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SIX TOP 10 DC WHOLESALERS TALK ABOUT **ADAPTING** TO THE **NEW NORMAL**

plus

NAPA's Top 100 DC Wholesalers

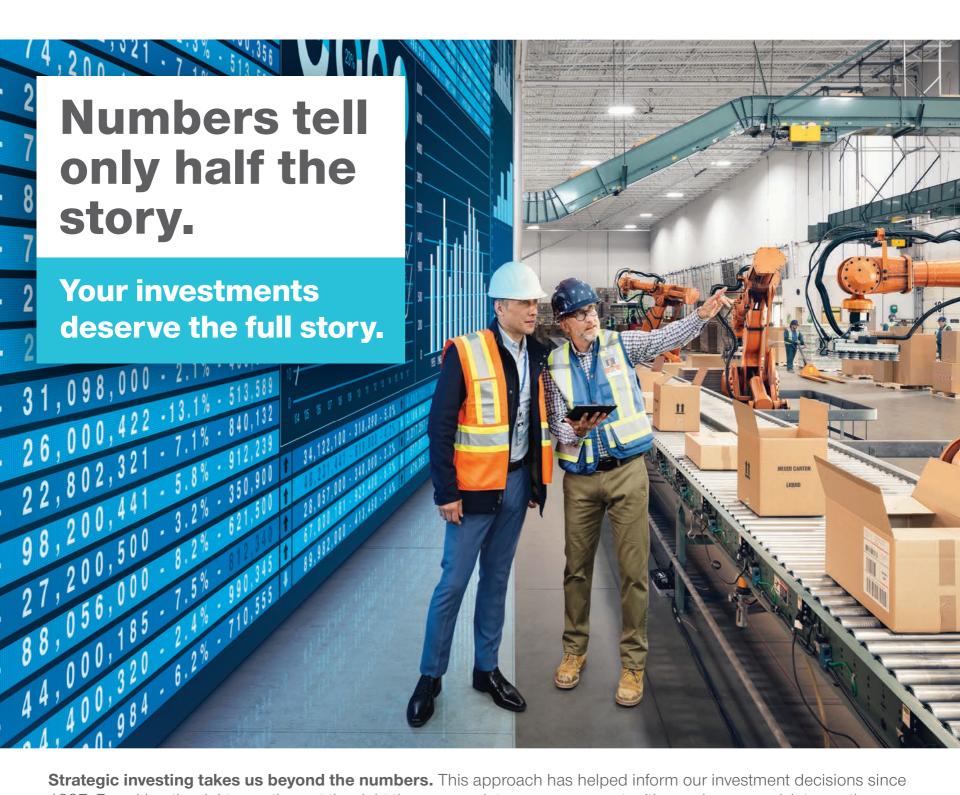
Will PEPs Propel Change?

DOL Proposals Prove Provocative

> **Stashing Generational** Stereotypes







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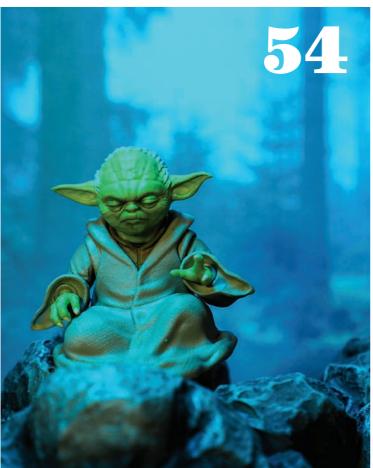
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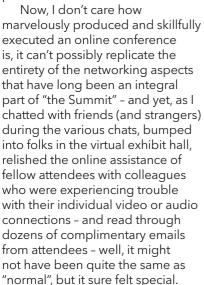




Virtual Realities

NEITHER RAIN, NOR SNOW, NOR DARK OF NIGHT...

s we head to press, the echoes of this year's 2020 NAPA 401(k) "Cyber" Summit are still reverberating in my head. Like so many other aspects of our lives this year, it didn't happen the way it was "supposed" to, not to mention when or where it was planned.



Something like that doesn't happen by accident. It happens because we start by building the agenda based on feedback - and voting - by advisors. It happens because that agenda is further refined and polished by a steering committee that gives generously and graciously of their time and expertise, both in developing the topics, in selecting speakers, and ultimately by "owning" the execution of individual workshops. It happens because the size and quality of the event (and its audience) draw the support and engagement of the very best advisors, industry experts and thought leaders.

And of course it happens - this year more than most - because of the tireless, dedicated, incredibly



hard-working conference staff that keep everything going no matter what. Trust me, this event would never have happened - certainly not as well as it did without the commitment, energy, and creativity of Erika Goodwin, Caroline Mihm, Victoria Backer, and most especially Matt Scanlon.

While the "Cyber" Summit has only just concluded, we're already working on 2021. We've got a lot to work with - an array of new legislation and guidance to go with it, an array of regulations and proposed rules that are still undergoing refinement and commentary, and an election whose outcome(s) are still unknown - and whose outcome could have a dramatic effect on all of the foregoing. We've had to absorb all this amidst a global pandemic, with extraordinary, unprecedented economic and financial volatility - during which the retirement plans and participants we support have been a critical bulwark against ruin for many, and an important security cushion for many more.

More importantly, ours is a vibrant and ever-changing field, with a critical mission that is nothing less than the financial future of working Americans, and we're (still) looking at millions of working Americans who don't even have access to a plan at work

As we head into the fourth quarter of this year - and make preparations for 2021, I'd like to thank all of you - for your support of the NAPA 401(k) Summit, for sticking with the "cyber" version, for your interest in, and on-going participation at NAPA events like the NQDC Conference, the NAPA DC Fly-in Forum, the Women in Retirement Conference, and - the 2021 NAPA 401(k) Summit!

See you there!

Levi

Nevin E. Adams, JD *Editor-in-Chief*

TIDBITS

New Firm Partners

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Thank you, NAPA members, for naming seven Fidelity associates among your **2020 Advisor Allies Top DC Wholesalers**.

- Katelyn Boone, Vice President
- Jim Dowling, Senior Vice President
- Travis Gavinski, Vice President, Retirement Director
- Ami Hindia, Senior Vice President
- Ben Leger, Senior Vice President
- Mike Manosh, Senior Vice President
- Jarrad Smith, Vice President, Retirement Director

You honored them for their knowledge and insight. For the ideas they offer, and their willingness to listen to yours. You see them as an extension of your practice. We see them as our coworkers and friends, and we couldn't be prouder of them.





Diversity: We've Come a Long Way

BUT WE STILL HAVE A LONG WAY TO GO.

By Patricia S. Wenzel

he COVID-19 crisis and racial tensions of the last several months have really brought to light the social and financial inequalities among races in America and across the world. As NAPA President, I've been asking myself what can we be doing to help promote diversity in our

industry and even do something to bridge the gap between financial inequalities among the races.

Let's face it, we know what the make-up of our industry looks like. Look around at any conference and you see lots of grey hair and varying shades of blue and black suits. We have seen strides as it



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pertains to the number of women now in our industry, but there are still very few African Americans, Latinos, fewer Native American, Asians, Indians and Middle-Easterners in financial services. We've come a long way, but we still have a long way to go. Our industry is not representative of the demographic make-up of America. I know that's true about several industries, but what can we do about increasing the diversity in our industry and helping those who are financially challenged?

As plan advisors, we have the distinct advantage of being able to get in front of hundreds if not thousands of people physically or virtually through the employees of the plans we manage.

I am asking for a call to action of all you!

Remember the slogan from the early 1990s, "think globally, act locally"? Race relations and financial inequalities are too big

"It's time we try to drive change in our communities and in our industry by doing what we all do best."

of issues for any one person or organization to tackle, but we can all do our part to initiate change. Here are some ways we can "act locally."

Have a diversity initiative for your team

Incorporate a diversity initiative in your team structure. There's study after study that proves that diversity especially in leadership leads to better business results. It's just not about different colors of our skin, it's about differences in opinions, ideas, cultures, personalities, etc. We need to adapt to better serve our clients, which are probably diverse, but we also need diversity for our own personal growth.

What does your team look like? At least think about it when you have your next hire.

Mentor young minority financial advisors and interns

Young financial advisors need our help. Many who enter the financial services industry, especially as advisors, don't make it. Even if you can't hire them right now, reach out to diverse advisors and offer to mentor them. We started a fantastic mentoring program within NAPA/ARA for women advisors and expanded to other female financial services associates. I have served as a mentor myself and I know it has helped just to be a sounding board in challenging times. If you are interested in participating in the women's mentoring program, please reach out to Nicole Corning for more information or go to https://www.napa-net.org/ member/womens-mentoringprogram. We also need to do a better job of recruiting minority candidates at the universities in our areas. This has been a challenge too—anyone with a success story, please share it with me!

Seek out minority business owners and help them with their retirement plan and personal financial planning needs

According to the U.S. Senate Committee on Small Business and Entrepreneurship, there are now more than 4 million minority-owned businesses in the U.S. which employ over 4.7 million people. Most do not offer retirement plans to their employees. They need our help too. As financial advisors, not just plan advisors, we can offer our services to help minority business owners navigate through their many financial challenges. They also may employ minority employees we can also help through financial education.

Volunteer to teach financial education at not-for-profit organizations/communities

There are programs already in place that need volunteers. We need to do our part to effect change and teach smart financial habits to people of all ages, especially in predominantly minority areas:

- Girl scouts: Financial literacy badges
- Credit Abuse Resistance Education (CARE)
- Junior Achievement
- Boys & Girls Club
- YMCAs offer evening classes

• Churches-many welcome financial literacy programs

There are many more that exist in local markets. I started volunteering for the San Jacinto chapter of Girls Scouts in Houston 3 years ago. There are several financial literacy badges where they need people that are knowledgeable about topics like investing, budgeting, credit, etc. The girls come from all walks of life and represent different races and ethnic groups. It has been an extremely gratifying experience for me and I know that I'm making an impact on their future. With the COVID crisis, in-person meetings have been cancelled, but hopefully will start up again in the near future.

Conclusion

The only two things we can control are our *own* attitudes and actions. Let's embrace diversity, not just for diversity's sake but to help us all personally and professionally be better people, leaders and businesses.

It's time we try to drive change in our communities and in our industry by doing what we all do best

We will be sending a census and benchmarking survey out to NAPA members this fall to get a better understanding of where we stand as it pertains to racial and ethnic diversity within NAPA and your practices. Please take the time to fill it out.

I appreciate your attention to this serious matter and look forward to witnessing and being part of the change in our industry in the coming years.

All the best. NNTM

'Razing' the Bar

THE BEST INTERESTS OF PLAN PARTICIPANTS ARE BEST SERVED BY PROVIDING PLAN FIDUCIARIES THE OPPORTUNITY TO CONSIDER THE IMPACT THAT FACTORS SUCH AS ESG COULD HAVE ON LONG-TERM PERFORMANCE.

Brian H. Graff

n late June, the Labor Department issued a proposed rule innocuously titled "Financial Factors in Selecting Plan Investments."

While the proposed rule itself was relatively short and largely uncontroversial, the preamble and supporting analysis of costs left little doubt that the authors saw a problem looming on the horizon, and wanted to "nip it in the bud."

The preamble cited a concern "that the growing emphasis on ESG investing may be prompting ERISA plan fiduciaries to make investment decisions for purposes distinct from providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan."

If ever there was a solution in search of a problem...

The reality today is that ESG investments—those that incorporate environmental, social, governance (ESG) factors—have struggled to find a toehold in defined contribution plans despite numerous industry surveys suggesting that participants are interested in such alternatives. Fewer than 3% of DC plans offer an ESG option, according to the 62nd annual Plan Sponsor Council of America survey, and less than 0.2% of plan assets have been invested in those options.

That hesitancy on the part of plan fiduciaries has almost certainly been fueled, if not fanned, by previous pronouncements from the Labor Department, most recently a 2018 Field Assistance Bulletin which laid out the "all things equal" standard seen by many as a pull back from the position articulated during the Obama administration. It hasn't helped that these options were typically more expensive,

tended to underperform more traditional options, and were subject to the whims of investment professionals as to what investments and practices satisfied their sense of ESG.

Well that, as they say, was then.

Today there's plenty of evidence to suggest that many ESG-themed investments perform just as well as, if not better than, those with a more "traditional" focus. In fact, a growing number of investment managers are incorporating that focus—notably the "governance" aspect—as part of their regular screens, viewing consideration of ESG risk exposure as a baseline consideration.

Ultimately, we believe—as we commented to the Labor



Brian H. Graff, Esq., APM, is the Executive Director of NAPA and the CEO of the American Retirement Association.

participant savings rates and even diminish portfolio diversification.

Not that there isn't room for improvement and clarity in ESG labelling. Many factors today compete for that label, and those who blindly embrace options simply because of a marketer's branding will surely come to regret that myopia. But the Labor Department's proposal provides no more nuance than the blunt affixation of an ESG labellargely, if not nearly completely, constraining a fiduciary from considering ESG factors as part of a prudent process even those deemed to have a substantive impact on long-term investment

In response to this need for clarity both in understanding these options, and the obligations of fiduciaries in considering them, NAPA, supported by an impressive cast of education partners, has teamed up with some of the industry's leading experts and advisors to develop an "ESG for 401(k) Certificate Program." Designed with the current challenges and opportunities in mind, this exclusive program was unveiled at the 2020 NAPA 401(k) Cyber

Today there's plenty of evidence to suggest that many ESG-themed investments perform just as well as, if not better than, those with a more 'traditional' focus.

Department in late July-that ERISA requirements for fiduciaries selecting plan investments should neither promote the sacrifice of investment returns or assumption of greater investment risks as a means of promoting collateral social policy goals-nor should they preclude consideration of benefits other than investment return. The concern expressed by many of our members was that this proposal not only opens the door to complex interpretations of how to regard ESG factorsbut that it could ultimately stifle investment selection, decrease

Summit, and will be available in Q2 2021.

ARA members have long applied ERISA's fiduciary principles in carrying out their fiduciary duties when selecting plan investments and investing plan assets, regardless of the type of investment. As always, we believe the best interests of plan participants and beneficiaries are best served by providing plan fiduciaries—and those who support them—the opportunity to consider the impact that factors such as ESG could have on long-term performance. NNIM

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Steven Silverman



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Trends 'Setting'

IN A YEAR OF EXTRAORDINARY EVENTS, TREND LINES MAY BE SKEWED, AND PATTERNS MAY BE SHORT-LIVED—OR THEY MAY SIMPLY PRESENT US WITH A NEW "NORMAL" TO RECONNOITER BY. REGARDLESS, IN THIS ISSUE YOU'LL FIND SIGNS OF EMERGING FROM THE PRESS OF THE PANDEMIC, AS WELL AS SOME "MARKERS" INVOLVING HSA INVESTING, TARGET-DATE FUND SELECTION, AND A DOSE OF GENERATIONAL MYOPIA.

Stereo "Typical?"

Drop the generational stereotypes, says survey

When it comes to financial planning and saving for retirement, it's time to toss out those labels for categorizing workers, as generations aren't determinative when it comes to predicting financial attitudes and behaviors.

Instead, workers' past experiences and personal backgrounds matter more in shaping individuals' financial behaviors and attitudes, according to the survey and corresponding white paper, "It's Not About Generations," by the Empower Institute.

And understanding these experiences and backgrounds can help employers evaluate the financial wellness tools they offer and create more targeted solutions that help workers take action to reach their financial goals—especially considering the uncertainty brought about by the global pandemic.

Key findings of the survey reveal that:

- 80% of the employees surveyed said their views were shaped by experiences and personal characteristics not by the generation in which they were born
- 65% of respondents think generational differences are overstated

- 53% say their ideas and feelings about money varied greatly from each life stage
- 40% identify more with others who are going through the same life events, compared with those in their defined generations

As such, American savers want to talk about financial planning that matches where they are in life–like getting married, managing debt or taking on a mortgage.

Saving for retirement is a top financial goal across all generations, but, of course, not everyone will get there in the same way, the paper notes. Moreover, people take action with regard to their financial plan most often as a result of major life events.

Events that involve unexpected loss—such as loss of a job, loss of housing or divorce—are especially likely to result in changes, including cutting back on spending and retirement contributions, and taking withdrawals on retirement savings before they planned to do so.

For example, nearly half (47%) of respondents said they have taken action with regard



"As one might expect, it appears likely that the global pandemic and its financial strain will shape financial attitudes and behaviors into the future, including changes in how retirement investors behave."

to their financial plans after an unexpected job loss and 41% said they took action after a loss in the 2008-2009 housing market crash.

As one might expect, it appears likely that the global pandemic and its financial strain will shape financial attitudes and behaviors into the future, including changes in how retirement investors behave. But with so much uncertainty, the paper emphasizes that it is still too early to tell how behaviors will change.

Tailored Advice

Still, even though many workers feel they have too much to manage to focus on retirement planning, respondents' top goals for 2020 are financial—they want to tackle personal debt and save for retirement. Based on these findings, Empower suggests that workers want help when it comes to improving their financial wellness and plan sponsors can play a role.

"Our data show that workers crave financial advice, but they want information that's tailored to their specific characteristics and life experiences—not generation-based advice," the paper notes.

For Empower participants, amid the global pandemic, digital financial wellness tool usage has increased by 22% while reading content from the learning center has decreased 12%. And of those accessing digital tools, 47% took action with a majority requesting one-on-one advice.

Yet, many tools apparently fail to deliver what people want. Empower found that, while an overwhelming 90% of those surveyed want a financial plan that's personalized to them and adjusts to their needs, more than

half (55%) say most financial products aren't relevant to their stage in life. In addition, more than half (56%) also feel their goals and challenges are unique, which makes the planning tools available to them difficult to use.

The survey further shows that financial wellness resources need to integrate both digital tools and human advice. According to the findings, respondents were split over whether they prefer digital tools to assist with financial planning or trust only human advice. Empower participant behavior in response to the pandemic has shown this to be true. The paper notes that there has been a 109% increase in appointments for one-on-one advice for eligible participants.

The survey was conducted by the Harris Poll in January 2020 among a national sample of 2,001 U.S. citizens aged 18 years and

— Ted Godbout

"Emerging" Markets?

Despite Headwinds, Emerging Opportunities Seen for DCIO Sales

Coronavirus lockdowns and other factors are changing the game for DCIO sales teams, but there are pockets of emerging opportunities, according to a report from Ignites Research.

In "The Big Get Bigger in DCIO Sales," the August 2020 report observes that the increasing complexity and competition within the advisor-sold DC market has forced many plan specialist advisors to build out their teams, prompting DCIO managers to do the same. At the same time, both groups are readying themselves

for opportunities from the SECURE Act, the report notes.

With money flowing toward target date funds and low-cost products, more managers are combining DCIO with other IO sales units, in some cases abandoning existing structures with a standalone DCIO group, according to the report. In fact, Ignites found that only 41% of the asset managers it surveyed house DCIO in its own unit, down from 77% of firms in their 2018 DCIO survey.

Moreover, net outflows from retiring Baby Boomers' DC plans have created a "persistent headwind." In 2019, the 17% growth in overall DC market assets was powered largely by rising stocks and bonds. Consequently, DCIO firms are responding by investing in themselves, with 41% of the 17 DCIO firms surveyed planning to add sales-related staff this year.

By the end of 2020, these firms expect to increase full-time equivalent employees dedicated to DCIO distribution by 4.8% to nearly 29 employees on average. That said, these firms do appear to be pulling back from 2019, when DCIO headcount grew by an average of 5.3%. But unlike 2019 when 24% of firms trimmed staff, the report notes that none plan to reduce headcount this year.

The ranks of DCIO externals continue to grow largely because of the increasing complexity of the plan advisor audience and their needs, the report notes. What's more, a significant portion of the FT 401 say that they not only use DCIO-supplied services, but that they expect to use them more.

Ignites also found, however, that internal wholesalers represent



the group most likely to see a jump in hiring demand, projecting it to rise 7% to an average of 7.1 by the end of 2020. Part of that impetus comes from internals taking the lead in managing and analyzing client and prospect data, which is crucial when pressure on profitability has asset managers focused on efficiency, the report further observes.

A more immediate impetus for firms to hire more internals is the COVID-19 crisis, which converted the vast majority of salespersonadvisor meetings into phone calls or videoconferences. To that end, the report notes that more DCIO shops may be looking toward hybrid wholesalers, who split their time between being deskbased and in the field, for similar reasons. That said, Ignites notes that only 18% of surveyed DCIO managers have any hybrids.

Structural Alignment

DCIO team structure also needs to align with specialist DC plan advisors. Ignites notes that in 2019, these advisors accounted for the largest segment of gross sales at 36% on average. The second most important DCIO audience—accounting for 29% of gross sales in 2019 on average—are "mid-tier consultants."

Partly because they've grown so aggressively, mid-tier consultants have risen quickly in importance to DCIO managers, the report notes. "You need to have a dedicated effort for those aggregators," one DCIO leader told Ignites. "Once the lockdowns end, M&A will ramp. So, we'll see continued growth among these firms."

