



## PRIVATE BANKING UPDATE

April 2014

### Understanding Your Fiduciary Responsibilities: An ERISA Primer

Regulatory complexity and increased scrutiny on compliance arguably has made the task of retirement plan fiduciaries harder today than ever before. Many employers and their delegates may not have a full understanding of their roles and responsibilities to the plan and its participants. For those newly stepping into a role of plan governance or for those who need a refresher on how their plan should be administered, here is an overview of key considerations.

#### **ERISA: The Letters of the Law**

Qualified workplace retirement plans - such as 401(k) plans - are governed by the Employee Retirement Income Security Act (ERISA). ERISA mandates that a plan fiduciary must fulfill four primary responsibilities:

1. To act solely in the interests of plan participants and beneficiaries.
2. To do so with the care, skill, and diligence characteristic of a "prudent" person familiar with such matters.
3. To diversify plan investments, with exceptions for investments in company stock.
4. To comply with the written plan document.

#### **Focus on Investments**

Implicit in the ERISA guidelines is the need for sponsors to monitor all investment options, not just company stock. While ERISA does not specifically define what type of monitoring practices should be employed, many experts recommend that plan fiduciaries should review each investment option at least once per quarter to make sure that it remains a potentially appropriate option for participant contributions. Details of such monitoring procedures should be spelled out in the plan's investment policy documents.

The ongoing review should typically resemble the process employed for investment selection and take into account the following considerations.

- A comparison of recent and rolling performance data, relative to an appropriate peer group and industry index.
- A comparison of fees and expenses, relative to an appropriate peer group.
- An assessment of risk-adjusted performance relative to a relevant peer group.
- The significance of changes to a portfolio management team.
- The significance of changes to investment strategy (e.g., has style drift occurred?).
- Whether investment options offered by the plan complement the plan's stated investment strategy.
- Whether there has been a significant increase or decrease in the plan's fees and/or assets under management.

Of course, these initiatives may prove relatively useless in court if they remain undocumented. For that reason, the individuals or committees responsible for such tasks should make every effort to keep detailed minutes of their discussions and decisions.

#### **Make Participant Communication a Priority**

In addition to "back office" oversight, plan sponsors are also advised to communicate clearly, honestly, and frequently with plan participants. Under normal circumstances, those communications might address a wide array of topics -- such as how the plan works, how to calculate a savings goal, and how to arrive at realistic investment expectations -- as well as basic educational themes, such as understanding asset allocation and investment risk. But when volatility negatively influences the value of specific investment options -- particularly employer stock -- it may be appropriate to issue a message from company management explaining the current situation and reinforcing the need to maintain a long-term, diversified investment strategy.<sup>1</sup>

Keep in mind that a company cannot give participants more information about a specific security than they would be allowed to give to other shareholders. Also, make sure that participant communications do not contain any information that could be perceived as erroneous, inconsistent, or promissory in nature.

The information in this article is not intended to be authoritative guidance or legal or tax advice. You should consult with a financial professional and ERISA counsel to help determine your unique situation and needs.

<sup>1</sup>*Asset allocation and diversification do not ensure a profit or protect against a loss.*

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