JULY
Building Retirement Security

Fiduciary Outsourcing Options for Advisors

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Our Series Sponsor

First Trust

JULY Overview

Founded 1994 / Privately Owned	National Recordkeeping Firm	3,300 Clients
92,000 Participants	$2.8 Billion In Plan Assets	Plan Sizes $0 to $30 Million
SSAE 16 / CEFEX Certified	Over 45 Industry Certifications	Bundled or Local TPA Option

Q1 2016 data reflected above.

SPP Rating
AAA-Superior

Recordkeeping
Services

Open Q & A

Fiduciary Outsourcing Options for Advisors

2016

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Fiduciary Options for Advisors

Exit	Build	Outsource
▪ Exit the retirement plan business, due to the cost of complying with and adhering to the new regulations	▪ Develop a fiduciary process ▪ Create infrastructure for retirement plan business oversight ▪ Eliminate conflicts and move toward levelized compensation and consolidation of service providers ▪ Requires expertise, personnel, technology, capital	▪ Partner with outsourced fiduciaries provided by recordkeepers ▪ Improves efficiency and saves time by outsourcing fund monitoring and due diligence ▪ Allows the advisor to grow their business and increases the satisfaction and loyalty of their plan sponsors ▪ Mitigates fiduciary liability risk

High ← Cost/Effort → Low

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ERISA Defined Fiduciaries

1. Named Fiduciary; identified by name in the plan documents
   i. Responsibility or liability for investing plan assets
   ii. Appoint a third-party as an ERISA 3(21) fiduciary to provide investment advice, but retain responsibility for investing plan assets
   iii. Appoint a third-party ERISA 3(38) fiduciary with responsibility for investing plan assets
2. 3(16) Fiduciary (Administrator)
3. 3(21) Fiduciary
4. 3(38) Fiduciary

3(16) ERISA Fiduciary

The Plan Administrator:

- Typically the plan sponsor, but a third-party fiduciary may be appointed
- If delegated to third party, may NOT include all administrative functions
  - Filings
  - Participant disclosures
  - Selecting service providers, including other fiduciaries
  - Investment selection and monitoring

Source: 401khelpcenter, http://www.401khelpcenter.com/

Typical 3(21) Fiduciary Services

- Acknowledges fiduciary responsibility under ERISA Section 3(21) through an agreement or contract
- Indemnifies the plan sponsor from certain ERISA-related third-party lawsuits (not required to do so)
  - May also indemnify agents of the plan sponsor, including advisors
- Assists plan sponsors in investment selection and monitoring
  - Serves in an investment advisory capacity
  - Does not have discretion over how plan assets are managed
- Provides flexible menus OR one or more pre-built lineups
- May allow for non-covered investment options
  - Brokerage windows and company stock
  - Funds not on the approved list
- Generally lower cost than 3(38)
- Not all 3(21) fiduciaries are the same
  - Legal and financial protection offered
  - Degree of customization allowed
  - Deliverables for the service may vary

Typical 3(38) Fiduciary Services

- Acknowledge fiduciary responsibility under ERISA Section 3(38) though an agreement
- Indemnify the plan sponsor from certain ERISA-related third-party lawsuits (not required to do so)
  - May also indemnify agents of the plan sponsor, including advisors
- Take discretion for selecting, monitoring and replacing investments
- Provide less flexibility for advisors and sponsors
  - One or more pre-built lineups from which to choose one, or;
  - Narrow approved fund list
- May not allow for non-covered investment options
  - Brokerage windows and company stock
  - Funds not on the approved list
- Not all 3(38) fiduciaries are the same
  - Legal and financial protection offered
  - Initial setup
  - Deliverables for the service vary

Can Fiduciaries be subject to criminal penalties?

If someone is found guilty of willfully violating ERISA's provisions, s/he is subject to criminal penalties.

- A fiduciary who is an individual cannot be fined more than $100,000 and/or imprisoned for more than ten years.
- A fiduciary that is not an individual (such as a plan sponsor or investment committee) cannot be fined more than $500,000.

What issues typically give rise to criminal prosecution?

