ERISA ADVISORY COUNCIL
UNDERSTANDING BROKERAGE WINDOWS IN SELF-DIRECTED RETIREMENT PLANS
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My name is Tim Rouse, and I am the Executive Director of the SPARK Institute. Thank you for inviting me to testify before the Council once again. The SPARK Institute ("SPARK") represents defined contribution recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms and investment managers. Collectively my member firms administer the retirement plans for over 100 million American workers. My testimony will reflect the work SPARK's members have done to collect an appropriate picture of the use and prevalence of Self-Directed Brokerage Accounts ("SDBA") within the U.S. retirement market.

A commonly shared opinion among SPARK members on why they and plan sponsors offer SDBAs is: SDBAs serve as a "noise reduction" tool. Most plan sponsors prefer to offer a core investment lineup but recognize that tiny and often vocal segments of their workers have an interest and desire to invest in some specific fund or stock. The ability to offer a SDBA allows these plan sponsors to offer the overwhelming number of their workers a solid core of investments, while still respecting the demands of the few more active investors. This fact is highlighted in a survey we conducted with SPARK members in preparation for this meeting.

SPARK Survey

We asked our members to answer 8 simple questions about their SDBA offerings:

1. Do you offer a SDBA?
2. What percentage of your plans offer a SDBA?
3. For those plans that offer a SDBA, what percent of participants use this feature?
4. For those plans that offer a SDBA, what is the average total account balance for those participants that use it?
5. What is the percent of your plans that **ONLY** offer a SDBA option and have no employer selected fund offering?
6. For plans that **ONLY** offer a SDBA and have no employer selected fund offering, what is the average number of participants in these plans?
7. For plans that **ONLY** offer a SDBA and have no employer selected fund offering, what is the average participant account balance in these plans?
8. Do you offer cryptocurrency within your SDBA?

Sixteen of the largest recordkeepers answered our survey, representing almost 90% of the overall retirement market.

Key Findings

- All respondents to the SPARK survey offer a SDBA. As noted previously, it is a necessary service for members to offer to plan sponsors but considered a "noise reduction" tool. While the decision to add a SDBA is the plan sponsor's to make, recordkeepers will often point out that this feature is not necessary for a successful plan and can add avoidable costs to the plan. And of course, many plan sponsors rely on the advice of a consultant or adviser, who will often share the same perspective. Not surprisingly, therefore, according to our survey, only 13.5% of plan sponsors offer this feature to their plan participants.
- We found further evidence that the participant appeal of a SDBA is limited. Just over 2% of the participants in plans that offer SDBAs use this plan feature. This means that of all U.S. workers actively participating in a workplace retirement plan, only about 0.3% are investing some of their retirment savings in a SDBA.
- The average account balance in a SDBA for those participants that are using this feature is $334,263. The total account balance for these same participants is much higher than those of the average defined contribution plan participant. We want to highlight two conclusions from this: First, the average participant who using a SDBA is only placing a portion of his or her account in the SDBA. Second, those using a SDBA are likely to be more sophisticated and knowledgeable investors. In speaking with our members directly, this is their experience in dealing with participants in the SDBA.
- We occasionally have heard concerns that plan sponsors might be utilizing a SDBA as the *only* investment option in the plan, perhaps as a way to avoid fiduciary responsibility. The data in our survey confirms what we have heard directly from our members: This is not an issue. None of the respondents to the survey had any plans that *only* offered a SDBA. So, there were no examples of an employer using a SDBA as a means of avoiding their fiduciary oversight duties. Accordingly, questions 6 & 7, asking about the number of participants and average account balances for such plans, are not applicable.
- Finally, we found no firm currently permits investments in crypto currencies on their platform. Two firms pointed out that their platforms cannot accept direct investments in crypto currencies but if a participant uses the SDBA option they would have access to registered investment vehicles (mutual funds or ETFs) that in turn invest directly in crypto businesses or currencies.

Recommendations

Based on the data and our conversations with SPARK members, we have the following recommendations regarding future policymaking related to SDBAs:

- The data bears out that SDBAs are working as we would hope: A minority of plans offer them to participants, and an even smaller minority of participants utilize them. Thus, SDBAs are *enhancing* fiduciary oversight by providing plan sponsors a tool to respond to the small number of participants who truly want an option outside the designated investment alternatives—i.e., a "noise reduction" tool.

- There is no evidence in the data that so-called SDBA-only plans are commonly used as a fiduciary-avoidance tool. This is not an area where Department of Labor guidance is needed.
- During the comment period for the participant fee and investment (404a-5) disclosure, there was some concern that guidance was needed as to which investments should be included on the disclosure and which should be treated as part of a SDBA. But since then, we are aware of no confusion. The Department's term "designated investment alternative," which is used to mean those investments selected and monitored by the plan fiduciary, is well understood and SPARK members and their plan sponsor clients understand how to complete the 404a-5 disclosure.
- We understand that the Department has some concerns about the use of crypto currency as a plan investment. No SPARK member currently offers crypto currency in their SDBAs, which suggests there is not much interest, at least among the plan sponsors or participants that SPARK members support. That said, while our members are not currently offering the ability for participants to invest in crypto currency, they have expressed to us significant concern about the Department issuing guidance or undertaking any regulatory actions to suggest that any particular investment is automatically imprudent. Congress deliberately avoided the use of a "legal list" of approved investments under ERISA, and we think it is not good policymaking for the Department to ban particular investments from plans.

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On behalf of the SPARK Institute, I want to thank the Council for seeking our input, and I am happy to take any questions.