DCIO teams differ in how they serve mid-tier consultants. Less than half (44%) use only retail DCIO wholesalers, as they do for other plan advisors. Other approaches include splitting the segment between retail DCIO and institutional DCIO (39% of companies) and involving DCIO key account managers in some way (17%).

Plan advisors are also reportedly zeroing in on vehicle type, with 45% of FT 401 advisors saying they're "likely or very likely" to switch out of mutual funds and into other vehicles, such as CITs. According to the findings, 55% of plan advisors say they plan to boost their use—compared with 27% of advisors who plan to increase their use of either TDFs or mutual fund institutional share classes.

SECURE Act Interest

In addition, more than two in five FT 401 advisors also plan to study adding annuities or other income options into

Other SECURE Act features generating interest include authority to create "open" MEPs, tax credits to encourage automatic enrollment, and requirements to open DC plan participation to certain part-time workers. The report notes that both advisors and DCIO leaders see the SECURE Act as a potential boost to their business prospects, although DCIO executives are more optimistic, with 56% of DCIO teams and 40% of plan advisors expecting the SECURE Act to provide a moderate or large lift to their business by 2023.

The report is based on two proprietary surveys conducted by Ignites. The firm surveyed DCIO sales leaders in the U.S. during March and April, covering 17 DCIO firms managing a total of \$1.1 trillion in retail DCIO assets as of Dec. 31, 2019. The firm also solicited the opinions of the Financial Times 401 Top Plan Advisors, each with an average of \$1.8 billion in DC plan AUA.

— Ted Godbout

"Made" Mien

Are HSA investors born—or made?

A recent analysis finds that while only 6% of HSA accountholders actively invest those funds—nearly two-thirds of those do so within the first year.

The analysis by the Employee Benefit Research Institute (EBRI) characterizes those early investors as "born," and while what distinguishes them from others is not inherently obvious, the report notes "there is some quality intrinsic to them that prompts them to invest their balances immediately."

A second group—those who transition to investing within

the first three years of account ownership-are considered "made." These, EBRI report authors Jake Spiegel and Paul Fronstin say, might be the result of "some external force that prompts them to invest their balances," specifically things like developing a familiarity with HSAs, the result of an effective benefits education campaign, or having accumulated a balance that they feel comfortable investing. However, the EBRI researchers say that among this group, the two most important characteristics they found to be associated with transitioning to investing are account tenure and balance. "In particular," they write, "our analysis shows that a oneyear increase in account tenure is associated with a similar increase in the likelihood of investing as an account balance roughly \$3,250 larger."

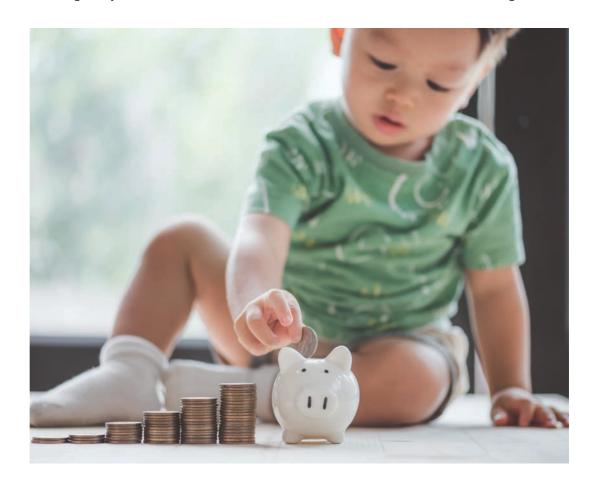
The report also cites employee contributions as a factor that increases the likelihood of investing, "likely signaling that engagement is an important determinant in transitioning to investing," they write.

Accumulate "Shun?"

As for the notion that people are simply waiting for their balance to grow, the report finds "only weak evidence to support" that hypothesis. When plotting the distribution of account balances when accountholders transitioned to investing, EBRI noted spikes around \$1,000 (see above-it's a minimum requirement for many plans), \$3,000, and \$6,000, "likely signifying thresholds that at least some investors are targeting, such as required balance thresholds for investing or health plan deductibles. However, there was a great deal of variance in account balances at the time of investing, suggesting that this only describes a small share of investors."

Additionally, plan deductibles apparently do not serve as a strong signal to accountholders that they should save that much before investing.

There are things that stand in the way; the report highlights the impact of taking a large distribution (at least half the account balance), a factor they say is associated with a reduced likelihood of transitioning to



"So, are HSA investors "born" or "made"? The answer at present, at least according to the EBRI research, appears to be some of both—but with many more "made" by time, education or circumstances."

investing, which they say may indicate that accountholders try to build their balances back up after withdrawing money from their HSAs before investing.

Implications

The report notes that only few accountholders transitioned to being investors after more than five years of account ownership—a result that they say is suggestive of two conclusions. One, that long-tenured non-investors intentionally do not invest, either because they view their HSA as a spending vehicle, or they are concerned about losses. Secondly, since at least some long-tenured accountholders transition to investing at some point, then the researchers suspect there might be some external force driving them to invest; perhaps employers' educational outreach efforts, personal research, or building up a sufficient cash buffer to cover short-term medical expenses, though they note that the "actual motivations" are undetermined at

Indeed, it seems fair to say that many, if not most, HSA education sessions are focused on their ability to address the short-term health care expenses of the year ahead. And, considering the role they have traditionally played on the benefits menu, that makes sense.

I would suggest that the true answer to why so few seem to invest their HSAs appears two-fold: First, that the vast majority of programs set a minimum threshold of \$1,000¹ (or more) to take advantage of those options—alongside a working assumption in HSA education that you won't.

Secondly, since at least some long-tenured accountholders transition to investing at some point, then the researchers suspect there might be some external force driving them to invest; perhaps employers' educational outreach efforts, personal research, or building up a sufficient cash buffer to cover short-term medical expenses, though they note that the "actual motivations" are undetermined at present.

So, are HSA investors "born" or "made"? The answer at present, at least according to the EBRI research, appears to be some of both–but with many more "made" by time, education or circumstances.

Those of us with a retirement focus² appreciate the long-term potential of the HSA, tout its "triple tax" advantages, and acknowledge both the potential impact of health care expenses on retirement finances, and the opportunities that an HSA offers in filling those retirement income "gaps" that "replacement ratios" never quite seem to fully contemplate.

As HSA education goes, that might be a good place to start in "making" more HSA investors.

— Nevin E. Adams, JD

Zero Tolerance?

Can selecting TDFs ending in zero affect retirement savings?

There is some legitimacy to that assertion, according to new research published in the Journal of Consumer Research.

"The Zero Bias in Target
Retirement Fund Choice"
identified a tendency for
individuals to select retirement
funds ending in zero compared
with funds ending in the number
5. This "zero bias," according
to the findings, affects the
amount people contribute to
retirement savings and leads to
an investment portfolio with an
incompatible level of risk, which
can significantly lower total wealth
at retirement.

Wei Zhang, Kingland Faculty Fellow in Business Analytics and associate professor of marketing in Iowa State University's Ivy College of Business, along with co-authors Ajay Kalra of Rice University and Xiao Liu of New York University, analyzed data from a global financial investment firm that included 84,600 individual accounts, with nearly half of the sample investing in target date funds (TDFs).

¹ The Plan Sponsor Council of America's HSA Survey indicates that more than three-quarters require a balance of at least \$1,000 to invest in anything beyond a cash equivalent.

² As for implications of this analysis, EBRI explains that employers that want to encourage their workers to use their HSAs as longer-term savings vehicles may wish to consider implementing two strategies. First, since account tenure is closely linked to the decision to invest, they say that suggests that accountholders invest because they become more familiar with their HSAs, they learn more about the benefits of investing, or both—and that therefore an education strategy could be effective in encouraging accountholders to invest (although, see "What's Holding Back HSAs?"). Secondly, since account balance seems to be closely linked with the decision to invest, they suggest that employers could consider contributing some seed money to new accountholders, particularly those with plans with very high deductibles.

The researchers found that the zero bias manifests itself in people born in years ending between 8 and 2. For example, investors born in years ending in 8 or 9 tended to select TDFs that mature earlier than they intend to retire. Those born in years ending with zero, 1 or 2 select TDFs that imply they intend to retire at 70, while those born in years ending with 8 or 9 choose TDFs that imply retiring at 60.

In fact, nearly 34% of people born in years ending with 8 or 9 select early retirement funds and all of them end up worse off financially, according to the results. Conversely, nearly 30% of people born in years ending in zero through 2 were found to select fund dates that are later than they plan to retire and end up better off, except for those who are risk-averse, the study notes.

"Targeted funds offer a 'set it and forget it' approach to investing, which is popular for consumers who don't want to navigate financial decision-making. However, that initial decision of selecting a targeted plan has implications," observes Zhang.

The researchers also looked at several demographic factors where the likelihood of zero bias was stronger. They found that men, older people and those with higher incomes are more likely to demonstrate the bias. Investors who participated in a 30-minute financial planning program were less likely to exhibit the zero-bias tendency, Zhang further noted.

Wealth Implications

Zero bias exposes investors to different risk-return trade-offs, the study further observes. For instance, selecting a non-matching TDF exposes investors to risk that may be incompatible with their stage of life.

Investors were also found to contribute less if they select a later-date retirement fund compared to the matching TDF. Moreover, the extent of losses incurred by not choosing a matching targeted fund can be quite large depending on birth year.

According to the researchers, the findings suggest that the bias is a result of imprecise math, specifically rounding up or down to estimate retirement age. By understanding this bias and how it relates to birth years, financial advisers can better inform investors of their choices.

"Given that many individuals are choosing targeted retirement funds for their retirement portfolio, the insights from our paper will help financial service companies and consumers to improve investors' financial wellbeing," Zhang emphasizes. NNIM

— Ted Godbout



From Sea to Shining Sea

HERE'S HOW TO COMMUNICATE WITH SMALL BUSINESS OWNERS AND EARN NEW PLANS.

By Rebecca Hourihan

hroughout our great nation, we have more than 30 million¹ small businesses that employ over 34%² of the American workforce. Those businesses equate to more than 44% of GDP³—and as many campaigning politicians tout, they are the "backbone of America."

If 93% of plans use an advisor⁴ –an all-time record—then how can you unseat the incumbent and earn new plan business? Especially in a time when we are going through a pandemic, a presidential election, and stock market volatility? Let us share some lessons learned from our experience.

We built this country on...

This summer, we completed a cross country road trip totaling over 9,500 miles. Our journey took us though the deserts of the American southwest, up the Eastern seaboard to Niagara Falls, west to Mount Rushmore, over and through the Rockies, and then we parked safely back home in San Diego.

As we traveled from small town to big city, through endless corn fields and picturesque farms, up and down mountain ranges, there was always one constant–small businesses.

I saw the sign and it opened up my eyes

From billboards, local magazines, and restaurant placemats, we saw advertisements for small businesses that supported their local economy. As we passed

each new state line, I couldn't help but wonder, how can advisors communicate their value and explain to employers why they need to hire a retirement plan expert?

Life is a highway

From what we saw staring out the windshield, talking with locals, and asking seemingly odd questions—because talking about retirement plans after meeting a person for 10 minutes is generally considered odd—people were open to sharing. Here's what I found:

- Reading newsletters:
 Whether printed or emailed,
 employers appreciate
 newsletters. They like to have
 something to read that keeps
 them informed. They like
 consolidated information.
 Then if they have questions,
 they know whom to ask, or
 they can do independent
 research.
- Scrolling through social media: They like passive scrolling through Facebook, Instagram, Twitter and LinkedIn. Not much posting going on. But they do read what other people post about–like pictures, memes, videos, graphics and other quick bursts of edutainment.
- Friendly introductions: Most people have a "guy" who does their "financial stuff." However, they are open to learning other ideas. Most of the time they have a deep loyalty to this person. So, to change advisors, there needs to be an issue.

This means that as a required marketing baseline, your firm should be sending out a regular newsletter, posting on social media, and encouraging centers of influence and clients for introductions. These three marketing items are going to help you keep existing clients and gain awareness of new prospects.

"Use your marketing content as a platform to educate small business owners."

Big wheels keep on turning

On a daily basis, small business owners toggle seamlessly between clients, prospecting, sales, management, finance, operations and sometimes even janitorial activities. Every day is an opportunity to go as planned or for a wild ride. The lesson is that when you have the attention of the employer, you need to maximize their time.

To earn new business, create and share content that focuses on answering these questions:

- What should the employer know? And why?
- What should they do about it?
- How can you help them handle or address this topic?

Here is an example on the topic of stock market volatility:

- What should the employer know? And why? Historically, the stock market has tended to rise over time, even with setbacks. With that in mind, it's important to help your employees focus on their long-term retirement savings goals rather than reacting to short-term market fluctuations.
- What should they do about it? Employers should consider sharing market insights and commentary explaining market volatility and educate employees on how they can focus on their overall financial picture.
- How can you help them handle/address this topic? You can help by providing market insights and commentary that explains market volatility. Share

content such as newsletters, blog articles, research reports, data-supported infographics and videos. This will help the employer educate their plan participants. In addition, make yourself available to answer questions through webinars, live broadcasts, and virtual meetings to provide more resources and support.

• Use your marketing content as a platform to educate small business owners. When your message is meaningful to them, their business, their retirement plan and their employees, they will find the time to read your content. Seek to share information that focuses on the business owner's challenges and provides ideas that position you as the solution.

Oh beautiful, for spacious skies

Among the advisors who have a consistent marketing process to share timely, relevant and topical information with their clients, prospects and centers of influence, you are standing out and differentiating your firm as qualified experts—great job! As we enter this selling season, the opportunities are endless.

Take this time to look at your contact list and identify your warm prospects. Then invite them (via email) to a (virtual) meeting. And when they say "yes," we hope to see you smiling from sea to shining sea.

Thanks for reading and Happy Marketing! NNTM

FOOTNOTES

¹ Mohsin, Maryam. "10 Small Business Statistics You Need to Know in 2020 [May 2020]." Oberlo, Oberlo, 8 July 2020.

² Gaetano, Chris. "More Americans Work At Big Firms Than Small Ones." NYSSCPA, NY's Society of CPAs, 4 May 2020.

³ Office of Advocacy. "Small Businesses Generate 44 Percent of U.S. Economic Activity." SBA's Office of Advocacy, 30 Jan. 2019.

⁴ Sergeant, Jacqueline. "93% Of Retirement Plan Sponsors, A Record, Now Work With Advisors." *Financial Advisor*, 28 Aug. 2019.



Get Famous

WHY 63 MILES USED TO BE THE DIFFERENCE BETWEEN "FAMOUS" AND "NOT FAMOUS."

By Spencer X Smith

n 2002, our rock band Myopic Son started to get pretty big in West Lafayette, IN. We won a battle-of-the-bands competition at Purdue University, home to about 40,000 students. As a result, we earned a booking at the "Slayter Slammer," an annual concert to kick off the start of fall semester.

Purdue, being an excellent university for engineering, has an amphitheater on Slayter Hill on campus, and one of the most interesting features is its suspended ceiling. Instead of walls holding up the roof, it's supported by wires. Each portion of the amphitheater construction, consisting of 21 individual columns and the roof, are all separate from each other, creating wonderful acoustics with no rattling or other noise from the individual components. The natural amphitheater that is Slayter Hill can host 20,000 people. If your band gets to perform at the Slayter

Slammer, you've joined a fraternity of very, very few bands.

The local rock & roll radio station in Lafayette covers the show each year, and two of us from Myopic Son were interviewed live by the station's on-air personalities before performing. They liked our sound and began playing a song of ours on the station. After the Slayter Slammer, we returned a few months later to perform a show at an outdoor tiki bar that drew 1,700 people. Things were looking up in West Lafayette!

Feeling good about our "fame" in and around Purdue, and hoping to leverage our success in Indiana, we traveled 63 miles east to Indianapolis, a city more than 10 times the size of West Lafayette. And... had to completely start over.

Why?

Back in 2002, geography played an enormous role in how an independent band could get known. Our West Lafayette reputation couldn't precede our arrival in Indianapolis because... well, in 2002, how could it? Our performances at the amphitheater and tiki bar remained forever trapped in time. We had no smartphones, no YouTube, and no social media. Word of mouth, which was our best form of promotion then, was relegated to those who could be physically close together.

So 63 miles might as well have been 630 miles for our little band. People in Indianapolis had never heard of us and weren't aware of our notoriety in a city so close to them. Back then, bands that achieved a level of national fame did so through a hit song on radio stations throughout the country, and that exposure occurred after they signed a record deal. The band would then tour in support of that song (and the album on which the song appeared), with radio commercials touting, "Come see ABC band perform their hit song XYZ."

Fast-forward about 20 years. What's different now? A fantastic set of technologies we all have available to transcend success you experience locally. No longer do you, or I, or anyone else need to be restricted by geography, nor do we need to be "put on" by a record contract or by a radio station. Distribution of content, which was previously controlled and throttled by those with the power, has now become democratized. If you create something good, you have the ability to use digital and social media to amplify your message to those who may benefit from you. Not in just in your town... everywhere.

Here's a plan for you, then: Let people know when you do something newsworthy in one place, and they'll begin to recognize you in another. Put another way, before the next time you attend the NAPA 401(k) Summit in person (hopefully in 2021), use digital and social media to build your reputation online. When people see you in real life, they'll already know who you are and what you share. Instead of starting a conversation from zero, you'll start from a point of understanding.

How are you using digital and social media technology to get "famous" with your target audience? NNTM



Let's hear it for our Advisor Allies!

- Justin Bonavitacola
- Tim Curran
- Matt Fessler
- Bryson Hopkins

- Stewart Rauchman
- Donny Sheinwald*
- Tony Summers

Lincoln Financial is proud to congratulate our exceptional team members who have each been recognized as a 2020 Top Defined Contribution Industry Wholesaler by the National Association of Plan Advisors (NAPA).

Your hard work and dedication is extraordinary, and it shows.

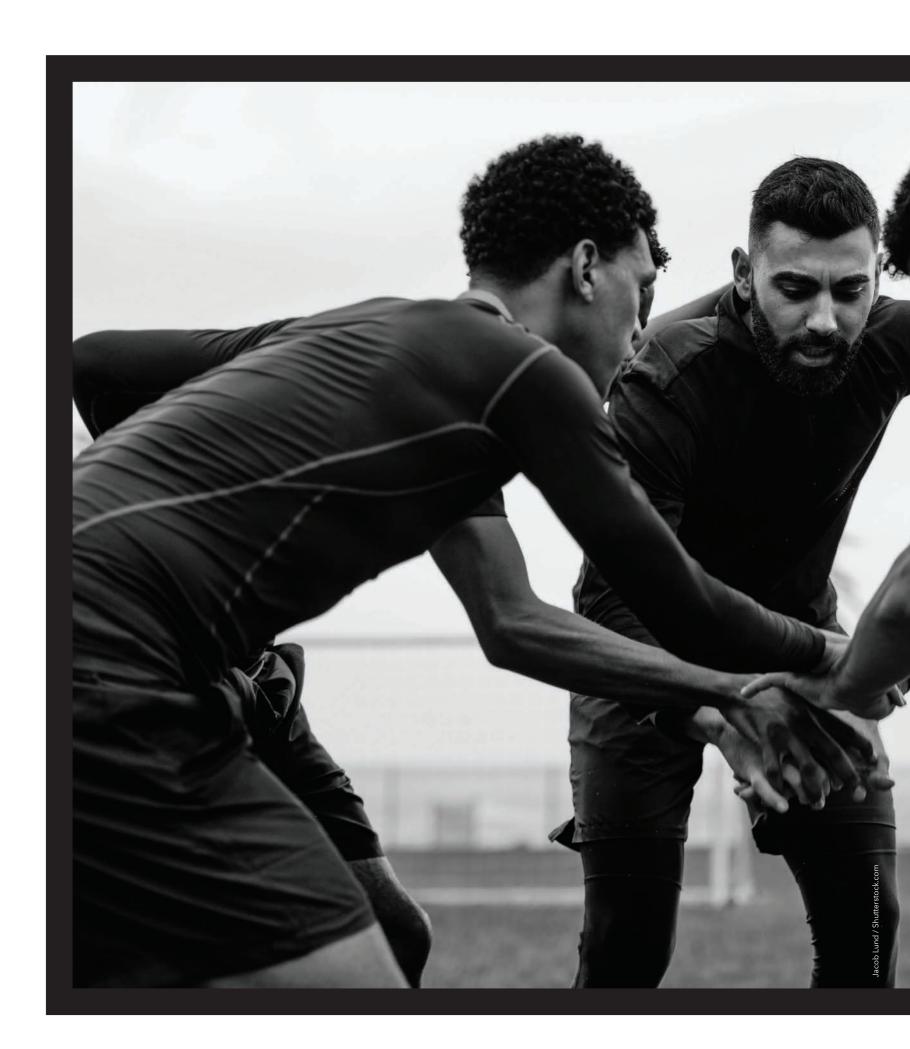
Thank you for your tireless commitment to helping financial professionals look to the future with confidence.

