The Volatile Market Fiduciary

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Retirement plan sponsors can reduce their fiduciary risk and adeptly serve plan participants' best interests, even during an economic downturn.

A MARKET IN HAVOC

Stocks have fallen in value to a level that marks the equity market's worst period since 2009. This tumult, including a 1,000-point drop in the Dow Jones Industrial Average that fueled it in August of 2015, justifies questions about what retirement plan fiduciaries should do. Market volatility is not a new phenomenon, yet it is always unsettling. It affects both defined benefit and defined contribution retirement plans, and ushers in an atmosphere of uncertainty that impacts plan participants and fiduciaries alike.

In an unpredictable environment, it is important for fiduciary retirement plan sponsors to adhere to a clear investment policy statement, a defined management process, and core fiduciary principles. By keeping their fiduciary strategy simple, they can help mitigate risk and ease plan participant apprehension. Indeed, the guiding principles that always center a fiduciary strategy include:

- acting solely in the **interest of plan participants** and their beneficiaries;
- carrying out **duties prudently** (and utilizing subject matter experts when needed);
- following **plan documents** that are aligned with ERISA;
- ensuring **diversified plan investments**; and
- paying only **reasonable fees** to plan vendors.

Fiduciaries should also remain cognizant about what they can and cannot control—and more specifically, under ERISA, those activities for which they are and are not responsible. There are many sources of market volatility that fall beyond the control of fiduciaries, including global economic conditions, political environments, speculative investing, and "panic" buying and selling (e.g., dumping equities and buying bonds as equity markets drop).

Plan fiduciaries must recognize that they are not held responsible for the state of the market under ERISA. Rather, they are expected to maintain a clear management direction amidst market volatility that serves the interest of their par-

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ticipants and integrates fiduciary best practices.

MAINTAINING A STEADY COURSE

For fiduciaries, a complex financial environment usually brings with it a barrage of investment opinions from external advisors, and an influx of plan inquiries from employee participants. This constant theorizing on potential plan strategies, adjustments, and outcomes can make the idea of adhering to simple principles a challenge. Fortunately, there are tangible steps plan sponsors can take to help keep them on a steady path, regardless of turbulent external factors.

1) Follow a documented decision-making process. A key success factor for fiduciaries in a financial downturn is to have a roadmap that guides the management of the retirement plan. As opposed to feeling that decisions rest on one individual's or committee's shoulders, a fiduciary management plan helps outline essential steps that responsible parties need to take on a weekly, monthly, or quarterly basis in order to be compliant under ERISA and fulfill expectations of the company's stakeholders. Fiduciaries should be trained in all four of the fiduciary disciplines that make up the investment process, which include the following:

- Governance—Creating and following a "prudent process" for the management and oversight of the retirement plan.
- Administration—Focusing on how vendors are being evaluated and managed, how efficiently the plan is being administered, and how well participants are being served by the plan.
- Investments—Ensuring the plan is being run in accordance with the investment policy, and that the policy is focused on the "right things" that impact participants' retirement readiness.
- Controls—Testing fiduciary practices on a regular basis to ensure that the Plan Administrator and other fiduciaries are serving the plan as directed by ERISA.

The more knowledge that a fiduciary team has about an ERISA-compliant management process, the more confident and steadfast those team members will remain during challenging times. Fiduciary training can be done in person or online, and can be broken into smaller content buckets or approached as a comprehensive overview of the fiduciary role. An example of fiduciary training courses can be found at the following link: http://rolandcriss.com/what-we-do/services/fiduciary-training.

2) Identify the key internal and external players and ensure that all parties know their responsibilities. Most retirement plan sponsors rely on at least one, if not several, outside experts for guidance, given the esoteric nature of the investment industry and the various demands on a plan sponsor's time. Indeed, this strategic outsourcing is a recommended practice under ERISA. While it may be true that each of these retirement plan service providers can be relied on for guidance regarding the selection of plan investments, it is important to know which of these advisors (if any) is legally accountable for providing that type of advice. For example, recordkeeping firms can be considered a resource for investment counsel, but by their vendor sector's own choosing they do not accept a legal fiduciary capacity. While nothing about this arrangement is inherently wrong, it is important for a plan sponsor to be clear about the delineations in this type of relationship, so that all parties understand where the ultimate discretion and decision-making power resides (both for practical and legal purposes).

3) Work with investment providers to develop an in-

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vestment fund line-up that suits the plan's participant demographics. Employee communication is perhaps the most challenging aspect of plan sponsors effectively carrying out their fiduciary duty. The creation and execution of a plan to distribute consistent, relevant information for plan participants about plan options and performance is essential. A plan sponsor can team with an investment provider to create and/or disseminate this type of information, but it is important that the plan sponsor play an instrumental role in designing the strategy for this type of campaign. After all, the plan sponsor has the advantage of knowing intimately the participant audience, demographics, and needs. A study of these factors is important when determining the medium (print or electronic, or both), frequency, and information scope that will be shared on an ongoing basis. A well-executed communication plan can be the difference between having a group of concerned employees or a team that believes their leadership is doing everything it can to protect their interests.

4) Documenting the process and the decisions. When talking with retirement plan sponsors, we find that most believe they spend an adequate amount of time managing their retirement plans. The Department of Labor's (DOL) enforcement activity over the last few years, however, reveals that even plan sponsors that spend enough time managing their plans, are not reflecting that time by properly documenting their oversight. Specifically, the DOL seeks documentation that provides evidence of a prudent decision making process. One of those recommendations includes recording minutes of any formal meetings involving the retirement plan, including meetings for the investment committee, advisor reports or updates, management discussions, and vendor evaluations.

5) Make sure the investment policy is in alignment with current investment options. Even if a plan sponsor has not prioritized a regular review of the plan's investment policy in the past, times of economic volatility prompt an analysis of the retirement plan's investment policy statement to ensure fidelity by all parties involved in the retirement plan's decisions. The investment policy details how an organization will enable its participants to be "retirement ready," and specifies the plan's risk tolerance and diversification metrics that should consistently be met. Particularly in a shifting financial market landscape, it is imperative that plan sponsors and their advisors are confident that 1) the parameters of the investment policy serve participants' best interests, and 2) all management and investment decisions align with that strategy. A review of the investment policy with an independent third party provider can ensure that all four fiduciary disciplines are being addressed, that plan participant interests are being met, and that all involved parties are successfully fulfilling their role under ERISA.

THE FEARLESS FIDUCIARY

A fluctuating financial market does not have to instill fear into the minds and hearts of well-intentioned plan sponsor fiduciaries. By contrast, a well-informed plan sponsor can feel confident that he or she is abiding by fiduciary best practices and helping participants weather economic uncertainty by standing firm in core fiduciary principles. Plan administrators do not have a legal responsibility for controlling the markets. Their duty is to manage the retirement plan process and ensure regular steps are being taken to assemble investments that are best for their participants. From a legal perspective—and certainly from an ethical standpoint, as well—this stewardship approach frees plan sponsors from unnecessary angst amidst even the most dismal economic environment.

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