

A 401(k) Plan Sponsor's Guide To Hiring A 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 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, some financial advisors 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

Find out what their role is, a fiduciary role that is

There are many ways an advisor can serve as a plan fiduciary whether they are an advisor or broker. Whatever the role is, you need to know exactly what the role is. While most advisors serve in a fiduciary capacity, there are varying degrees that they can serve. Most serve in a co-fiduciary capacity where they share some of the legal culpability with you, some RIAs 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 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. Consider having an affordable ERISA attorney (cough, cough) review any service contract with a financial advisor to make



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, and check your State for state-registered RIA firms. Also, find out whether the firms the advisors are affiliated with have proper insurance and who will take custody of the assets.

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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 financial 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 a 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 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 regularly 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.

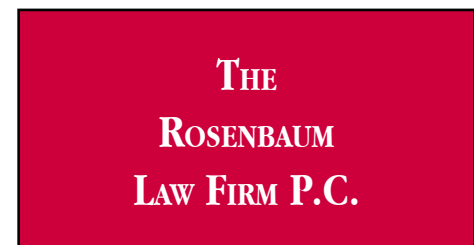
Understand the proposed fee they will charge

Any financial advisor you are considering to work on your retirement plan needs to be paid and it's your fiduciary responsibility to know how much the advisor is going to get paid and whether that's reasonable. A financial advisor can get paid in 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 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. Consistently, review your advisor for the work they are doing for the plan and make sure you meet with them regularly. Make sure your advisor meets you to discuss 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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