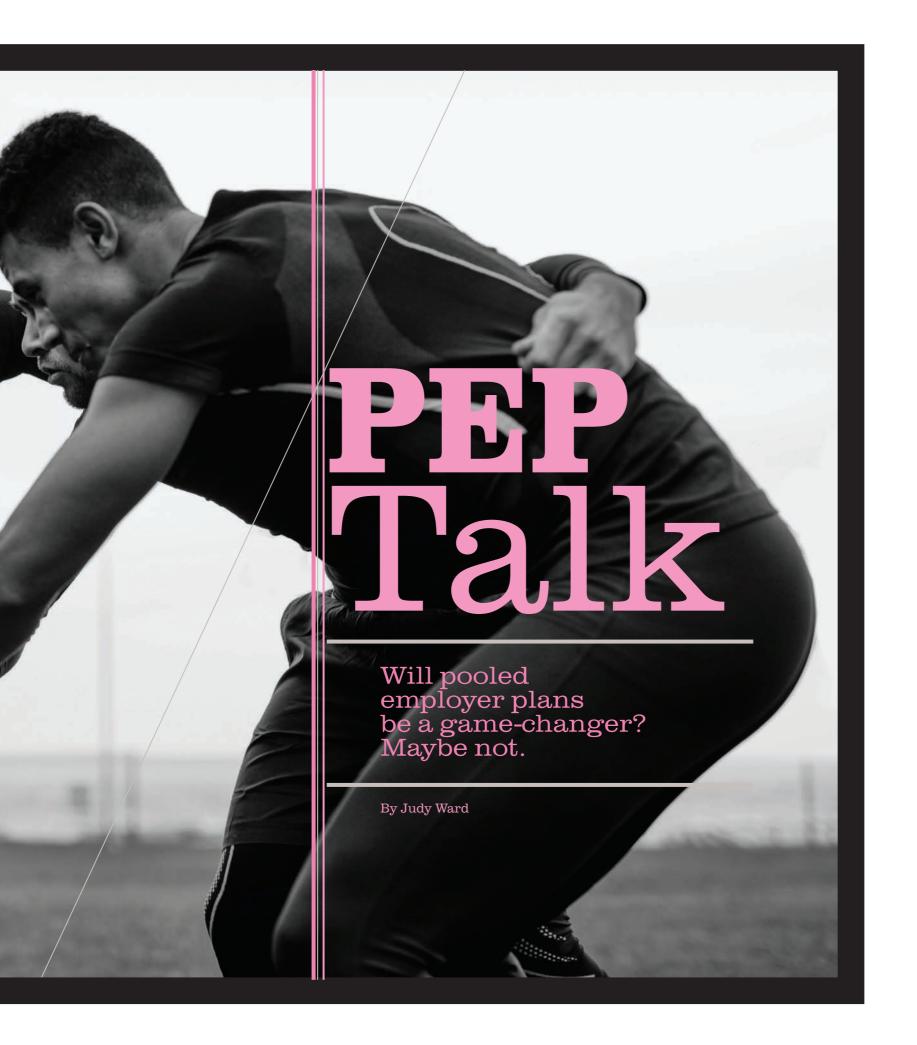
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^{*}Top 10 wholesaler in total votes across all recordkeepers.







Because of that important goal to expand coverage, CAPTRUST feels motivated to get involved somehow, Matheson says. The advisory firm hasn't focused on the start-up market in the past, he adds, "because we would have to charge too much for it to be workable for them, to deliver the services at our standards." Now, he and his colleagues are thinking about how best to get involved with PEPs, which launch starting Jan. 1, 2021.

It wouldn't be a stretch for CAPTRUST to serve as a 3(38) fiduciary investment manager for PEPs, Matheson says, since it already has taken on that role with about 700 client plans. "The issue is if we want to start our own PEP, and be a plan provider," he says. "The question is, how could we do that in a way that achieves scale and also preserves our commitment to exceed our clients' service expectations? We're having a lot of conversations internally about what that would look like. "

CAPTRUST doesn't feel compelled to enter the PEP market in January 2021, Matheson says, since the advisory firm's culture is to weigh decisions like that carefully. "We've been reluctant to be the 'first mover,' and going in on 1-1-21 with a PEP is not our desire," he says. "We'd rather be a 'close follower,' to make sure that we are delivering something that is consistent with our service standards."

For advisors, PEPs are a new market with promise, but also uncertainties. Here's a look at five of the uncertainties currently surrounding PEPs.

1. The Growth Curve

What kind of employers will want to go into a PEP, instead of sponsoring their own retirement plan? "It's the million-dollar question," says Founder and Managing Principal Randy Long of Irvine, California-based SageView Advisory Group. "My sense is that it may work best for companies with five to 100 employees. I think it's going to tend to be smaller employers that don't want all the hassle and responsibility of setting up a retirement plan. The appeal will be simplification: As an employer, they can outsource a lot of these duties."

Mike DiCenso is bullish on PEPs' prospects. "Most advisors we're talking to are looking at this as their primary mode of business going forward," says DiCenso, executive vice president, sales at Newport retirement services, headquartered in Walnut Creek, California. "I could see that in the next 3 to 10 years, PEPs become a majority of retirement plan assets. Employers will see that their fiduciary obligations and potential liabilities have been released. If they can do that and get a pricing discount, why not go into a PEP?"

At least initially, a PEP may appeal primarily to small employers just starting to offer retirement benefits, says Shannon Edwards, president of Oklahoma City-based third party administrator TriStar Pension Consulting. That target market may not be attractive to many successful plan advisors, she thinks. "Many retirement plan specialist advisors prefer to work with medium and large employers that have existing plan assets and healthy average account balances, want the in-depth services the advisor offers, and understand the value and therefore the fees charged for the services provided," she adds.

J.D. Carlson feels skeptical about PEPs' value, and doesn't anticipate a steep growth curve. "I'm of the opinion that this will be 'sold' to employers, so it's less about plan sponsors being drawn to PEPs, or advisors and how they perceive PEPs," says Carlson, CEO of Foster City, California-based third party administrator Plan Design Consultants, Inc. "I want to be clear:



"The real growth in coverage would come from the start-up market, from organizations that otherwise would not have a plan."

Scott Matheson, CAPTRUST



Randy Long, SageView

"I think PEP providers are going to be in for a shocker, in terms of the success of their sales efforts."

- J.D. Carlson Plan Design Consultants, Inc.



Mike DiCenso, Newport

There is nothing unique about a PEP. All the sales bullet-points that PEP providers will have—the opportunity for lower costs and economies of scale, eliminating most of the fiduciary for the employer, the operational efficiencies—are all things that are not solely accomplished in a PEP. I think PEP providers are going to be in for a shocker, in terms of the success of their sales efforts."

2. Lingering Legal Issues

SageView doesn't currently have plans to start a PEP itself, Long says, partly because of legal concerns about advisory firms' involvement. "I think there are potential conflicts of interest, under the DOL's new fiduciary rule, to be both the sponsor of a PEP and the fiduciary investment manager," he says. "It's a prohibited transaction to do both."

Long sees SageView focusing on a 3(38) fiduciary investment management role for PEPs. "I think the opportunity for us is to work with an organization like an association or industry group that would be the plan sponsor," he says. "From an advisor perspective, I think the opportunity is investment oversight."

As it ponders its role, CAPTRUST awaits upcoming Department of Labor rules on PEPs, including settling issues around prohibited transactions. "We would want clarity from the DOL, to give advisors an exemption that's 'clean' and fully transparent for clients," Matheson says. "We would be looking for a streamlined exemption that eliminates any potential conflicts. We need to get that cleared away first, and then we'll find our way from there. If that does happen, I could see us going down the road of being a plan sponsor of a PEP."

3. The Customization Question

Advisors and other intermediaries white-labeling the Newport PEP offering will have the ability to let employers make numerous plan design customization decisions, DiCenso says. That includes issues such as eligibility rules, the match formula, a profit-sharing allocation, automatic enrollment and auto-escalation, and loan and hardship withdrawal rules. "We'll have the ability to have different plan designs within a PEP," he adds. However, he adds that some providers are struggling with how much choice they'll be able to offer in a PEP, because their systems' setup doesn't lend itself to that level of customization.

As a practical matter, Carlson thinks, most PEPs will have to offer employers little ability to customize plan design. "The whole concept of this thing is about efficiency, and efficiency equates to 'cookie-cutter,'" he says. "I would choose customization and flexibility over 'cookie-cutter' if I'm going to go to market as an employer."

A lack of plan design flexibility will reduce PEPs' appeal to many employers, Edwards anticipates. "Large employers and employers in professional industries, such as law firms and physician practices, normally do not want to be limited by plan design choices," she says. "But in order for a PEP to provide efficiencies, to be profitable for the sponsor of the PEP, design choices likely will need to be limited."

4. The Fee Concern

PEP proponents say they'll offer a lower-fee option than a stand-alone 401(k) plan, but SageView's Long has doubts it will work out that way. "If they can get all the costs down and get to the point of having scale, that will make it a good alternative, from a fee perspective, to having a stand-alone plan," he says. "But these plans will have a lot of different moving parts: There are the funds' investment managers, the investment management oversight, the plan administration, and the trustee. So you have got a lot of hands in the pot."

There's not a big opportunity to convince employers that already have a stand-alone 401(k) plan to transition to a PEP instead, Long thinks. Transitioning to a higher-cost plan with less customization could actually pose a risk for employers. "Costs will be higher in some cases, and sponsors will not want to lose the plan design flexibility they have now," he says. "If it's not going to be a less-expensive alternative to a 401(k), I don't think many employers will consider a conversion."

Edwards also has doubts that PEPs will have lower fees than a standalone plan. "It is being sold as, 'It's going to be less expensive than being on your own,' but the providers are not really saying specifically how it is going to be less expensive," she says. She points to the requirement that companies participating in PEPs be tested separately for nondiscrimination as one reason for her doubt. "I am hearing a lot of talk that it's not going to be cheaper," she adds.

Carlson thinks he knows where PEP providers will find their fee efficiencies. "Where the efficiencies apparently will be happening is on the advisor side," he says. "By using a 3(38) investment manager, they will be trying to create efficiencies for the PEP. But for the advisor, that will lower the revenues they get per plan. I don't think it's as attractive for advisors to get involved as the industry 'talking heads' say it will be."

Asked about the concern that serving as a 3(38) investment manager to a PEP will end up squeezing advisors' revenues, DiCenso says he doesn't see that happening, based on the advisors Newport is working with now on its upcoming PEP offering. "We do see different pricing based on the services that an advisor will render within a PEP," he says. "Some will focus only on being the 3(38), some will also offer managed accounts, some will go heavy on financial wellness."

DiCenso also says that when plan advisors can streamline the investment oversight part of their work, that will give them a lot more time to work in-depth on other revenue-producing areas such as financial wellness, rollovers, and handling wealth management for business owners and their family members. "I actually see this as margin expansion for advisors, not margin compression," he adds.

5. The Competitive Outlook

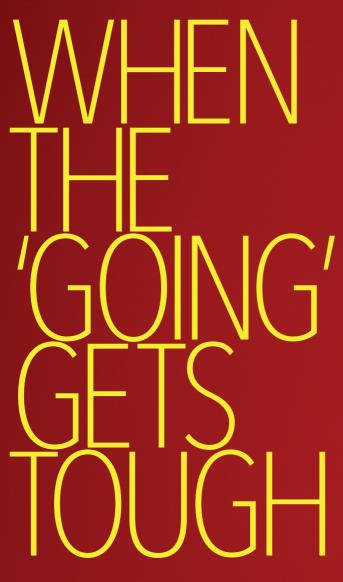
Plan advisors banking on the PEPs market may face competition from some advisory business giants. Carlson doesn't see offering a PEP as a good growth model for most advisory firms, with one exception. "I do think there is one area of the market that this fits well: the bigger, aggregator types of shops," he says. "Most of these shops have never played in the sub-\$5 million plan space, because there is not enough revenue for their service model. They are going to use a PEP as a way to create an efficient solution they can offer that market, and they're going to win more market share doing it."

Carlson also thinks plan advisors who shift their focus to the PEP model will later face additional stiff competition—from plan advisors who've remained specialists in serving 401(k) plans individually, offering customized plan design and investment menus, fiduciary services, and competitive fees. PEP assets won't be very "sticky" for many advisors or providers offering them, he believes. "Good specialist advisors are going to be licking their chops when they walk into a meeting with an employer that is in a PEP," he says. "It's going to be like shooting fish in a barrel to talk to an employer that has been in a PEP for one year, or two years, or five years. A confident advisor who can tell a better, customized-service story around their non-PEP solution is going to be able to take that business." NNTM



"Large employers and employers in professional industries, such as law firms and physician practices, normally do not want to be limited by plan design choices."

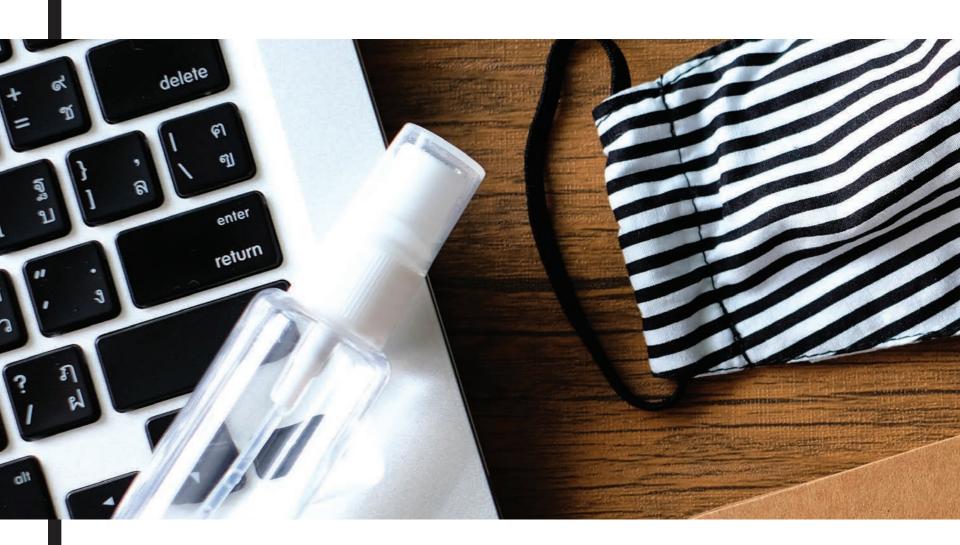
Shannon EdwardsTriStar Pension Consulting



SIX TOP 10 DC WHOLESALERS TALK ABOUT ADAPTING TO THE NEW NORMAL

BY JUDY WARD







he business of being a wholesaler shifted abruptly in March, with the simultaneous onset of the COVID

pandemic, the market volatility, and a personal financial crisis for many Americans. "There was a sense of 'Wow, what just happened?' So much has changed this year, and at such a rapid pace," says Scott Ward, Bostonbased regional vice president at John Hancock Retirement. "It has been an enormous challenge for all of us in the industry. As a wholesaler, we need to help advisors to quell the panic and help their plan sponsors and participants focus on the future, with calm, reassuring advice and guidance. For us, the challenge is to embrace this insanity, focus, and work hard."

Six of last year's Top DC Wholesalers–three from the Top 10 DCIO list, and three of the Top 10 recordkeeper list– talked about how their work has shifted, and what they see ahead for the wholesaler-plan advisor relationship. "As a wholesaler, adaptability has to be one of the best traits to have in order to succeed in varying environments," says Matt Kasa, Newport Beach, California-based vice president and DCIO regional sales director at Nuveen.

WHAT'S HAPPENING NOW

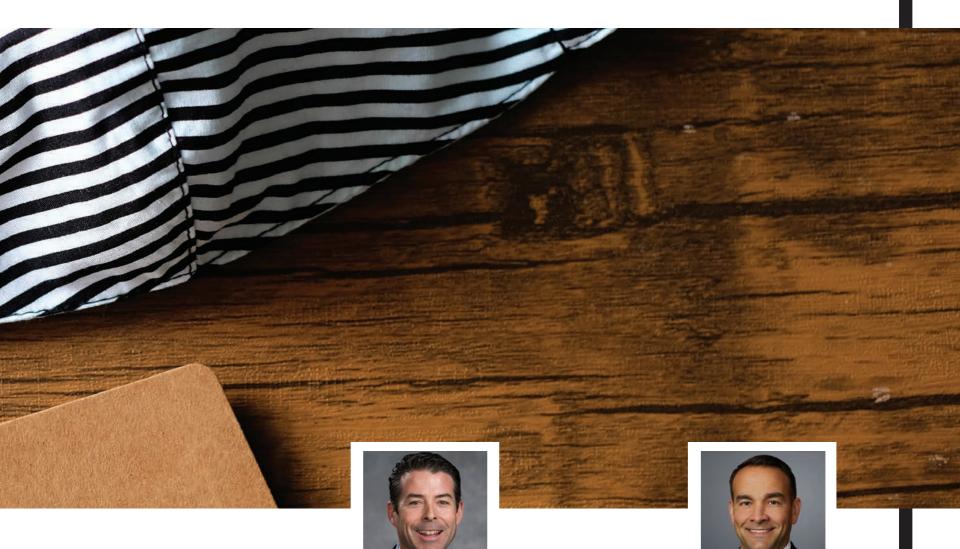
For Keith Neal, his workdays look a lot different now. "The biggest 'time shrink' in my life the past few months has been the travel. I'm definitely doing less entertaining now—things like coffee and golf—and fewer presentations and plan sponsor meetings," says Neal, Boston-based director at MFS Investment Management. "Instead, I'm doing a lot of Webex, Zoom, and Skype calls, and a lot of old-fashioned talking on the phone."

The first month, Neal says he struggled with the temporary end of face-to-face conversations

with advisors, a part of the work he really enjoys. "But as soon as I realized that we're not getting back to normal anytime soon, and accepted that, it's been good since then," he says. "I'm not wasting a lot of time traveling, so I'm spending my time on direct interaction with people."

Kasa has been going back to his roots, making a lot more phone calls, and also doing a lot of Webex and Zoom calls. In their talks with advisors. Kasa and his Nuveen colleagues focus on trying to provide solution-based ideas. "We are not talking so much about investment products themselves," he says. "Everybody is just wondering, 'How am I going to get through this? And how are my clients going to get through this?' Our focus is on how we can help advisors get as informed as possible, so they can help their clients."

The stock market's spring nosedive led to a lot of advisors needing help, Kasa says. "There



prevalent than ever in the first month or so, because we'd been riding the coattails of a bull market for a decade," he says. "We talked with them about simple ideas that they could share with plan sponsors. One of the most important is, 'If your long-term goals haven't changed, then you shouldn't be making any

was an immediate need for them to know, 'How do I calm my clients' fears?' That was more

Nuveen put together one- and two-page briefs for advisors to share with their busy employer clients.

hasty short-term moves," he says.

A crisis always reveals what works and what doesn't, says Jerry Cicalese, senior vice president, strategic partnerships at Sentinel Benefits & Financial Group in Melville, New York. "One thing that is evident, and this started in early March, is that we wholesalers have pivoted from a sales role to a service role," he says. "The dynamic of our relationship with

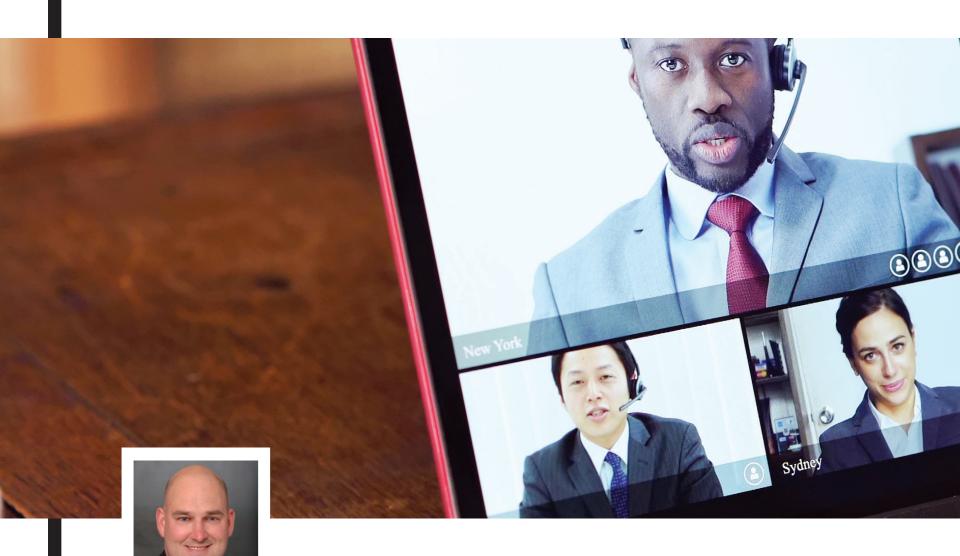
Scott Ward John Hancock Retirement

the advisor is changing. It already had been slowly changing from a vendor relationship to a partner relationship, and this pandemic is driving that relationship change at a rapid speed. Wholesalers must serve and lead now, as opposed to just pitching products and services. This will be a 'new normal.'"

