fidelity via coupon book. If you are on a leave, you should automatically receive a coupon book from Fidelity, approximately two weeks from the time you start your leave, to continue your loan payments. If you do not receive the coupon book, contact the Fidelity Service Center. If you fail to continue making payments on your plan loan(s), the outstanding balance(s) may be treated as a distribution subject to income taxes and penalties. For additional information, see "Distributions After Separation of Employment" in this chapter. If you need assistance on your loan, contact the Fidelity Service Center. If you joined Intel as part of a merger or acquisition, these rules may not apply to loans under your M&A Retirement Plan.

If you have a 401(k) and/or Retirement Contribution loan prior to the start of a qualified Military Leave, you can elect that the interest rate on your outstanding loan be capped at 6% during the time you are on Military Leave. You may choose to suspend your loan payments at the current interest rate, prior to leaving on Military Leave. If you choose to suspend your loan and keep your original interest rate, the length of your leave will be added to the end of the life of the loan and reamortized at the original interest rate. Loan repayments may also continue to be taken from your supplemental pay, if available. If no supplemental pay is available, then your

loan will automatically be suspended until your return from Military Leave.

If, for any reason, payroll withholding is not possible and you fail to make a loan payment on time, your loan will be declared in default. If a default is declared, Intel may require immediate payment of the entire unpaid balance, or deduct the unpaid balance from the assets in your vested 401(k) Savings Plan account balance or your vested balance in the Retirement Contribution Plan, as applicable. If the loan is declared to be in default, it is considered a taxable distribution and may be subject to income taxes and penalties. If a loan in default is not repaid, it will be considered outstanding for purposes of calculating your maximum available loan. More detailed information about the loan and terms is included in the loan application.

401(k) Savings Plan withdrawals while employed

Under certain circumstances, you may withdraw money from your 401(k) Savings Plan accounts while you are still employed. Withdrawals may be subject to taxes and penalties depending on the sources of your 401(k) Savings Plan account that you withdraw from. You should consult a tax advisor before requesting a withdrawal from your account. Withdrawals may be subject to an individual service fee. See "Plan Fees and Expenses" in this chapter for more information. If all or a portion of your 401(k) Savings Plan account is invested in funds in Fidelity BrokerageLink, you will be required to transfer the necessary amount back to the Invesco Government & Agency Portfolio before your withdrawal can be processed. To initiate a withdrawal, contact the Fidelity Service Center.

Withdrawals are permitted only according to the following rules:

Age 59½ withdrawals

Withdrawals of pre-tax and/or Roth 401(k) contributions and earnings are permitted for employees who are at least age 59½. Only one age 59½ withdrawal is permitted within a rolling 12-month period. Withdrawals from your pre-tax source will be subject to ordinary income tax. Withdrawals from your Roth 401(k) source may be subject to taxes if your withdrawal is requested prior to meeting the qualified distribution rules.

Hardship withdrawals

Withdrawals of pre-tax and/or Roth 401(k) contributions, including pre-tax amounts in your rollover account, are permitted in the event of certain financial hardships, which are limited to the following situations:

- Payment of extraordinary medical expenses previously incurred by or necessary to obtain care for you, your spouse, or dependents
- The purchase of your primary residence (excluding mortgage payments)
- Payment of tuition and related education fees for the next 12 months of post-secondary education for you, your spouse, or dependents
- To prevent eviction of or foreclosure on your principal residence
- Payment of funeral expenses for a family member
- Repair damage of primary residence that would qualify under the casualty deduction under Code section 165

For the calendar year in which you receive pre-tax money as a hardship withdrawal, you must pay income taxes on such withdrawal, which may include an additional 10% penalty tax if you are under age 59½. Withdrawals from your Roth 401(k) source may be subject to taxes if your withdrawal is requested prior to meeting the qualified distribution rules. The hardship withdrawal amount can be increased for the anticipated income taxes and any penalty due on the withdrawal.

Hardship withdrawal requests must be approved by Fidelity, the plan record keeper. Approval is granted only if you are unable to obtain the necessary funds from other sources within Intel, including available plans loans, selling stock that you purchased through the Stock Purchase Plan, or exercising your vested stock options and RSUs, and you indicate in writing that you lack other resources to meet the financial need.

Hardship withdrawal requests can be made only once in a rolling 12-month period, and only your contributions (e.g., not earnings on your contributions, and not any amounts attributable to Intel's discretionary Retirement Contributions made on your behalf) can be withdrawn. Under the law, this does not include earnings credited to your pre-tax account on or before Dec. 31, 1988.

You will be prohibited from making deferrals to all employer plans including the 401(k) Savings Plan for six months after receiving a hardship withdrawal.

After-tax withdrawals

If you participated in the 401(k) Savings Plan before 1988, you may have an after-tax account available for withdrawal. After-tax withdrawals may be made for any

reason, but are permitted only once in a rolling 12-month period.

You may withdraw after-tax contributions made before Jan. 1, 1987, without penalty. If you withdraw after-tax contributions made on or after Jan. 1, 1987, a portion of this withdrawal is assumed to be interest earned and subject to ordinary income tax, and a 10% early withdrawal penalty may apply. N**ote:** After-tax withdrawal rules do not apply to the Roth 401(k) source.

Free$tock withdrawals

If you participated in the 401(k) Savings Plan before 1987, you may have a Free$tock account available for withdrawal. Only one withdrawal of Free$tock is permitted in a rolling 12-month period. Payment will be made in either cash or shares of stock according to your withdrawal instructions. If you do not make a specific election, the shares of Intel common stock will be sold and you will receive a cash distribution equal to the value of such shares. This withdrawal will be subject to ordinary income tax and a 10% early withdrawal penalty may apply.

Age 70½ withdrawals

Withdrawals of any or all of your vested Retirement Contribution source are permitted for eligible participants who are at least age 70½. Only one age 70½ withdrawal is permitted in a rolling 12-month period. Age 70½ withdrawals may be subject to an individual service fee, and will be subject to ordinary income tax.

Retirement Contribution Plan Withdrawals

Age 70½ withdrawals

Withdrawals of any or all of your vested account balance are permitted for eligible participants who are at least age 70½. Only one age 70½ withdrawal is permitted in a rolling 12-month period. Age 70½ withdrawals may be subject to an individual service fee, and will be subject to ordinary income tax. Age 70½ withdrawls requested from your Retirement Contribution Plan require notarized spousal consent if you are married.

Distributions after Separation of Employment

Topics

Distributions Overview
Termination of Employment
Forms of Distribution at Termination
Distribution to Beneficiaries
Federal Income Tax Considerations
Payments Eligible for Rollover
Beneficiaries
Tax Effects on Intel
Fees and Expenses

Distributions overview

You can receive distributions from your 401(k) Savings Plan, Retirement Contribution Plan and/or Minimum Pension Plan benefit after you have separated employment with Intel. Distributions are different from in-service withdrawals which are available while you are employed with Intel. To initiate a distribution, contact the

Fidelity Service Center and request a distribution packet for the Plan from which you are requesting a distribution. If all or a portion of your 401(k) Savings Plan account is invested in funds in Fidelity BrokerageLink, you will be required to transfer the entire BrokerageLink balance back to the Invesco Government & Agency portfolio before your 401(k) distribution can be processed.

Termination of Employment

When you terminate your employment with Intel, you can request a distribution as early as 30 days after you leave Intel. You can receive the following:

- Your pre-tax, Roth 401(k), rollover, and merged account balances, and vested Intel discretionary retirement contribution account balance in the 401(k) Savings Plan
- Your vested account balance in the Retirement Contribution Plan
- A benefit from the Minimum Pension Plan, if the balance in your Retirement Contribution Plan account does not provide a minimum level of retirement income as determined by the pension formula

Note: If you transfer to a non-participating subsidiary or to a country outside of the U.S. and are no longer eligible for participation in the Plans, under U. S. tax law you are not eligible to receive a distribution of your account balance(s) until you have separated employment within Intel's control group.