- Failure to comply with rules surrounding the backgrounds of plan fiduciaries (i.e. someone convicted of robbery, bribery, embezzlement, perjury or certain drug offenses cannot serve as a fiduciary of a plan)
- Willful violations of reporting and disclosure requirements
- Interference with a participant exercising his or her rights under a benefit plan (by such things as fraud, force, violence or threat)

Can Fiduciaries be subject to civil penalties?

Yes, the penalty depends on the violation:

- Breach of fiduciary duty
- Failure to comply with prohibited transaction rules
- Failure or refusal to file Form 5500
- Failure to furnish required notices or documents to a participant on request (e.g., quarterly benefit statements, plan documents, etc.)
- Failure to provide documents upon DOL request (e.g., summary plan description, summary of material modifications, or other plan-related documents)
- Failure to provide blackout period notice

Options Available to Mitigate Fiduciary Risk

- Indemnification
- Fidelity Bonding
- Errors & Omissions and Directors & Officers Policies
- Employee Benefits Liability Insurance
- Fiduciary Insurance
- Fiduciary Warranties
- Outsourced Fiduciary Services

What is Indemnification and Who Can Indemnify a Plan Fiduciary?

- Indemnification is the protection from monetary liability by a third-party.
  - For example, XYZ Corporation agrees to indemnify its Benefits Director, a plan fiduciary, in the event the Benefits Director is held liable for fiduciary breach. If the Benefits Director is sued by a participant for fiduciary breach and is found to owe monetary damages, XYZ Corporation is obligated to pay those monetary damages due to the indemnification agreement.

- Who Can Indemnify a Plan Fiduciary?
  - A plan fiduciary can be indemnified by the employer sponsoring the plan, an employee organization that has employees participating in the plan (such as a union), or an outsourced fiduciary with a written indemnification contract.

Note: A benefit plan cannot indemnify a plan fiduciary.

If you are a 3(21) Today, Why Outsource?

- A low cost way to mitigate fiduciary liability risk for you and your plan sponsors through indemnification and legal protection (some agreements protect sponsors and advisors)
- Alleviation of conflicts of investment selection through an independent third-party review
- Advisors own the relationship with plan sponsor
- An added layer of independent fund due diligence so you can spend more time with plan sponsors on items that increase retirement outcomes such as plan design and participant education
- A documented and disciplined fiduciary process that includes selection and monitoring of investments from an independent third-party team of experts for your plan sponsors
- Increased satisfaction and loyalty for your plan sponsors

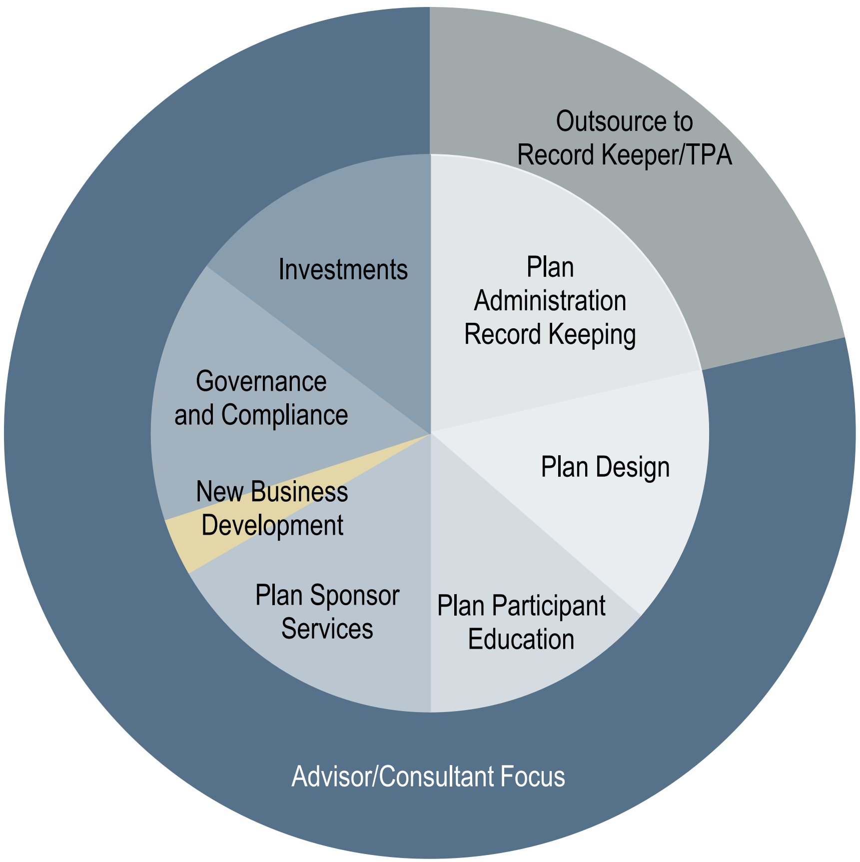
*The specific instances in which a party may be entitled to indemnity are set forth in detail in the agreement between the plan sponsor and Mesirow Financial, and nothing herein is intended to modify that agreement.

