EVALUATION OF PLAN ADVISORS BY PLAN SPONSORS

2007

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I. Pension Consulting Services.

A. Services provided to retirement plans, frequently marketed as a package of bundled services, include, but are not limited to, the following:

1. Assistance in determining a plan's investment objectives,

2. Allocation of plan assets among different invest categories,

3. Selecting money managers,

4. Choosing mutual fund options,

5. Tracking investment performance, and

6. Selecting other service providers,

7. Providing brokerage,

8. Money management services.

B. Pension consultants may also furnish products and/or services to money managers, either directly or through an affiliate.

C. Plan sponsor and named fiduciary responsibilities include;

1. Selecting and monitoring plan service providers, and

2. Selecting and monitoring plan investment options.

II. Fiduciary Responsibilities.

A. Duty under ERISA. The basic duty of a fiduciary under ERISA is to discharge his or her duties solely in the interest of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits for the participants and their beneficiaries (and defraying reasonable administrative costs of the plan). A fiduciary is subject to the "prudent expert" standard of care; that is, he or she must 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 other words, he is held to the standard of a "prudent expert."

1. General Guidelines with respect to Selecting Service Providers. In selecting service providers, the DOL has stated that a fiduciary must "engage in an objective process designed to elicit information necessary to assess the qualifications of the provider, the quality of services offered, and the reasonableness of the fees charged in light of the services provided. In addition, such process should be designed to avoid self-dealing, conflicts of interest or other improper influence." DOL Field Assistance Bulletins 2002-3 and 2007-01.

2. Transactions with Parties in Interest. Payment of any service provider with plan assets is a prohibited transaction unless the transaction meets certain regulatory requirements:

a. The services are necessary, i.e., appropriate and helpful;

b. Compensation for the services is reasonable;

c. The services are furnished under a contract or arrangement which is reasonable, i.e., terminable by the plan on short notice and without penalty

3. Transactions with Fiduciaries. When a vendor is a fiduciary, there is a potential conflict of interest where long-term business relationships and revenue agreements of the vendor may compromise the integrity of the decision making process with respect to the selection of investment options. Such conflicts may exist regardless of whether the investments under consideration involve proprietary or nonproprietary funds. In such situations, vendors with an interest in the outcome of a decision should exclude themselves from the decision making process, and the choice should be made by an independent fiduciary that has been furnished with all the relevant facts.

B. Duty under the Investment Advisers Act. Under the Investment Advisers Act of 1940, an investment adviser (generally, a person who exercises discretion with respect to an account) has a fiduciary duty to provide only suitable investment advice and to disclose all conflicts of interest. An investment adviser is also obligated to get the client's permission before selling stocks or other securities from the firm's inventory.

III. DOL and SEC Issue Guidance with Respect to Pension Consultants and Potential Conflicts of Interests. The DOL has published "tips" to help plan fiduciaries determine if pension consultants have conflicts of interest when it comes to advising the plan. The tips provide the following questions that plan fiduciaries should ask to assist them in evaluating the objectivity of the recommendations provided, or to be provided, by a pension consultant. Plan consultants should be prepared to answer these questions forthrightly.

A. Are you registered with the SEC or a state securities regulator as an investment adviser? If so, have you provided me with all the disclosures required under those laws?

B. Do you or a related company have relationships with money managers that you recommend, consider for recommendation, or otherwise mention to the plan for our consideration? If so, describe those relationships?

C. Do you or a related company receive any payments from money managers you recommend, consider for recommendation, or otherwise mention to the plan for our consideration? If so, what is the extent of these payments in relation to your income (revenue)?

D. Do you have any policies or procedures to address conflicts of interest or to prevent these payments or relationships from being considered when you provide advice to your clients?

E. If you allow plans to pay your consulting fees using the plan's brokerage commissions, do you monitor the amount of commissions paid and alert plans when consulting fees have been paid in full? If not, how can a plan make sure it does not overpay for its consulting fees?

F. If you allow plans to pay your consulting fees using the plan's brokerage commissions, what steps do you take to ensure that the plan receives the best execution for its securities trades?

G. Do you have any arrangements with brokers-dealers under which you or a related company will benefit if money managers place trades for their clients with such broker-dealers?

