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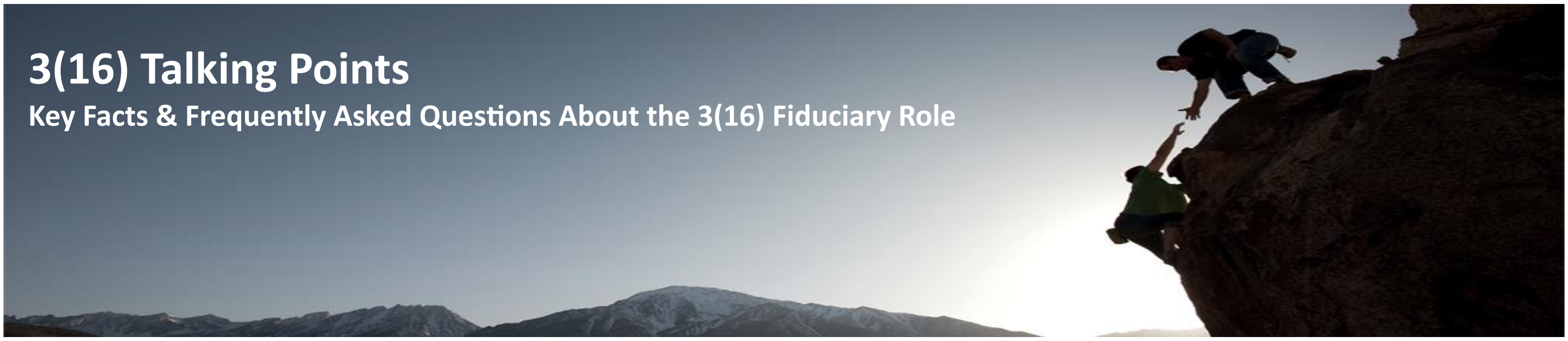

# 3(16) Talking Points

**Key Facts & Frequently Asked Questions About the 3(16) Fiduciary Role**

## What Is a 3(16) Fiduciary?

- Under ERISA, **a 3(16) fiduciary is the Plan Administrator** who has top-to-bottom control over the management of the retirement plan.
- The Plan Administrator is the person named in the plan document; **if no person is named, then the Plan Administrator is the Plan Sponsor** (or the committee of persons that established and currently maintains the plan).
- An outsourced 3(16) Plan Administrator **adopts fiduciary responsibilities (and associated risk) on behalf of the Plan Sponsor**.

## Why Is the 3(16) Role Important Right Now?

- The Department of Labor has **heightened its vigilance over Plan Sponsors** following the publishing of ERISA rule 408(b)(2) in July 2012, and has **elevated enforcement actions** over the last year.
- ERISA regulation 408(b)(2) (also known as the fee disclosure rule) **placed stricter requirements on Plan Sponsors** to evaluate their vendors' fees and determine whether they are "reasonable." While many benchmarking "solutions" have been made available to Plan Sponsors, benchmarking does not evaluate a particular vendor's VALUE, which is a Plan Sponsor's requirement under this new rule.
- The result: **Plan Sponsors are often ill-equipped to deal with this sea change in their responsibility**, as they do not have training in vendor management, and are faced with deciphering esoteric investment language and unfamiliar ERISA jargon.
- Plan Sponsors have an option **to outsource their responsibilities** to an accredited, independent 3(16) to reduce their legal risk and lessen their fiduciary burden.

## Department of Labor (DOL) Enforcement Statistics

- In fiscal 2011, the EBSA collected **$1.38 BILLION** in plan restorations, fines and penalties from retirement plans.
- Plans with less than $10 million in assets paid fines with an average **exceeding $300,000**.
- **75% of retirement plans audited** by the DOL in 2011 were fined or received penalties.
- The average penalty per plan came to **$450,000**.
- The **DOL added nearly 1,000 employees** in 2011, setting the stage for these numbers to continue to increase.
- A study of the early 2014 DOL audits reveal that the **investigations are broadening in various plan operations** and digging into 408(b)(2) and provider monitoring functions.