Forms of Distribution at Termination

The following general rules apply to distributions from the 401(k) Savings Plan, Retirement Contribution Plan and Minimum Pension Plan:

- **401(k) Savings Plan, Retirement Contribution Plan and Minimum Pension Plan: Account balances $1,000 or less**
    - If your account value in any of the Plans is $1,000 or less, it will automatically be paid to you in a single lump sum. **Note:** If your 401(k) Savings Plan account balance is comprised of both Roth after-tax and pre-tax contributions, the $1,000 limit is applied separately to your Roth after-tax balance and your pre-tax balance (pre-tax deferral and discretionary Retirement Contributions)
        - **Example:** If the value of your 401(k) Savings Plan account balance is $900 and comprised of $400 pre-tax and $500 Roth after-tax balances, you will receive two lump sum checks. One for the $400 pre-tax balance and a separate check for the $500 Roth 401(k) balance
- **401(k) Savings Plan: Account balances more than $1,000 but not more than $5,000**
    - If your 401(k) Savings Plan account value is more than $1,000 but less than or equal to $5,000, you may elect to roll over your account to an IRA, to another employer's eligible retirement plan that accepts rollovers, or receive your account value in a single lump sum. If you do not make a distribution election within 60 days from the date you receive your termination packet, your account will be rolled over into a Fidelity Rollover IRA in your name. Information on how to access your IRA

account will be mailed to you after your Fidelity Rollover IRA has been established. Your IRA account is between you and Fidelity. **Note:** If your 401(k) Savings Plan account balance is comprised of both Roth 401(k) and pre-tax contributions the $1,000 limit is applied separately to your Roth 401(k) balance and your pre-tax balance (including any discretionary Retirement Contributions)

- **Example:** If the value of your 401(k) Savings Plan account balance is $2,000 and comprised of $1,000 pre-tax and $1,000 Roth 401(k) balances, your account will be paid in two lump sum checks. One for the $1,000 pre-tax balance and a separate check for the $1,000 Roth 401(k) balance
- **Example:** If the value of your 401(k) Savings Plan account balance is $2,500 and comprised of $2,000 pre-tax and $500 Roth 401(k) balances, the $2,000 pre-tax balance will be rolled over to an IRA and the $500 Roth 401(k) balance will be paid in a lump sum check
- **Example:** If the value of your 401(k) Savings Plan account balance is $3,000 and comprised of $1,500 pre-tax and $1,500 Roth401(k) balances, the $1,500 pre-tax balance will be rolled over to an IRA and the $1,500 Roth 401(k) balance will be rolled over to a Roth IRA

- **Retirement Contribution Plan and Minimum Pension Plan: Account balances more than $1,000 but not more than $5,000**
  - If your vested Retirement Contribution Plan account value or Minimum Pension Plan benefit is more than $1,000 but less than or equal to $5,000, you may elect to roll over your account to an IRA

to another employer's eligible retirement plan that accepts rollovers, or receive your account value in a single lump sum. If you do not make a distribution election within 60 days from the date you receive your termination packet, your account will be rolled over into a Fidelity Rollover IRA in your name. Information on how to access your IRA account will be mailed to you after your Fidelity Rollover IRA has been established. Your IRA account is between you and Fidelity

- **401(k) Savings Plan and Retirement Contribution Plan: Account balances more than $5,000**
  - If your vested 401(k) Savings Plan or Retirement Contribution Plan account balances are more than $5,000, they will remain in your account until you request a distribution. You may elect to roll over your account to an IRA or to another employer's eligible retirement plan that accepts rollovers, or request a partial distribution with the minimum amount of $5,000 (full account balance if less), or receive your account value in a single lump sum, or as an annuity paid from the Minimum Pension Plan. If you do not elect a distribution prior to age 70½, federal law requires that you begin receiving benefits from the Plan. The first Plan distribution (referred to as a Minimum Required Distribution or MRD) must be made no later than April 1 of the calendar year after the calendar year you have reached age 70½. Additional distributions must be made by December 31 of that year and each year following. If you are married and elect a form of distribution other than a joint and survivor annuity under the Retirement Contribution Plan, a notarized spousal consent form is required before

your distribution can be processed. **NOTE:** If the total value of your 401(k) Savings Plan account is over $5,000 and is comprised of both Roth 401(k) and pre-tax contributions, the **$1,000** limit described in the **$1,000 and $1,000 but not more than $5,000** sections does not apply

- **Minimum Pension Plan: Account balances more than $5,000**
    - If the present value of your vested Minimum Pension Plan benefit is more than $5,000, it will be automatically paid as an annuity at age 65, unless you elect another form of distribution, such as lump sum. You may request your Minimum Pension Plan benefit to commence prior to age 65, but the amount of your benefit will be reduced. If you do not elect a form of distribution before your 65th birthday, your Minimum Pension benefit will be paid in a single life annuity or, if you are married, as a 100% joint and survivor annuity with your spouse. If you are married and elect a form of distribution other than a joint and survivor annuity under the Minimum Pension Plan, a notarized spousal consent form is required before your distribution(s) can be processed
        - **Distributions from Roth 401(k) contributions.** If you contributed to the 401(k) Savings Plan on a Roth 401(k) after-tax basis, special rules apply. Earnings accumulate on your Roth 401(k) contributions and are distributed federal income tax free if the distribution is a qualified distribution. A qualified distribution is defined as (1) made after you have attained age 59½, become disabled, or

die AND (2) made after the fifth tax year beginning with the year you first made a Roth 401(k) contribution. Roth 401(k) account balances may be rolled over to another employer's Roth 401(k) account that accepts Roth rollovers or a Roth IRA, but not to any other account in an employer's plan or to a traditional IRA

- **Distributions from after-tax 401(k) contributions**: If you contributed to the 401(k) Savings Plan before 1988 on an after-tax basis, those contributions are not taxable when distributed. Eligible after-tax contributions made to your 401(k) Savings Plan account can be rolled over to an IRA or to another employer's plan that accepts after-tax monies. The earnings on after-tax contributions can then be tax deferred
- **Outstanding loan balances at distribution.** If you have a loan outstanding and you do not receive or request a distribution of your Plan account, you will receive a coupon book and may continue to make payments directly to Fidelity in order to avoid default. If you have a loan outstanding and you receive a distribution of your account (whether automatically or by election), the amount of your outstanding loan will be included in the taxable portion of the distribution

o If you have a loan outstanding and your account is rolled over directly to another employer's eligible retirement plan or to an IRA (whether automatically or by election), the balance due on your loan will be deemed distributed to you in a

taxable distribution if you do not pay off the loan in advance of the rollover
- If any portion of the defaulted loan is from the Roth 401(k) source, taxes may apply if you have not met the qualified distribution rules

Before making a distribution election you should consult a tax advisor and review the tax consequences of each of your distribution options. See Federal Income Tax Considerations in this chapter for additional information.

Lump sum distributions

If you elect to take a lump sum distribution, you may:

- Take the entire distribution in cash and pay the taxes due on the eligible amount in the year received
- Take the entire distribution in cash (or cash and shares of Intel common stock with respect to any whole shares allocated under the Intel Stock Fund or as Free$tock), and pay the taxes due on the cash and your cost basis on the stock
- Take the entire distribution in cash (or cash and shares of Intel common stock with respect to any whole shares allocated under the Intel Stock Fund or as Free$tock) and then within 60 days roll over part or all of the distribution into an IRA or into another employer's eligible retirement plan that accepts pre-tax. Roth 401(k) or after-tax rollovers
- Request a direct rollover of your entire account to an IRA or to another employer's eligible retirement plan that accepts pre-tax and/or Roth 401(k) rollovers
- Take part of your distribution in cash or shares of Intel stock with respect to any whole shares

allocated under the Intel Stock Fund or as Free$tock, or both, and request that the rest of your account be transferred to an IRA or to another employer's eligible retirement plan that accepts pre-tax and/or Roth 401(k) rollovers, in a direct rollover

If you take a distribution in cash or shares of Intel stock and subsequently roll it over, rather than transferring that amount in a direct rollover, your distribution will be subject to tax withholdings. See Federal Income Tax Considerations in this chapter for additional information. You may roll over shares of Intel stock to an IRA or to another employer's eligible retirement plan only if the plan or IRA accepts such stock.

