

401(k) Pros That Financial Advisors Should Partner Up With

By Ary Rosenbaum, Esq.

Starsky had Hutch, Cagney had Lacey, Fred had Ginger, Bogie had Bacall, Bonnie had Clyde, Bert had Ernie, Baskin had Robbins, and Sheriff Bart had the Waco Kid. Whether it's law enforcement, entertainment, or any type of business, there are times when you need to partner up and find a good partner. With a retirement plan industry that requires sophistication and transparency, it is highly recommended that financial advisors team up with other retirement plan service providers to better serve the needs of the client plan sponsor and to serve as a resource for the financial advisor to augment their retirement plan advisory business.

The retirement plan industry is full of financial advisors who have no background in retirement plans. Financial advisors don't all of a sudden have to become retirement plan experts but the sophistication of the retirement plan industry is increasing, so financial advisors are not serving the needs of their clients if they are not partnering themselves with the retirement plan experts they need. When I speak at advisor events on how my third party administration (TPA) experience can help financial advisors start or grow their retirement plan business, I bring up a line from the movie "Back to School" that always gets a laugh. Rodney Dangerfield's character Thornton Mellon who owned a chain of Big & Tall clothing stores said in a commercial: "that if you want to look thin, surround yourself with fat people." So I tell financial advisors that if you want to look 401(k) smart, surround yourself with smart 401(k) people.

The days of a financial advisor simply

picking a few mutual funds and planting the 401(k) plan at a payroll provider TPA or an insurance company bundled provider without helping the plan sponsor manage the fiduciary process are over and just collecting their quarterly commission/fee is over. Regulatory changes such as retirement plan fee disclosure regulations, and the Department of Labor's revising of the definition of who is a plan fiduciary will create greater responsibilities and



potential liability for the financial advisor. As a result, a financial advisor will have to partner with experienced retirement plan providers to help their client and to help the financial advisor maintain the client. Whether it's an ERISA §3(38) fiduciary, retirement plan consultant, ERISA attorney, or TPA or some combination of them, it would be wise for a financial advisor to have a backup team of retirement plan experts on which they can rely.

ERISA §3(38) Fiduciary

Many financial advisors have asked

me about ERISA §3(38) fiduciaries and whether they are a new development in the retirement plan business. The fact is that ERISA §3(38) fiduciaries have been around since 8 track tapes and ERISA's enactment in 1974. ERISA §3(38) fiduciaries are defined as Investment Managers under ERISA, which can only be a bank, an insurance company, or registered investment advisors, a broker-dealer cannot become one. Investment Managers under ERISA §3(38) have legally defined "discretion" that makes it a decision-maker and fully assumes the plan sponsor's liability in the fiduciary process. So an ERISA §3(38) fiduciary decides what investment options should or should not be included for the plan.

An ERISA §3(38) fiduciary is an attractive partner to have for a financial advisor who cannot or does not want to assume the highest level of fiduciary responsibility. Broker-dealers have to decide what route to take when they meet this fork in the road called plan fiduciary. The Department of Labor is contemplating changing

the definition of retirement plan fiduciary to require brokers to meet the fiduciary standard. That is a problem with broker dealers since the focus of brokers has been to sell financial products (often their own) and their focus on sales may conflict with the role of a fiduciary, which has a duty of care when dealing with assets of a plan sponsor. Indeed, fiduciary duty is the highest standard of care in equity or at law.

Consequently, broker dealers have three options: get out of the retirement plan business entirely, assume the role

of a fiduciary, or partner with an ERISA §3(38) fiduciary where the ERISA §3(38) assumes all the fiduciary responsibility and then hires the broker to assist in the non-fiduciary components that a financial advisor could partake in like investment education.

Registered investment advisors can partner with an ERISA §3(38) fiduciary so their clients can get the liability protection from choosing a §3(38) investment manager. Several ERISA §3(38) have made it their practice to assist advisors who are just starting in the retirement plan space.

Retirement Plan Consultants

The use of independent retirement plan consultants can certainly be a tremendous resource to retirement plan advisors because these consultants have a financial advisory and/or TPA background. Therefore, these consultants have the experience and background to assist the financial advisor in managing their retirement plan book of business. The best retirement plan consultants are provider neutral, meaning they will help find the best TPA for the client (whether it's the bundled or unbundled approach). Essentially, they will assist a financial advisor in developing an infrastructure so that financial advisors can effectively assist a plan sponsor in delivering the best retirement plan possible without the advisor having that retirement plan background.

ERISA Attorneys

There are two types of ERISA attorneys, those who speak English and those who speak ERISAese. In addition, there are ERISA attorneys who understand the role of the financial advisor in the fiduciary process for retirement plans and there are those ERISA attorneys who see them only as a nuisance. ERISA attorneys can certainly be an important resource because they understand the applicable rules and regulations. They have expertise in plan design, administration, and the fiduciary process of selecting plan investments. Finding the right ERISA attorney can be difficult because many ERISA attorneys are more interested in billable hours than developing relationships with financial advisors. Look for ERISA attorneys that have reasonable fees and a background in

the day-to-day administration of retirement plans.

Financial advisors are an integral part of the retirement plan business and I saw when I worked as an ERISA attorney for



TPAs. That is why my ERISA practice is dedicated to working with financial advisors and assisting them with resources, marketing materials, and support the development of their retirement plan business. I have an open door policy with financial advisors, and I never miss an opportunity to meet or speak with one because as my mentor in this business, the late, great Richard Laurita would say, relationships in the retirement plan business mean everything. So, in addition to working with retirement plan sponsors on their plans for a flat fee, I am now representing retirement plan advisors in developing client agreements that meet fee disclosure regulations, and ensuring that their practices help their retirement plan clients effectively manage the fiduciary process.

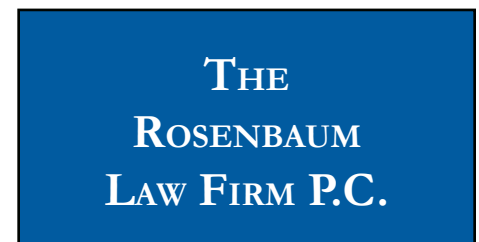
TPAs

Third party administration firms can be a tremendous resource and partner in helping a financial advisor in recruiting and managing retirement plan clients. When partnering with a financial advisor, a TPA can assist in plan design, administration, and offer tools that help an advisor shine in a plan sponsor's process of selecting a financial advisor. A good TPA will certainly partner with a financial advisor in meeting potential clients because, if the financial advisor gets a client, so will the TPA. A TPA that is not producing (meaning they sell no investment products or

offer financial advisory services) is a partner in business and will never be the competition.

There are too many financial advisors who fail to understand the value of a good TPA. Retirement plans are not made like cookies; they have to be individually designed with features that will maximize plan participation, retirement savings, and employer tax deductions. There are too many retirement plans that no longer fit the needs of the plan sponsor and a good TPA is a tremendous resource because their innovative plan design features will make a financial advisor stand out among the competition. Financial advisors who just plunk their plan down with a payroll provider or insurance company TPA without contemplating plan design is at a distinct advantage over those advisors who work with a TPA that can offer distinct plan design that maximize the use of a retirement plan.

The retirement plan business is constantly changing and the increased level of sophistication in the retirement plan industry required by fee transparency and management of fiduciary liability should give financial advisors the incentive with the retirement plan provider that can offer them resources to recruit and maintain retirement plan clients at little or no cost.



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