Cicalese actually finds himself collaborating with his advisor partners more frequently than ever. "The level of interaction between wholesalers and advisors has changed, given the speed of the past few months," he says. "I am talking to some advisors several times a week. They mostly want to understand, what is happening with the (participant) data?"

Matt Kasa Nuveen

There's been a lot of focus on using data analytics to understand the impact of this volatile time on retirement plans and their participants, Cicalese says. "Technology has come a long way in our industry, and there is more opportunity today than ever to extrapolate plan data and understand the behavior of participants," he says. "We can provide metrics on things like participants' movement from equities to a stable value fund or money market fund. We can look at who has taken a loan, and who has suspended their loan repayments. We can pull together all the analytics in real time, and then take a step further and ask, 'What do these changes mean long term for that plan?" For



Keith Neal MFS Investment Management

example, it could lead Sentinel and a plan's advisor to talk about how a plan's nondiscrimination testing may be impacted and the plan design potentially changed, to avoid testing failure.

Boston-based John Hancock Investment Management Managing Director Ryan Fay says he and his colleagues are being methodical about connecting with advisors these days. Back in March, he says, John Hancock Investment Management reconsidered how to approach advisors, and came up with a fourstep series of outreaches.

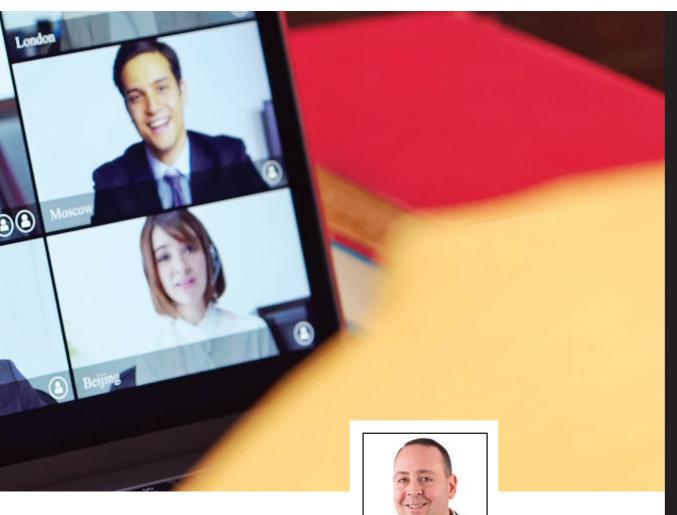
"The first step was to reach out and just check in with advisors to ask, 'How are you doing, and how is your family doing?'" Fay says. "The second step was to get in touch and talk about, 'How is it going with your clients? Are they furloughing people? Are they suspending their match?'"

"The third step was to offer them continuing education seminars, for their licenses and designations," Fay continues. For example, John Hancock Investment Management has done a webcast on how advisors can keep prospecting effectively in a virtual environment. "The fourth step is to reach out and talk about, 'OK, we've all had some time to adjust, let's talk business. How can we help you?" He and his colleagues are working with advisors on issues in their book of business such as retention, business development, and underperformance, he adds.

Donny Sheinwald, Marlboro, New Jersey-based regional 401(k) sales director at Lincoln Financial Group, has seen advisors' needs shift in the past few months. "Initially, when the pandemic struck, their focus was just on servicing their existing clients, and helping them feel comfortable," he says. "What's happened is that for some employers there has been a shift from, 'Is my business going to survive the pandemic?' to 'Let me take a look at this new environment.' They're starting to look at their employee benefits to see if they still meet their needs. Now, a lot of plan advisors see opportunities in the market, so we're helping them to prospect."

LONG-TERM LOGISTICS

The "virtual" way of working seems unlikely to end totally once the pandemic does, Neal says. "I don't think it will go back to 100% like it was before," he says. "A lot of consultants I work with say that all the virtual meetings have allowed them to be really efficient in their work. Before, they may have done a day of prep for a client's committee meeting, then a day of traveling, and a day of follow-ups. If they can compress that process into one day, they



ial Jerry Cicalese Sentinel Benefits & Financial Group

can be more efficient in their work with clients, and that will allow them to service more clients."

Sheinwald anticipates a partial return to in-person meetings, for advisors and for wholesalers. "I think there's going to be a hybrid model," he says. "Some advisors and business owners see this new virtual way of doing business as working well, and others want to get back to meeting face-to-face when they can."

The length of time the pandemic continues will play a big part in determining whether it has a long-term impact on virtual vs. in-person meetings, Kasa thinks. If both plan advisors and wholesalers work this way for long enough that they have clear data showing it didn't hurt their business, he expects lots of virtual meetings to stick around. "If we're all able to do the work in a more cost-efficient manner, that could lead to long-term changes," he says, but adds with a laugh, "I could argue that the majority of

folks I work with do want to see me again, face-to-face."

There will always be the need for talking face-to-face, Kasa believes. He's asked what's missing in virtual meetings. "The personal connection between one another," he answers. "I think that human beings are just very personal by nature. People do crave that in-person social interaction: I think we are social beings at our core."

Both the wholesaling and plan advisory businesses historically are relationship businesses, as Ward points out. If the pandemic ends in a year, would he like to go back to the frequent inperson meetings he had up until mid-March, or keep up the virtual approach? "I think I

What's in a Name?

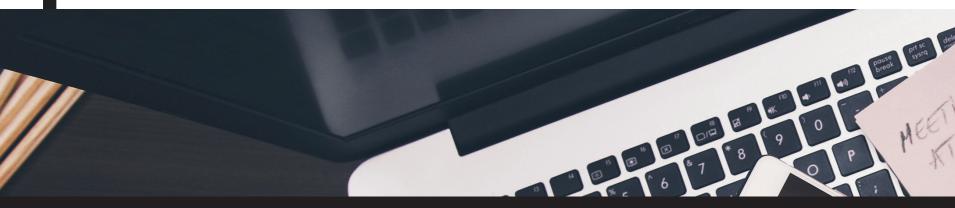
We have long referred to the Top DC Wholesalers as "Wingmen" because if they are doing their job, they have your back.

While that's certainly an apt description for the traditional role, the most successful wholesalers do more—they are true partners, often working side-by-side with advisors—and so, we have decided to acknowledge that expanded role with a new name: Advisor Allies.

Once again finalists for this year's list of Top 100 DC Wholesalers were selected based on those votes cast by several thousand advisors from a list of more than 600 wholesalers nominated by NAPA Firm Partner record keepers and DCIOs.

With an estimated 1,500 record keeping and DCIO external wholesalers working directly with advisors, this 2020 list of Advisor Allies represents the top 7% of the industry.

Our congratulations to these Advisor Allies—and the firms that support them—and our thanks to all of you who supported this recognition with your votes!



"SOME ADVISORS AND BUSINESS OWNERS SEE THIS NEW VIRTUAL WAY OF DOING BUSINESS AS WORKING WELL, AND OTHERS WANT TO GET BACK TO MEETING FACE-TO-FACE WHEN THEY CAN."

- DONNY SHEINWALD, LINCOLN FINANCIAL GROUP



prefer, personally, the way the business was in January, February, and early March," he says. He's working from home—where he lives with his wife and two sons, ages 6 and 9—and, like many people, has found that sometimes challenging. "I only had to warn my kids 16½ times, and threaten them with taking away their video games, to stay quiet for the next 30 minutes," he jokes during a phone interview. "But if they see a squirrel outside, all bets are off."

ADVISORS' SHIFTING NEEDS

Those interviewed expect the help advisors will need from wholesalers to evolve, as a result of both this tumultuous time and longer-term evolutions that already had begun.

Cicalese sees the evolution of the wholesaler's role from sales to service having a big impact on investment discussions with advisors. "Wholesalers are going to need to know their products better: The '30,000-foot

level view' is not going to work anymore," he says. "In the past, wholesalers often have brought in product specialists for finalist presentations. But now, the wholesaler needs to become the product specialist."

Wholesalers will need to collaborate with plan advisors as they look more closely at their clients' target date funds. "We're seeing advisors take a more consultative approach to target date funds, and 'peeling back the onion' of the TDFs their clients have," Fay says. They're evaluating whether their plan clients have the right target date fund family, in terms of both the participant demographics and the dynamics of the plan and employer, he says. "That's as opposed to, 'Let's just go with the cheapest,' or 'Let's just go with the best performance,"

And Cicalese says the past few months, filled with participants' worry about market volatility and questions about taking a plan

Donny Sheinwald Lincoln Financial Group

loan, have demonstrated the crucial role a plan advisor can play at the participant level-much of it virtually. "When I think of what will change long term, I think how the advisor services the participant will be one of those things," he says. The past few months. Sentinel has had more requests than ever to provide on-demand, short education videos for a plan's participants. These videos can be customized to a specific plan, and include the plan advisor's appearance. "It's all about creating visibility for the advisor," he says. "The human element is going to be key to changing participant behaviors."

Delivering so much participant education virtually has turned out to have some advantages,

Ryan Fay John Hancock Retirement

beyond the lack of travel time and increased efficiency for advisors and providers, Sheinwald says. It's helped participants too, he says. "What's great is that this education is no longer required to be in the 8:30-5:30 workday timeframe. It allows more flexibility to take in this information at the best time for them," he explains. "And when we are meeting with people faceto-face, many times employees are scared to raise their hand and ask their question. When they are on a webcast, they are more likely to ask a question, because they don't feel like they're in front of other employees."

This time of financial stress for many Americans also has reiterated that participants need an advisor's help beyond their retirement account, Ward says. "Historically, trying to educate participants has meant talking about this linear process of saving for retirement," he says. "That model has changed dramatically. Now, you have to be relevant for individuals, based on what they're going through at that time in their life. And as you are being more relevant to folks, you're able to build a better relationship."

Internally, plan advisors also will need to make their practice management more efficient. "Being a great fund-picker has gotten more commoditized," Neal says. "Now, clients are looking for more than that. So advisors want help to be more efficient, because the main fiduciary issues have become more commoditized."

With so many demands on their time the past few months, Kasa anticipates plan advisors will look more closely at the efficiency and profitability of their work with each client. "Advisors are realizing

more now that there are plan sponsors who can be a drag on the advisor's time, and that they are not making enough revenue for the amount of time they're spending on those clients," he says. He thinks there will be more discussions between advisors and sponsors about increasing efficiencies, such as an advisor attending one on-site committee meeting a year, and attending the rest of the committee meetings virtually. As he says, "Perhaps that has been a benefit of this time-to open the door to that kind of discussion." NNTM







TRAVEL "BANDS"

THE TOP NAPA DC WHOLESALERS OF 2020

BY NEVIN E. ADAMS, JD



n this issue we are pleased to showcase the seventh annual list of NAPA Top 100 Defined Contribution (DC)

Wholesalers, as selected by the nation's leading retirement plan advisors.

We have long referred to the Top DC Wholesalers as "Wingmen" because if they are doing their job, they have your back. But while that's certainly an apt description for the traditional role, the most successful wholesalers do more—they are true partners, often working side-by-side with advisors—and so, with this year's "class," we have decided to acknowledge that expanded role with a new name—Advisor Allies.

Once again finalists for this year's list of Top 100 DC Wholesalers were selected based on those votes cast by several thousand advisors from a list of more than 600 wholesalers nominated by NAPA Firm Partner recordkeepers and DCIOs.

Our congratulations to these Advisor Allies—and the firms that support them—and our thanks to all of you who supported this recognition with your votes!

The wholesalers who make this list cover a lot of ground–literally. Or did, pre-pandemic. They still

cover large "swathes" of territory - in terms of geography, number of advisors, or both.

The vast majority of nominees for this year's award had lots of retirement plan experience—more than half of the top 100 had been working with retirement plans for 15 years or longer, and another third for more than a decade. They also bring vast experience as a wholesaler to their advisor partners - more than four-in-ten had been in that role for more than 15 years, though not all with the same firm.

Travel has long been both the best and the "bane" of a wholesaler's life - and if the pandemic has diminished the time away from home and families, it's also brought with it some new challenges. As one of the Top 100 said, "Recently, the hardest part has been navigating each broker dealer's, as well as my own firm's, ever-changing compliance policy regarding the COVID pandemic. I am tasked with finding ways to stay relevant amidst a constantly changing series of rules that each firm is abiding by to keep their employees safe... The stakes have never been higher when attempting to fill a calendar as a wholesaler."

On the other hand, another explained that "The hardest is also the most enjoyable—every day is different. We work with

different products, personalities, timelines, levels of sophistication, etc. It requires a good wholesaler to adapt and be constantly challenged."

"During the day I am conducting back to back Zoom Meetings with advisors, recordkeepers and TPAs. I spend most of the night following up on everything that was promised/discussed during the meetings," commented another.

"Prior to this year I would have said work/life balance due to the typical travel and time away from home that comes with being a wholesaler," noted another. "However that certainly has not been the case with the work from home orders. Now the biggest challenge is transitioning into a more virtual environment, and being able to have the same impact working remotely via webinars and phone calls rather than in-person meetings."

Another explained, "It is easy to just do business with guys you are friends with. It is easy to do business with 401k specialists who know what they are doing. What is hard is consistently teaching new advisors the 401k business and how to thrive in it. It can seem like "Groundhog Day" at times, but I believe in creating 401k Disciples and I never want to think of myself as "too big" or "too successful" to not help a young FA out with a start up plan who has no idea what safe harbor means."

Our congratulations to those who made this year's list of Top DC Wholesalers - and our thanks to all the men and women in those roles who are helping us all make a difference - every day.



PROCESS

How the Advisor Allies are determined.

One of the things that sets this list apart is that it is based on a nominating/voting/selection process that taps the experience and perspective of NAPA's plan advisor members. Here's how the three-part process works:

- 1. Nominations: The process starts with NAPA's DCIO and record keeper Firm Partners submitting their wholesalers for nomination. Wholesalers who work directly in the field with plan advisors are eligible for nomination; internal relationship managers are not eligible.
- 2. Voting: NAPA members and other advisors vote for their favorites using our online voting tool. Only votes from advisors submitted from a corporate/ business email account are tallied. Duplicates are discarded.
- 3. Selection: The final vote tallies are reviewed by the NAPA Top DC Wholesalers Blue Ribbon Committee, which selects the top wholesalers, including the Top 10, in both Recordkeeping and DCIO categories.

Legend



Top 10 DCIO Wholesaler



Top 10 RKWholesaler

Jeffrey Abelli DCIO

Amundi Pioneer

Doug Allen

RK

Nationwide

Bobby Allen

DCIO

American Century

Chris Athens

DCIO

BlackRock

Heather Bailey

DCIO

State Street Global Advisors

Staci Baker

DCIO

JP Morgan

Matt Bartch

DCIO

BlackRock

Bill Beardsley

DCIO

Columbia Threadneedle Investments

Dennis Beaudet

RK

John Hancock

Rhea Berglund

DCIO

Invesco

Chris Bilello

DCIO

Amundi Pioneer

Keith Blackmon

DCIO

T. Rowe Price

Justin Bonavitacola

RK

Lincoln Financial Group

Bradford Boney

RK

John Hancock

Katelyn Boone

DCIO

Fidelity Investments

Bryan Bracchi

RK

Ascensus

Shaun Bromley

DCIO

JP Morgan

Andrew Brosco

DCIO

Amundi Pioneer

David Castina

RK

Nationwide

Chris Castro

PΚ

Transamerica

Jerry Cicalese

Sentinel Benefits & Financial Group

Murray Cleaner

DCIO

Lord Abbett

Steve Cohen

DCIO

Federated Hermes

Mark Conroy

DCIO

Legg Mason



Bret Contreras

DCIO

Lord Abbett

Marty Courage

DCIO

Columbia Threadneedle Investments

Kevin Crotsley

DCIO

Victory Capital

Tim Curran

RK

Lincoln Financial Group

Jesse Daniels

DCIO

American Century

Matthew DeMarco

DCIO

PIMCO

Chris Donnager

DCIO

MFS Investment Management, Inc.

Jim Dowling

DCIO

Fidelity Investments

Wendell Epps

RK

Principal

Ryan Fay DCIO

John Hancock

Investment Management

Matt Fessler

RK

Lincoln Financial Group

Travis Gavinski

RK

Fidelity Investments

Michele Giangrande

DCIO

T. Rowe Price

Jerry Giovinazzo

RK

John Hancock

Glenn Godin

DCIO

American Century

Ruben Gonzalez

DCIC

Janus Henderson Investors

Matthew Grandonico

RK

Prudential

Liam Grubb

DCIO

Franklin Templeton

Ami Hindia

DCIO

Fidelity Investments

Ryan Hines

RK

John Hancock

Bryson Hopkins

RK

 $Lincoln\ Financial\ Group$

Howard Joelson

RK

John Hancock

Adam Johnson

RK

John Hancock

Matt Kasa

DCIO

Nuveen

Kris Krikorian

RK

Pentegra

John Kutz

DCIO

Legg Mason

Ben Leger

DCIO

Fidelity Investments

Amanda Lewis

DCIO

BlackRock

Mike Looney

RK

Principal

Aylmer Magill

DCIO

John Hancock Investment Management

Cara Magliocco

DCIO

Wells Fargo Asset Mgmt

Scott Maney

DCIO

Invesco

Mike Manosh

DCIO

Fidelity Investments

Seth Marsters

RK

The Standard

Todd Matlack

DCIO

Invesco

Sean Mayo

RK

CUNA Mutual Retirement Solutions

Chris McDavid

RK

John Hancock





2020 NAPA ADVISOR ALLIES



Congratulations to Ruben Gonzalez

Janus Henderson Senior Retirement Director

At Janus Henderson Investors, we believe connections enable strong relationships with clients based on trust and insight.

These connections are central to the value our Retirement Strategy Group provides: We connect you with dedicated resources, knowledge and support to help you more confidently navigate the evolving regulatory landscape, fulfill your fiduciary duty, and better serve your clients.

FOR MORE INFORMATION ON OUR DC RESOURCES, VISIT JANUSHENDERSON.COM/DC.

Top 10 DCIO Wholesalers



02. MARK CONROY DCIO Legg Mason

03.
RYAN FAY
DCIO
John Hancock
Investment Management

04. MATT KASA DCIO Nuveen

05.
BEN LEGER
DCIO
Fidelity Investments

06.
MIKE MANOSH
DCIO
Fidelity Investments

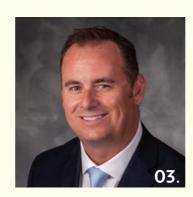
07.
KEVIN MORGAN
DCIO
JP Morgan

08.
BRIAN MUNN
DCIO
American Century

09.
KEITH NEAL
DCIO
MFS Investment
Management, Inc.

10.
CHRIS SLEGGS
DCIO
PIMCO



























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Rich Merson

DCIO

PIMCO

Eric Milano

DCIO

T. Rowe Price

Kevin Morgan

DCIO

JP Morgan

John Mueller

DCIO

Nuveen

Brian Munn

DCIO

American Century

Keith Neal

DCIO

MFS Investment Management, Inc.

Mark Needham

RK

John Hancock

Tyler Neenan

DCIO

BlackRock

Barry Newman

RK

Ameritas

Yen Nguyen

RK

Ascensus

Dan O'Shea

DCIO

Columbia Threadneedle Investments

Christy Poe

DCIO

American Century

Dustin Pugh

RK

Principal

Brandon Radach

DCIO

John Hancock Investment Management

Stewart Rauchman

RK

Lincoln Financial Group

Chris Schutz

Rk

Transamerica

Brandon Shea

DCIO

T. Rowe Price

Donny Sheinwald

RK

Lincoln Financial Group

Steven Silverman

DCIO

American Century

Chris Sleggs

DCIO

PIMCO

Jay Slusher

DCIO

PIMCO

Alison Smith

RK

 ${\sf Principal}$

Jarrad Smith

RK

Fidelity Investments

Chad Stewart

RK

John Hancock

Anthony Summers

RK

Lincoln Financial Group

Luke Szafranski

RK

Transamerica



DCIO

Legg Mason

Matt Tollison

DCIO

Neuberger Berman

Andy Tyndall

DCIO

MFS Investment Management, Inc.

Alan Valenca

DCIO

T. Rowe Price

Matt Vanaman

DCIO

PIMCO

Scott Ward

RK

John Hancock

Dave Waters

DCIO

Franklin Templeton

Jeff Weaver

DCIO

JP Morgan

Tina White

DCIO

 $Franklin\ Templeton$

Jonathan Wilkinson

DCIO

T. Rowe Price

Jason Yepko

RK

John Hancock

MJ Zayac

DCIO

AllianceBernstein

Dan Zibaitis

RK

John Hancock



2020 NAPA ADVISOR ALLIES

Transamerica congratulates our regional vice presidents for being recognized as Top 100 DC wholesalers by the National Association of Plan Advisors.

