

Item 8

Plan Sponsor Consideration for Offering a Self-Directed Brokerage Window

The purpose of this memo is to summarize the considerations a plan sponsor should take into account when deciding to offer a self-directed brokerage account with their defined contribution retirement plan.

Plan Sponsor Considerations

Fiduciary Roles and Responsibilities

Offering a brokerage window is a fiduciary decision. Plan sponsors are exercising their discretion concerning how to implement the plan provisions giving participants the right to direct their accounts. Plan sponsors must use a prudent process in determining if a brokerage window is appropriate.

There is no guidance on the fiduciary duty to offer a brokerage window. That said, the decision is not fundamentally different from any other decisions made by fiduciaries in that they must engage in a prudent process and reach an informed and reasonable decision. A few examples a fiduciary may want to consider include:

- The investment sophistication of the entire employee population.
- Sponsors should communicate to participants that the investments in the brokerage window are not selected or monitored by the DCMC or its advisor and they should consider their unique risk tolerance and sophistication level.
- Would the population benefit from being able to build portfolios from offering an expanded number of investments?

Other considerations:

Does offering a brokerage window continue to afford plan sponsors protection under ERISA 404(c)–protection against losses incurred by plan participants? The answer is yes, as long as the plans “core” options meet the criteria and all disclosure obligations are met. Additionally, the following disclosures need to be made:

- Explanation of any fee and expenses that may be charged against the individual account:
 - Any fee or expense necessary for the participant to open or close the window.
 - Any ongoing fee or expenses to maintain the window.
 - Commissions or fees per trade.
 - A reconciliation with statement of the dollar amount of fees and expenses that were charged during the preceding quarter.

Regarding disclosures, in Field Assistant Bulletin 2012-02R, the DOL explained that the plan sponsor or plan committee must provide a general description that gives “sufficient information to tenable participants and beneficiaries to understand how the window, account, or arrangement works.”

Selection of the Provider

Once a decision has been made to offer a brokerage window, the fiduciaries have a second decision to make– selecting the provider. This review process should include the following:

- Is the provider qualified to offer a brokerage window service?
- What is the quality of the service provider’s services?
- Do they have a track record of providing prompt, efficient and accurate responses?
- Are confirmations provided in a prompt manner?
- Are the fees reasonable relative to other window providers?

Monitoring of Provider Selection

Plan sponsors should periodically review that the service provider originally selected continue to offer services and pricing competitive with the marketplace.

Conclusion

Offering a self-directed brokerage window can provide participants with additional investment options beyond those offered in the plan’s core investment line-up. This additional flexibility does come with additional selection, monitoring and disclosure requirements for the plan fiduciaries.

If a plan sponsor is receiving numerous requests to invest in securities not offered in the plan, then investigating the merits of the brokerage window makes sense. Absent this demand, taking on the additional fiduciary responsibilities may be something a plan sponsor looks to avoid.

** Information included in this memo was compiled from various public whitepapers. It should, by no means, be considered legal advice.*