A Simple Q&A for Retirement Plan Providers

By Ary Rosenbaum, Esq.

When I was an associate at a semi-prestigious Long Island law firm, the goal was that I would start a national single employer retirement plan practice. I couldn't have my articles published because the marketing department was overworked by the law firm administrator who wanted to publish his articles (that drew no money) and I had law firm partners who had no interest in expanding their wallet by cross selling my services to their clients. So I thought I could jumpstart this national ERISA practice by helping advisors and third party administrators (TPAs) with their clients and their practice that would create goodwill and good referrals for my services. To get the whole story, pick up a copy of my e-book (coming soon to a Kindle near you). As part of my practice, I have an open phone policy with advisors and TPAs where I help them with their questions about their clients and their practice. I get asked a straight question and I'll give them a straight answer. So this article is an answer to the questions I usually get from advisors and TPAs.

Where is the retirement plan industry headed?

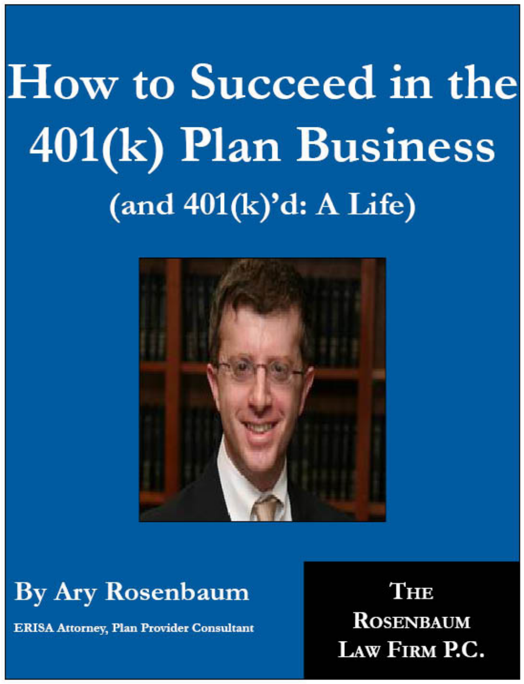
I predicted in 2007 that the retirement plan business was headed towards a fee disclosure/transparency environment, but I was also the same fellow who thought that Apple starting their own store was a bad idea. One doesn't need a crystal ball or to be a genius to figure out where this industry is headed. With fee disclosure regulations and regulations allowing financial advice by service providers and an eventual new fiduciary definition, it's only headed one way. The retirement plan industry is requiring more professional plan providers with more responsibility, while getting paid less. The financial advisors who dabbled in the retirement plan business by having one plan on their books are being replaced by financial advisors who offer a plethora of other service to augment their service as a plan's financial advisor. Financial advisors who are in the retirement plan space will have to be retirement plan experts, meaning that they will understand that their role is a little more than just picking fund for the plan's investment lineup. TPAs will continue to face pricing pressures as fee disclosures have had the effect of drawing down fees (and their revenues). TPAs who are truly independent (with no advisory or payroll business) will have trouble with those TPAs that are not, but an independent TPA who can communicate with plan sponsors clearly on how their services are more cost effective over the long run will do quite well. If you want to know a thing or two about communication, give me a call.

Should I offer ERISA fiduciary services?