This year's Advisor Allies in the Recordkeeping category include:

- Chris Castro
- Chris Schutz (top 10)
- Luke Szafranski (top 10)



transamerica.com





Top 10 RK Wholesalers



Nationwide

02.
DENNIS BEAUDET

John Hancock

03.
TRAVIS GAVINSKI
RK

Fidelity Investments

04.

MATTHEW GRANDONICO

RK

Prudential

05. SETH MARSTERS RK The Standard

06. CHRIS MCDAVID

RK John Hancock

07. CHRIS SCHUTZ RK

Transamerica

08.
DONNY SHEINWALD
RK

Lincoln Financial Group

09. LUKE SZAFRANSKI RK

Transamerica

10. SCOTT WARD RK

John Hancock























We're honored to be recognized by the people we serve.

Congratulations on being named to NAPA's 2020 100 Top DC Wholesalers.



Alison Smith



Mike Looney



Wendell Epps



Dustin Pugh

We're proud to stand with you as you continue to find new ways to bring value to the financial professionals you work with and stay at the forefront of the industry.

Principal Financial Group closed the acquisition of certain assets of the Wells Fargo Institutional Retirement and Trust (IRT) business on July 1, 2019. The transition, transfer, and conversion of IRT business operations, employees, and clients will occur over the following 12–24 months. During the transition period, Wells Fargo Bank, N.A., a bank affiliate of Wells Fargo & Company, will continue to operate and service the IRT business for the benefit of Principal®, including providing recordkeeping, trustee, and/or custody services.

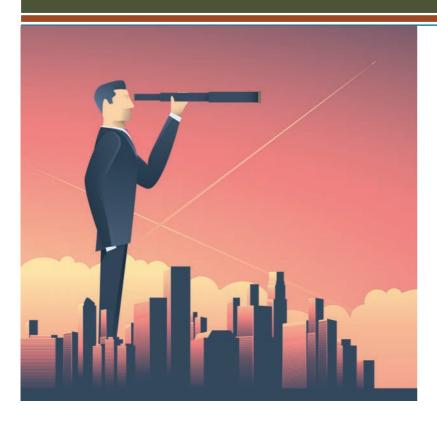
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LOOKING AHEAD TO THE FUTURE OF FIXED INCOME IN RETIREMENT SAVINGS PLANS. BY NEVIN E. ADAMS & JACK TOWARNICKY



n the wake of near-record volatility in equity markets during the first six months of 2020, retirement savings plan investment fiduciaries and the financial professionals that advise them are bound to be hyper-focused on how each Core investment performed. Both parties will also likely re-evaluate the adequacy of their Core investment structure. Increased due diligence is indeed warranted as the traditional roles of key asset classes continue to evolve to meet the shifting demographics of plan participants. Our inaugural 2020 Plan Investment Trends surveyi provides supporting evidence for these trends and reveals new insights about the role of fixed income in retirement savings plan investment menus.

Plan participant needs encompass a wide variety of risk, return and retirement needs. Retirement savings plan menus are generally designed to provide an array of investment options that enable participants to construct a suitable, well-diversified portfolio.

Fiduciaries have long understood the need for a diversified menu of investment options. However, regardless of plan size, plan provisions or diverse participant populations, the typical 401(k) plan has three to four times as many equity options as fixed income choices. Data from the Plan Sponsor Council of America's Annual Survey of 401(k) and Profit-Sharing Plans confirms that while the number of options has expanded over time, that ratio has remained unchanged through many market cyclesⁱⁱ:

ASSET "CLASS"

Among the fixed income options regularly incorporated in a Core investment structure, survey data show that advisors most frequently recommended stable value (84.3 percent), intermediate/core (74 percent) and multi-sector (55.9 percent). Stable value (67.4 percent) and bond index (61.1 percent) funds dominate actual plan investments. While core bonds remain an integral component in most plan menus, they may no longer be a "one-size-fits-all" solution given the historically low government yields around the globe and the new opportunities presented by wider credit spreads.

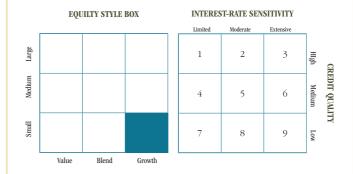
Our research also confirmed that advisor approaches differ in constructing the Core lineup and in selection of equity versus fixed income investments. Almost three fourths of investment professionals know and use a nine-quadrant style box to encourage diversification among equity investments. However, only forty percent of those investment professionals used a comparable style-box approach in presenting fixed income investments (see sidebar). This difference in approach may explain why there are fewer fixed income options and thus less diversification in the typical Core investment lineup. Limiting the number of fixed income options may hinder participants' ability to properly diversify their risk exposure in line with their return expectations and retirement goals.

Traditionally, fixed income investments have been used to reduce a portfolio's overall volatility to an acceptable level without significantly reducing returns. Not surprisingly, the vast majority of financial professional respondents said that they considered diversification in their recommendations. However, fewer than two-thirds of investment professionals (63.4 percent) confirmed that "correlation with equities" was an "essential" or a "preferred" criterion in recommending fixed income options.

Box "Set"

While nearly three-quarters (72 percent) of surveyed advisors confirm that they regularly incorporate a nine-quadrant style box^A when making recommendations for Core domestic equity investments, only 40 percent of advisors use the comparable style box when making recommendations for Core fixed income investments.

Equity boxes are determined using three organization size categories or capitalization bands (small, mid-side and large) as well as three investment styles (value, blend and growth).



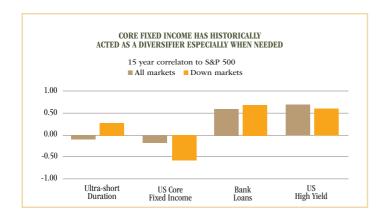
^aFixed income boxes are determined using static or dynamic evaluations of interest-rate sensitivity based on the bond fund's effective duration (limited, moderate, and extensive) as well as three levels of credit quality (high, medium, low).

Typically, stocks and bonds have a negative correlation—when stock prices rise, bond values fall, and vice versa. Indeed that is what financial professionals and participants expect—they buy fixed income to diversify their equity exposure. But the artificially low yields that followed the financial crisis of 2007-08 resulted in a proliferation of new products that take on more equity-like risk in their pursuit of higher returns—offerings that may not perform as expected. That's why it's important to look past the labels to know exactly what you're buying, and to understand how it conforms to the intent of the portfolio.

Indeed, for most investors, a negative stock-bond correlation is helpful because it enhances portfolio diversification. However, even when correlations are negative, the degree of correlation varies significantly among different forms of fixed income investments. In fact, despite its importance as a selection factor, "diversification" is the primary focus in only one of the four typical fixed income strategies; Core.

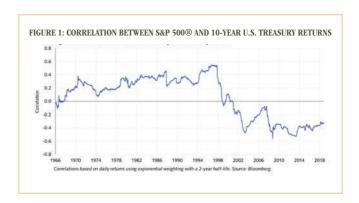
Typical Fixed Income Strategies

- Core capital preservation during a market downturn,
- Diversify low correlation to other fixed income investments,
- Risk-Adjusted Income equity-like fixed income, and
- Multi-sector fixed income investing.



CLOSING THE GAPS

Most participants are aware that stock returns outpace bond returns. However, while this has historically been the case, the difference may not be as great as some may think. Using more than 60 staggered 35-year intervals from 1900 to 1996, one study showed that stock returns, adjusted for inflation, were 5.5 percent a year. Comparatively, bonds had real returns of roughly 3 percent. The differences are even less once adjusted for risk – and, considering the buffering role fixed income typically plays in portfolio construction, the value received, certainly relative to the risk undertaken merits



attention. Intuitively, the more volatile the investment option, the more likely a participant may be to react, and to respond by selling low and buying high.

Actively managed funds, whether comprised of equities or bonds, tend to have higher fees due to greater trading costs and portfolio management expenses. Indeed, it has become something of a mantra, particularly in excessive fee litigation, to suggest that actively managed funds are imprudent where passively managed alternatives exist. While stock index funds are often touted as outperforming their actively managed counterparts, certainly in rising markets, the opposite is true when it comes to fixed income. Actively managed bond funds have done better than bond index funds during the one-, three-, five-, ten-, and twenty-year periods ending December 31, 2019. This applies regardless of the type of fixed income investment, intermediate-term, high-yield, or short-term. These indices tend to be overweighted in low-yielding government securities, in contrast to equity index offerings are typically weighted by market-cap, and thus dominated by the inclusion of stronger, better performing companies. Bond index funds are very narrowly defined and generally include only a small portion of the investable universe, while active managers have a broader toolkit from which to add value. These considerations are, unfortunately, often glossed over in configuring a participant-directed plan menu in favor of the perceived simplicity and efficiency of indexed offerings. In sum, all index funds are not created equal, and thus care should be taken to make sure that you understand what's "inside", and how it complements the remainder of the menu.

"STAYING" POWER

So, what do investment professionals consider when recommending fixed income options? Survey responses indicate risk tolerance (56.3 percent), retirement age (40.8 percent), and average age (38.3 percent). Incredibly, particularly in view of the diversity of participant investment practices, as well as participants' diverse needs and uses of plan assets, fewer than 25 percent of investment professionals also consider average tenure, salary, education level, presence of other benefits (such as a defined benefit

pension plan), gender, average account balance, and/or ethnicity/race.

In the past, investment recommendations may have been more focused on achieving minimum compliance and checking the fixed income box rather than anticipating participant investment needs at every stage of accumulation and decumulation. A participant's investment needs will vary during the accumulation stage, as a "term vested" participant, and during periods of decumulation as a "retiree". Needs may also change when a surviving spouse steps into the participant's shoes and continues participation. Many plans also permit a non-spouse beneficiary to continue the account for a specified period.

Given this fluid nature of participant needs, fiduciaries and investment professionals may want to examine participant demographics prior to the next review of investment performance and evaluate whether the Core investment structure continues to match participant needs. Today, an ever-increasing number of plan sponsors encourage participants to retain assets in the plan after separation. Other trends suggest a change in participant preferences such as an increase in asset retention post separation, deferred commencement until the age 72 required beginning date, and an increase in the use of installment payouts as a source of periodic income in retirement.

As the prevalence and amount of guaranteed retirement income from other sources declines (e.g., defined benefit pension plans, etc.), and as more participants age into retirement, a more diverse set of fixed income options may be needed for income generation.

SECURE "ACTS"

As plans are amended to incorporate changes permitted by the Setting Every Community Up for Retirement Enhancement (SECURE) Act^{vii}, most industry experts expect an even greater focus on retirement income, particularly the decumulation phase and outcomes. To meet these evolving trends, we expect to see more fiduciaries and investment professionals incorporate liability driven investment considerations, especially given the interest rate risks

highlighted by monetary and fiscal responses to COVID-19. We expect some fiduciaries will begin to use processes more frequently applied to defined benefit pensions to ensure their fixed income investments match participants' liability duration. For example, some plans may now choose to accommodate participant needs for longer-duration and/or inflation-protected fixed income investments.

POST-PANDEMIC ASSESSMENTS

Diversification as a form of risk management should be on the minds of all plan sponsors. A highly diversified portfolio will—on average—help participants achieve higher returns over periods of long-term investing.

Recently, fixed income investments have experienced several changes, including:

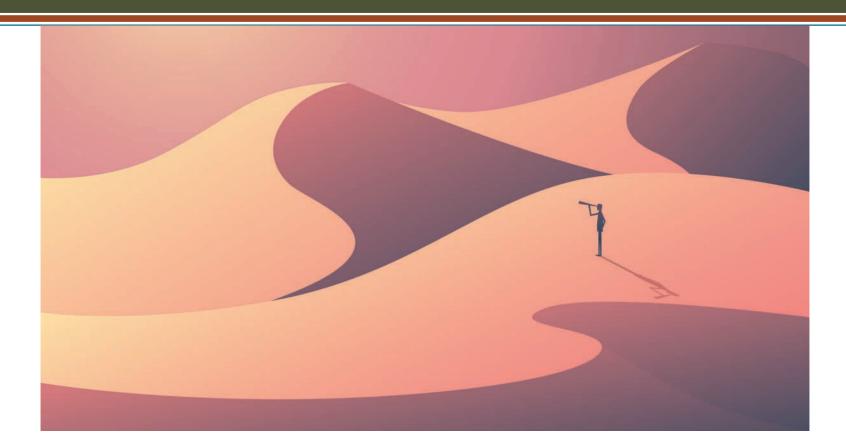
- Global central banks, including the Federal Reserve Bank, have pegged front-end rates at zero, which, combined with accommodative monetary and fiscal policy, have incentivized risk-taking.
- Long bonds (with a duration of more than 10 years) have given up their historically higher yields compared to shorter duration bonds, creating an almost flat yield curve, resulting in less incentive to own long bonds.
- Differences in risk have resulted in high-yield bond performance which more closely resembles that of an equity investment, as we often see in risk-off environments.
- Relatively low rates of inflation have depressed the demand for Treasury Inflation Protection Securities (TIPS).
- Miniscule returns on money funds, with nearly half of U.S. money funds generating zero- or 1-basispoint yields as of May 29, 2020, according to Crane Data.

Fiduciaries and investment professionalswill want to consider these trends in their reviews and may also want to incorporate an "attribution analysis" to identify why an actively managed bond fund's performance differs from that

TDF "Targets"

Due to record volatility in equity markets, many industry experts expect litigation to increase later in 2020 focused on fiduciary monitoring of Target Date Fund (TDF) investment performance. As in the wake of the 2007-09 financial crisis, participants most likely to be surprised may be those who were defaulted to a 2020 TDF (or its equivalent) and who expected to retire and/or commence payout at this time. Many 2020 TDFs – which increasingly target a "through" rather than "to" retirement date focus - had 50+ percent equity allocations.

While beyond the scope of this paper, as qualified default investment alternatives (QDIAs), and specifically target-date funds approach \$1 Trillion in plan assets, plan fiduciaries will want to be particularly attentive, both to the asset allocation compositions and underlying glidepaths that support the portfolio transitions of retirement savers, and likely with a growing sensitivity to the balance and utilization of fixed income alternatives.



of its passive benchmark (see sidebar - Attribution Analysis). As plan sponsors and investment professionals prepare for their 2nd Quarter 2020 investment reviews, a renewed focus on diversification may prompt changes in investment managers as well as the structure of the Core menu. Fixed income investments like the Bloomberg Barclays U.S. Aggregate Bond Index typically post top decile returns during periods of extreme market volatility. However, the same index has historically been outperformed by actively managed fixed income funds - falling to the bottom decile in past recessions.

LOOKING AHEAD – DEMOGRAPHICS ARE DESTINY

The 401(k) marketplace appears to be maturing concurrent with the retirements of the Baby Boom generationviii. Many Core investment structures have not kept pace with changes within participant populations, notably the reality that many workplaces now encompass five separate generational cohortsix. Not only are participants increasing their fixed

income exposure as they age, but the sustainability of their retirement assets depends on this rationalization.

Indeed, the retirement marketplace evolution, changing participant demographics, increased litigation, and a greater focus on retirement income and outcomes are all likely to prompt even greater, more lasting changes to the Core investment lineup.

What's more, these changes will necessitate thoughtful consideration of plan menus to ensure they not only support adequate portfolio diversification, but also contemplate a wide range of participant needs and circumstances.

In the months ahead, we expect to see more fiduciaries and investment professionals move towards an institutional approach to investment selection – a greater focus on outcome-oriented investments (target date funds, stable value, retirement income solutions, managed accounts), broader asset class diversification, and a thoughtful mix of active and passive investment choices. NNTM

FOOTNOTES

- i Plan Sponsor Council of America (PSCA), National Association of Plan Administrators (NAPA), Janus Henderson Investors (JHI) 2020 Plan Investment Trends Survey, June 2020
- ii PSCA Annual Surveys, 43rd (12/31/99), 51st (12/31/07) and 62nd (12/31/18).
- iii PSCA, NAPA, JHI Note ii, supra
- iv Journal of American Finance, "Long-Term Bonds vs. Stocks", 2004. See also: Historical Bond Versus Stock Performance From 1999 2019. "... Since the turn of the century, sometimes bonds have outperformed stocks. The 20-year total return of the Vanguard Long-Term Bond Index Fund (VBLTX) was 272%, compared to the return on the S&P 500 Index ETF (SPY) of 210%. Selecting different investments will yield different results. ..." Accessed 6/29/20 at: https://www.financialsamurai.com/historical-bond-versus-stock-performance/
- v D. Weil, Active Funds Are Winning (in Bonds, That is), Active managers have more flexibility to seek higher yields in high-yield and emerging markets, Wall Street Journal, 2/3/19, Accessed 6/29/20 at: https://www.wsj.com/articles/active-funds-are-winning-in-bonds-that-is-11549249561
- vi PSCA, NAPA, JHI, Note ii, supra. 38.2 percent of surveyed investment professionals encourage plan sponsors to encourage participants to retain assets in the plan after separation.
- vii Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Pub. L. 116-94, Section 401, part of the Further Consolidated Appropriations Act, 2020, 12/20/19.
- viii J. VanDerhei, EBRI. Among the 64 MM participants in the EBRI data base, 27MM have an identified age among that group, over one third are age 50 or older, and just over 1 million (~4%) are over age 65.
- ix Many plans now include participants from five generations Silent or Traditionalist (1925–1946), Baby Boomer (1946–1964), Generation X (1964–1981), Millennial or Generation Y (1982–1995), and Generation Z (born after 1995).

Advisor Focus is Crystal Clear

RETIREMENT PLAN ADVISORS ARE FORTUNATE TO HAVE WEATHERED THIS STORM WITH THE ABILITY TO CONTINUE TO DELIVER PRODUCTS AND SERVICES TO THE CLIENTS WHO NEED THEM.

By Steff Chalk

etirement plan advisors now conduct business amid a pandemic. Despite the incessant newsfeeds, updates and interviews with a plethora of experts, no one is certain if we are halfway into the pandemic, on the tail end–or still at the beginning.

Advisors and compliance departments have developed a new way of servicing clients, having adjusted the running of their day-to-day operations. Most retirement plan advisors have found prospecting cumbersome and in-person reviews challenging; however, Zoom, GoToMeeting and others have helped to fill the void during the prohibition on face-to-face meetings. Advisors have adapted activity levels to their environment, and many are operating their business from home. It is far from business-asusual, but having functionality is now considered a luxury. Retirement plan advisors are fortunate to have weathered this storm with the ability to continue to deliver products and services to the clients who need them.

What about Clients?

The pandemic is a time for cementing client relationships. As advisors and plan sponsors work through the pandemic, advisors should be familiar with every client's circumstances and unique needs. Each plan sponsor organization can now be pigeon-holed into one of three categories:

- going out of business;
- adjusting to new markets,

- new products or new strategies; or
- flourishing during the pandemic.

It is not difficult to comprehend and contrast the nuances of a firm that is destined for extinction in the span of three weeks in March versus a firm that faces orders they cannot fulfill over that same three-week period. One firm is furloughing long-term employees, while the other is frantically considering adding production facilities. As an advisor it is possible to help and assist either firm—but it is important that you know how to do so.

Plan sponsor clients in all three categories listed above are likely immersed in cash flow analysis, scrutinizing their customers to determine credit risk and potential losses. But for your plan sponsor clients, cash flow analysis extends well beyond their own customers during times like these. They are also engaged in another ongoing analysis: regularly deciding whether it makes sense to take advantage of the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL) monies being offered through the CARES Act. And, in varying degrees, all organizations have held discussions and then had to make made decisions on whether to move forward with a remote workforce, contract workers or a leaner staff. Each of these decisions will have an impact on facilities management and the possibility of a downsizing of office space the next time the lease is up for negotiation.

How Can the Advisor Help?

Each of the above–cash flow analysis, remote workers, CARES Act funding and lease negotiations–can be a "survival strategy" more than a conversation. The topics are important–but no fiduciary can forget the retirement plan.

Acting as a prudent expert during times like these can be an elusive obligation for plan sponsors. Pandemic or not, the fiduciary duties of prudence, care and loyalty are still the responsibility of each plan sponsor fiduciary. (As you may have noticed, law firms like Schlichter Bogard and Denton do not seem to have relaxed during the pandemic.)

As difficult as it is to keep plan sponsors on track 24/7, being an advisor is a rewarding profession. The retirement industry is one where we are all aware of our goals and objectives. While we are all conducting business differently today than we did last year, we are fortunate to still be in a position to assist plan sponsors in helping their plan participants retire. NNTM



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The DOL Strikes Back

WHAT WILL THE NEXT SAGA IN THE SERIES BE?

By David N. Levine

or three years, there was relative peace in the land of Department of Labor guidance. DOL investigations continued apace and memories of the 2015-2017 battles over the DOL fiduciary rule began to fade. Some in the retirement industry even began to believe that the future of guidance lay mainly at the SEC rather than the DOL.

