BeManaged
BE RESPONSIBLE. BE SMART. BEMANAGED.

Wednesday, May 05, 2010

BeManaged
5088 Corporate Exchange Blvd., Ste 140
Grand Rapids, MI 49512

For the sake of context, we would like to make it clear that we have abided by the PPA Fiduciary Adviser provisions since they were released, as we have a focused business model on providing conflict-free fiduciary advice and managed accounts to 401(k) investors. We would like to begin by applauding the Department on clarifying and resolving issues with the January '09 proposal that could have resulted in conflicted advice to 401(k) investors. We were highly concerned with the potential for a "puppeteering" affect by the affiliates on the fiduciary adviser. We also whole-heartedly support the continued belief that eliminating a brokerage/self-directed window from the available investment options for which the fiduciary adviser.

The following are suggestions that reflect our commitment and belief conflict-free advice should be made more accessible to 401(k) investors:

Extension of Regulations to Managed Accounts

It is our opinion that managed accounts and investment advice are siblings, not distant cousins. It is our opinion both managed accounts and investment advice are in effect the same thing, just different delivery mechanisms. Arguments exist for each approach being an effective solution for 401(k) investors we would suggest combining the best practices of the '01 SunAmerica Opinion and the PPA Fiduciary Adviser and extend the clearly stated, fiduciary standard of care to managed accounts as well as investment advice. Additionally, it has been our experience that the success of advice pivots on clear, consistent communication with participants. The SunAmerica Opinion requires the advice provider to communicate on a quarterly basis, while the current proposal has an annual requirement. The disparity does not seem fair to participants, especially if providers stick to the minimum standard established by the Department, which has been the case in the past.

Plan Sponsor Audit

We also applaud the continued requirement for an independent audit of the Fiduciary Adviser, as we have found this to be a very effective process (via CEFEX) and it provides plan sponsors an added level of confidence in moving forward with providing their employees the advice they need and desire. However, there is a provision requiring an audit of the plan sponsor, and we have found this point to be a contentious one with plan sponsors. If the goal is to try and make 401(k) advice more accessible, without compromising the integrity of the advice delivered, we believe this is a requirement that could be eliminated without harming the intent of the PPA Fiduciary Adviser for 401(k) investors. If it does more harm than good without adding notable value, then no harm, no foul in our opinion.

Investment Evaluation and Accepted Theories Criteria

We respect the concern of the Department over the criteria by which Fiduciary Advisers evaluate the investment options they advise to their clients. We believe the Department could clarify this issue simply by stating a minimum investment evaluation requirement to be included in their fiduciary investment process, instead of focusing only on such items as fees. If not, it could create the impression the Department wants to become an investment advisor, which we believe not to be the case. While we do not believe highly tactical approaches to be prudent, we believe that investment theories can be supported solely due to the business model of the provider. Our Chief Investment Officer, John Whaley, CFA stated very clearly:

"There is no single investment theory, or even a subgroup of investment theories that are more trustworthy than others.

The CFA Asset Manager Code of Conduct addresses the ethical issues. The bottom line - if you adopt a philosophy because it fits with a sales strategy, you are not serving the client. That is the broker model.

In the defined contribution world, it is hard to justify any strategy that focuses on a time horizon other than the retirement/first withdrawal horizon. Brokers are not compensated for that focus."

Therefore, our only contention is similar to the communication requirement previously mentioned, we believe a minimum standard would be fine, but defining what should constitute a fiduciary investment evaluation process or investment theory might not be in investors' best interests.

Disclosure Requirements

We are in full support of clear, concise disclosures articulated in understandable language for 401(k) investors. However, in our experience of delivering such PPA compliant advice to 401(k) investors working for employers ranging from 15 – 4,600+ active participants, there are certain data points that create more confusion than value. The following suggestions for adjustment are specific to the behavioral finance aspect of investors, not the expected rational response one might expect. Human behavior is a key variable that must be considered in the delivery of advice, as it is central to the acceptance, use and trust of 401(k) advice. Therefore, we would suggest eliminating the "expected portfolio returns" requirement, as numbers have a severe impact on decisions, instead of speaking to core asset allocation considerations such as age, retirement time horizon and risk tolerance. During both bull and bear markets, we have found 401(k) investors to anchor themselves to the direction of the market, and when numbers come into play, it can guide their expectations, which would have been very harmful during '08-'09.

The same can be said for the investment options past returns, as participants will often steer toward the highest returns without any consideration or understanding of the associated risk. Unfortunately, this could be another example of good intentions having undesirable consequences to the effectiveness of the advice rendered.

Additionally, we have found that electronic delivery of disclosures is not only more efficient, but desired and expected from today's consumer. Letters and memos can be easily dismissed, while emails can be filed, organized, and archived for retrieval later.