The value proposition of a retirement plan advisor in the new fiduciary era

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Agenda

- Introduction and terminology
- Status of the fiduciary rule
- Prognosis for the fiduciary rule
- Prohibited transactions and applicable exemptions
- What is "reasonable compensation"?
- A reasonable contract or arrangement
- Importance of an advisor value proposition
- Creating an advisor value proposition in the new fiduciary era
- Impact of the fiduciary rule on advisor's compensation model
- Summary

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Introduction and terminology

- Remember Bob Dylan's song *The Times They Are A-Changin'* (1964)?
- Terminology we will be discussing –
  - Retirement plan advisor
  - New fiduciary era
  - Fiduciary rule
  - Retirement plan investors
  - Plan
  - ERISA
  - Code
  - IRA

Status of the fiduciary rule

- November 29, 2017 – DOL published amendments in the Federal Register extending transition period to July 1, 2019
- During extended transition period –
  - Expanded definition of "investment advice fiduciary" remains in place
  - Impartial conduct standards ("ICS") remain in place
  - All annuities may continue to be sold under PTE 84-24, subject to ICS

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Prognosis for the fiduciary rule

- Acting in the best interest of one's clients is a concept that is here to stay
- Potential changes during the extended transition period ending July 1, 2019
- Bottom line for advisors – regardless of any tweaks to the fiduciary rule during the extended transition period, operating by fiduciary principles and in the client's best interest is a concept that is here to stay

Significance of prohibited transactions and applicable exemptions

- Both ERISA and the Code proscribe certain activities by means of the prohibited transaction rules
- Sales of financial products and provision of investment advice are prohibited, absent a statutory or administrative exemption
- DOL issues class and individual exemptions
- Key concept permeating the exemptions is that of “reasonable compensation”

What is “reasonable compensation”?

- Both ERISA and the Code permit payment for services necessary for establishment and operation of the plan, if no more than “reasonable compensation” is paid therefor
- Advisor’s contract with the plan and his/her compensation must be “reasonable”
- Regulations provide little guidance on what is or is not reasonable compensation
- Must not be in excess of compensation that is deductible as a reasonable business expense
- DOL’s 408(b)(2) regulations

A reasonable contract or arrangement

- Requirement of a “reasonable contract or arrangement” for the exemption to the prohibited transaction rules
- ERISA 408(b)(2) regulations provide for certain disclosures
  - Description of services to be provided
  - Status of service provider as fiduciary or non-fiduciary
  - Forms and amount of compensation to be paid
  - Additional investment disclosures for a service provider offering investment advisory services

Importance of an advisor value proposition

- Fiduciary rule requires advisors to re-think their value proposition to their clients
- “I am the advisor on the plan” is not a sustainable value proposition going forward
- Value proposition needs to be centered on the services provided that entitles the advisor to reasonable compensation, not on the advisor’s relationship to the client
- Factors to be considered –
  - Amount of services provided
  - Quality of services and results obtained
  - Qualifications and experience of the advisor
  - Time spent on the engagement
  - Benchmarking for “reasonableness”

Creating an advisor value proposition

- Basic premise behind the value proposition is "reasonableness" of compensation
- More services offered generally equates to more compensation for those services
- Consider both fiduciary and non-fiduciary services

Specimen fiduciary investment advisory services for use in an advisor’s value proposition for plan fiduciary

- Non-discretionary investment advice
- Selection of investment options for 404(c) compliance
- Assist in development of investment policy statement (“IPS”)
- Provide documentation for fund selection methodology
- Fund analysis and monitoring
- Prepare periodic investment reports
- Meet with client on periodic basis to discuss investment results
- Documentation of periodic investment reviews
- QDIA selection and monitoring

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Specimen non-fiduciary services for use in an advisor’s value proposition for plan fiduciary

- Non-fiduciary participant investment education
- Assist in group enrollment meetings
- Review results of group enrollment meetings with plan sponsor to assess plan effectiveness
- Service provider benchmarking services
- Communicate legislative and regulatory updates
- Review operation of the plan with sponsor
- Review results of TPA’s work on the plan
- Review status of fiduciary liability insurance policy
- Assist sponsor with participant communications
- Review status of ERISA bonding requirements
- Assist in RFP searches for service providers

Specimen fiduciary investment advisory services for plan participants and IRA owners

- Individualized investment advice related to the participant's account in the plan or IRA
- Annual or more frequent meetings to review investment performance measured against criteria jointly established by the client and advisor
- Periodically evaluate the performance and expenses associated with the investment options available to the client
- Assistance with rollover decisions

Specimen non-fiduciary services for plan participants and IRA owners

- Holistic financial planning
- Social Security and Medicare planning
- Retirement preparation consultation
- Investment education

Impact of the fiduciary rule on advisor’s compensation model and value proposition

- Decide on value proposition and assign monetary value to advisor’s services to the client
- Associate the monetary amount with objective factors to determine reasonableness of compensation being paid to the advisor
- Fiduciary considerations –
  - Manner in which Advisor is to be paid
  - Whether a PTE is required to facilitate payment
- Conflicted compensation considerations
- Payment methods if no conflicted compensation
- Popular exemptions for conflicted compensation

Summary

- June 9, 2017 – the beginning of the new fiduciary era
- The new definition of fiduciary investment advice is now applicable
- Market conditions may force advisors to act as fiduciaries
- Outdated value propositions
- Elements of a new value proposition –
  - Amount of services provided
  - Quality of services provided and results obtained
  - Qualifications and experience of the advisor
  - Time spent on the engagement
  - Benchmarking
- Development of a unique value proposition for each advisor

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