Then came the summer of 2020. Starting in early June and running at a breakneck pace through August, the DOL struck back in what may be one of its most productive guidance periods ever.

In what began to feel like a standard weekly process, the department issued new guidance on a wide range of issues-from the "undead" fiduciary rule and a proposed new exemption bringing memories of the Best Interest Contract Exemption (BICE), to proposed guidance that could put an end to the yo-yo approach to guidance on environmental, social and governance (ESG) investing, to proposed guidance on lifetime income disclosures, to rules on how to register to offer a pooled employer plan (PEP).

What does all this mean for an advisor? Here's the crib sheet version.

Rise of the Fiduciary Rule

The pre-2016 fiduciary rule has risen from the dead and is formally being reinstated. This in itself is no big shock. However, as part of the reinstatement

of the fiduciary rule, the DOL introduced a new proposed exemption that would replace the highly adaptable transition relief issued in 2017 with an exemption that imposes potentially significant additional procedural requirements (and limitations) on advisors—especially as it relates to rollovers. In addition, the rule's preamble (the DOL's introduction and explanation) contains a lot of interpretation of what the "old" (now new!) fiduciary rule meant—and not everyone agrees with it.

Return of ESG

Over the past 26 years, since the Clinton administration, Democratic and Republican administrations have moved back and forth on their position on the role of ESG investing. In recent years, ESG has started to find increased traction in parts of the advisor community. However, in proposing guidance on ESG, the DOL added what could be seen as even broader "process steps" that could require more vetting by advisors and could directly impact the use of investment products where an advisor also plays a role.

Lifetime Income Disclosures Awaken

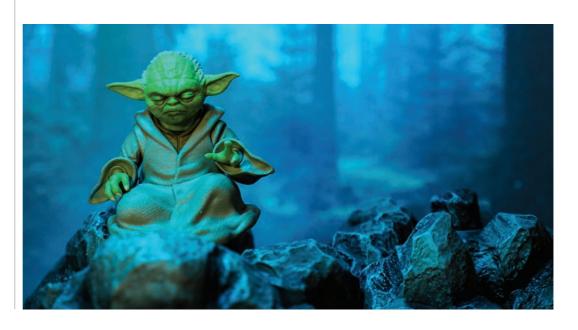
In 2013, the DOL published an advance proposal of guidance requiring lifetime income disclosures for individual account defined contribution plans. It was never finalized. In 2019, DOL was directed to provide guidance

on lifetime income disclosures as part of the enactment of the SECURE Act. The DOL has now proposed lifetime income disclosure guidance that provides many disclosure safe harbors—but not for all products. Notably, this safe harbor guidance also does not protect future growth in accounts. For advisors, this guidance structure may affect how they frame their wellness and decumulation advice in the future.

PEPs Awaken

After becoming law in the SECURE Act, pooled employer plans will "go live" in 2021. Many advisors are considering their role and potential offerings in this new part of the retirement ecosystem. The initial piece of guidance issued by DOL focused on how to register as a pooled plan provider (PPP). This proposed guidance requires significant disclosures and ongoing updates to DOL. Importantly, this registration is required before "marketing" a PEP. Advisors are now working rapidly to consider and adapt to this proposed guidance.

Much like Star Wars, the DOL's guidance during the summer of 2020 was a series of blockbuster events. However, the next trilogy or franchise reboot could be just around the corner. Regardless of whether there is a second Trump term or a Biden administration, additional change is likely in the wings—and advisors will need to adapt to it. NNTM





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Are HSA Investors Born—or Made?

EBRI EXAMINES WHAT DRIVES HSA ACCOUNT HOLDERS TO TRANSITION TO INVESTING.

Nevin E. Adams, JD



recent analysis finds that while only 6% of HSA account holders actively invest those funds–nearly two-thirds of those do so within the first year.

The analysis by the Employee Benefit Research Institute (EBRI) characterizes those early investors as "born," and while what distinguishes them from others is not inherently obvious, the report notes "there is some quality intrinsic to them that prompts them to invest their balances immediately."

A second group—those who transition to investing within the first three years of account ownership—are considered "made." These, EBRI report authors Jake Spiegel and Paul Fronstin say, might be the result of "some external force that prompts them to invest their balances," specifically things like developing a familiarity with HSAs, the result of an effective benefits education campaign, or having accumulated a balance that they feel comfortable investing.

However, the EBRI researchers say that among this group, the two most important characteristics they found to be associated with transitioning to investing are account tenure and balance. "In particular," they write, "our analysis shows that a one-year increase in account tenure is associated with a similar increase in the likelihood of investing as an account balance roughly \$3,250 larger."

As for the notion that people are simply waiting for their balance to grow, the report finds "only weak evidence to support" that hypothesis.

The report notes that only few account holders transitioned to being investors after more than five years of account ownership—a result that they say is suggestive of two conclusions. One, that long-tenured non-investors intentionally do not invest, either because they view their HSA as a spending vehicle, or they are concerned about losses. Secondly, since at least some long-tenured account holders transition to investing at some point, the

researchers suspect there might be some external force driving them to invest; perhaps employers' educational outreach efforts, personal research, or building up a sufficient cash buffer to cover short-term medical expenses, though they note that the "actual motivations" are undetermined at present.

Indeed, it seems fair to say that many, if not most, HSA education sessions are focused on their ability to address the short-term health care expenses of the year ahead. And, considering the role they have traditionally played on the benefits menu, that makes sense. I would suggest that the true answer to why so few seem to invest their HSAs appears twofold: First, that the vast majority of programs set a minimum threshold of \$1,000 (or more) to take advantage of those optionsalongside a working assumption in HSA education that you won't.

Secondly, since at least some long-tenured account holders transition to investing at some point, then the researchers suspect there might be some external force driving them—perhaps employers' educational outreach efforts, personal research, or building up a sufficient cash buffer to cover short-term medical expenses—though they note that the "actual motivations" are undetermined at present.

So, are HSA investors "born" or "made"? The answer at present, at least according to the EBRI research, appears to be some of both—but with many more "made" by time, education or circumstances.

Those of us with a retirement focus appreciate the long-term potential of the HSA, tout its "triple tax" advantages, and acknowledge both the potential impact of health care expenses on retirement finances, and the opportunities that an HSA offers in filling those retirement income "gaps" that "replacement ratios" never quite seem to fully contemplate.

As HSA education goes, that might be a good place to start in "making" more HSA investors.NNTM



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Cases in Point

COURTS MAY HAVE BEEN CONVENING VIRTUALLY, BUT LITIGATION FILING AND RESULTS, BOTH SETTLEMENTS AND ADJUDICATIONS CAME FAST AND FURIOUS DURING THE SUMMER. WHILE MONETARY SETTLEMENTS CONTINUED TO BE A CRITICAL ELEMENT, SETTLEMENTS *INCREASINGLY* INCORPORATED OTHER, "STRUCTURAL" REFORMS NOT ONLY IN PLAN DESIGN, BUT IN PROCESS AND PROCEDURE.

'Fast' Track?

Massive 401(k) suit settlement struck

In a remarkably short period, an excessive fee suit involving proprietary funds has settled for what may be the largest monetary settlement among those cases to date.

The suit-filed on Feb. 15, 2019 by plaintiff (and former McKinsey plan participant) Tushar Bhatia against McKinsey and MIO (MIO Partners, Inc., a subsidiary of McKinsey)—asserted claims for breach of fiduciary duty, prohibited transactions, and equitable restitution under ERISA. More specifically, he alleged that McKinsey adopted certain in-house funds for the plans (McKinsey & Company, Inc. (PSRP)



Profit-Sharing Retirement Plan and the McKinsey & Company, Inc. (MPPP) Money Purchase Pension Plan) that are managed by MIO, and not offered in any other retirement plan. He further alleged that the MIO funds performed worse than alternative, lower-cost investment options, and that MIO received more than \$20 to \$36 million per year in investment management fees in connection with these funds. Further, he alleged that the plan fiduciaries "failed to appropriately monitor and control the Plans' administrative expenses."

Oh, and the suit-filed on behalf of the plaintiff by Nichols Kaster PLLPii–also alleged that "each participant pays approximately \$95 per year or more for recordkeeping services (out of a total \$160 annual administrative charge)," which the plaintiff not only claimed was "... more than twice the reasonable market rate for similarly-sized plans (approximately \$30 to \$40 per participant)," but that "McKinsey improperly retains around 25% of the recordkeeping charge for itself."

But that, as they say was then—a mere 18 months ago. Now, under the terms of the proposed Settlement (*Bhatia v. McKinsey & Co.*, S.D.N.Y., No. 1:19-cv-01466, motion for preliminary settlement approval 8/10/20), McKinsey (and/or its insurers) will pay a Gross Settlement Amount of \$39,500,000 into a common fund for some 33,000 current and former participants.

The agreement notes that this recovery "...measures favorably," representing approximately 0.65% of the \$6.2 billion plan assets. The parties also note that represents approximately 22% of the total amount of fees that MIO received from the plans in connection with MIO Funds during the class period (\$180 million), and approximately 21% of the combined sum of these MIO fees plus the alleged recordkeeping excess (\$9 million).

Attorney Fees

Before that settlement is distributed, the Settlement Agreement requires that Class Counsel file their motion for Attorneys' Fees and Costs at least 30 days before the deadline

FOOTNOTES

¹ The suit alleged that the McKinsey plans were the only defined contribution plans in the country (out of more than 650,000 total) that have retained MIO as an investment manager and have utilized these MIO-managed portfolios. "No other plan uses these proprietary portfolios."

ii If that name sounds familiar, no wonder. They've represented plaintiffs in a wave of retirement plan litigation, including cases involving Oklahoma's BOKF NA, John Hancock, M&T Bank, MFS, SEI and Goldman Sachs, as well as suits involving Deutsche Bank Americas Holding Corp., BB&T and American Airlines. Nichols Kaster was also one of three litigation firms specifically noted in a recent property and casualty renewal template that has reportedly showed up in a number of cases.

for objections. That said, while something in the range of 25%-33% of the settlement seems to be the "norm," the agreement says that Class Counsel will seek no more than one-fourth of the Gross Settlement Amount in attorneys' fees. The settlement also says that the award to the named plaintiff "shall not exceed \$15,000." However, the settlement agreement notes that those "awards shall be determined by the Court in its discretion; the Settlement Agreement does not purport to establish a presumptively reasonable amount."

Speaking of distributions, the settlement outlines a plan of allocating the settlement-setting a Settlement Allocation Score for each quarter during the Class Period, "which shall be the sum of 15 points (if the eligible Class Member had an Active Account at the end of the quarter) plus 0.0020 points for every dollar invested by the eligible Class Member in MIO funds at the end of the quarter (up to a maximum of 300 points)," and then allocated among eligible Class Members on a pro rata basis in proportion to their Average Settlement Allocation Score across all quarters.iii

Other Actions

Now, in addition to the monetary settlement, McKinsey has agreed that:

- For a period of no less than three years, they will "retain an independent investment consultant to provide ongoing review of the investment options in the Plans, and review and approve any communications to participants regarding the Plans' investment options."
- For a period of no less than three years, all expense reimbursements by the Plans to McKinsey, MIO, or any other affiliated person or entity will be reviewed and approved by an independent

- fiduciary, who shall have final discretion to approve or reject reimbursements.
- Before the expiration of the current recordkeeping agreement for the Plans, McKinsey will issue a request for proposal for recordkeeping services for the Plans.

Finally, the agreement notes that, "as required under DOL regulations, the Settlement will be subject to review by an Independent Fiduciary as well as the Court, and that that Independent Fiduciary will issue its report at least 30 days before the final Fairness Hearing so that the Court may consider it."

We'll see what the court has to say...

--- Nevin E. Adams, JD

'Weight' Listed?

Great-West fends off excessive fee suit

An excessive fee suit brought by participants in several plans recordkept by Empower that used Great-West investment options has come to a conclusion.

The suit was actually two suits, brought by participants (Obeslo, Hall and Gorrell-Deyerle) in plans that had chosen Empower as recordkeeper, and investment options from Great-West and other fund complexes from which participants could choose. The funds are overseen by the directors on the Great-West Funds Board of Directors, a majority of whom are independent, and the Board engages in an annual "15(c)" process for reviewing and approving the fees charged to the funds. The funds are administered by GWL&A as part of its recordkeeping services, pursuant to an Administrative Services Agreement approved by the Board.

Plaintiffs claim that the fees charged by Defendants Great-West Capital Management, LLC (GWCM) and Great-West Life & Annuity Insurance Co. (GWL&A) violate § 36(b) of the Investment Company Act of 1940 (ICA), which prohibits fees that are "so disproportionately large that [they] bear[] no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining."

Case History

The parties here had been busy, following the initiation of the case on Jan. 29, 2016, and then on Aug. 22, 2016, and April 20, 2017, the Court granted Defendants' Motions to Consolidate this case with two related actions, producing a Consolidated Amended Complaint on Sept. 27, 2017. At that point, the Great-West/Empower defendants filed a motion to dismiss and a motion for summary judgment, the former was granted in partspecifically the claims of "various shareholder plaintiffs whom it found to lack standing because they could not demonstrate that they continuously owned shares throughout the pendency of this case."

However, the court denied the motion for summary judgment after a hearing on Sept. 27, 2018, finding that there was a genuine dispute of material fact as to whether Defendants' fees were so high that they could not have been the product of arms-length bargaining—in doing so, the court relied on opinions offered by Plaintiffs' expert, J. Chris Meyer—who we'll hear more about in a bit.

Then on Feb. 11, 2019, the defendants filed a Motion to Strike Meyer as an expert—but the court denied that motion, "concluding that weaknesses in Mr. Meyer's qualifications and conclusions were proper subjects for cross examination, but they did not preclude him from testifying."

And then, finally the Court held an 11-day bench trial that included 13 fact witnesses and three expert witnesses, as well as four plaintiffs—each of whom

^{III} Current Participants will have their Plan accounts automatically credited with their share of the Settlement Fund, while Former Participants will be required to submit a claim form that will allow them to elect to have their distribution rolled over to an individual retirement account or other eligible employer plan, or to receive a direct payment by check.

"The suit was actually two suits, brought by participants (Obeslo, Hall and Gorrell-Deyerle) in plans that had chosen Empower as recordkeeper, and investment options from Great-West and other fund complexes from which participants could choose."

testified that they had invested in Great-West Funds through employer-sponsored retirement plans or individual retirement accounts—and C. Michael Pfister, who is a trustee of the Duplass Plan.

The Issues

The ruling (Obeslo v. Great-West Capital Mgmt. LLC, 2020 BL 297664, D. Colo., No. 16-cv-00230, 8/7/20) by U.S. District Judge Christine M. Arguello in the U.S. District Court for the District of Colorado, notes that the ICA "regulates investment companies, including mutual funds," and imposes a "fiduciary duty" on investment advisers with respect to the compensation they receive for providing services to mutual funds. That said, she explained that the U.S. Supreme Court has held that, in order for an investment adviser "to face liability under § 36(b), [the] adviser must charge a fee that is so disproportionately large that it bears no reasonable relationship to the services rendered and could not have been the product of arm's length bargaining." Moreover, the "essence of the test is whether or not under all the circumstances the transaction carries the earmarks of an arm's length bargain," and that, as a result, "the benchmark for reviewing challenged fees is 'the range of fees that might result from arm's-length bargaining."

In addition to establishing a breach of fiduciary duty, plaintiffs must prove that "as a result of the breach, there was an injury or damages; and . . . [t]he amount

of actual damages related to the breach of fiduciary duty that occurred."

The Decision

"The Court finds that Plaintiffs failed to meet their burden of proof with respect to all of the *Gartenberg* factors. Additionally, Plaintiffs' claims fail for the independent reason that they did not establish that any actual damages resulted from Defendants' alleged breach of fiduciary duty."

So, how did Judge Arguello get to that conclusion? Well, she adopted and incorporated the defendants' "proposed findings of fact and conclusions of law with regard to the *Gartenberg* factorsiv and surrounding circumstances," explaining that those findings of fact were "well-supported by the record and their conclusions of law are proper with respect to each factor."

She cited "persuasive and credible evidence that overwhelmingly proved that their fees were reasonable," noted that both the advisory and administrative fees were within the range of comparable funds, that their profits were within the range of their competitors, and that they provided "extensive, high-quality services in exchange for their fees."

She also rejected assertions that the plaintiffs were entitled to recover advisory fees that exceeded the average fees of the top 10 "large market" competitors, while also explaining that charging a fee that is above the industry average doesn't violate

the ICA. Judge Arguello also noted that the legislative history of the ICA makes clear that "lost gains" aren't "actual damages" recoverable under the statute.

In short, she noted that "the Court finds that Plaintiffs failed to prove by a preponderance of the evidence that Defendants breached their fiduciary duties. Moreover, even though they did not have the burden to do so, Defendants presented persuasive and credible evidence that overwhelmingly proved that their fees were reasonable and that they did not breach their fiduciary duties."

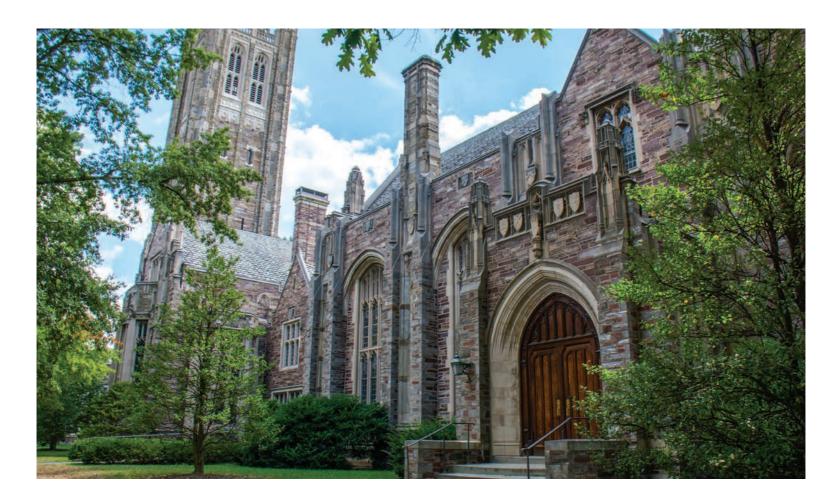
The Damages

As for damages-the court ruled that the plaintiffs "failed to meet their burden with respect to damages" at trial. And that was through the testimony of J. Chris Meyer (remember him?) who, the court noted "was thoroughly discredited on cross examination." While the decision listed a number of shortcomings in his background, current knowledge, and conclusions, the decision concluded by explaining that there were "abundant examples of other weaknesses and inconsistencies in Mr. Meyer's testimony which the Court will not list in detail. Suffice it to say, the Court found Mr. Meyer's testimony to be non-credible. Moreover, in addition to the general inadequacy of his testimony, his specific theories regarding Plaintiffs' alleged damages are legally flawed."

The decision continued, "When those flaws are juxtaposed with

FOOTNOTES

in case you were wondering, these factors are: the Board was independent, qualified, and it engaged in a robust process in approving Defendants' fees, the Advisory Fees and Administrative Fee were within the range of comparable funds, the plaintiffs failed to quantify any alleged economies of scale or show that those economies were not adequately shared with shareholders, defendants' profits were within the range of their competitors, defendants provided extensive, high-quality services in exchange for their fees, and plaintiffs failed to identify any significant fall-out benefits that Defendants acquired.



the inadequacy of his testimony overall, the Court concludes that his opinions are entitled to no weight. As a consequence, the record is devoid of any evidence that suggests that Plaintiffs sustained actual damages as a result of the fees that Defendants charged."

Defendants, therefore, are entitled to judgment in their favor on two independent grounds. First, Plaintiffs failed to meet their burden of proof with respect to their claim that Defendants breached their fiduciary duties under §36(b) of the ICA. Second, Plaintiffs failed to meet their burden to prove that they suffered actual damages due to Defendants' conduct.

And with that Judge Arguello entered judgment in favor of the defendants, and ruled that they could recover their costs.

In addition to Schlichter Bogard and Denton LLP, Peiffer Rosca Wolf Abdullah Carr & Kane APLC, and Schneider Wallace Cottrell Konecky Wotkyns LLP represented the plaintiffs. Milbank LLP represented the defendants.

— Nevin E. Adams, JD

College 'Course'

Princeton plaintiff settles for cash and 'therapeutic' relief

The terms of a 403(b) excessive fee suit have come to light—and it includes some "therapeutic or structural relief."

The proposed settlement (it must still be approved by the court) has been struck between the fiduciaries of the Princeton University plan based on a suit filed nearly three years ago by plaintiff Elysee Nicolas individually and as representative of a class of

participants and beneficiaries of the Princeton University Retirement Plan and the Princeton University Retirement Savings Plan. The suit alleged that the plan fiduciaries "... selected and retained as the Plans' investment options investment funds and insurance company annuities that caused the Plans to incur far higher administrative fees and expenses relative to the size and complexity of the Plans."