H. If you are hired, will you acknowledge in writing that you have a fiduciary obligation as an investment adviser to the plan while providing the consulting services we are seeking?

I. Do you consider yourself a fiduciary under ERISA with respect to the recommendations you provide the plan?

J. What percentage of your plan clients utilize money managers, investment funds, brokerage services, or other service providers from whom you receive fees?

IV. Plan Fees. Determining the fees of plan advisers as well as charges attributable to investment vehicles and evaluating whether they are reasonable is an important part of an employer's procedural and substantive due diligence if it is to meet its fiduciary responsibilities. Currently, although the DOL has encouraged disclosure with respect to mutual fund fees, the disclosure obligation of non-fiduciary service providers remains limited.

A. Participant Directed Accounts. Under ERISA Section 404(c), if a plan provides for individual accounts and permits a participant to exercise control of the assets in his or her account, then the plan's fiduciaries will not be liable for any loss by reason of any breach resulting from the participant's exercise of control. Section 404(c) protection is contingent on disclosure to participants of expenses attributable to a plan's various investment options. In addition, fiduciaries retain significant responsibility with respect to the investments offered under a 404(c) plan. The fiduciary has an obligation to prudently select investment vehicles available under such a plan and to periodically evaluate such vehicles to determine if they should continue to be offered under the plan.

B. DOL Initiatives with Respect to Fee Disclosure.

1. Form 5500 Reporting.

a. Current Rule. Fees and expenses paid by the plan must be disclosed on the Form 5500 using either the Schedule A which is used to report commissions or related fees paid to insurance companies or the Schedule C which is used to report fees paid to service providers. Service providers, such as insurance companies, have traditionally narrowly interpreted their duty to disclose. For example, investment management fees, soft dollars and internal fund expenses are not disclosed on either Schedule A or C of the Form 5500. There is little reporting of hidden fees.

b. Proposal. In July of 2006, the Department of Labor proposed changes to Schedule C that would require reporting of virtually all "indirect compensation," i.e., payments to plan service providers by third parties "in connection with that person's position with the plan or services rendered to the plan." This change will be effective for reporting years beginning on January 1, 2008 and will effectively place the burden of obtaining such information on the plan administrator. By itself, this change would not require the cooperation of service providers. However, such cooperation would be required if the proposal described in Item VI.C.3, below, is implemented.

2. Change to Prohibited Transaction Regulations. Plan service providers are parties in interest to a plan, and, as such, must satisfy the statutory and regulatory conditions for exemption from the prohibited transaction rules. Under DOL Regulation Section 2550. 408b-2(a), these conditions require that the services be "necessary," that the arrangement under which they are provided be "reasonable," and that no more than "reasonable compensation" be paid for the services. See Item II.A.2, above. The DOL is considering a proposal to amend this regulation to make disclosure by

the service provider a condition of exemption. The required disclosure would likely be designed to ensure that service providers furnish a plan fiduciary with information sufficient to allow the plan fiduciary to determine

a. Whether the plan is paying reasonable fees for services,

b. Whether the service provider's total compensation, including indirect payments from third parties, is reasonable, and

c. Whether the service provider's advice is affected by conflicts of interest

C. Questions Plan Fiduciaries Should Ask A Consultant, Invest Advisor and/or Broker.

1. With Respect to Soft Dollars. Soft dollars consist of extra commission that a brokerage firm may charge that can be used to purchase additional services, such as investment research. Using soft dollars for purposes other than the exclusive benefit of participants and beneficiaries or payment of the operational costs of the plan is a fiduciary breach

   a. Do you receive 28(e) soft dollars from mutual funds within our plan?

   b. If yes, what exact benefits do you/have you received?

   c. Exactly how many 28(e) soft dollars are attributed to our plan?

2. With Respect to Sub-transfer Agent Fees. Brokerage firms and mutual funds often sub-contract the accounting of participant shares to a third party called a sub-transfer agent. Payments to these third parties are sub-transfer agent fees. The problem is not with whom is receiving the fee, but whether the fee fairly represents the value of the services being rendered.

   a. Do you or any other entity receive sub-transfer agent fees?

   b. If yes, are these fees offset directly against stated costs as described in a service agreement?

   c. Do invoices reflect the offset against what otherwise would be fees paid directly by the employer or plan via invoice?

