

A Retirement Plan Sponsor's Guide For Selecting Their Financial Advisor

By Ary Rosenbaum, Esq.

When it comes to your role as a retirement plan sponsor, outside of hiring a TPA (third party administrator), the most important plan provider that you need to hire is a financial advisor. Unfortunately, like my favorite cereal, Cheerios, there are just so many of varieties of financial advisors that it can be confusing what you should be looking for. So this article is intended to act as a guide for you as you select a financial advisor for your retirement plan or to review the incumbent advisor as part of your fiduciary responsibility.

Pick an advisor who handles retirement plans

Just because someone is a financial advisor (either as a broker or a registered investment advisor (RIA)) doesn't mean they can be a retirement plan financial advisor because there are quite a few of them that don't handle retirement plans for one reason or another. In addition, there are financial advisors who claim that they handle retirement plans, but have no idea what they are doing. So you need to find a financial advisor with the requisite retirement plan knowledge and experience, but don't equate knowledge and experience with just by looking at plans under management, assets under management, or years of experience. There are a variety of factors to look at it, but you need to make sure that any financial advisor you look at can handle the job of working on your retirement plan.

Find out who's backing them

I always say that Bernie Madoff ruined ponzi schemes for everyone. Jokes aside, there are still quite a few criminals masquerading as financial professionals. So

for every financial advisor you consider, find out which firm they are affiliated with, as well as whether they and their firm are properly licensed and registered. Check out FINRA's website to check out brokers and SEC registered RIA firms, check your State for state registered RIA firms. Also find out whether the firms the advisors affiliated with have proper insurance and who will custody the assets.

capacity where they share some of the legal culpability with you, there are RIAs who serve as ERISA §3(38) who will assume all the liability and responsibility that comes with managing a retirement plan's fiduciary process. Then there are ERISA §3(21) fiduciaries that can serve in a limited scope or a full scope capacity with the respective assumption of liability that goes with it. So regardless of any fiduciary capacity that the financial advisor you are considering will claim to be assuming, always review any potential investment management contracts to make sure that you are actually getting the liability protection that these advisors are promising. I have heard an advisor claiming to be a limited scope (3)(38) fiduciary and I have seen RIA firms claiming to serve in a co-fiduciary capacity, but trying to disclaim any fiduciary role in their contract. As plan sponsors, you need to know who are plan fiduciaries and what their culpability is because if the plan does get sued, the last thing you need is a shock that you weren't getting the legal protection from your advisors you thought you were getting.



Find out what their role is, fiduciary role that is

Any financial advisor acting in a fiduciary capacity has more legal culpability than one who doesn't; at least if the advisor is actually delivering that capacity that they are promising. While brokers typically do not serve in a fiduciary capacity, there are some brokers who will based on their firm's practice or their standing in the firm. While RIAs do serve in a fiduciary capacity, there are varying degrees that they can serve in. Most serve in a co-fiduciary ca-

Consider having an affordable ERISA attorney (cough, cough) review any service contract with a financial advisor to make sure you're getting the liability protection that the potential advisor is promising.

Find out their investment style

Do you hire a cook without finding out their culinary expertise? So why hire a financial advisor without understanding their investment style? While most retirement plans these days are participant directed 401(k) plans, a retirement finan-

cial plan advisor will still help develop the investment option menu. So you need to understand the financial advisor's investment style. Some advisors like only to use index mutual funds or exchange traded funds, while some only like actively managed investment options. Some financial advisors like to develop model portfolios, while others use a lot of target date and/or lifestyle funds. One style may not be better or worse than the other, you just need to understand their style and determine whether a financial advisor is the right fit for your Plan. A financial advisor who only picks single currency ETFs for a fund lineup may not be the right fit.

Find out how they will handle the “fiduciary process” of the plan

The fact that you have to realize is that the role of a retirement plan financial advisor isn't simply to pick out the investment lineup for the plan. Too many plan sponsors think that they aren't liable for any participant's losses in their retirement plan account if the participant directs their investment. That really isn't the case. You will only minimize your liability for a participant's losses in their retirement account under ERISA §404(c) if you give the participants enough information to make informed investment decisions. So you need to “paper” the process, documenting all the decisions that helped develop the fund lineup (including drafting an investment policy statement (IPS)), offering investment education to plan participants, and reviewing the investment options on a regular basis to make sure they still meet the criteria of the IPS. So the right financial advisor for your plan is going to be an advisor who will tell you how they will assist you in the fiduciary process through the drafting of an IPS, a review of investments, and offering investment education or investment advice to plan participants. There are too many retirement plan financial advisors who never see their plan sponsor clients or who never provide the necessary fiduciary

help. Find an advisor who can talk the talk and walk the walk.

Understand the proposed fee they will charge

Obviously, any financial advisor you are considering to work on your retirement plan needs to be paid and it's your fidu-



ciary responsibility to know how much the advisor is going to get paid and whether that's reasonable. A financial advisor can get paid a variety of ways including by you directly or through plan assets. If it's through plan assets, the advisor can charge a flat fee or based on a percentage of assets. If the financial advisor is a broker, the broker may be paid by any 12(b)(1) fees from the mutual funds in the plan. Regardless of the method, know how much you will be charged. What is reasonable? Benchmark your fees by using a service or by comparing it with other advisors. Reasonableness will be determined by the level of services and the assets in your plan because a \$50 million 401(k) plan is going to pay less in fees as a percentage of assets than a plan with \$500,000 assets. You can always pay more than what the competition is charging, but only if you are getting an extra level of service. Keep in mind that you don't have to select the cheapest provider, just select one that is reasonable and that you are comfortable with.

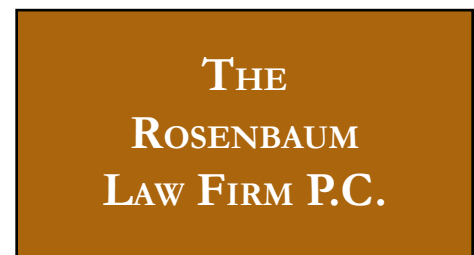
Once you pick an advisor, you still have to review them

After all is said and done and you pick

an advisor, your work isn't finished. As a plan sponsor, you are a fiduciary and you need to keep tabs on all of your retirement plan providers including your financial advisor. On a consistent basis, review your advisor for the work they are doing for the plan and make sure you meet with them on a regular basis. Make sure your

advisor meets you to discuss any changes in the plan or any changes in the plan investments or any changes that may be made to the IPS. Make sure the advisor is available for enrollment dates and make sure that they are there to provide at the very least, investment education to all plan participants on a semi-annual or quarterly basis. Document the review process and make sure it's kept with all plan records. Consider hiring an ERISA

attorney (cough, cough) or an independent retirement plan consultant every 1-3 years to review your advisor's work if you are not up to the task. You can't afford to take your advisor's word that they are doing their work, you need to make sure they are because if they are not, it's your fault if they don't do their job and your liability.



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