Annuity options

You may choose among three annuity options under the Plan. All annuity options are distributed from the Minimum Pension Plan. If you want to receive your 401(k) Savings Plan or Retirement Contribution Plan account in the form of an annuity, your Plan accounts will be transferred to the Minimum Pension Plan. The accounts will be converted to an annuity using rules set out in IRS regulations, which will result in an annuity amount different from the annuity amount subtracted from the Minimum Pension Plan benefit. An annuity paid from the Minimum Pension Plan will be subject to its spousal consent rules. Generally, if you are married and do not elect a joint and survivor annuity under the Retirement Contribution Plan or Minimum Pension Plan, notarized spousal consent is required.

- **Single Life Annuity:** This option provides a monthly payment to you for the rest of your life

with no provision for continuing payments to a survivor.

- **50% or 100% Joint and Survivor Annuity:** This option provides a reduced monthly payment to you for the rest of your life, and after your death, monthly payments to your designated beneficiary for life. The amount of each payment to your beneficiary is 50% or 100% of the amount of each payment made during your life. This annuity is calculated based upon a single life annuity and then actuarially reduced to reflect the fact that payments are guaranteed for the lives of two people. The amount of the reduction is based on your age and the age of your beneficiary when payments begin. The benefit can be calculated so that either 50% or "100% of the benefit will be continued to your designated beneficiary in the event of your death.
- **10- or 15-year Period-Certain Annuity:** This annuity provides a reduced monthly payment to you for the rest of your life and, if you die, guarantees a payment to your designated beneficiary for the guaranteed 10-year or 15-year period as elected. This annuity is calculated based upon a single life annuity and then actuarially reduced to reflect the guarantee period.

Investment of deferred account balances

Unless you elect to receive a distribution, the funds in your 401(k) Savings Plan account will continue to be invested in the investment options selected by you. Following your termination of employment, you will continue to be entitled to change the allocation of your 401(k) Savings Plan balances among the available

investment funds offered under the Plan. Deferred vested balances in your Retirement Contribution Plan account will continue to be invested in the Global Diversified Fund, unless you are eligible and elect to participate in the Retirement Contribution LifeStage program.

401(k) Savings Plan - merger accounts

If you were an employee of a company acquired by Intel, the benefits you earned before the acquisition may have been transferred to the 401(k) Savings Plan in a merger account. If you have a merger account, special distribution options may be available to you. For more information about your merger account distribution options contact the Fidelity Service Center.

Distributions to Beneficiaries

Spousal and non-spousal beneficiaries

Beneficiaries must take a full distribution of a participant's account balance(s) no later than March 1 of the year following the participant's death.

If you are a beneficiary as the surviving spouse, you may choose to have an eligible rollover distribution paid in a direct rollover to an IRA, into another employer's eligible retirement plan that accepts pre-tax and/or Roth 401(k) rollovers, or paid to you in the form of a life annuity or a single lump sum. If the value of the account is $5,000 or greater and the surviving spose beneficiary does not elect a distribution from the Retirement Contribution Plan prior to March 1 of the the year following the participant's death, the surviving spouse beneficary's Retirement Contribution Plan account balance will automatically be transfered into the Minimum Pension Plan on March 1 and the surviving spouse beneficiary will

receive an immediate single life annuity commencing March 1 from the Minimum Pension Plan. Retirement Contribution Plan account balances less than $5,000 or the total vested vale of the account balance from the 401(k) Savings Plan will be paid as a lump if no distribution election is made by March 1.

If you are a non-spousal beneficiary, you may choose a direct rollover to an IRA which will be treated as an "inherited IRA". A non-spousal beneficiary cannot roll over the payment themselves. A non-spousal beneficiary must instruct the Plan Administrator of the distributing plan to make a direct rollover to an "inherited IRA" that the non-spousal beneficiary has established on his or her behalf. If the non-spousal beneficiary does not make a distribution by March 1 of the year following the participan'ts death from either the Retirement Contribution Plan or 401(k) Savings Plan, the Plan accounts will be paid as a lump sum regardless of the value of the account balance.

If distribution of your account already started in the form of an annuity payment before your death, your beneficiary may or may not be entitled to additional payments, depending on the form of annuity payment you elected. See "Annuity options" in this chapter for details. Survivor benefits in the pension plan, in the event you die before benefit payments begin, are payable only to your spouse.

Alternate payees

If you are an alternate payee as a result of a Qualified Domestic Relations Order (QDRO), and you are the participant's spouse or former spouse, you have the same choices as the employee except that no survivor benefits will be paid from the Minimum Pension Plan to your

spouse if you have remarried. You can have any lump sums payments to which you are entitled from any of the Plans paid as a direct rollover or paid to you. If you have it paid to you, you can keep it or roll it over yourself to an IRA or to another employer's eligible retirement plan that accepts rollovers. If you are an alternate payee and you are not the participant's spouse or former spouse, you can have any lump sum payments to which you are entitled from any of the Plans paid to you. You cannot choose a direct rollover, and you cannot roll over the payment yourself.

Federal Income Tax Considerations

Consult a professional tax advisor

The following summary of federal income tax consequences does not purport to be a complete statement of the law in this area. Any U.S. tax advice contained in this document is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any U.S. federal tax penalties that may be imposed on that person. The summary does not address the effects, if any, of other federal taxes, such as inheritance taxes, or of state, local or foreign tax laws. Because of the complexity of the tax laws with respect to these matters, and because such laws may change, Intel recommends that you consult a tax advisor to assess your tax situation, as well as the effect and applicability of state, local and other tax laws.

General tax information

The Plans are intended to qualify under Section 401(a) of the Tax Code. Qualification under Sections 401(a) has the following key effects:

- Except for any Roth 401(k) contributions that you make, you are not taxed on the amounts you contribute to the Plans until these amounts are distributed or withdrawn from each Plan
- You are not taxed on earnings or gains in the Plans until these amounts are distributed or withdrawn from each Plan
- The trust which holds the Plans' assets are not taxed on contributions or earnings
- Intel takes a current deduction for amounts contributed to each of the Plans

In general, when you receive money from the Plans, the amount of the distribution is required to be reported to the IRS. Annuity payments and lump sum payments are taxable income in the year each payment is received.

Taxation of distributions

In general, the recipient of a distribution from the Plans will be subject to federal income tax and other state and local taxes in the year of such distribution on the amount of the distribution. The tax" treatment of any distribution depends in part on whether the distribution includes shares of Intel common stock, whether the distribution qualifies as a lump sum distribution, and whether any portion of the distribution is eligible to be rolled over to an IRA or other eligible retirement plan. The following effects are possible:

- Amounts paid to you are subject to withholding taxes
- Some distributions may also be subject to a 10% penalty tax for early withdrawal
- Distributions of Intel stock received as shares may be taxed less than distributions taken as cash

- Special tax treatment is available for some distributions
- Distributions may be rolled over to an IRA or another retirement plan

Distributions on Roth 401(k) after-tax contributions

After-tax contributions included in your 401(k) Savings Plan account distribution from your Roth 401(k) account are not taxed, but earnings might be taxed. The tax treatment of earnings included in the distribution depends on whether the payment is a qualified distribution. If a distribution is only part of your designated Roth 401(k) account, the payment will include an allocable portion of the earnings in your designated Roth 401(k) account. If the payment from the Plan is not a qualified distribution and you do not make a rollover to a Roth IRA or a designed Roth account in another employer's plan, you will be taxed on the earnings in the distribution. If you are under age 59½, a 10% additional income tax on early distributions will also apply to the earnings, unless an exception applies. If you make a rollover, you will not have to pay taxes currently on the earnings and you will not have to pay taxes later on payments that are qualified distributions. If the payment from the Plan is a qualified distribution, you will not be taxed on any part of the payment even if you do not make a rollover. If you make a rollover, you will not be taxed on the amount you rollover over and any earnings on the amount you roll over will not be taxed if paid later in a qualified distribution.