The suit also alleged that the defendant "failed to engage in a prudent process for the evaluation and monitoring of amounts being charged for administrative expense, allowing the Plans to be charged an asset-based fee for recordkeeping calculated in a manner that was completely inconsistent with a reasonable fee for the service and was grossly excessive for the service being provided," as well as other issues."

FOOTNOTES

V Consistent with similar suits, the plaintiffs here also took issue with the selection of the Teachers Insurance and Annuity Association of America and College Retirement Equities Fund (TIAA-CREF), TIAA Traditional Annuity as the plan's principal capital preservation fund, as well as the CREF Stock Account (which comprised more than 20% of the plans' assets), and the TIAA Real Estate Account, asserts that as a "jumbo" plan, the plan should have been able to negotiate a better deal, including the negotiation for recordkeeping services on a per participant basis rather than on asset-based fees, and their decision to use multiple recordkeepers (here TIAA-CREF and Vanguard), claiming that "the inefficient and costly structure maintained by Defendant has caused Plan participants to pay and continue to pay duplicative, excessive, and unreasonable fees for Plan recordkeeping and administrative services."

As for that settlement, the university agreed to pay \$5.8 million in cash. More specifically, under the terms of the Settlement Agreement (Nicolas v. Trs. of Princeton Univ., D.N.J., No. 3:17cv-03695, motion for preliminary settlement approval 7/28/20), within fifteen (15) business days after the Court enters a Preliminary Approval Order, the University will pay \$100,000 of the Settlement Amount to an account identified by Class Counsel to cover the initial Settlement Administrative Expenses, including the costs of sending Notice to the Settlement Class, and within 15 business days after complete settlement approval to deposit the rest into that Settlement Account.

Therapeutic Relief

As for that "therapeutic" relief, under the terms of the settlement, Princeton agrees:

- that it will not increase the Plans' recordkeeping fees for a period three (3) years from the date of entry of the signing of the Settlement Agreement, and will use "commercially reasonable best efforts" to continue to attempt to reduce recordkeeping fees;
- to conduct a Request for Proposal process for recordkeeping-administrative services and outside independent investment consulting services to the Plans;
- by the date of the Complete Settlement Approval, Defendant's Benefits Committee and Investment Committee will amend their respective charter and/or operating documents, to the extent necessary, to adopt and follow best practices for 403(b) plans, as described by the Plans' current independent investment consultant;
- for a period of five years following Complete Settlement Approval,

Defendant's Investment Committee will meet not less than four times per year with the Plans' current independent investment consultant to evaluate expense and performance of each investment option in the Plans, to review and consider changes to the investment option line-up, to review Plan costs and expenses, and to investigate and pursue further strategies to reduce Plan costs, and report results to the Benefits Committee;

- for a period of five years following Complete Settlement Approval, Princeton's Benefits Committee will meet with the Investment Committee and the independent investment consultant once a year to evaluate the expense and performance of each investment option in the Plans, to review and consider changes to the investment option line-up, to review administrative and recordkeeping costs of the Plans, and to investigate and pursue further strategies to reduce Plan costs;
- by July 2020, Princeton will review the TIAA collateralized loan program with, but not limited to, its independent investment consultant and Plans' counsel, terminating and replacing that loan program by March 2021, if not sooner, if it is found that it should be replaced based on that review or if TIAA ceases to offer it:
- Princeton's current independent investment consultant will continue to evaluate the CREF Stock Account and the TIAA Real Estate Account to determine whether they continue to be appropriate investment options in the Plans; and
- Princeton will "correct the Plans' disclosures to Plan participants and

beneficiaries to identify the CREF Stock Account as an investment that invests in U.S. and non-U.S. equities following Complete Settlement Approval."

Other Elements

The settlement agreement also calls for:

- a Plaintiff's incentive/service award (to be paid from the settlement amount) not to exceed \$7,500; and
- Class Counsel to "petition the Court for an award of attorney's fees not to exceed one-third (1/3) of the Settlement Amount, plus costs."

Finally, in an interesting development, for the members of the Settlement Class who no longer have an account in the plans as of the time of distribution, the distribution will be made via a tax-qualified distribution process, which will transfer those funds to Retirement Clearinghouse LLC^{vi}-to be deposited into safe-harbor automatic rollover individual retirement accounts. It was the second of these excessive fee suits that Retirement Clearinghouse LLC supported, following Brown University.

College 'Courses'

For those tracking these suits, of the roughly 20 universities that have been sued over the fees and investment options in their retirement plans since 2016, there have been eight (now nine with Princeton) announced settlements; the largest to date with MIT, for \$18.1 million, and prior to that Vanderbilt University, which in April 2019 announced a \$14,500,000 cash settlement, as well as a long list of process/ procedural changes that were, as with the MIT settlement, also to be monitored over a three-year period. NNTM

— Nevin E. Adams, JD

^d A year ago, the Department of Labor approved the Retirement Clearinghouse's request for relief from ERISA's prohibited transaction restrictions to receive fees in relation to its pioneering auto-portability program. Their auto-portability program was recently adopted by Alight.



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THOUGHT-PROVOKING CONTENT

During the second quarter a number of white papers were published on a variety of thought-provoking topics of interest to retirement plan professionals and those they support. This issue we're featuring insights on the "forgotten" participant, the impact of financial wellness, the evolution of retirement investing, and the top five concerns of plan sponsors dealing with the impact of the COVID-19 pandemic. We encourage you to check these out at the links below.



THE POWER OF FINANCIAL WELLNESS

Risk is often thought of as the chance an investment will lose money. You may consider creating a diversified asset allocation for your retirement account to help you balance risk to help you reach your future financial goals. In general, the more risk an investment carries, the greater the potential for a higher return. Investments with less risk generally offer lower potential return.

Find out more at https://s3.amazonaws.com/www.adpretirementmarketing.com/landing-pages/99-5246/0420/99-5246-0420
ADVLP1 Financial Wellness LP.html



ALLIANCEBERNSTEIN CITS: WHAT'S OLD IS NEW AGAIN

Collective investment trusts continue to gain momentum in DC plans. The reasons are simple.

The use of collective investment trusts (CITs) is on the rise. In 2019, it was estimated that total CIT assets were \$3.1 trillion. Plan sponsors and their advisors like CITs because they combine the cost savings of a separately managed institutional account with the convenience of a mutual fund. That may explain the growth of CITs versus mutual funds in defined contribution (DC) plans.

More at https://www.alliancebernstein.com/library/whats-old-is-new-again.htm



AMERICAN CENTURY THE MAKING OF A GLIDEPATH

A plan's reliance on target date funds underscores the importance of having a disciplined approach to glide path construction. The central defining characteristic of a target-date solution is, arguably, its glide path—the level, slope and landing point of the equity allocation over the life of the target-date series.

In this paper, we describe the process and philosophy that underlie the creation of our target-date solutions, including One Choice® Target Date Portfolios and target-date collective investment trusts.

https://ipro.americancentury.com/content/ipro/en/insights/asset-type/multi-asset/iuo/the-making-of-a-glide-path.html

CONTENT MARKETING





















INVESCO FIDUCIARY PROTECTION AND **BENEFITS OF RISK-BASED STRATEGIES**

The inclusion of risk-based strategies in a defined contribution plan investment menu helps address participants' investment preferences and provides additional protections for fiduciaries.

More at https://www.invesco.com/us- rest/contentdetail?contentId=31cfb 4570e380710VgnVCM1000006e 36b50aRCRD&dnsName=us& <u>audienceType=inst</u>



JOHN HANCOCK **ENGAGE MORE PARTICIPANTS**

According to advisors, participant engagement is the skill plan sponsors value most. These steps can help set your strategies and practice apart.

More at https://assets.jhnavigator. com/managed_assets/itemFiles/usa/ Six ways to optimize your 401(k) participant engagement programs.pdf



NUVEEN **INCOME: THE** 'NEW' OUTCOME

Academics and retirement industry experts alike have long advocated the inclusion of retirement income options in defined contribution plans. How might the SECURE Act be transformative in providing viable solutions to this critical aspect of retirement planning?

More at https://issuu.com/usaretirement/ docs/ nntm sum20 complete rs/6



WHOSE DATA IS IT, ANYWAY?

Recent retirement plan fee litigation may alter how providers market products to participants.

http://www.pardot.securian.com/ParticipantDataLitigationPaper94638



MORE THAN ASSET **PROTECTION**

Investors in State Street's 2020 target date fund accumulated more in the last 10 years compared to three large "to retirement" managers.

More at https://www.ssga.com/ic/ insights/pre-retirees-need-assetprotection?WT.mc_id=pe_tdf_napa-preretirees-need-more us n text n n n aug20



T. ROWE PRICE **EVOLUTION WITH PURPOSE**

Learn how an informed, researchbased approach can help lead to better retirement outcomes.

More at https://bs.serving-sys.com/ serving/adServerbs?cn=trd&mc= click&pli=29844370&PluID=0&ord= [timestamp]&pcp=\$\$[pub_token]\$\$

Polling Places

DURING THE COURSE OF THE COVID-19 PANDEMIC, WE CONDUCTED A SERIES OF WEEKLY NAPA-NET READER POLLS ABOUT THE WAYS IN WHICH INTERACTIONS WITH PLAN SPONSORS, PARTICIPANTS, AND COLLEAGUES MIGHT CHANGE.

By Nevin E. Adams, JD

n early June we asked DC wholesalers about the ways in which interactions are likely to change in the future. As for the frequency of communication, in the wake of the pandemic, wholesalers were more inclined to be on the "more than usual" side than advisors, but, asked how they thought the frequency of communication would change, they said the frequency would be:

35% - More than usual.

29% - About the same as usual.

23% - Less than usual.

12% - Way more than usual.

1% - Much less than usual.

How Will that Communication Occur?

90% - via video call/conference.

87% - via phone call.

85% - email.

37% - social media.

3% - in person.

And for the wholesalers, while email was certainly common, it wasn't the most frequent medium:

37% - via phone call.

33% - email.

30% - via video call/conference.

What do wholesalers consider to be an appropriate length for a video/Zoom call?

64% - 30 minutes.

21% - 15 minutes.

10% - 45 minutes.

3% - 60 minutes.

2% - <15 minutes.

Not surprisingly, asked to cite the most common timing, nearly three-quarters (72%) picked 30 minutes, with 15 minutes (13%), 45 minutes (11%) and 60 minutes (4%) rounding out the responses.

Our wholesaler respondents had some additional observations on the subject:

"If it's a formal PM/business type call we are trying to be concise. 20 minutes going through the formal presentation, 10 minutes Q&A and 30 minutes max. The Q&A can run over but we commit to a half hour and that seems to work well."

"Much of our talk-time has been centered around the "events of the day/week," so it has taken a bit longer (appropriately so) to steer the conversation towards some discussion of the business at hand"

"30 mins max... but trying to have 10-20 minute calls is key."

"30 minutes if is a general Discovery/Partnership meeting, 45 minutes if it's specific to a product/ opportunity/etc."

"I would actually say that 20-25 minutes is ideal. You have enough time to say pleasantries and then get to the heart of your conversation."

"Depends on the meeting. check in conference call could take 30 minutes. A product Zoom meeting would take about 45 minutes and a presentation (Finals or a fact finder) usually takes an hour."

"It depends on the subject of the call. Technical discussion about plan design can be longer and sales strategies and marketing can be shorter." "Zoom can be exhausting, I think folks will be more willing to spend longer time on a phone conversation."

"We budget 30 minutes but there tends to be more demand and the calls tend to run over (based on the clients questions). Example: I had a "30 minute" call with a PM last week with a CFA at a large consultant and we had 35 minutes of Q&A but it was driven by the advisor so taking an hour was great—they had many questions and appreciated the extra time."

"Q and A often takes us into OT."

"Our Zoom/video interactions have often gone longer than anticipated. People want to talk and share their stories, findings, and feelings."

"The length of time can vary based on if it's a national call with a featured speaker, or if it's just a wholesaler to advisor call. If it's a national call, those tend to take an hour, where a local wholesaler call can, and should be much less. So to answer what is most common depends on what type of call it is."

"Video prevents multitasking and makes the calls more focused. It shortens calls."

The New Normal?

As for how wholesalers thought we'd emerge from this period:

66% - Less in-person.

64% - More video conferencing.

41% - More phone calls.

23% - More emails.

As with the advisor respondents, just 1 in 10 thought we'd be "pretty much back to 2019 levels," and only about 9% thought there would be more inperson meetings.

Other Comments

In our industry it is a guarantee that there will be market cycles that fluctuate in two directions up and down, these changes will affect our business. In this moment I feel good because of



the business and partnerships I have built to support the business regardless of the market and external conditions.

Childcare is a challenge so that is making work from home difficult.

Personally great-I have 3 kids in school. It is a blessing to have so much family time after 20 years of being a road warrior. We are making the most of it, trying to get out and golf/bike ride/hike. I am really enjoying the time with the wife and kids. Dinner at home EVERY NIGHT!! Professionallygood but it's tougher. The positives-I feel like I have bonded with my clients going through this shared experience. It took a month to get in a groove but now I am calling/contacting my top relationships and having great conversations. It's hard to not have the in-person contact and we are all tired of the quarantine but I am coming to grips with the likelihood this will be the new normal at least until 2021. The negatives-sitting

at my desk most of the day making calls is very draining, especially the internal Zoom calls! I need to take breaks or I crash.

With a 10-month-old at home, some days are definitely better than others. That said, I have been very thankful to have this time at home with my wife and son that I otherwise would not have.

It has been nice to have a few moments at home with my family.

I don't know that I've ever been busier. Not having 20 to 30% of my day spent traveling between meetings has put the full day to use.

After 20 years of traveling 3-4 days a week it has been a shock to be grounded.

Bring your kids to work months has been challenging.

Things are starting to loosen up and people are moving forward on some plans that were on hold.

My activity levels are at an historic high; I am sleeping on my own bed and not traveling. I like this approach to wholesaling and see me doing it more frequently after we are permitted to travel.

Sales have certainly slowed, but conversations are beginning to pick back up a bit.

I'm doing fine, but struggling (a bit) when it comes to feeling like I am actually moving the needle/selling something. I typically have great conversations, but it seems that advisors/ consultants are not all that interested in hearing about specific funds and how they performed during this period. Seems like they want to kick that can down the road a bit, until a later date in time. I can understand that, given that their clients are most focused on business continuity-and not how well their funds performed during this period.

"I'm grateful for my family's health, financial security, & positive attitude. I'm lucky to work for an organization that has always taken a long-term view on this business, and which affords me job security, and provides my clients with a consistent experience."

I am lucky. Net and gross sales have been good but I am not confident this will last unless we all get back to work quickly. I do not trust the government knows what they are during and it is an election year. All is crazy right now, just hoping to survive.

Considering my relative position in the world–I work for a great company that is doing its best to care for its employees. My family is safe and healthy. My finances are fine. I would obviously like to get back to normal–but it's hard to complain when so many others have so many more problems.

It's tough. Advisors are looking for new ideas. I think with the SECURE Act and what we are seeing from new products with group plans there is new opportunity which has been great. I think for 401k business company to company it has been extremely hard right now.

Without traveling, the days have started to merge together! Especially last week with the holiday. I could swore it was Tuesday on Thursday for a few hours

From a professional standpoint, things are going as well as expected. From a personal level—I had to postpone my wedding!

Better than expected and certainly grateful for the opportunity to help instill confidence and perspective for a portion of their world. It could always be worse.

Territories can be very large geographically, and it's

important to be cognizant that my local experience may be very different from our clients and their sponsors/participants. It's crucial to listen, be humble, and connect with clients according to their personal experiences.

I am thankful for my role in helping financial advisors assist business owners and participants plan for retirement and know that eventually we will be back to business.

Considering what many frontline workers have endured, staying home and social distancing is pretty easy.

Advisors are taking time to speak longer about themselves. It's a great time for relationship building! Also, I have requested all of my advisors on LinkedIn so it has allowed time to further build relationships. The silver lining is while I may be tethered to the laptop, I am getting more done as I am not navigating freeways/ stuck in traffic where I would waste up to 4 hours per day in some instances. Working from home has been more efficient in some ways. I am doing a lot of work with my RK partners actually. That has been fruitful.

Hills and Valleys. Some days I have a lot of correspondence and interaction with Advisors and some days its slower. It's case specific and depends on the advisor.

Being in New Jersey, we will be the last or second last to open. Dipping into savings.

Prior to COVID, many of my meetings with advisors/consultants have been via conference call so there hasn't been a massive disruption to my overall business.

Prefer face to face meetings. I feel less effective on the phone & webinars.

I've developed a routine now working from home and I have found a level of comfort with that. I also do not miss the commute to and from the office every day which is a nice bonus. I also I feel I've been more productive over these last 11-12 weeks; there aren't as many distractions at home as there are in the office.

The world is evolving as expected and we can make the most of it. I changed my latitude earlier this year and it has been the best decision and lucky timing.

Have always worked from home so other than travel firing on all cylinders.

My firm has put an emphasis on staying the course and taking great care of our clients first. The only way we can do that is if we have the proper staff to continue to service. We are very fortunate to have not had any layoffs and have been reassured that we are a strong company. I believe that puts everyones' mind at ease and we can continue to give exceptional service to our clients who are afraid in their own right. They rely on us to help guide them through this tumultuous season.

Thanks to all who participated in this special wholesaler-focused Reader Poll! NNTM

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Financial Finesse Financial Fitness for Life

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intellicents Invest Titan Invesco IRON Financial ISS Market Intelligence

Ivy Investments J.P. Morgan Asset Management Janus Henderson Investors

John Hancock Retirement Plan Services Judy Diamond Associates (ALM)

July Business Services Karp Capital Management

John Hancock Investments

KerberRose Retirement Plan Services

Kestra Financial LAMCO Advisory Services

Latus Group, Ltd.

Lazard Asset Management

LeafHouse Financial Advisors Lee CPA Audit Group

Legacy Retirement Solutions, LLC Legacy 401k Partners, LLC

Legg Mason & Co. LLC

LifeYield, LLC

Lincoln Financial Group

Lockton Financial Partners, LLC

Lord Abbett LPL Financial

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MassMutual Retirement Services Matrix Financial Solutions

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Reilly Financial Advisors

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Retirement Learning Center

Retirement Plan Advisors Ltd.

Retirement Plan Consultants

Retirement Planology

Retirement Resources Investment Corp.

RiXtrema, Inc.

Rogers Wealth Group, Inc. Roush Investment Group RPS Retirement Plan Advisors

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Smith Bruer Advisors Soltis Investment Advisors

Spectrum Investment Advisors Stadion Money Management

State Street Global Advisors Steadfast Financial Solutions

Stifel

Stiles Financial Services, Inc. Stolzer Rothschild Levy LLC

StratWealth Streamline Partners

Sway Research, LLC T. Rowe Price

TAO Investments Hawaii

Taylor Wealth Solutions Teros Advisors The Entrust Group The Pangburn Group

The Standard The Waterford Group

Thornburg Investment Management Three Bell Capital LLC

TIAA

Touchstone Retirement Group

Transamerica TRAII

Trinity Advisors Trutina Financial

Twelve Points Retirement Advisors Ubiquity Retirement + Savings

UBS Financial Services Unified Trust Company Vanguard

Vestwell Victory Capital

Virtus Investment Partners Vita Planning Group VOYA Financial

vWise, Inc. WealthConductor LLC (IncomeConductor)

Wells Fargo Advisors Westminster Consulting WhaleRock Point Partners Wilmington Trust

Wilshire Associates Wintrust Wealth Management

Wipfli Hewins Investment Advisors, LLC ZUNA LLC

*As of September 18, 2020

Regulatory Review

WHILE MOST THE INDUSTRY WAS WORKING FROM HOME, REGULATORY AGENCIES—NOTABLY THE LABOR DEPARTMENT—WERE CRANKING OUT NEW PROPOSED REGULATIONS AND GUIDANCE, RANGING FROM HELP ON THE SECURE AND CARES ACTS, AS WELL AS CONTROVERSIAL PROPOSALS ON ESG INVESTMENTS AND A NEW FIDUCIARY RULE WITH A DISTINCT "BACK TO THE FUTURE" FLAVOR—ALL OF WHICH COULD BE VULNERABLE TO A CHANGE IN ADMINISTRATIONS.

Fiduciary Rue?

DOL Unveils New Fiduciary Rule Proposal

In late June, the Labor Department finally unveiled its much anticipated fiduciary rule, though it's a mixed bag and has a certain "back to the future" feel, along with some new implications for recordkeepers, Pooled Employer Plans and rollover advice.

Titled "Improving Investment Advice for Workers & Retirees," the proposal—and it's still just that at this point—proposes a new prohibited transaction class exemption that would be available for investment advice fiduciaries.

As part of what it describes as a "principles-based approach," the proposal defines retirement investors as plan participants and beneficiaries, IRA owners, and plan and IRA fiduciaries. The Labor Department notes that under the new exemption, financial institutions and investment professionals could receive a wide variety of payments that would otherwise violate the prohibited transaction rules, including but not limited to commissions, 12b-1 fees, trailing commissions, sales loads, markups and mark-downs, and revenue sharing payments from investment providers or third parties.

