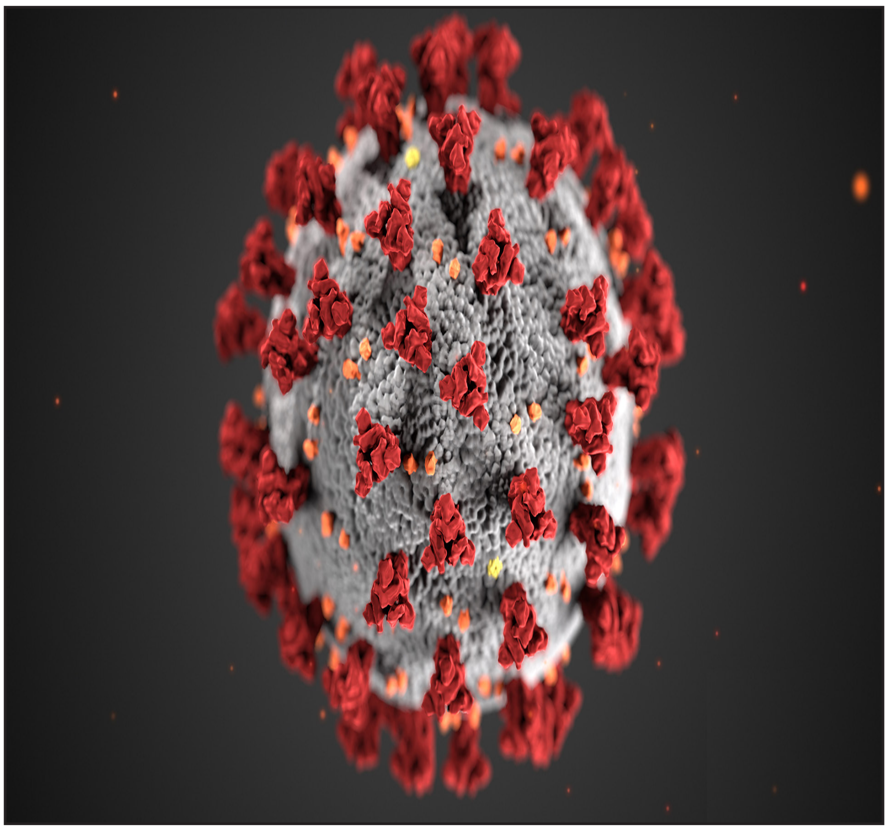
Coronavirus Concerns For 401(k) Plan Sponsors

By Ary Rosenbaum, Esq.

I've been around the 401(k) plan business for almost 22 years. I started before online 401(k) investments were a thing and you could only change investments by phone or by paper. That means I've also been there when September 11th and the housing bubble (both in the same decade) led to disastrous financial returns that hurt the 401(k) industry and plan participants. The coronavirus outbreak (COVID-19) is starting to become another financial challenge for all of us in the 401(k) industry and all of us with a 401(k) balance. As a 401(k) plan sponsor, the bad news might be worrying you and this article is all about why you shouldn't panic and what you should be considering if the markets remain volatile.



We didn't start the fire

I live in Long Island, so I think there is some law that I have to like Billy Joel. One of my favorite Billy Joel songs is "We Didn't Start The Fire." While I know Billy and many diehard fans hate the song, I always liked it because it essentially gives you the lesson that no matter how times are challenging now, times have always been challenging. This virus that is causing markets to correct and meltdown is part of a pattern that the market has been experiencing since 1929. Will COVID-19 be a worse bear market than the housing bubble that put the entire financial sector on the brink of disaster? Time will tell. The lesson is that while the stock market over the long term is one of the best investments out there, there are times where the market goes down 30-40% in a huge correction. Anyone can handle things when the market is on an upswing, it's how you deal with adversity as a 401(k) plan sponsor that's more important.

