Mistakes That 401(k) Plan Providers Can Avoid Today

By Ary Rosenbaum, Esq.

Like Senator Pat Geary in The Godfather Part II, I can be a little frank, a little too frank, but I don't blackmail mobsters or visit joints owned by Fredo Corleone. Expressing an opinion or offering advice can upset a few apple carts (I still don't know what that means). As a plan provider, you can take my advice with a grain of salt, but there are certain clear mistakes you can avoid today and this is what this article is all about.

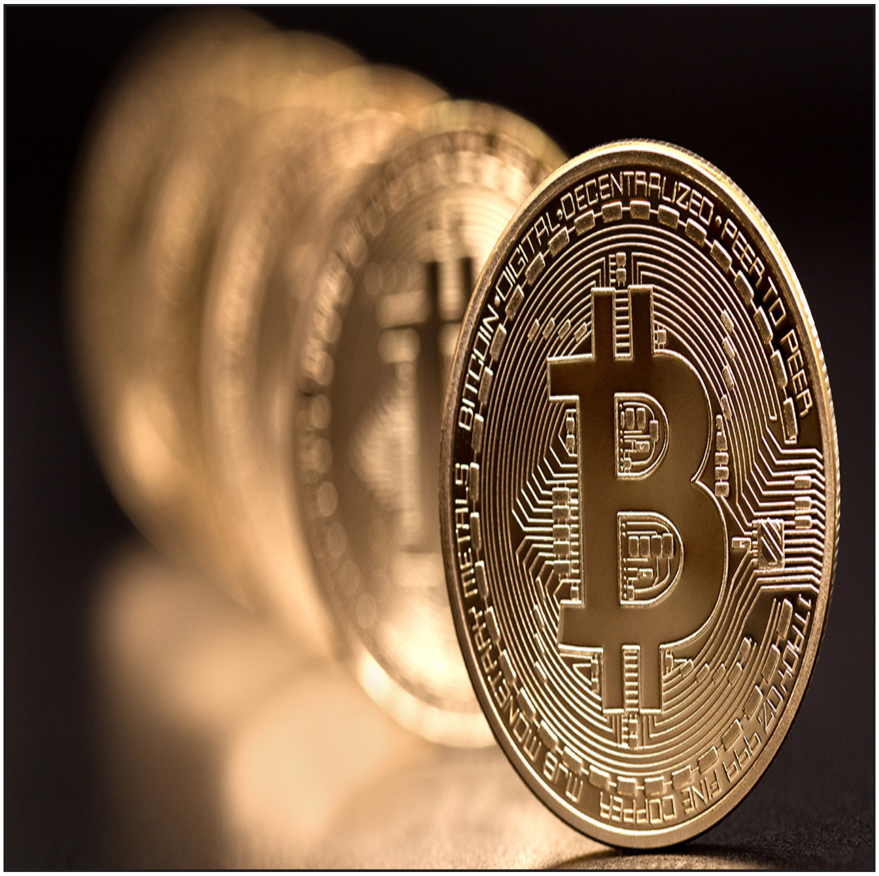
Making excuses about how the markets are affecting business

I was a Vice President of a local synagogue for a year and next to being an associate at a semi-prestigious law firm, it's one of the most disappointing experiences. I came up with unique fundraising and member recruiting events, and I was surrounded by the same leadership that took a synagogue of 750 families down to 250. Some of them used the excuse of changing neighborhood demographics as to why, with no solutions to combat that. I remember discussing this with a former President who wrote off the synagogue as terminal because of demographics and I suggested if that was his view, then maybe we should just shut our doors. The most important lesson that I ever learned from my grandmother Rose is that a defeatist attitude will defeat you and her will to live is why she survived the Holocaust. There will be retirement plan providers that will dismiss the poor stock market as the reason why business is bad, and that's just an excuse. I have been an ERISA attorney for 24 years and that means I've been through two bear markets and this current one might be the third. During the two bear markets of 2000-2001 and 2008-2009, selling 401(k) services to employers was a challenge, but every challenge is really an opportunity. While most plan sponsors might not want to talk about 401(k) plan when the stock market is off 20-40%, this is actually the right time to talk about fiduciary issues, as well as the incumbent

plan providers that might not be attentive as they should. It's easy to be a 401(k) plan sponsor when every investment is making money, it's a lot more challenging when participants' retirement savings have taken a buzz cut. While the conversation might be more difficult to start, this is the time that 401(k) plan sponsors could use the help the most. A booming stock market is an easier time to sell 401(k) plan services, but a bear market isn't an excuse to sit around and mope that business isn't good. As I always say, you can't be a spectator in your life, you have to be a willing participant.