Rollover Clarity for Plan Advisors

The proposed exemption would allow investment advice fiduciaries under ERISA to receive compensation, including as a result of advice to roll over assets from a plan to an IRA that would otherwise violate the prohibited transaction provisions of ERISA and the Code.

The rollover issue had loomed large as a concern for retirement plan advisors. "We appreciate the Department including plan fiduciaries in their exemption for rollover transactions," commented Brian Graff, CEO of the American Retirement Association and Executive Director of the National Association of Plan Advisors. "For many participants, the plan advisor is the only advisor they have ever met, and plan fiduciaries are comfortable complying with ERISA's fiduciary requirements."

Significantly, the Labor Department acknowledges that advice to take a distribution of assets from an employee benefit plan is, in fact, "advice to sell, withdraw, or transfer investment assets currently held in the plan, and therefore may be covered by the five-part test."

Five-Part "Fix?"

That's right-1975's five-part test¹ -effectively restored by the 5th Circuit's 2018 decision vacating the previous fiduciary rule-is front and center in the new proposal. A financial institution or investment professional which meets this five-part test and receives a fee or other compensation, whether direct or indirect, is an investment advice fiduciary under ERISA and the Code. With regard to rollovers, all prongs of the fivepart test must be satisfied for a financial institution or investment professional to be an investment advice fiduciary when making a rollover recommendation. The Labor Department notes that under the proposal, "status as an investment advice fiduciary will be informed by all the surrounding facts and circumstances."

More specifically, as it relates to one of the five parts, the Labor Department says that the determination of whether there is a mutual agreement, arrangement or understanding that the investment advice will serve as a primary basis for investment decisions "is appropriately based on the reasonable understanding of each of the parties, if no mutual agreement or arrangement is demonstrated."

However, the Labor
Department goes on to caution
that, "written statements
disclaiming a mutual
understanding or forbidding
reliance on the advice as a
primary basis for investment
decisions are not determinative,
although such statements may be
considered to determine whether
a mutual understanding exists."

Deseret "Dumped"

While the emphasis on the fivepart test has a certain familiarity, with regard to rollovers, the Labor Department has given it a new flavor with its disavowal of the "Deseret letter," the Department of Labor's Advisory Opinion to Deseret Mutual Benefit Administrators. That opinion stated that a person is not a fiduciary when it provides a recommendation regarding whether to roll over plan assets from an ERISA-covered plan to an IRA as long as the person is not a fiduciary with regard to the plan.

Thus, recordkeepers—who weren't fiduciaries to the plan but provide recommendations regarding rollovers, and drew comfort from the shield previously offered by the Deseret letter—now find that shield removed by the Labor Department's proposal.

implication for them. These days recordkeepers are increasingly acting as full or partial fiduciaries (say as a 3(38) fiduciary for a managed account). The preamble of the proposed rule clarifies that when you are giving advice to the plan, you are deemed to be giving advice to the participant, and that you have an ongoing relationship with participants. And that, with the repeal of the Deseret letter, means that the rollover is a covered transaction subject to an ERISA fiduciary standard-an outcome that may well catch some unprepared.

PEP Pitfalls?

Illustrative of the potential issues that will need to be addressed is a statement on page 31 of the preamble that says: "the Department does not intend for the exemption to be used by a Financial Institution or Investment Professional that is the named

fiduciary or plan administrator of a Plan or an affiliate thereof, unless the Financial Institution or Investment Professional is selected as an advice provider by a party that is independent of them."

Graff noted that this "raises questions as to how it would apply in the context of a Pooled Employer Plan (PEP), where the Pooled Plan Provider is required to be a named fiduciary"—a point that was made in the American Retirement Association's comment letter on the proposal in early August.

Impartial Conduct Standards

The Labor Department says the proposal includes Impartial Conduct Standards that are, in its view, "aligned" with those of other regulators, including the Securities and Exchange Commission, and various state "regulators and standards-setting bodies." The Impartial Conduct Standards have three components:

A best interest standard

- A reasonable compensation standard
- A requirement to make no misleading statements about investment transactions and other relevant matters

The proposed rule also includes an annual retrospective compliance review, and a caution that investment advice fiduciaries could lose access to the class exemption for a period of 10 years for certain criminal convictions in connection with the provision of investment advice to retirement investors or for egregious conduct with respect to compliance with the class exemption. Those deemed ineligible for the exemption could rely on existing statutory exemptions or seek an individual prohibited transaction exemption from the Department, which says that it would provide financial institutions with the opportunity to be heard before they became ineligible. Financial

institutions would have a one-year winding-down period to avoid disruptive transitions.

Disclose "Sures"

Prior to engaging in a transaction subject to the proposed exemption, the financial institution and its investment professionals would have to acknowledge that they are fiduciaries, a disclosure that "would be required to provide a written description, accurate in all material respects regarding the services to be provided and the Financial Institution's and Investment Professional's material conflicts of interest."

Moreover, the financial institution would be required to establish, maintain and enforce written policies and procedures prudently "designed to ensure that the Financial Institution and its investment professionals comply with the Impartial Conduct Standards." Financial institutions would also be required to conduct an annual retrospective review.

In addition, to meet the requirement of the rollover documentation requirement, financial institutions must document the specific reasons that any recommendation to roll over assets is in the best interest of the retirement investor.

The DOL also said that it does not intend the fiduciary acknowledgment or any of the disclosure obligations to create a private right of action as between a financial institution or investment professional and a retirement investor, and it does not believe the exemption would do so.

Reasonable Fees

One element that has drawn criticism is the preamble's admission its best interest standard "would allow Investment Professionals and Financial Institutions to provide investment advice despite having a financial or other interest in the transaction, so long as they do not place the interests ahead of the interests of the Retirement Investor, or subordinate the Retirement Investor's interests to their own."

The preamble explains that "the reasonableness of fees will

depend on the particular facts and circumstances at the time of the recommendation," notes that it would not have to recommend the transaction that is the lowest cost or that generates the lowest fees without regard to other relevant factors, and goes on to explain that "recommendations of the "lowest cost" security or investment strategy, without consideration of other factors, could in fact violate the exemption."

Robo advice is not covered by the proposed exemption, though it would cover hybrid arrangements that involved personal advice in conjunction with a robo advisor support.

--- Nevin E. Adams, JD

Social "Standing"

EBSA proposal pours some cold water on ESG enthusiasm

Noting its concern "that the growing emphasis on ESG investing may be prompting ERISA plan fiduciaries to make

investment decisions for purposes distinct from providing benefits to participants and beneficiaries and defraying reasonable expenses of administering the plan," in late June the Labor Department proposed a new rule to clarify the standards.

"Private employer-sponsored retirement plans are not vehicles for furthering social goals or policy objectives that are not in the financial interest of the plan," said Secretary of Labor Eugene Scalia. "Rather, ERISA plans should be managed with unwavering focus on a single, very important social goal: providing for the retirement security of American workers."

The Labor Department also said it was "concerned that some investment products may be marketed to ERISA fiduciaries on the basis of purported benefits and goals unrelated to financial performance." In fact, the Labor Department said that "ESG investing raises heightened concerns under ERISA."



6 Things You Need to Know

- **1.** This is a proposed rule, not a final one.
- 2. DOL says it was concerned about the marketing of ESG products, alongside significant increases in ESG investments by ERISA plans.
- 3. Until now, there's really only been Interpretive Bulletins (IBs) (in 1994, 2008 and 2016) and, more recently, a 2018 Field Assistance Bulletin (FAB) on this subject. The 2016 IB was read as encouraging consideration of ESG factors (or at least discouraging the discouraging); the 2018 FAB pulled back on that stance.
- **4.** DOL says this is a separate initiative from the one recently reported regarding inquiries to plan fiduciaries regarding ESG plan investments.
- **5.** The proposed rule maintains the "all things equal" test, but requires a new level of documentation. It also says that ESG is not suitable as a qualified default investment.
- **6.** Comments on the proposed rule were sought for 30 days.

In unveiling the proposed rule, the Labor Department noted that as ESG investing has increased, it has engendered important and substantial questions and inconsistencies, with numerous observers identifying a lack of precision and rigor in the ESG investment marketplace. "There is no consensus about what constitutes a genuine ESG investment, and ESG rating systems are often vague and inconsistent, despite featuring prominently in marketing efforts. Moreover, ESG funds often come with higher fees, because additional investigation and monitoring are necessary to assess an investment from an ESG perspective."

Financial Factors

With the proposed rule innocuously titled "Financial Factors in Selecting Plan Investments," the Labor Department says it hopes to "set forth a regulatory structure *In unveiling the proposed rule, the Labor Department noted that as ESG investing has increased, it has engendered important and substantial questions and inconsistencies, with numerous observers identifying a lack of precision and rigor in the ESG investment marketplace.*

to assist ERISA fiduciaries in navigating these ESG investment trends and to separate the legitimate use of risk-return factors from inappropriate investments that sacrifice investment return, increase costs, or assume additional investment risk to promote non-pecuniary benefits or objectives."

That said, it also explains that the proposed rule "does not revise the requirements that the fiduciary give appropriate consideration to a number of factors concerning the composition of the plan portfolio with respect to diversification, the liquidity and current return of the portfolio relative to the anticipated cash flow needs of the plan, and the projected return of the portfolio relative to the funding objectives of the plan."

Core Additions

The proposal would make five core additions to the regulation:

- 1. New regulatory text to codify the Department's longstanding position that ERISA requires plan fiduciaries to select investments and investment courses of action based on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action.
- 2. An express regulatory provision stating that compliance with the exclusive-purpose (i.e., loyalty) duty in ERISA

- section 404(a)(1)(A) prohibits fiduciaries from subordinating the interests of plan participants and beneficiaries in retirement income and financial benefits under the plan to non-pecuniary goals.
- **3.** A new provision that requires fiduciaries to consider other available investments to meet their prudence and loyalty duties under ERISA.
- **4.** The proposal acknowledges that ESG factors can be pecuniary factors,² but only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories. And the proposal adds new regulatory text on required investment analysis and documentation requirements in what it characterized as "the rare circumstances when fiduciaries are choosing among truly economically 'indistinguishable' investments."
- **5.** A new provision on selecting designated investment alternatives for 401(k)-type plans.

Cautionary Note

The Labor Department noted that the proposed rule is "designed in part to make clear that ERISA plan fiduciaries may not invest in ESG

"The weight given to pecuniary ESG factors should reflect a prudent assessment of their impact on risk and return—that is, they cannot be disproportionately weighted."

vehicles when they understand an underlying investment strategy of the vehicle is to subordinate return or increase risk for the purpose of non-pecuniary objectives." As for why now, the proposal explains that, "the Department understands that in the case of some ESG investment funds being offered to ERISA defined contribution plans, fund managers are representing that the fund is appropriate for ERISA plan investment platforms, while acknowledging in disclosure materials that the fund may perform differently or forgo certain opportunities, or accept different investment risks, in order to pursue the ESG objectives."

"The fundamental principle is that an ERISA fiduciary's evaluation of plan investments must be focused solely on economic considerations that have a material effect on the risk and return of an investment based on appropriate investment horizons, consistent with the plan's funding policy and investment policy objectives. The corollary principle is that ERISA fiduciaries must never sacrifice investment returns, take on additional investment risk, or pay higher fees to promote non-pecuniary benefits or goals."

Economic Environments

Not that other factors can't be considered. The Labor Department noted—and has recognized in its prior guidance—that "there may be instances where factors that sometimes are considered without regard to their pecuniary import—such as environmental considerations—will present an economic business risk or opportunity that corporate officers, directors, and qualified investment professionals would appropriately treat as material economic considerations under

generally accepted investment theories."

The Labor Department noted that "while Public companies and their investors may legitimately and properly pursue a broad range of objectives, subject to the disclosure requirements and other requirements of the securities laws. Pension plans covered by ERISA are statutorily-bound to a narrower objective: management with an 'eye single' to maximizing the funds available to pay retirement benefits."

ESG factors and other similar considerations may be economic considerations, but "only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories." The proposed rule emphasizes that such factors, if determined to be pecuniary, must be considered alongside other relevant economic factors to evaluate the risk and return profiles of alternative investments. The weight given to pecuniary ESG factors should reflect a prudent assessment of their impact on risk and return-that is, they cannot be disproportionately weighted.

Noting that, if, after such an evaluation, alternative investments appear economically indistinguishable, a fiduciary may then, in effect, "break the tie" by relying on a non-pecuniary factor. But then cautions that "the Department expects that true ties rarely, if ever, occur."

"Equal" Signs

There is, of course, the matter of the "all things being equal" that arose during the Obama administration—a test that the DOL now says "could invite fiduciaries to find ties without a proper analysis, in order to

justify the use of non-pecuniary factors in making an investment decision," though it acknowledges that since "ties may theoretically occur and the Department does not presently have sufficient evidence to say they do not, the Department proposes to retain the current guidance's 'all things being equal' test."

If, after completing an appropriate evaluation, alternative investments appear economically indistinguishable, and one of the investments is selected on the basis of a non-pecuniary factor or factors such as environmental, social, and corporate governance considerations (notwithstanding the requirements of paragraph (b) and paragraph (c)(1)), the fiduciary must document the basis for concluding that a distinguishing factor could not be found and why the selected investment was chosen based on the purposes of the plan, diversification of investments, and the financial interests of plan participants and beneficiaries in receiving benefits from the plan.

No ESG Default?

The Department said it "does not believe that investment funds whose objectives include nonpecuniary goals-even if selected by fiduciaries only on the basis of objective risk-return criteria consistent with paragraph (c)(3)should be the default investment option in an ERISA plan." The preamble goes on to explain that "ERISA is a statute whose overriding concern relevant here has always been providing a secure retirement for American workers and retirees, and it is inappropriate for participants to be defaulted into a retirement savings fund with other objectives absent their affirmative decision."

Fiduciaries "must not too readily treat ESG factors as

economically relevant to the particular investment choices at issue when making a decision," as "[i]t does not ineluctably follow from the fact that an investment promotes ESG factors, or that it arguably promotes positive general market trends or industry growth, that the investment is a prudent choice for retirement or other investors." Rather, ERISA fiduciaries must always put first the economic interests of the plan in providing retirement benefits and "[a] fiduciary's evaluation of the economics of an investment should be focused on financial factors that have a material effect on the return and risk of an investment based on appropriate investment horizons consistent with the plan's articulated funding and investment objectives."

Comments

More than 1.500 comments were received within the 30 days allotted for them, most harshly critical. It remains to be seen what the Labor Department might do in response. At the same timethough initially characterized as a separate initiative by the Labor Department, information requests have been sent to registered investment advisory firms looking to the practices behind investments in, and monitoring of, ESG-themed ERISA plan investments by Registered Investment Advisory firms. Earlier this year information requests had been sent to a number of plan sponsors, making inquiries regarding "...environmental, social, and governance (ESG) themed funds in its investment options." Those letters-which made a series of specific, pointed requests for information regarding ESG investments made by the plan in question-stated that "the Department seeks to better understand the Plan fiduciaries' selection of ESG funds for inclusion in the Plan's investment options and compliance with their duty to administer the Plan prudently and solely for the purpose of providing benefits to participants and beneficiaries, and defraying reasonable expenses of administering the Plan."

- Nevin E. Adams, JD



"Window" Stressing

Treasury, Labor reg agendas face tight window under APA, CRA

Regulatory Affairs (OIRA), the Spring 2020 unified regulatory agenda—which is usually released in May but was delayed due to COVID-19—details an ambitious retirement-policy agenda for the next 12 months. The agenda highlights the regulatory and deregulatory actions that agencies plan to issue in the near and long term. While some items have been on the agenda for several years, others are new and have a higher sense of urgency.

For instance, in the last three weeks the Department of Labor has unveiled:

- a proposed new prohibited transaction class exemption for investment advice fiduciaries;
- a proposed rule to clarify the standards for environmental, social and governance (ESG) investing; and

 a Request for Information (RFI) on prohibited transactions involving Pooled Employer Plans (PEPs) under the SECURE Act.

These proposals appear to be a high priority for the administration, but under the Administrative Procedure Act (APA) and Congressional Review Act (CRA), they could face additional scrutiny from a new president and Congress.

Why Are the APA and CRA Important?

The APA governs the process by which federal agencies propose and establish new regulations. The statute generally requires agencies to provide public notice and a period for public comments, to review and analyze the comments, to assess the costs and benefits of the proposal and consider legal requirements. The APA also lays out the process for judicial review of rules in federal court.

In general, each of the proposals mentioned above will

"While it's still a moving target, it appears that the current CRA window applies to any significant Trump administration rule that was either finalized or made effective after roughly May 15, 2020."

be subject to the procedures under the APA and the CRA, if finalized. And key Democratic members of Congress are already objecting to the 30-day comment period for the DOL's proposed prohibited transaction class exemption for investment advice fiduciaries, noting that the period is "less than half of what similar proposals were granted in the past."

In fact, the APA generally requires agencies to "give the public a meaningful opportunity to submit written comments in paper or electronic form and must consider all relevant matters presented." Moreover, Executive Order 12866 recommends a comment period of at least 60 days.

The APA also specifies that agency rules generally may not take effect at least 30 days after publication in the Federal Register, except for a substantive rule that grants an exemption or relieves a restriction or for other "good cause."

In the case of "economically significant" proposals—note that the proposed prohibited transaction class exemption does not appear to fall into this category—these regulatory actions require a more detailed assessment of the likely benefits and costs of the regulatory action, including a quantification of those effects, as well as a similar analysis of feasible alternatives. A regulatory action is determined to be "economically significant"

if OIRA determines that it is likely to have an annual effect on the economy of \$100 million or more, or adversely affects a sector of the economy.

In addition, Congress, through the Congressional Review Act (CRA), may review and choose to reject new regulations issued by federal agencies. Under the CRA, before most final rules can take effect, an agency must submit them and supporting information to the House, Senate and the comptroller general. Rules defined as "major" under the CRA may not take effect for at least 60 days (30 days for non-major rules), with exceptions in some cases.

Congress generally has a 60-day window to act on a joint resolution of disapproval to take advantage of the CRA's special "fast track" procedures. If both the House and Senate pass the resolution and it is signed by the President, the CRA states that the disapproved rule "shall not take effect (or continue)."

The timeline for this 60-day window gets tricky, however. It is based on legislative days and is also tied to when Congress adjourns its session. According to the Congressional Research Service, if, within 60 days of session in the House or Senate after the receipt by Congress of a rule, Congress adjourns its annual session sine die, the periods to submit and act on a disapproval resolution "reset" in their entirety in the next session of Congress. Additionally, in the new session,

the reset periods begin on the 15th day of session in the House and Senate.

In this instance, this would be like what happened with the reversal of the Obama administration's DOL safe harbor exempting states' and municipalities' auto-IRA programs from ERISA, where President Trump and the Republicancontrolled Congress overturned the rule.

While it's still a moving target, it appears that the current CRA window applies to any significant Trump administration rule that was either finalized or made effective after roughly May 15, 2020. As such, review of any rule implemented after that date under the CRA window would likely extend into 2021. This is because the 60-day window is based on legislative days and Congress will be adjourned for the month of August through Labor Day, and will adjourn again leading up to the elections.

In fact, even the DOL's recently finalized rule providing a new safe harbor for electronic disclosures could be subject to the CRA next year.

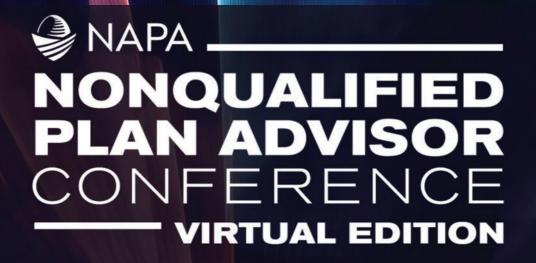
It's important to emphasize, however, that this scenario only really comes into play if the Democrats win the White House, hold the House and take back the Senate. Otherwise, Republican control of either chamber or the presidency could block a resolution from moving forward. NNTM

— Ted Godbout

FOOTNOTES

¹ For advice to constitute "investment advice," a financial institution or investment professional who is not a fiduciary under another provision of the statute must: (1) render advice to the plan as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing, or selling securities or other property, (2) on a regular basis, (3) pursuant to a mutual agreement, arrangement, or understanding with the plan, plan fiduciary or IRA owner, that (4) the advice will serve as a primary basis for investment decisions with respect to plan or IRA assets, and that (5) the advice will be individualized based on the particular needs of the plan or IRA.

² The term "pecuniary factor" means a factor that has a material effect on the risk and/or return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and the funding policy established pursuant to section 402(a)(1) of ERISA. Near the end of a term of every presidential administration, there's always a push to finalize key regulatory proposals before a potential new president or Congress can overturn them. And this year appears to be no different.



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