Don't panic

The worse thing that any 401(k) plan participant could ever do in times like today is selling every equity position they have and switch to an only fixed income position. It's idiotic because they're effectively locking in their losses. The worse thing anyone can do in a situation like today is panic. As a 401(k) plan sponsor, you can't afford to panic. Unlike one of your plan participants, you're a fiduciary and you're responsible for the retirement assets of your employees in the plan. So any kneejerk decisions you make concerning the plan may come back to bite you. This isn't the part of the show where you decide to eliminate all equity mutual funds from your plan. Also, this isn't the time to terminate your plan. Through some of these corrections, I've seen too many plan sponsors think about terminating their plans by thinking they're more trouble than they're worth. Unlike the folks buying toilet paper, this isn't the time to make rash decisions that will hurt you long term. As long as you have a viable business and you think you'll be in business longer than the short term, this isn't the time to be terminating the plan which would cause your participants to lock in their losses. I assure you that panicking right now does nobody good as a responsible plan fiduciary, you can't afford to get involved with the hysteria.

Think long-term

Retirement savings is a marathon, not a sprint. Unless you're less than 3 years from retirement, you have to keep a long term view of things. While economic times are tough now and we don't know how long this will impact our economy, just remember that the reason you started the plan was for long term retirement savings. This is a small pothole in the road towards retirement savings, so understand that it shouldn't deter you from continuing the plan for you and your employees. Remember that the reason you created the plan in the first place was to provide an employee benefit that can recruit and retain employees. Like a Philadelphia 76ers fan, you need to trust the process and keep in mind that there are hiccups across the way.

Call your advisor, don't give advice

I'm not a financial expert, but you have one to help your 401(k) plan, so feel free to contact them. I assure you that they're better at telling you the financial landscape better than I can. In times like these, it's quite possible that your advisor already reached out to you with some commentary on the volatility of the stock market. If they have provided such commentary, see what they have to say and if you have any long term questions and the impact the volatility has on your 401(k) plan, give them a call. The worst thing you can do right now as a 401(k) plan sponsor is giving financial advice of your own to plan participants. Unless you are a broker or financial advisor, now is not the time to be giving your two cents on where the market is heading. When the housing bubble burst in 2008, a fellow law firm employee told me that he put in 100% of his 401(k) assets in a midcap fund because it's the middle of the market, I kept my mouth shut. Giving financial advice to participants on your own is a fiduciary liability threat and should be avoided. As I always say, reach out to the experts to handle these things. Reach out to your advisor if they haven't reached out to you.

Contact your TPA

With so much volatility in the markets and financial troubles that your employees may experience, this might be a time to consider contacting your third-party administrator (TPA) to see how this much upheaval can affect your plan. For example, if participants stop deferring and they're not considered highly compensated employees, this might negatively impact your compliance testing if your plan isn't a safe harbor 401(k). Even if there is nothing that affects your plan's day to day administration, there is nothing wrong with touching base with your TPA to see if you need to know anything new in your role as a 401(k) plan sponsor and fiduciary.

Communicate with plan participants

I always say communication is key and one of the major problems I had as an employee was that I didn't hear from my employer when I thought I needed to. In these volatile times, I think it's best to work with your plan providers in developing communications with your participants. You can't fix what is wrong out there, but a reassuring word from you and your plan providers may help your employees when it comes to anxiety when market losses are being incurred week to week. While people are told not to look at their 401(k) account balances in days like these, human nature means that many will be too curious to avoid that tip. Letting participants know about the history of the markets and basic concepts like dollar-cost averaging can go a long way in alleviating the fear and the hype. In crazy times like these, make sure that participants get that regularly scheduled investment education/enrollment they're entitled to.

Can you afford those mandatory contributions?

If your 401(k) plan has required contributions such as a safe harbor or a stated matching contribution or you have another retirement plan with minimum funding requirements (defined benefit/cash balance/target benefit/money purchase), now is the time to consider whether you can afford these contributions or not. Thanks to accrual requirements with many of these contributions, realizing that you can't afford a contribution in December isn't going to help you avoid that mandated contribution. As a plan sponsor, you have a lot more leeway in perhaps freezing or eliminating these types of contributions if you figure it out before June 1.

Coronavirus won't get you out of your fiduciary duty

While every day, we seem to have some sort of change thanks to the coronavirus, you still have to fulfill your fiduciary duty as a 401(k) sponsor prudently, barring any guidance from the Internal Revenue Service and/or Department of Labor to the contrary. You still have to deposit salary deferrals as quickly as possible, administer the plan according to its terms, making sure you only pay reasonable plan expenses and making sure that participants who direct their investment get the information they need to make informed investment decisions.

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