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U.S. Department of Labor  
Employee Benefits Security Administration  
Advisory Council on Employee Welfare and  
Pension Benefit Plans  
Washington, D.C. 20210

RE: Brokerage Windows in Self-Directed Retirement Plans

Thank you for the opportunity to share my experience with the ERISA Advisory Council regarding retirement plans utilizing self-directed brokerage accounts. My personal work experience began prior to Top Heavy regulations or 401(k) plans, so I have seen first-hand the industry move from pooled investments only to the participant-directed accounts. I have also worked in multiple roles with very different providers including bank trust and wealth management, recordkeeper, TPA under a CPA umbrella, TPA under investment advisor, and stand-alone TPA. Although essentially providing the same retirement plan services, each exposed me to different regulating bodies in addition to Department of Labor and Internal Revenue Service!

I have for some years been the practice lead for Blue Benefits Consulting, Inc., a regional Third Party Administration firm which provides consulting and administration for about 450 clients. Many of our clients have under 100 employees, although we do handle plans with employees in the 1000s, as well.

Our clients primarily use investment platforms such as Empower, John Hancock and American Funds and utilize the specialized services that these platforms have built to create the checks and balances and services that provide ease in reporting and provision of required participant disclosures. We have had a good deal of experience with plans utilizing a brokerage window available through the investment platform, which works quite well. With the omnibus reporting provided to the plan sponsor, notice distribution to all employees, including the process and rules for utilizing brokerage accounts, the plan sponsor can fully meet fiduciary responsibilities. I would agree with the testimonies given in June that indicate typically more experienced or sophisticated investors take advantage of the opportunity to utilize brokerage windows when made available in addition to a standard 404(c) compliant investment platform. As TPA, we include an additional layer of monitoring that these obligations are being met and see no need to make additional requirements in disclosures or monitoring of the brokerage windows under these circumstances.

However, as more of a boutique TPA, our firm frequently handles plan designs that do not easily fit within the parameters of a single investment platform. Many times, that includes the use of multiple brokerage accounts from multiple brokerage firms and multiple financial advisors. We see that occur primarily in professional groups where individuals wish to manage and select investments under the direction of their personal investment advisor. While this is more labor intensive for reconciliation, it can work well and meet the participants needs, especially when an investment platform is also provided for those participants who are not interested in a brokerage account, or perhaps does not have the appropriate account balance to make a brokerage account advantageous. We have seen this arrangement work very well for an audit sized client with 60 brokerage accounts in conjunction with a well-used investment platform.

Where I find there is room for improvement is with smaller plans, say 10 participants, and the sponsor has set up a plan with brokerage self-directed accounts for participants. Frequently participants are put at a disadvantage because the sponsor has provided so much liberty in setting up individual brokerage accounts that employees who do not contribute for themselves and perhaps receive a standard safe harbor non-elective contribution, must figure out how to set up their own brokerage account with an advisor when they have no experience in that area, or may have an account set up on their behalf with an advisor who typically handles only high wealth clients. In this scenario it is not unusual for a participant to have a small balance in a brokerage account with higher fees and without investment guidance because there is no QDIA.

While I do not care to see any additional regulation upon monitoring investments within brokerage windows, I would suggest that there may be room for a requirement for a minimum standard of care where self-directed brokerage accounts are offered.

- 1) If there are participants who potentially may receive only safe harbor non-elective matching contributions in the plan, an investment platform with a selected investment menu must be provided, along with a default investment account. This might look like the engagement of an advisory firm that specializes in participant engagement and advice or use of an established investment platform specializing in retirement plans.
- 2) If self-directed brokerage accounts are provided, an investment advisor and/or education must be provided to participants along with an enrollment process. The process should include a default brokerage firm and advisor selected by the fiduciary so that participants are not required to find their own brokerage firm to participate in the plan.

These recommendations would eliminate participants' employer contributions landing in an unattended brokerage account and fulfill the fiduciary duty of the plan sponsor without adding requirements for monitoring the investments of brokerage accounts or heinous notice requirements. I would expect this type of requirement would not create any additional burden for a SEP or SIMPLE plan either as I believe most of these plans are set up under the above circumstances.

Ultimately, I believe that participants should continue to have the flexibility to use brokerage windows as currently provided. A brokerage window within a platform allows for good governance of the current regulations. It is my personal opinion that a minimum standard of care for those plans which currently choose not to use an established retirement-plan-ready platform would continue to allow the flexibility and further meet fiduciary responsibility for those participants who are not established or sophisticated investors.

Thank you.



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