A qualified distribution of Roth 401(k) contributions is defined as meeting both of the following:

- Distribution occurs at least five (5) years after the year of your first Roth 401(k) contribution (counting the first year as part of the five years) *and*

- On or after you attain age 59½, become disabled, or die

You may roll over the distribution to a Roth IRA, a Roth individual retirement account or Roth individual retirement annuity, or a designated Roth account in another employer's plan that will accept the Roth rollover, but not to any other account in a plan or to a traditional IRA.

Distribution of after-tax contributions

If your 401(k) Savings Plan account distribution includes after-tax contributions that portion of your distribution is not taxed. If the distribution is only part of the distribution, an allocable portion of your after-tax contributions is generally included in the payment. If you have pre-1987 after-tax contributions maintained in a separate account, a special rule may apply to determine whether the after-tax contributions are included in a distribution.

You may roll over to an IRA a distribution that includes after-tax contributions through either a direct rollover or a 60-day rollover. You must keep track of the aggregate amount of the after-tax contributions in all of your IRAs in order to determine your taxable income for later payments from the IRAs. If you do a direct rollover of only a portion of the amount paid from the Plan and a portion is paid to you, each of the payments will include an allocable portion of the after-tax contributions. If you do a 60-day rollover to an IRA of only a portion of the payment made to you, the after-tax contributions are treated as rolled over last. For example, you receive a total distribution of your 401(k) Savings Plan account which totals $12,000 of which $2,000 is after-tax contributions. In this case, if you roll over $10,000 to an IRA in a 60-day

rollover, no amount is taxable because the $2,000 amount not rolled over is treated as being after-tax contributions.

You may roll over to a new employer's plan all of the distribution that includes after-tax contributions, but only through a direct rollover and only if the new employer's plan separately accounts for after-tax contributions and is not a governmental section 457(b) plan. You can make a 60-day rollover to a new employer plan of part of a distribution that includes after-tax contributions, but only up to the amount of the payment that would be taxable if not rolled over.

Amounts paid to you

When you receive money from the Plans, your distribution amounts are required to be reported to the IRS. Payments you receive from an annuity purchased with tax-deferred contributions and lump sum distributions are taxable income in the year received. If you choose to have your Plan benefits paid to you:

- You will receive only 80% of the taxable portion of the payment, because the Plan administrator is required to withhold 20% of the taxable portion of the payment and send it to the IRS as income tax withholding to be credited against your taxes. Any non-taxable portion of the payment will be paid to you in full
- Your payment will be taxed in the year it is paid unless you roll it over. You may be able to use special tax rules that could reduce the tax you owe. However, if you receive the payment before age 59½, you also may have to pay an additional 10% penalty tax for early withdrawal
- You can roll over the 80% payment to your IRA, or to another employer plan that accepts your rollover,

within 60 days of receiving the payment. The amount rolled over will not be taxed until you withdraw it from the IRA or employer plan. If you roll over your 80% payment, you may be entitled to a tax refund of the 20% withholding credited against your taxes

- If you want to roll over 100% of the payment to an IRA or to an employer plan, you must replace the taxes that were withheld by depositing into the IRA or employer plan an amount equal to the amount withheld. If you roll over only the amount you actually received, you will be taxed on the amount that was withheld for taxes (the 20% federal withholding tax plus any state or other taxes withheld)

You may avoid the 20% withholding if you elect to take your distribution in the form of a direct rollover. Direct rollovers are explained in greater detail in the Direct Rollover section.

Penalty tax

Distributions that are not rolled over will be subject to a 10% excise tax (penalty) unless an exception applies. Generally, the following payments are exempt from the penalty tax:

- Payments to you upon termination of employment after reaching age 55
- Payments to you after retirement due to disability
- Payments made to your beneficiary after your death
- Annuity payments based on your life expectancy
- Payments that do not exceed your tax-deductible medical expenses for the year (whether or not you itemize deductions)

- Payments to an alternate payee under a qualified domestic relations order
- Payments made to comply with a levy by the IRS
- Payments to individuals called to active duty for at least 179 days after 9/11/2001
- Payments of ESOP dividends
- Corrective distributions of contributions that exceed tax law limitations

Withholding taxes

Mandatory withholding: If you take a lump sum distribution as cash (whether or not you roll it over into another plan or to an IRA), the Plan administrator is required to withhold 20% federal income tax from the taxable portion of the payment and report it to the IRS as income tax withholding to be credited against your taxes. Your distribution may also be subject to additional withholding taxes if you live in a state that imposes withholding taxes on retirement plan distributions.

Voluntary withholding: If any portion of your payment is not an eligible rollover distribution but is taxable, the mandatory withholding rules described above do not apply. In this case, you may elect not to have withholding apply to that portion. To elect out of withholding, ask Fidelity for the election form and related information.

Intel Stock

Intel stock in the Intel Stock Fund or your Free$tock account in the 401(k) Savings Plan may be distributed as shares, or the shares may be sold and distributed as cash. Under current Tax Code rules, if you elect to receive a

distribution of shares, the amount of tax you pay may be less than if you elect to receive a cash distribution.

Under this special rule, you may have the option of not paying tax on the net unrealized appreciation of the stock until you sell the stock. Generally, net unrealized appreciation is the increase in the value of the stock while it is held by the Plan. If you elect to receive a distribution of shares, you will be taxed only on your cost basis in the shares. Generally, your cost basis in the Intel Stock Fund is the amount of contributions or transfers into the Intel Stock Fund, plus dividends, less the amount of cash (if any) in your Intel Stock Fund account.

The Plan administrator is still required to withhold 20% federal taxes of the total taxable cash and taxable amount of Intel common stock and report it to the IRS as income tax withholding to be credited against your taxes. However, the Plan administrator is not required to withhold the entire 20% if the cash portion of your distribution is less than 20% of the combined total of cash and taxable common stock amounts. In that case, you will receive only the shares of Intel common stock, and all cash will be credited as income tax withholding.

To use this special rule, one of two requirements must be met:

- The payment must qualify as a lump sum distribution, as described below—or it would qualify except that you do not yet have five years of participation in the Plan—or
- The stock included in the payment must be attributable to non-Roth 401(k) after-tax employee contributions, if any

You may elect not to have the special rule apply to the net unrealized appreciation. In this case, your net

unrealized appreciation will be taxed in the year you receive the stock, unless you roll over the stock. The stock (including any net unrealized appreciation) can be rolled over to an IRA or another employer plan either in a direct rollover or a rollover that you make yourself. If you roll over the stock to an IRA or another plan, the special rule for taxing stock distributions will not apply to a later distribution of the amounts rolled over. If you receive Intel stock in a payment that qualifies as a lump sum distribution, the special tax treatment for lump sum distributions described below (such as five-year averaging) also may apply.

If you wish to take advantage of this special tax rule only with respect to your shares, you may take your shares in a distribution and roll over the rest of your distribution in a direct rollover or a 60-day rollover.

Lump sum distributions to persons born before January 1, 1936

Under the Tax Code, special federal income tax treatment applies to a distribution constituting a lump sum distribution which is made to a person who was born before January 1, 1936. Generally, a lump sum distribution is a payment, within one year, of your entire balance under the Plan, together with your balance under any other profit-sharing or 401(k) plans of Intel and its affiliates, and is payable because you have reached age 59½, died, or have terminated your service with Intel. For a payment to qualify as a lump sum distribution, you must have been a participant in the Plan for at least five years. However, if Intel reemploys you after you receive a lump sum distribution as a result of termination of your service with Intel, the Tax Code provides for a recapture of the tax benefit that may have resulted to you as a result of the

application of certain favorable tax rules described below pertaining to lump sum distributions.