If you are a registered investment advisor, the question is whether you should offer ERISA §3(21) and 3(38) fiduciary services. For the TPA, the question is whether you should offer §3(16) administrative services. For both, there is no clear answer. I can't offer you a definitive yes or no answer because I can't opine about your business and your clients and as I was told in Star Wars Episode 3: Revenge of the Sith, only Siths deal in absolutes. If you are fairly new to this business, becoming an ERISA fiduciary is probably not the greatest idea since with great ERISA fiduciary power, comes great responsibility (sorry for stealing that, Stan Lee). ERISA fiduciary services should only be offered by retirement plan providers that have the background and competence in order to carry out that task because the last thing this business needs is more providers who don't know what they are doing. For those that don't have the requisite background in this business consider partnering up with those providers that do. If you're a financial advisor (including brokers), partner up with an advisor that offers §3(38) services. For the TPA, there are non-TPAs offering ERISA §3(16) administration (including yours truly). For those with the requisite background, offering ERISA fiduciary services might e a good idea because if you're already doing a great job as a plan provider, taking on the additional liability of being a fiduciary with full discretionary control of the plan's fiduciary process (§3(38)) or administration (§3(16)) might not be as scary as you think. If you're considering offering these services, my first piece of advice is that these ERISA services aren't the right for every client because there are plan sponsors who are diligent enough in their role as plan fiduciaries, that they don't need to outsource a good chunk of their liability to an ERISA fiduciary. My second piece of advice is that the best way to being a fiduciary is to minimize risk. For the §3(38) fiduciary, it's offering predominately index based investments (whether it's mutual funds or exchange traded funds). For the §3(16) fiduciary, it's about asking sure that there is a process in place that facilitates administration and makes sure that no ball gets dropped. Third piece of advice is that if you offer ERISA fiduciary services, consider it as a concierge service as compared to your regular service. That means you should offer clients both services and ask them to choose as well as charging more for that added ERISA fiduciary service. My last piece of advice is that if you want to offer ERISA fiduciary services, you need a service agreement for that service and I know a great ERISA attorney who charges a nominal, flat fee for these agreements (cheap plug here).

What is the biggest mistake in marketing to potential clients?
Focusing totally that your services cost less than the incumbent provider because most plan sponsors aren't going to go to another provider just to save some basis points, even if it's substantial. When the DOL talks about plan costs, they talk about reasonableness and whether the fees are reasonable for the services provided. Since most of the time, the plan is paying the fees; plan sponsors even care less about cheaper fees. So that's why stressing value is more important than just focusing on cost. A plan sponsor won't fire the incumbent broker just because he or she collects 50 basis points on a $15 million plan, they will if they could hire a §3(38) fiduciary who will assume almost all of the liability of the fiduciary process for 20 basis points. If you're a TPA, don't tell them that the competition costs too much, just state that your handling of the administration will help the plan sponsor out in terms of less compliance issues, better use of employer contributions, or anything better than what they are currently getting. I learned this the hard way when I started my law practice about 14 years ago as a side business and I was going to be the Wal-Mart of legal service by offering wills for $100 and tax preparation for $150. It was a flop because legal services are not something that people were looking for something low cost; the same can be said about retirement plan services. Stress more on value and less on cost.

Why should I care who the TPA is?
This question is what I get sometimes from financial advisors since good TPAs already know why they are superior to those who aren't good. Financial advisors need to be concerned with the TPA for a variety of reasons. First off, financial advisors are typically the plan provider they really on most to look after them. So financial advisors will have fewer headaches if their client has a good TPA because when there is a bad TPA out there, it's the financial advisor who usually gets the complaints. Second, one of the major reasons that a financial advisor gets fired is if they recommended a bad TPA. Last, a good TPA can be a great resource to maintain an advisor's current clients by creating a plan design that makes better use of employer contributions and help with potential clients by offering plan design studies or cost analysis that can help them grab potential clients. Simply dumping off clients on to a particular TPA because the advisor can get paid easier through their platform is a form of client neglect. Do better for your clients and care who the TPA is.



How will the fiduciary definition change impact the retirement plan business?
While the DOL will take their time in unveiling a proposed change, I think a change to the definition is inevitable. The DOL is going to try to hammer a definition change without seeking the wrath of Congressmen who are flushed with Wall Street money to fight it. There will be a compromise that will require brokers to act as fiduciaries, but have enough leeway so that they may still be compensated by commissions/trails. As with any change, it will be opportunity for many registered investment advisors because many small time brokers and brokerage firms will no longer offer their services to retirement plans because for them, fiduciary maybe the most damaging f word to them.

What is the most important piece of advice you can give to any plan provider?
The retirement plan business is a close-knit business. If you do good work, people will talk about you. If you do bad work or you have a reputation of cheating clients or stealing clients from people who referred you business, they will talk about you and not in a good way.

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