Mitigate Risk with 3(38) Fiduciary Investment Management

When an employer decides to sponsor a qualified retirement plan, they accept certain fiduciary responsibilities. One critical responsibility is the management and control of the plan assets. Discretionary authority over qualified plan investments is a heavily regulated function. Adherence to the Prudent Expert standard carries additional liability. Sponsors who properly use a 3(38) Fiduciary Investment Manager may delegate the fiduciary responsibility for investment-related decisions and shield themselves from the associated liability.

The Plan Trustee, named in the Plan Document, is responsible for the plan's assets. In a small business, a company officer often performs this function. In a typical 401(k) plan, the sponsor will hire a financial advisor to assist with this duty. However, not all advisors are the same nor do they provide similar services in this capacity. For example, in the absence of a 3(38) Fiduciary Investment Manager, the sponsor may be responsible for making important discretionary investment decisions. When acting in this capacity, the sponsor accepts the risk that comes with those decisions.

When a sponsor hires a 3(38) Fiduciary Investment Manager, they entrust their full responsibility to prudently select and monitor the investment options to the fiduciary investment manager, effectively transferring the liability for investment decisions from the sponsor to the investment manager. A 3(38) Investment Manager acknowledges his or her fiduciary status in writing, accepts full responsibility for managing the plan's assets and is required to act in the client's best interest.

Under this arrangement, the sponsor is still a fiduciary, but if a 3(38) Investment Manager is properly appointed and monitored, the responsibility for investment decisions is successfully delegated to the third party. Note that the sponsor will always retain the responsibility for overseeing and selecting the plan's service providers, including the investment manager. This duty includes a periodic review of the investment manager's performance and fees.

When selecting financial advisors for their qualified plan, sponsors should be aware of the differences in advisory services and the level of risk associated with each. Sponsors may choose to mitigate their risk by delegating the responsibilities from which the liability stems. If properly implemented, the use of a 3(38) Fiduciary Investment Manager effectively reduces the risk associated with investment-related decisions and liability.

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