If your distribution qualifies as a lump sum distribution, it may be eligible for special tax treatment:

- **10-Year averaging if you were born before January 1, 1936**: If you receive a lump sum distribution and you were born before January 1, 1936, you can make a one-time election to calculate the tax on the payment by using 10-year averaging (using 1986 tax rates). Ten-year averaging often reduces the tax you owe
- **Capital gains treatment if you were born before January 1, 1936:** If you receive a lump sum distribution and you were born before January 1, 1936, you may elect to have the part of your taxable payment that is attributable to your pre-1974 participation in the Plan (if any) taxed as long-term capital gain at a rate of 20%

There are other limits on the special tax treatment for lump sum distributions. For example, you can generally elect this special tax treatment only once in your lifetime, and the election applies to all lump sum distributions that you receive in that same year. If any portion of a lump sum distribution is rolled over, you cannot use this special tax treatment for later payments from the Plan. If you roll over your payment to an IRA, you will not be able to use this special tax treatment for later payments from the IRA. Also, if you roll over only a portion of your payment to an IRA, this special tax treatment is not available for the rest of the payment.

Payments Eligible for Rollover

Payments from the Plans may be eligible rollover distributions. This means that they can be rolled over to an IRA or to another employer plan that accepts rollovers. Fidelity will advise you as to what portion of your payment is an eligible rollover distribution.

A payment from the Plans that is eligible for rollover can be rolled over in two ways. You can choose to have all or any portion of your payment either:

- Paid to another retirement plan or IRA in a direct rollover, or
- Paid to you, and deposited by you within 60 days into another plan or IRA (a 60-day rollover)

This choice will affect whether withholding taxes apply to your distribution.

Payments that cannot be rolled over

Generally, the following types of payments cannot be rolled over:

- **Long-term payments:** You cannot roll over a payment if it is part of a series of equal (or almost equal) payments that are made at least once a year and that will last for:
  - Your lifetime (or your life expectancy,) or
  - Your lifetime and your beneficiary's lifetime (or life expectancy,) or
  - A period of 10 years or more
- **Required minimum payments:** Beginning in the year you reach age 70½ or retire, whichever is later, a certain portion of your payments cannot be rolled over because it is a required minimum payment that must be paid to you

- **Hardship withdrawals:** A hardship withdrawal from the 401(k) Savings Plan cannot be rolled over

Direct rollovers

If you choose to have your distribution transferred in a direct rollover:

- Your payment will not be taxed in the current year and no income tax will be withheld
- Your payment will be made directly to your IRA or, if you choose, to another employer plan that accepts your rollover
- Your payment will be taxed later when you withdraw it from the IRA or the qualified employer plan
- Your pre-tax payment will be taxed under special tax rules if your payment is made directly to a Roth IRA

Direct rollover to an IRA: You can open an IRA to receive the direct rollover. The term "IRA" includes individual retirement accounts and individual retirement annuities. If you choose to have your payment made directly to an IRA, contact an IRA sponsor, usually a financial institution, to find out how to have your payment made in a direct rollover to an IRA at that institution. If you are unsure of how to invest your money, you can temporarily establish an IRA to receive the payment. However, in choosing an IRA, you may wish to consider whether the IRA you choose will allow you to move all or a part of your payment to another IRA at a later date, without penalties or other limitations.

Direct rollover to a Roth IRA: Starting in 2010, you may roll over your pre-tax distribution directly to a Roth

IRA. A special rule applies under which the amount of the payment rolled over, reduced by after-tax amounts, will be taxed. However, the 10% additional income tax on early distributions will not apply unless you take the amount rolled over out of the Roth IRA within five (5) years, counting from January 1 of the year of the rollover. For distributions from the Plan during 2010 that are rolled over to a Roth IRA, the taxable amount can be spread over a 2-year period starting in 2011. If you roll over the payment to a Roth IRA, later payments from the Roth IRA that are qualified distributions will not be taxed, including earnings after the rollover. See "Distributions on Roth 401(k) After-tax Contributions" in this chapter for the definition of a qualified distribution.

Direct rollover to an Employer Plan: If your new employer has a retirement plan, ask the administrator of that plan whether it will accept your rollover. An employer plan is not legally required to accept a rollover. If your new employer's plan does not accept a rollover, you can choose a direct rollover to an IRA.

60-Day rollover: If you have an eligible rollover distribution paid to you, you can still decide to roll over all or part of it to an IRA or another employer plan that accepts rollovers. If you decide to roll over, you must make the rollover within 60 days after you receive the payment. The portion of your payment that is rolled over will not be taxed until you take it out of the IRA or the employer plan.

You can roll over up to 100% of the eligible rollover distribution, including an amount equal to the 20% that was withheld. If you choose to roll over 100%, you must find other money within the 60-day period to contribute to the IRA or the employer plan to replace the 20% that was withheld. On the other hand, if you roll over only the 80%

that you received, you will be taxed on the 20% that was withheld.

- Example: Your eligible rollover distribution is $10,000, (all taxable) and you choose to have it paid to you. You will receive $8,000, and $2,000 will be sent to the IRS as income tax withholding. Within 60 days after receiving the $8,000, you may roll over the entire $10,000 to an IRA or employer plan. To do this, you roll over the $8,000 you received from the Plan, and you will have to find $2,000 from other sources (e.g., savings, loans). In this case, the entire $10,000 is not taxed until you take it out of the IRA or employer plan. If you roll over the entire $10,000, when you file your income tax return, you may receive a refund of the $2,000 withheld. If, on the other hand, you roll over only $8,000, the $2,000 you did not roll over is taxed in the year it was withheld. When you file your income tax return, you may receive a refund of the part of the $2,000 withheld. However, any refund is likely to be larger if you roll over the entire $10,000

Beneficiaries

In general, the rules summarized above that apply to payments to employees also apply to payments to surviving spouses of employees and to spouses or former spouses who are alternate payees. You are an alternate payee if your interest in the Plan results from a qualified domestic relations order, which is an order issued by a court, usually in connection with a divorce or legal separation. Some of the rules summarized above also apply to a deceased employee's beneficiary who is not a spouse. However, there are some exceptions for payments

to surviving spouses, alternate payees and other beneficiaries that should be mentioned.

If you are a surviving spouse or an alternate payee as a result of a QDRO, you may choose a direct rollover to an IRA or to an eligible employer plan or paid to you. If you have the payment paid to you, you can still decide to roll over all or part of it to an IRA or to an eligible employer plan. If you decide to roll over, you must make the rollover within 60 days after you receive the payment. Thus, you have the same choices as the participant.

If you are a beneficiary other than a surviving spouse, you may choose a direct rollover to an IRA which will be treated as an "inherited IRA." You cannot roll over the payment yourself. You must instruct the Plan Administrator of the distributing plan to make a direct rollover to an "inherited IRA" that you have established on your behalf. You will be required to receive required minimum distributions from the IRA in accordance with IRS regulations. See IRS Publication 590, “Individual Retirement Arrangements,” for more information.

If you are a designated beneficiary other than a surviving spouse and you do not choose a direct rollover to an IRA, the taxable portion of your payment will be taxed in the year it is paid and federal income tax will be withheld to the extent required. If you are a surviving spouse, an alternate payee or another beneficiary, you may be able to use the special tax treatment for lump sum distributions and the special rule for payments that include company stock, as described above.

If you receive a payment because of the employee’s death, you may be able to treat the payment as a lump sum distribution if the employee met the appropriate age requirements, whether or not the employee had five years of participation in the Plan.

Required minimum distributions

Distributions from the Plans generally must begin on or before April 1 of the calendar year following the later of the calendar year in which you reach age 70½, or the calendar year in which you retire. A 50% non-deductible excise tax will be imposed on amounts required to be distributed commencing on this date that are not so distributed.

