How 401(k) Plan Sponsors Should Deal With A Rollercoaster Stock Market

By Ary Rosenbaum, Esq.

When times are doing well, people are on easy street. When the stock market is booming, 401(k) plan participants and fiduciaries don't seem to have a care in the world as everyone is making money. When the stock market isn't doing too well (such as now), too many plan sponsors are paralyzed through panic as they realize that their retirement savings as owners of the company are being wiped out. As plan sponsors, you're also plan fiduciaries and with liability that comes with the job, you can't afford to be paralyzed with panic. This article is all about how you can manage the rollercoaster of the stock markets and properly manage your plan.

The Coronavirus pandemic is new, but it isn't unique

In our lifetime (as long as we aren't old enough to go through World War II), this Coronavirus pandemic is probably our most challenging time. Yes, we've had September 11th and some terrible natural disasters (Hurricane Sandy destroyed half my house), but these were localized events that affected millions. This pandemic is affecting the entire country, with most of the country shut down, except for essential services (thankfully, restaurants and liquor stores are essential businesses in New York). Millions of people are unemployed and millions more are furloughed. This isn't hyperbole, but this is probably the worst job loss since the Great Depression. While this pandemic unique from other national calamities, the part that isn't unique is the stock market. The stock market is starting to resemble a rollercoaster, but there is still a 20-30% correction that has taken place (at press time). A 20-30% correction for anyone with a nice sized retirement plan account balance hurts, but this is nothing unique. Having started in the 401(k) business in 1998, the markets did crater with huge bear markets in 2000-2001 and 2008-2010. So while many aspects of this pandemic are unique, what affects the 401(k) plan in terms of the stock market, is not.

Communication to participants is the biggest thing

The number one reason that relationships of any kind falter are usually a lack of communication. People tend to be passive-aggressive, especially employees who may fear for their jobs if they criticize you. If you're not providing enough communication to them, they may not tell you that it isn't sufficient. Providing communication about the 401(k) plan is a whole lot easier when employees are working at your place of business instead of working at home or if they're furloughed at home. Whether you're implementing the COVID-19 distribution or increased loan amounts under the CARES Act or not, it's important that you communicate directly with plan participants. They need to know what is going on with their plan whether the notices are required by ERISA or not. Clearly, any notices regarding plan changes have to be provided such as if you're amending the plan to remove a safe harbor 401(k) contribution. However, this may be an opportune time to communicate directly with your participants regarding the volatility of the market. Of course, this isn't the time to be giving your own financial advice especially if you don't have the training and also because you have a financial advisor working on your plan.

Contact your financial advisor

I'm not a financial expert, but you have one to help your 401(k) plan, so this would be a great time 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 has already reached out to you with some insight as to what is going on in 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. As discussed, the worst thing you can do right now is giving financial advice of your own to your 401(k) 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. That's not your expertise and you don't need the liability headache that goes with it. 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 mid-cap 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. Perhaps the plan's fund lineup needs a tuneup with some replacements or augmentations. Perhaps plan participants should get information or there needs to be a virtual enrollment/education meeting. Reach out to your advisor if they haven't reached out to you. Providing financial advice is what you are paying them for and this is the perfect time to lean on them. Perhaps they could offer advice or commentary that could be distributed to plan participants. If you haven't heard from them in any fashion, this is a pause for concern because, in times like these, you'd want a reassuring voice to help you. If you can't rely on them in times like these, it's a pause for concern. In times like these, you need to know who you can rely on and who you can't. Clearly, a financial advisor who hasn't reached out to you isn't doing a major part of their job, which is communicating with their clients (which includes 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 could negatively impact your compliance testing if your plan isn't a safe harbor 401(k). If you are a safe harbor 401(k) and you canty afford the contributions anymore, you need to contact your TPA as soon as possible. That's the same if your plan has a stated match contribution as well. 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 in these troubling times. Most TPAs have already contacted their plan sponsor clients, especially when dealing with the optional provisions of the CARES Act (the Coronavirus distribution and increased loan amounts). As discussed before with financial advisors, it is a pause for concern if you haven't heard from your TPA yet.

Review your providers and fees

When I was working for a TPA back in 2003, I was in the office during the Northeast Blackout. At the time, the head of the company suggested that it was the perfect time to read a short book on ERISA that he distributed weeks earlier. Whether he was serious or joking, I did immediately leave for my 12-mile journey back home. When the stock markets go south and with what seems a lot of free as we socially distance, this may be the perfect time for you to review your plan providers and plan fees. See how your plan providers are serving you, this is the perfect time to see if they rise to the occasion of a choppy stock market. It's also a great time to see if the fees being charged to the plan are reasonable for the services they provide. These are necessary fiduciary functions that you always need to perform, but you might have the time now to get that done.

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