

## What fee disclosure and status changes mean for the non-fiduciary adviser

**THE LATEST ON FEE DISCLOSURE REGULATIONS** and the benefits of partnering with a registered expert when it comes to client fiduciary service needs

**O**n July 1 — when fee disclosure regulations go into effect — there may be questions about advisers trying to reduce their fees. They should keep in mind that in some cases a plan sponsor's ERISA counsel may perceive that action as an admission of guilt that previous fees may have been excessive or unreasonable.

Rick Unser, ERISA risk management consultant for Lockton, says although a majority of advisers are very knowledgeable in one capacity or another, they may not have a tremendous amount of expertise in the 401(k) space even though they have acquired plans over the years. "Fee disclosures will open up a lot of people's eyes in terms of what advisers have been earning and there's going to be a lot of tough conversations around fees earned versus services provided," he says.

### Shining a light on fee disclosures

Michael Stillman, SVP of Dallas-based International Research & Asset Management, finds many non-fiduciary financial advisers and vendor client relationship managers still have not been fully informed as to the

complexity of the plan fees. "If it's discovered that a plan's fees need to be adjusted lower, the adviser service team should be capable of managing the situation to their favor," Stillman says.

Even so, he thinks retirement plan fees are too high across the board. "Unfortunately, and I hope I'm wrong on this, I'm uncertain the new fee disclosure rules will force non-fiduciary advisers or vendors to reduce fees voluntarily unless they believe the client relationship is threatened," he adds.

### Specialization in the industry

Stillman notes a gradual shift to independent ERISA fiduciary specialist advisers has been underway for a few years, but it's been a slow progression. "The new disclosure rules should help fiduciary advisers in marketing their services more effectively, but regardless the sales cycle in this market can be years. Non-fiduciary advisers will find it more difficult to compete against fiduciary advisers unless they adapt," he says.

He believes that plan sponsors are rarely trained in the technical details of 401(k) fee benchmarking and service relationships in the market because they are tough to understand. "If the plan sponsor isn't feeling pain over fees, poor service, or lackluster investments, the new fee disclosures might not shake things up as much as one might think," Stillman adds.

### Partnering with an expert

Vendors are now offering to be a co-fiduciary or provide fiduciary services for advisers to utilize if they can't accept a position on their own, says Lockton's Unser. "If they don't have the expertise or the knowledge base, now more than ever it's certainly important for them to find that perspective because the market is only going to get more competitive," he adds.





Stillman thinks that although more vendors are offering different types of co-fiduciary services many of these can also be a “marketing gimmick because of their limitations in scope.” He adds that a co-fiduciary service to manage the 401(k) plan’s mutual funds may sound appealing, but it can give a false sense of security.

“For example, if the pool of funds

being managed has been pre-selected based on vendor revenue or other vendor benefits, then the co-fiduciary value to plan participants is substantially weakened,” he says. “Some co-fiduciary services are designed to protect the vendor more than actually protect the plan, so advisers and plan sponsors need to be careful.”

**Dan Hall, VP of sales at The Stan-**

**dard**, says if advisers partner with an expert fees will have to be split accordingly. “There will be a perceived fee that a 401(k) will pay for that group of services. An adviser and a vendor need to sit down and ask, ‘Who’s going to do what?’” he says. “If someone came to us and wanted to do most of the fund work, all the meetings, enrollments, etc., we’d have to cut back on our fees. It will involve a lot more communication and very clear expectations of who’s doing what.”

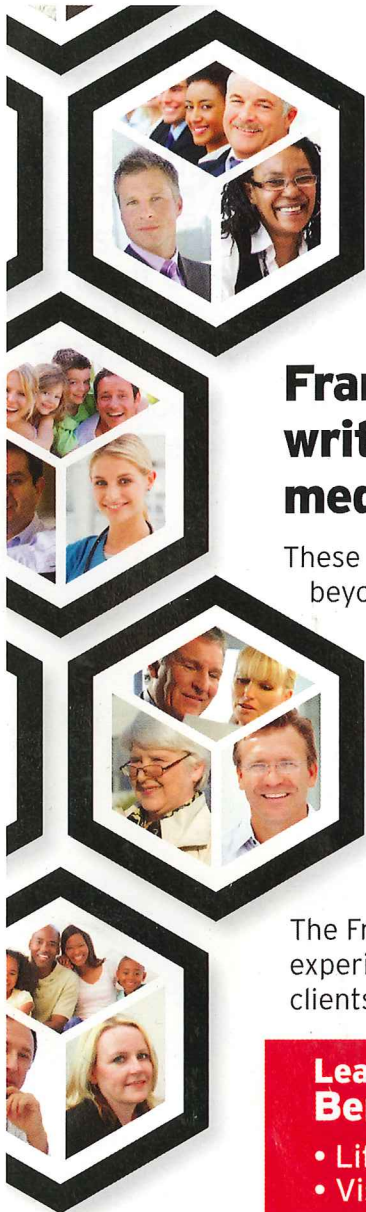
### Save the advice

In some instances financial advisers can be prohibited from offering fiduciary services by their broker-dealer. Unser says that broker-dealers take different positions on this issue. In some cases certain advisers can serve as a fiduciary on 401(k) plans if they go through training or partner with an expert adviser. But in other cases it just won’t work.

Unser agrees with Phyllis Borzi, assistant secretary of labor of the Employee Benefits Security Administration, as she tries to overhaul the definition of a fiduciary because the existing definition is too loose, he says: “Her goal and what she’s trying to do is a good thing in the market; having people sign in unwavering language that either you’re serving in a fiduciary capacity or you’re not.”

As an adviser, Stillman finds commission practices and conflicts of interest prohibit broker-dealer advisers from providing fiduciary investment advice; only registered investment advisers provide investment advice while non-fiduciary advisers provide strictly education.

“There are some firms that we deal with that have taken a stand on what they will allow their advisers to do,” says Hall. “The Standard sells two platforms, NAV and group annuity. A conservative company we have a relationship with likes the group annuity and will only allow their advisers to sell that platform because they get commissions and avoid the whole fiduciary discussion.” **EBA**



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