Taxation of excess contributions

If you make contributions to the 401(k) Savings Plan in excess of limitations imposed by the Plan or the Tax Code, you will be subject to taxation as follows:

- Contributions by you to the Plan in excess of the maximum tax-excludable amount under Tax Code Section 402(g) for each calendar year (IRS Annual Dollar Limit), taking into account your tax-excludable salary reduction contributions under all arrangements qualifying under Section 401(k), all simplified employee pension arrangements qualifying under Section 408 and all annuity contracts qualifying under Section 403(b), together with income thereon, are includable in your gross income for federal income tax purposes for the taxable year of the contribution, and also will be subject to taxation on distribution, unless the distribution occurs by April 15 following the close of your taxable year in which the excess amount was contributed. Excess contributions of Roth 401(k) contributions are distributed tax-free but earnings are taxable. If you made both Roth 401(k)

and pre-tax contributions to the 401(k) Savings Plan during the calendar year, excess contributions will be taken from the Roth 401(k) source first followed by the pre-tax source

- If you are a highly compensated employee, contributions for a Plan year that are in excess of the limitations on these contributions under Tax Code Section 401(k) and that are distributed to you, after adjustment for gain or loss, are included in your gross income for federal income tax purposes in your taxable year in which the contribution occurred, if the distribution is within two and one-half months after the close of the Plan year in which the contribution occurred. Otherwise, the excess distribution will be included in gross income in your taxable year in which the distribution occurs, and Intel will be liable for an excise tax equal to 10% of the amount of the excess contributions distributed

Tax Effects on Intel

Intel treats amounts contributed to the Plan under your salary reduction election as employer contributions, which are deductible by Intel in the year that the contributions are made. As discussed above, these contributions are not taxable to you until the year in which you receive a distribution from the Plan. Separate tax rules may apply to Roth 401(k) contributions; see "Distributions on Roth 401(k) Contributions" in this chapter for more information. There are no tax consequences to Intel as a result of Plan distributions made to you.

Fees and Expenses

The following table is provided to help you understand how fees are assessed and paid for the Plan. There are several services available to help you better understand the fees and expenses charged within the 401(k) Savings Plan and/or Retirement Contribution Plan.

Plan expense	Description	Payer
Administrative Expenses	Fees associated with the cost of recordkeeping, accounting, legal and trustee services. They also include additional fees for special features and services, such as telephone and Internet access to your account and financial modeling tools.	Plan administrative expenses are currently paid by Intel for the 2012 Plan year to the extent those expenses are not offset by expense reimbursements and other credits. Several mutual funds offered in the Plan pay credits back to the Plan ranging from .002% to .01% of the net assets value of the Plan balances in these funds. These credits are in turn used to pay a portion of the Plan administrative expenses. Plan expenses in 2011 were $3.1 million, which were paid by credits back to the Plan. See the 401(k) prospectus for additional information on which mutual funds pay credits back to the Plan.
Asset-based fees, also called	Generally associated with	Asset-based fees are deducted from a fund's

investment management fees	managing fund investments and assessed as a percentage of fund assets.	total return and are identified in the fund prospectus. For some funds, a portion of the investment management fee is used to pay fund expenses, referred to as an expense reimbursement.
Individual service fees	Charged to you when you use a particular plan feature	Loans, non-hardship withdrawals by phone and minimum required distributions are all subject to individual service fees charged to your account. -Loan origination fee: $35 per application -Loan maintenance fee: $3.75 per quarter per account -Required Minimum Distributions: $25 Overnight mail delivery: $25
Investment transaction fees	Some investment funds charge a redemption fee or surrender charge to discourage short-term buying and selling	Participants who invest in certain investment options are subject to redemption fees if they don't meet the minimum holding period requirement.
Intel Stock Fund fees	The Intel Stock Fund incurs	The Intel Stock Fund bears these costs, which

	costs such as management fees and brokerage fees.	affects the overall return of the fund.

Your quarterly statement shows the total assets in your account, how they are invested, and the increases and decreases in the value of your investment options during the period covered by the statement. Your statements also show any administrative fees deducted directly from your account. The prospectuses for the investment funds available in the Plans also contain information regarding plan fees and expense information. Plan and Fund prospectuses are available online at Fidelity NetBenefits or by calling the Fidelity Service Center. The Summary Annual Report of the Plan also includes fee and expense information and is mailed to participants annually in Q3/Q4.

Other Plan Information and Benefits

Topics

Other Plan Provisions
Disability and Death Benefits
Designating a Beneficiary
Quarterly Statements
Resources

Other Plan Provisions

Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA)

If you interrupt your employment with Intel due to U.S. military service (including full-time National Guard duty) and you later return to Intel, you may be entitled to certain re-employment rights under USERRA. Under USERRA and the Tax Code, you may be allowed to make military catch-up contributions to the 401(k) Savings Plan or receive a Retirement Contribution Plan contribution for the period of qualified military leave. In addition, loan repayments may be suspended during a period of qualified military leave. See the "Contributions" and "Loans" sections of the 401(k) Savings Plan and Retirement Contribution Plan for additional information. For more information about your rights under USERRA, please contact Get Help via Circuit.

Qualified Domestic Relations Orders (QDROs)

Under the terms of a qualified domestic relations order (QDRO), the Plans may be required to transfer all or part of your plan benefits to your former spouse as part of a marital property settlement. In addition, a qualified domestic relations order may require that all or part of your account balance be used to satisfy your child support obligations. Copies of the Plans' procedures and model documents pertaining to qualified domestic relations orders are available to you and your (former) spouse or children online from Fidelity Employer Services Company LLC. Fidelity will notify you if any of the Plans receive a qualified domestic relations order that affects your benefits. See "Resources" in this chapter for additional information.

Keep your address information up-to-date

If you are no longer an active employee of Intel, are a beneficiary or an alternative payee, it is your responsibility to keep your contact information updated so that you may continue to receive account and plan information. Update your home mailing address and email address online via Fidelity's NetBenefits website or call the Fidelity Service Center. See "Resources" in this chapter for additional information.

Active participants should use the Personal Profile tool on Circuit to update your address.

Disability and Death Benefits

Disability benefit

If you become permanently and totally disabled while you are working for Intel (as evidenced by your being approved in the "Any Occupation" classification of the Intel Corporation Long-Term Disability (LTD) plan), you will become 100% vested in your Retirement Contribution and Minimum Pension Plan benefits. "Any Occupation" status, as defined in the LTD plan, means "being unable to perform the work of any occupation for which you are or may become reasonably qualified by training, experience, or education." You will continue to receive service credit in the Minimum Pension Plan until you no longer qualify for LTD benefits.

Minimum Pension benefits will begin when payments from the LTD plan cease, you elect to discontinue pension accruals or at normal retirement age, whichever comes first. The pension benefit amount will be based on all your years of service to termination (up to 35 years), including the years of service you earned while on LTD, your final

average pay as of the date of your termination, your age when benefits begin, and the payment option you select. For a full description of distribution options, see "Distributions After Separation of Employment" in this chapter for more information.

You may withdraw your entire 401(k) Savings Plan account balance at any time once you become permanently disabled. You do not have to pay a 10% penalty tax on withdrawals if you are disabled; however, the taxable portion of your distribution is subject to a 20% federal income tax withholding at the time of the withdrawal if you do not roll it over into another tax-deferred plan.

Death benefit

If you are married: The Minimum Pension Plan automatically provides a surviving spouse benefit if you die while employed at Intel and you had accrued a benefit in the Minimum Pension Plan or you had terminated employment after earning a vested retirement benefit that had not yet commenced. The Minimum Pension Plan benefit is determined net of the annuity value of the Retirement Contribution Plan account balance. The payment of the benefit is determined as if you had chosen a 100% joint and survivor annuity the day before your death. See the "Retirement Contribution Plan and Minimum Pension Plans" section in this chapter for more information about Plan eligibility.

