SCHNEIDER DOWNS
Wealth Management

The Importance of Implementing Retirement Plan Best Practice Standards

The relevance of fiduciary best practice standards for retirement plan sponsors is rather intuitive, given that legal and performance pressures endured by companies are tremendous, coming from multiple directions and for various reasons. A shift towards heightened awareness of fiduciary responsibilities and "what not to do" can be seen in many recent ERISA lawsuit settlements alleging breaches in fiduciaries duties, but perhaps none more so than that of ATH Holding Company, LLC.

At the heart of a $23.6M settlement were allegations surrounding the multi-billion dollar retirement plan's investment and recordkeeping fees. Despite the plan's investment lineup being almost exclusively composed of Vanguard mutual funds – which are regarded as one of the nation's leading low-cost index providers – the plaintiffs alleged that the retirement committee should have selected even less expensive share classes. For example, the Plan was offering the Vanguard Extended Market Index Fund, which charged 0.24%, while there was a 0.06% share class available.

Further, the plaintiffs alleged that collective investment trusts and separately managed accounts were available at even less expensive fees than what was available to the plan in a mutual fund product for virtually identical investment strategies.

Differences between various share classes of mutual fund products include the Net Expense Ratio, minimum investment requirements, and revenue sharing amounts (12b-1, Sub-TA and Shareholder Service fees). Revenue sharing is a layered expense on top of the fee paid to the underlying investment manager and it is often used to pay or supplement outside service provider fees for service (advisor, recordkeeper, third-party administrator, etc.). Further confusing the issue, revenue sharing amounts are not consistent across the same share classes of different mutual funds.

The practice of not offering participants the lowest cost share class available for a given investment strategy is out of alignment with industry best practices standards because it reduces the transparency of fees for participants and may cause certain participants to pay more for the operation of the plan than others, simply as a result of selecting certain investment alternatives.

SD Retirement Solutions recommends the lowest cost share classes of our preferred investments in an effort to eliminate the consideration of how to account for revenue sharing arrangements. When some amount of revenue sharing is unavoidable, we have the option to credit the revenue sharing back to the individual participant's account that generated it. If that option is not available, we will often credit the revenue sharing against custody fees, not advisory or recordkeeping fees. We believe that this supports our position as an independent investment advisor. Full fee transparency is a philosophy on which we have built our practice as a fee-based SEC Registered Investment Advisory firm.

While the ATH monetary settlement was quite large, there were also a number of nonmonetary terms that were worth noting, including:

- The retirement committee must engage an independent investment consultant who is experienced with investment options in defined contributions plans.

Continued on back

- The committee must issue a request for proposal (RFP) for recordkeeping services for the plan.

This case and its settlement can serve as a great example of the continued emphasis on share class alternatives and their expenses, which is now inclusive of other investment vehicles for even mid-sized and smaller plans. Similarly, this case also encompasses the preference for setting recordkeeping fees on a per-participant rather than pro rata basis—given the costs for the services does not grow with increases in assets or with new contributions.

Material discussed is meant for general illustration and/or informational purposes only and it is not to be construed as investment, tax or legal advice. Although the information has been gathered from sources believed to be reliable, please note that individual situations can vary. Therefore, the information should be relied upon when coordinated with individual professional advice.