Stay away from crypto

I'm a crypto investor with my own personal money. For some time, I was doing quite well. I did enjoy some profits, that helped me finally escape the debt that remained from my house that was almost destroyed during Hurricane Sandy in 2012. What I do with my money is one thing, what a 401(k) plan sponsor does with plan participant money is quite the other. Unless you have been living under a rock, you have heard of plan providers that want to offer crypto windows that would allow plan participants to invest up to 20% of their account balance in Bitcoin. They say timing is everything and this crypto window would be more popular and an easier sell for plan sponsors when Bitcoin was $69,000 a coin, as opposed to $20,000 today. Offering an unregulated investment such as cryptocurrency within such a heavily regulated environment as a 401(k) plan is an absolutely bad idea. In addition, the volatility of an investment such as Bitcoin can be a weapon of mass destruction in the hands of the people less suitable to make important investment decisions: plan participants. As a whole, plan participants are not sophisticated investors and make poor and rash investment decisions. Instead of looking at the long-term and understanding



the basic concept of dollar cost averaging, they panic and lock in their losses the moment an investment goes south. These are reasons hot to offer a Crypto window in a 401(k), even before contemplating what the Department of Labor (DOL) is thinking. Well, we do know what the DOL thinks about offering Bitcoin within a 401(k) plan they are vehemently against it. The DOL issued a bulletin that showed their grave concerns about cryptocurrency investments in an ERISA plan. The concerns are about the lack of regulation, the volatility, and the cybercrimes surrounding the theft of crypto wallets. Within the bulletin, the DOL indicated they would investigate plan sponsors that would offer cryptocurrency investments within their 401(k) plan. Fidelity still went ahead with their Bitcoin offering, even after the DOL announcement since they have been planning to offer that crypto window for quite some time and with the hope that they're a large 401(k) provider and may have the pull to change the DOL's mind. If Bitcoin was around $69,000 a coin, I could understand being a 401(k) Don Quixote and taking aim at the DOL, but that's clearly not the case. As a plan provider, making waves by offering Bitcoin 401(k) investments isn't a great idea. In my opinion, Bitcoin has no place within a 401(k) as long as it's volatile, unregulated, and a concern for the DOL. Like I have repeatedly said, this is a solution looking for a problem and it's a bad idea to essentially become a target and make your plan sponsors a target for the DOL. Fools rush in and any plan provider pushing Bitcoin into 401(k) plans is a fool.

Spending too much marketing money on live events

As you may know, I have been running 401(k) advisor events around the country at Major League Baseball and National Football League stadiums called That 401(k) Conference (cheap plug, we will have events in Seattle in September and Charlotte in November). Needless to say, COVID has put a damper on things. Whether it's attendance or plan provider marketing support, the events were easier to run before COVID. The events have been a labor of love, it's allowed me to tour the United States and network with plan providers. That being said, the events don't set our sponsors that far back, they can pay as little as $500 or $1,500. That being said, I will still think that even if the pandemic ends tomorrow, there will still be an audience for live events that will never return to live events. While live events are a great avenue to meet plan sponsors and other plan providers, I wouldn't too much money and too much work into them because I think you will still be disappointed with the results. With Zoom and other online meeting places, people have grown accustomed to them and don't feel the need to be there live. So I certainly don't think you should abandon live events, I wouldn't open up the floodgates to your wallet to have or support them.

Losing your shirt over PEPs

Pooled employer plans (PEPs) aren't anything new if you think about it. They are merely Open Multiple Employer Plans (MEPs) that have been allowed into the law with a Pooled Plan Provider as fiduciary support and liability elimination. So while they're different than Open MEPs, they are the same for business purposes. They often say that he who forgets history is soon doomed to repeat it. Too many plan providers don't remember the lessons of Open MEPs in terms of pricing and asset building. Too many third-party administrators (TPAs) and financial advisors have spent too much on PEPs in terms of rock bottom pricing and resources that they may never get it back. Unless a PEP can aggregate assets from existing plans of plan sponsors that want to become adopting employers, it will take years to get the PEP into a position where it generates enough revenue and get good enough pricing for it to be worthwhile for plan providers and adopting employers. I'm not saying you shouldn't offer PEPs because I serve as a pooled plan provider for a half dozen of them, I'm saying you need to be patient and not cut your nose to spite your face by slashing your fees in the hopes of getting bulk assets, you will always end up chasing those assets while your business might suffer. While plan providers you might work with want a plan of their own, when it comes to PEPs, less of them is more.

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