## Plan Sponsor Question: "Why Didn't We Already Have a 3(16) in Place?"

- **Prior to ERISA regulation 408(b)(2), the need for a 3(16) was less evident**.
- **Regulation 408(b)(2) changed the landscape for Plan Sponsors and their fiduciary role**. Before 408(b)(2), Plan Sponsors lacked access to clear disclosures about their plans' fees and expenses. Using data that the Regulation requires vendors to release to their clients, Plan Sponsors now have no escape from ERISA's demand that they assess and prove their vendors' fees are "reasonable," a responsibility few (if any) Plan Sponsors feel wholly equipped to perform.
- The vendor community has been offering various fee comparison tools and metrics to help Plan Sponsors with these new tasks, but **increasing DOL enforcement actions have proven that "benchmarking" does not adequately measure a vendor's value, and thus does not fulfill a plan sponsor's requirements under 408(b)(2)**.
- The result: **The lack of a proper vendor evaluation system is placing Plan Sponsors and their advisors at risk.**
- Independent 3(16) Plan Administrator and global industry leader **Roland|Criss** evaluates current processes, adopts full fiduciary responsibility for the plan, and brings the plan quickly up to date to **1) cut legal risk, 2) drastically reduce fiduciary responsibilities for the Plan Sponsor, and 3) help ensure full ERISA compliance**.

## 3(16) Responsibilities

- **Vendor Management:** Selection and monitoring of the plan's vendors and their respective fees, including Recordkeepers, Third Party Administrators (TPAs), Investment Managers, and Advisors.
- **Filing Accuracy:** Verify that all filings with the federal government are made accurately and timely.
- **ERISA Compliance:** Ensure compliance with all available exemptions from prohibited transactions within ERISA.
- **Disclosure Distribution:** Approve various required disclosures to plan participants.
- **Plan Oversight:** Manage the plan in accordance with the plan's policies as defined in such documents as a trust agreement, investment policy statement, and conflicts of interest policy.

## What Are the Benefits to the Plan Sponsor of Engaging a 3(16)?

- **Unburdened Responsibilities:** Plan Sponsors no longer must act in the singular role of overseeing their retirement plan process, a position that few have the time or expertise to properly fulfill.
- **Seamless Supply Chain Management:** Plan Sponsors and participants can trust in the high quality and quantifiable value of their plan's selected vendors.
- **Improved Vendor Relationships:** Vendors enjoy working with a professional 3(16) Plan Administrator because it is fluent with ERISA language (which can be difficult for Plan Sponsors to interpret and apply).
- **Slimmer Risk Profile:** An independent 3(16) Plan Administrator adopts the legal liability that would otherwise be owned by the Plan Sponsor under ERISA.
- **Reduction of Errors of Omission:** With a professional Plan Administrator, errors of commission or omission are given priority and swiftly reconciled in order to maintain full regulatory compliance.
- **Objectivity Through Independence:** With a fully independent 3(16), Plan Sponsors can gain peace of mind knowing that all plan decisions are made in the best interest of its participants, as mandated by ERISA.

## What Are the Benefits to the Advisor of Engaging a 3(16)?

- **Demonstrated Value:** As the advisor role arguably becomes more commoditized, Roland|Criss helps advisors to quantify and articulate their unique value to Plan Sponsors, providing differentiation from the competition.
- **Eradicated Risk:** Advisors are detached from fiduciary risk under ERISA.
- **Enhanced Expertise:** Relieving advisors of time-consuming fiduciary compliance tasks allows them to excel in their respective areas of expertise.

## If the Plan Sponsor Hires a 3(16), What Is the Plan Sponsor's Remaining Fiduciary Obligation to the Plan?

- **Grant access** to all appropriate service provider internet-based portals to Roland|Criss Fiduciary Services (RCFS).
- **Distribute all appropriate plan documentation, disclosure information, and communication materials to participants** upon RCFS' review and approval. Distribution shall include regular mail, email, inter-company mail, and onsite meetings.
- **Upload accurate census and payroll files** to the recordkeeper on a timely basis.
- **Maintain, at its cost, appropriate limits on the Plan's Fidelity Bond and Fiduciary Liability insurance policies**.
- **Process payments to service providers** (if payments are employer-paid) and/or authorize the Plan to pay service providers (if Plan-paid).
- **Make time available to discuss plan operations** on a periodic and as-needed basis.
- **Monitor the 3(16) Plan Administrator**.
- As a fully independent organization solely focused on 3(16) Plan Administrator services, Roland|Criss considers it our responsibility to **provide regular reports via a technology platform that a) attest to our best-practice approach, b) serve as factual documentation in the event of a plan audit, and c) keep the Plan Sponsor apprised in real-time of all plan management activities and processes**.

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