

5 KEY TAKEAWAYS

Optimizing Retirement Plan Investment Committee Performance

Members of Kilpatrick’s Employee Benefits and Investment Management Teams recently presented a webinar on the topic of “Optimizing Retirement Plan Investment Committee Performance.” The discussion was focused on helping Investment Committee members better understand the current legal landscape so that they can meet this high standard and manage their risks. Key points covered were legal and regulatory developments impacting Investment Committees, including the latest developments in fee litigation and ESG investing; best practices for optimizing Investment Committee performance; and the latest developments affecting arbitration and other plan provisions that can help manage fiduciary risks.

Key takeaways from the presentation include:

1

Investment Committees are expected to provide a high standard of care in overseeing retirement plan investments. All Investment Committee members should be able to commit to active participation and receive proper training on their fiduciary duties.

Investment Committees should have a regular process for evaluating the investment advisers that they engage and should ensure that these processes include time for the Investment Committee to meet in executive session without the investment adviser present to discuss performance.

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Class action litigation challenging fiduciary breaches continues to proliferate over a wide range of issues, including claims relating to excessive fees, fund performance, and ESG investing. Investment Committees should work with their investment advisers and legal counsel to ensure that they understand the nature of these challenges and are taking appropriate steps to address them.

Investment Committee meetings should be carefully documented in minutes that are prepared with input from legal counsel (whether in-house or outside counsel). Well-drafted minutes protect an Investment Committee by documenting the Investment Committee’s diligence and active oversight role.

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Amending retirement plans to include carefully drafted mandatory arbitration and class waiver provisions may be a structural way of managing risks of Investment Committees. Courts have shown strong support for enforcing arbitration provisions in retirement plans, although some uncertainties remain for provisions that preclude the availability of statutory remedies to prevailing participants.

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