The Retirement Contribution Plan and 401(k) Savings Plan account balances will be paid to your surviving spouse unless your spouse consented to the designation of a different person to receive benefits according to Intel's beneficiary designation procedures. Payments to a beneficiary other than your spouse will be made only in a single lump sum. Retirement Contribution Plan payments

to your spouse will be paid as an annuity from the Minimum Pension Plan, unless your spouse elects prior to March 1 following the year of your dealth to receive payment in a single lump sum. See the "Retirement Contribution Plan and Minimum Pension Plans" section in this chapter for more information about Plan eligibility.

If you are single: If you die while still employed and are single, your Retirement Contribution Plan account will become 100% vested. Your Retirement Contribution Plan account and 401(k) Savings Plan account balances will be paid in a lump sum to your beneficiary. No benefits are payable under the Minimum Pension Plan to a beneficiary other than a spouse.

Designating a Beneficiary

You may designate a beneficiary to receive your 401(k) Savings Plan and Retirement Contribution Plan accounts in the event of your death before benefits start. If you do not designate a beneficiary or there are no designated beneficiaries who are living when payment is to be made, the benefits will be paid in the following order of priority:

1. To your spouse
2. To your children, in equal shares, if you have no spouse
3. To your estate if you have no spouse or children

Your beneficiary can be one or more persons or trusts, and can include primary and contingent beneficiaries. Your beneficiary designation under the 401(k) Savings or Retirement Contribution Plans can be, but does not need to be, the same as the beneficiary for other Intel benefit plans, such as life insurance. Your designated beneficiary under the 401(k) Savings Plan may be different from the beneficiary you designate for the Retirement

Contribution Plan. If you previously submitted a single beneficiary designation covering both Plans, or your beneficiary designation was executed before 1996, when the 401(k) Savings and Retirement Contribution Plans officially became separate plans, that beneficiary designation would apply to both Plans until you submit new beneficiary designations. If you are married, your spouse must consent to a designation of a trust, of any other person or persons as beneficiary, and the spouse may revoke the consent if you change the designation after the original consent was given. The consent must be in writing, a notary public must witness the consent, and the consent must acknowledge that, by giving consent, your spouse waives all or some rights to these benefits.

Only a participant can change his or her beneficiary. A beneficiary is not permitted to designate a beneficiary or change the participant's designated beneficiary. Your beneficiary election must be made using the proper Plan beneficiary form in accordance with the Plan procedures. You can make beneficiary designations at any time by visiting Fidelity NetBenefits website and using the beneficiary online tool or calling the Fidelity Service Center. Any other beneficiary designation, such as through a will, is not valid. See "Resources" in this chapter for additional information.

Quarterly Statements

Your quarterly statements are available at the Fidelity NetBenefits website. If you prefer to receive your statements at your home mailing address, you must make the selection from My Profile tab on the Fidelity NetBenefits website. Quarterly statements will show the following:

- The balance in your 401(k) Savings Plan and/or Retirement Contribution Plan accounts
- Your vesting percentage
- The balance in your pretax deferred contribution account, if applicable
- The balance in your Roth 401(k) after-tax contribution account, if applicable
- The balance in your Free$tock account, if applicable
- The balance in your rollover account, if applicable
- The balance in your after-tax contribution account, if applicable
- The balance in your Retirement Contribution Plan account, if applicable
- The balance in your merged account, if applicable
- The balance in your Fidelity BrokerageLink account, if appliable
- Your withdrawal activity, if applicable
- Your outstanding loan balance, if applicable
- The investment performance of each of your accounts

Resources

To access account information or to obtain additional information about the 401(k) Savings Plan, Retirement Contribution Plan or Minimum Pension Plan contact Fidelity Investments.

- **Online via Fidelity NetBenefits** at www.netbenefits.com/intel. Fidelity NetBenefits is available 24 hours a day, seven days a week with the exception of any scheduled downtime. Enter your Social Security Number or create a username and password. When accessing the

Fidelity Service Center or Fidelity NetBenefits for the first time, you will be prompted by the system to set up a new password. Your password must be no less than six and no more than 12 digits in length. Some of the online resources via Fidelity NetBenefits include:

- Enroll in the 401(k) Savings Plan
- Obtain personal account information, including set up or changing your password
- Change your contribution percentage
- Change investment elections for future contributions
- Initiate an exchange of your existing investment fund balances
- View investment fund fact sheets and fund prospectuses
- Obtain daily fund quotes and historical fund performance information
- View Excessive Trading Policies
- View current Employer Plan news and announcements
- Request information on loans, withdrawals or distributions
- Obtain an incoming rollover form
- View account balances
- View your quarterly statements
- Request written materials or forms
- Access the Summary Plan Description
- Access current tools and education workshops
- Update your beneficiary designation
- Update your home mailing address if you are a beneficiary, alternative payee, or terminated participant (Note For your protection, there is a 15-day hold on distribution transactions from the date the address is updated.)

- Update your email address
- Access BrokerageLink commission schedule, fact sheet, application, handbook, limited third-party trading authorization and indemnification form, and other BrokerageLink information under the Plan Information and Research link under the 401(k) Savings Plan.

- **Fidelity Service Center** at 888-401-7377 or TDD 800-655-0962 is available 24 hours a day, seven days a week with the exception of any scheduled downtime. Service Center Representatives are available Monday–Friday (excluding New York Stock Exchange holidays) from 5:30 a.m. to 9 p.m. Pacific.

  If you are calling the Fidelity Service Center from outside the U.S., you will need the AT&T country access code which can be found on the AT&T Direct website at: http://att.com/traveler/.

  Participants calling from an area unsupported by AT&T Direct should use the following international collect number 508-787-9902.

  Some of the available resources via the Fidelity Service Center include:
  - Enroll in the 401(k) Savings Plan
  - Change your contribution percentage
  - Change investment elections for future contributions
  - Initiate an exchange of your existing investment fund balances
  - Obtain account balances
  - Request distributions, withdrawals and loans
  - Request a loan payoff amount
  - Request written materials or forms

- Update your home mailing address if you are a beneficiary, alternative payee, or terminated participant (Note For your protection, there is a 15-day hold on distribution transactions from the date the address is updated.)
- Reset your NetBenefits password
- Request information on Fidelity's BrokerageLink
- Updating your BrokerageLink account address. (Online address changes will not transfer to your BrokerageLink account. You must call the Fidelity Service Center.)

- **Qualified Domestic Relation Orders (QDRO's).** You can:
  - Access the Plans' procedures and model documents online via Fidelity Employer Services Company LLC at https://qdro.fidelity.com/. You, your spouse, or attorneys can access this information by setting up an account on the web site.
  - Call the Fidelity Service Center – 888-401-7377 or TDD 800-655-0962. Representatives are available Monday–Friday (excluding New York Stock Exchange holidays) from 5:30 a.m. to 9 p.m. Pacific.
  - QDROs for the Intel 401(k) Savings Plan, Intel Retirement Contribution Plan and Intel Minimum Pension Plan should be sent or faxed to Fidelity at the address below.

  Submit QDRO documents to:
  Fidelity Employer Services Company QDRO Administration Group
  P.O. Box 770003
  Cincinnati, OH 45277-0066 Attn: Intel Corporation
  or, fax to 877-665-4284 or 617-698-9330

- **Fidelity BrokerageLink Accounts**
  - Access your BrokerageLink account through your Plan account on NetBenefits, www.netbenefits.com/intel or directly through Fidelity's retail platform, www.Fidelity.com
  - See "Online via Fidelity NetBenefits" section for additional BrokerageLink information
  - To change your address for your BrokerageLink account, please call the Fidelity Service Center at 888-401-7377. (Address changes made via Circuit will not carry over to your BrokerageLink account and will require you to call Fidelity.)

