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Participants First.

# Remote Fiduciary Services

## I. Overview:

ERISA requires plan sponsors to select and monitor the plan's investments in the same manner as persons familiar with generally accepted investment theories and prevailing investment industry practices. Where committee members lack the needed technical knowledge to properly select the investments, they are required to hire knowledgeable advisers.[1] There are several developments in the retirement plan market that are leading plan sponsors to seek to offload or delegate fiduciary and investment-related risk to unaffiliated third parties.

First, the recent wave of high-profile litigation alleging fiduciary breaches on the part of plan sponsors in selecting and monitoring investments and investment providers has led to an increased interest in plan sponsors to hire investment advisers to assist in or oversee investment-related decisions on the part of the plan. Second, the Department of Labor ("DOL") has stepped up its examination and enforcement activity aimed at detecting and preventing fiduciary breaches. The DOL has issued regulation 408(b)(2) that is designed to expose prohibited transactions and fiduciary breaches stemming from existing arrangements among plan sponsors and their service providers. As more arrangements are subject to greater scrutiny, many service providers (e.g., broker-dealers) are implementing procedures designed to avoid becoming ERISA fiduciaries. To the extent the adviser is prohibited from rendering fiduciary services, the plan sponsor will be required to seek advice from another firm. Consequently, it is incumbent upon plan sponsors to review their existing arrangements and determine whether they are protected against claims of fiduciary breach and to ensure they are receiving the proper level of service from their existing advisers.

## II. FPR Solution

FiduciaryPlanReview.com offers a remote advice program to respond to these events and has introduced a turnkey risk-shifting program designed to mitigate or eliminate fiduciary risk for plan sponsors and service providers. FPR will enter into an investment advisory agreement with the plan sponsor wherein FPR expressly assumes fiduciary responsibility for selecting and monitoring investment options on behalf of the plan. FPR will then work with plan sponsors and/or their delegated service provider to determine whether the current investments are meeting the needs of the plan. This process is accomplished by completing FPR's client profile and forwarding it to FPR for review. FPR will generate a customized investment policy statement, and based upon the investments available through the exiting plan, FPR will provide specific investment recommendations to add, remove and/or replace investment options that are made available to participants. FPR will continue to monitor those investment options and, on a quarterly basis, make additional recommendations if necessary. By engaging FPR to oversee the investment selecting and monitoring process, the plan sponsor will be able to demonstrate that investment-related decisions are being managed prudently and with the requisite expertise required to meet the obligations imposed by ERISA.

## III. Scope of Fiduciary Relief

The extent to which plan sponsors who utilize the remote advisory services offered by FPR will be shielded from liability is determined by the scope of authority delegated to FPR. Under FPR's ERISA 3(21) Remote Advice Program, the plan sponsor retains final decision-making authority over investment options. Consequently, while FPR will be primarily liable for investment-related decisions, FPR and the plan sponsor are co-fiduciaries and will jointly share in the responsibility to prudently select and monitor investment options. Under FPR's ERISA 3(38) Remote Investment Manager Program, full discretion over plan investments is delegated to FPR, and the plan sponsor is only liable for demonstrating that it prudently selected and periodically monitors FPR.

## IV. Conclusion

As the aforementioned risks become more apparent, an increasing number of plan sponsors will begin to reexamine their existing service arrangements to determine whether they are adequately protected, and many will conduct searches for new providers who are willing to assume co-fiduciary, or even primary, fiduciary responsibility over the selection and monitoring of investments. The FPR remote advice programs are designed to meet this need and provide significant support to plan sponsors in meeting their obligations and to mitigate fiduciary risk for plan sponsors to the fullest extent available under the law.

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[1] DOL Regulation §2509.95-1(c)(6) states that "unless a fiduciary possesses the necessary expertise to evaluate such factors, he would need to obtain the advice of a qualified, independent expert."