

James Lukezic, Managing Director at Old Slip Capital details importance of ERISA Fiduciary Governance

ERISA Governance and Investment Advisory

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-- ERISA FIDUCIARY ADVISOR -vs-
STANDARD BROKER/ADVISOR

When asked about the dangers of not hiring a ERISA Fiduciary Advisor under section 3(38) or 3(21) or both, James Lukezic explains how utilizing a standard broker or advisor is simply not good enough. According to Mr. Lukezic, "Plan Sponsors think that simply having an Advisor at the table is enough until they (Plan Sponsor) realize that a Standard or Retail Advisor is giving them arms length advice and not truly taking on liability or responsibility for that advice. With a sanctioned ERISA Fiduciary Advisor, Plan Sponsors can shift that liability to the ERISA Advisor and his or her firm; that includes personal liability on the part of the investment committee members".

Plaintiffs' class action lawyers in fiduciary breach lawsuits, the US Department of Labor in ERISA plan audits, courts, and insurers have focused increased attention on how well ERISA plan fiduciaries follow procedural due process. Actions (or inactions) of committees and individual investment committee fiduciaries are scrutinized and judged in increasing detail, causing fiduciaries to wonder if they are up to date on all of the best practices for plan governance.

INVESTMENT COMMITTEES



Understanding the roles of Fiduciaries and the types of Fiduciaries generally causes confusion. There are Trust Fiduciaries, Administrative Fiduciaries and ERISA Fiduciaries; the latter being the most important. According to Mr. Lukezic, "the role of the ERISA Fiduciary is critical, this advisor is the glue that holds the Retirement Plan together, his or her advice to the Investment Committee steers the success of the plan in a big way". Competence to act as a fiduciary on the investment committee means more than just having subject matter expertise. It also means having the time needed to devote to the fiduciary role. Putting aside the potential conflicts of interest that a director would face in switching hats from corporate director to plan fiduciary, even a director with the requisite expertise to act as a fiduciary, typically lacks the time (and probably the inclination) to perform more than an oversight role. Furthermore, the Board of Directors should never be left in the position of acting as the Investment Committee. Unfortunately, this is precisely the form of fiduciary governance structure that is in place with the overwhelming majority of employer sponsored plans.

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