3. With Respect to 12(b)-1 Fees. 12(b)-1 fees are charges against mutual fund accounts for advertising and promoting the mutual fund and/or paying commissions to brokers. Mutual funds may increase their internal expense

ratio by up to 1% in the aggregate (*e.g.*, 0.5% for sales and 0.5% for servicing). Fiduciary audits have revealed that some plan sponsors that have invested in mutual funds with high 12(b)-1 fees could have invested in a similar mutual fund without paying any 12(b)-1 fee or a lower 12(b)-1 fee.

a. Are you acting under a suitability or a fiduciary standard (*i.e.*, are you a non-fiduciary registered representative or are you a fiduciary registered investment advisor?)

b. If you are a registered representative, are you receiving 12(b)-1 fees?

c. If yes, what is the annual value of the 12(b)-1 gross revenue you receive? You should obtain this information in writing, and compare it with the information originally presented to you.

d. Can our same funds be purchased for a different share class with a lower 12(b)-1 fee?

e. Were our assets placed in this particular share class for a reason?

f. If yes, please explain. Was it because this share class paid higher 12(b)-1 fees?

g. If yes, could this be reasonably argued as constituting a breach of fiduciary duty for failing to properly investigate and pay only those fees that were appropriate and reasonable?

V. Statutory Exemption for Investment Advice. The Pension Protection Act of 2006 added a statutory exemption from ERISA's prohibited transaction rules for an "eligible investment advice arrangement" pursuant to which investment advice is rendered by a "fiduciary adviser."

A. Fiduciary Adviser. The term, "fiduciary adviser" was introduced by the Pension Protection Act and refers to a person who is one of the following: (1) a registered investment adviser; (2) a bank, savings association or similar institution acting through its trust department, (3) an insurance company, (4) a person registered as a broker or dealer under the Securities Exchange Act of 1934, (5) an affiliate of a person described in the preceding Items V.A.(1)-(4), or (6) an employee, agent or registered representative of persons described in Items V.A.(1)-(5). The adviser must acknowledge, in writing, that it is acting as a fiduciary in rendering advice.

B. Exemption. The exemption covers the following investment advice arrangements:

1. Arrangements in which fees (including commissions) do not vary depending on the investments selected; and

2. Investment advice programs that use a computer model and under which the adviser's fees may vary on the basis of selected investments. The computer model that generates investment advice under this type of arrangement must be certified by an independent expert that it meets the following requirements:

a. Applies generally accepted investment theories, such as modern portfolio theory;

b. Utilizes relevant information about the participant;

c. Utilizes defined objective criteria for asset allocation among the plan's investments;

d. Not biased in favor of investments offered by the adviser, an affiliate of the adviser or a party with which the adviser has a contractual relationship;

e. Takes into account all of the plan's investment options and is not "inappropriately weighted."

C. Monitoring Eligible Investment Advice Arrangements.

1. Annual Audit. In order to qualify as an eligible investment advice arrangement, an investment advice program must be audited annually by an independent auditor who issues a written report to the plan fiduciary (i.e., the sponsoring employer or other independent fiduciary) that present specific findings as to the arrangement complies with the varies requirements of the statutory exemption.

2. Periodic Review by Plan Fiduciary. The DOL has indicated in Field Assistance Bulletin 2007-01 that plan fiduciaries are expected to periodically review the performance of an investment adviser, and that this review will cover the following factors:

a. The extent to which there have been any changes in the information that served as the basis for the initial selection of the investment adviser, including whether the adviser continues to meet applicable federal and state securities law requirements;

b. Whether the advice being furnished to participants and beneficiaries was based on generally accepted investment theories;

c. Whether the investment adviser is complying with the contractual provisions of the engagement;

d. Actual utilization of the investment advice program by participants in relation to its cost to the plan; and

e. Participants' comments and complaints about the quality of the furnished advice. Complaints by participants may give rise to a duty to review the advice rendered, although, in general, the plan fiduciary has no duty to monitor the actual advice that is given.

3. General Applicability of Selection and Monitoring Standards. In Field Assistance Bulletin 2007-01, the DOL clarified that the duties of a plan sponsor in selecting an adviser are the same regardless of whether it uses an adviser that relies on the new statutory exemption or an adviser that renders services outside the exemption.