Where Might Co-Fiduciary Services Be Useful?

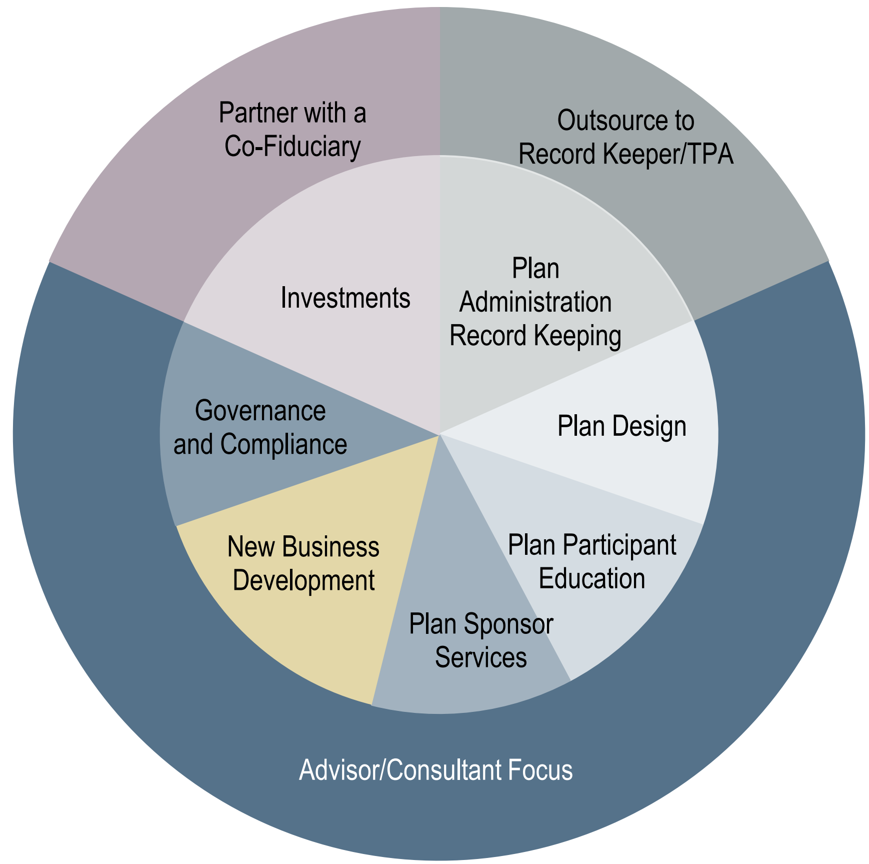
- Small to mid-size plans
  - Costs are prohibitive to customizing selection and monitoring of investment options
- Larger plans
  - Where advisor wishes to pass on part of the fiduciary risk
  - Where advisor is resource constrained/unable to devote sufficient time for investment selection and monitoring
  - Where advisor wishes to focus on other plan servicing needs
    - Managing the relationship
    - In-depth due diligence on providers
    - Participant advice (including large IRA opportunities)
    - Efficient operations to increase margins
    - Growing their business by freeing up time to sell

Advisor Time Allocation

Without a Co-Fiduciary



With a Co-Fiduciary



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Evaluation of a Co-Fiduciary Service Provider

- Written Contract
- Indemnification
- Fiduciary Liability Insurance Policy
- Sufficient Capital
- Technical Investment Experience and Expertise

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