- **Payroll Deduction Codes for the 401(k) Savings Plan**
  - Applies to the Annual IRS Limit ($17,500 for 2013)
    - 401K – Pre-tax contribuitons
    - 401KBC – Pre-tax bonus/commissions contributions
    - 401KVP – Pre-tax vacation/PA cash out (non-exempt) contributions
    - Roth 401K – Roth after-tax contributions
    - Roth BC – Roth bonus/commissions contributions
    - Roth VP – Roth vacation/PA cash out (non-exempt) contributions
  - Applies to the Annual IRS Catch-up Limit ($5,500 for 2013)
    - CTCHUP – Pre-tax catch-up contributions

- RothCTCHUP – Roth after-tax catch-up contributions

Filing a claim

Topics

Claim Process
Making a Claim
Reviewing the Claim
Understanding the Ruling
No Assignment of Rights

Claim Process

If you or your beneficiary disagrees with a plan benefit determination, you may make a claim.

Making a Claim

Your claim should be in writing, and you should explain why you disagree with the benefit determination. You should also include any other information you believe is necessary to support your claim. Direct your claim to the following address:

Intel Corporation
Attention: Intel Global Retirement
1900 Prairie City Road, FM3-224
Folsom, CA 95630

Reviewing the Claim

Intel Global Retirement will review your claim and conduct an investigation of your records. You will receive a response within 90 days of submitting your claim. If

Global Retirement believes that special circumstances justify an extension of time to review the claim, Global Retirement may notify you that it will take up to an additional 90 days to review your claim. The response will be in writing and will explain any adjustments that have been made to the original benefit.

Understanding the Ruling

If you receive a written response denying your claim in whole or in part, the written response will explain the specific reasons for the claims denial, and reference the provisions of the plan document or applicable law on which the decision is based. In addition, you will be provided with information on any other materials that may be necessary to justify your claim and an explanation of the Plan's appeal procedures. Under the Plan's appeal procedures, if your claim is denied, you may file a written request for appeal within 60 days of the denial. The request must be addressed to the Intel Retirement Plans Review Panel and sent to the following address:

Intel Corporation
Attention: Intel Retirement Plans Review Panel
1900 Prairie City Road, FM3-224
Folsom, CA 95630

The Intel Retirement Plans Review Panel will review the appeal and make a determination within 60 days of your request for an appeal. If more time is necessary, you will be notified in writing. The Intel Retirement Plans Review Panel determination also will be in writing, and it will state the reasons for the decision and the plan provisions on which the determination is based.

The decisions of the Intel Retirement Plans Review Panel will be final except for cases in which there are

conflicting claims made by more than one claimant or beneficiary for the same benefits. In these cases, the Intel Retirement Plans Review Panel can direct that payment of all benefits be withheld until the conflict has been resolved by agreement between the claimants.

No Assignment of Rights

Except in certain circumstances relating to a default under a loan from 401(k) Savings Plan accounts, your interests or property rights in the Plans, in the trust fund, or in any payment to be made under the Plans may not be assigned, alienated, optioned or made subject to attachment, garnishment, execution, levy, or other legal or equitable process or bankruptcy, and any such action will be void. These restrictions do not apply to the creation or assignment of a right to a benefit under the Plan pursuant to a beneficiary Qualified Domestic Relations Order (QDRO).

General information

Topics

Plan Administration
Future of the Plan
Plan Termination
ERISA Rights
General information about your Plan and benefits

Plan Administration

The Retirement Plans Administrative Committee, which currently consists of Intel employees, is the plan administrator responsible for the general operation and administration of the Plan, and for carrying out and interpreting the Plan's provisions. The Investment Policy Committee, which currently consists of Intel employees and a member of Intel's Board of Directors, has asset management responsibility for the Plan. The Investment Policy Committee has determined that it is appropriate to invest 5% of the Trust Fund in commodities investments. In order to do this, the Committee has filed a statement with the Commodities Futures Trading Commission that it is not a commodities pool operator and therefore is not subject to the registration and regulatory requirements that apply to such entities. Each of these committees is a named fiduciary as that term is used in ERISA. Intel's Board of Directors appoints the members of each of these committees. The Retirement Plans Administrative Committee has delegated day to day operating responsibility to Intel's Global Retirement Department and has contracted with Fidelity Investments to provide Plan recordkeeping services. To obtain additional information about the Plan and its administrators, you may contact the Fidelity Service Center. See "Resources" in this chapter for more information.

Future of the Plans

Intel intends to continue the 401(k) Savings Plan, Retirement Contribution Plan and Minimum Pension Plans but reserves the right to amend or terminate any of the Plans, in its sole discretion, at any time. The procedures for amending and terminating the Plans are set forth in the plan documents. If any material changes

are made in the future, you will be notified. Any changes made to the Plans will not reduce any amounts already in your account.

Plan Termination

Minimum Pension Plan termination

If the Minimum Pension Plan is terminated, the company is required to pay only the amount in the Trust Fund toward covered benefits. See "Pension Benefit Guaranty Corporation (PBGC)" in this chapter for more information. You may obtain additional information on the PBGC insurance protection and limitations, write to the PBGC.

Inquiries to the PBGC should be addressed to the following:

Office of Communications PBGC
1200 K Street NW, F14
Washington, D.C. 20005-4026
(800) 326-4000

Retirement Contribution Plan termination

If the Retirement Contribution Plan is terminated, Intel will comply with the tax rules governing termination by treating all participant account balances as fully vested for all employees who are participants on the date of termination.

ERISA rights

As a participant in the Plan you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to the information and rights listed below.

General Information about your Plan and Benefits

You are entitled to the following:

- Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites, all documents governing the Plan, including insurance contracts, and a copy of the latest annual report (Form 5500 Series) filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration
- Obtain, upon written request to the plan administrator, copies of documents governing the operation of the Plan, including insurance contracts, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. The administrator may make a reasonable charge for the copies
- Receive a summary of the plan's annual financial report. The Plan administrator is required by law to furnish each participant with a copy of this summary annual report
- Obtain a statement telling you whether you have a right to receive a pension at normal retirement age (age 65) and if so, what your benefits would be at normal retirement age if you stop working under

the Plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once every 12 months. The Plan must provide the statement free of charge

Prudent actions by Plan fiduciaries

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a pension or welfare benefit or exercising your rights under ERISA.

Enforce your rights

If your claim for a pension or welfare benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of plan documents or the latest annual report from the Plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to $110 a day until you receive the materials, unless

the materials were not sent because of reasons beyond the control of the administrator.

If you have a claim for benefits that is denied or ignored, in whole or in part, you may file suit in a state or federal court. In addition, if you disagree with the Plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in federal court.

If it should happen that plan fiduciaries misuse the Plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

Assistance with your questions

If you have any questions about your Plan, you should contact the plan administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

Questions about the Plans

Contact your Plan Administrator at the following address:

Intel Corporation
Attn: Retirement Plans Administrative Committee
1900 Prairie City Road, FM3-224
Folsom, CA 95630

Fidelity Service Center –888-401-7377

Agent for service of legal process

General Counsel Intel Corporation
2200 Mission College Blvd
Santa Clara, CA 95052

Service of legal process may also be made upon the Trustee.

Trustee information

Intel Master Trust
State Street Bank & Trust Company One Lincoln Street
Boston, MA 02111

Plan sponsor information

Intel Corporation
1900 Prairie City Road, FM3-224
Folsom, CA 95630

EIN: 94-1672743

General Plan information

Intel Retirement Contribution Plan

Plan number 001
Plan effective date – July 1, 1979
The Plan year begins on January 1 and end on December 31
Type of Plan and Plan Funding: This plan is a defined contribution pension plan. The plan is funded by Intel contributions. These contributions are deposited into individual accounts established on each participant's behalf.

Intel Minimum Pension Plan

Plan number 002
Plan effective date – January 1, 1988
The Plan year begins on January 1 and ends on December 31
Type of Plan and Plan Funding: This plan is a defined benefit pension plan. The plan is funded by Intel contributions. These contributions are actuarially determined.

Intel 401(k) Savings Plan

Plan number 003
Plan effective date July 1, 1979
The Plan year begins on January 1 and ends on December 31
Type of Plan and Plan Funding: This plan is a 401(k) plan. The plan is funded by employee contributions and non-matching discretionary employer contributions. These contributions are deposited into individual accounts established on each participant's behalf.