401(k) Plan Services 3(38) Discretionary Investment Fiduciary

A Retirement Plan Sponsor has significant responsibilities regarding the proper administration and management of an ERISA* plan. One of those responsibilities is the prudent investment of plan assets. For participant-directed 401(k) plans, that entails a process for the proper selection and maintenance of a group of investments in which participants may invest. That process is held to ERISA's prudent expert standard, whereby a Plan Sponsor's fiduciaries who make decisions concerning the investments must make those decisions as a prudent expert.

The fiduciary standard is one of the highest set by law. However, many Plan Sponsors have employees who are tasked with making plan decisions who do not have the time or expertise to be held to such a high standard. Many prudent fiduciaries solve this dilemma by hiring an independent fiduciary who has the expertise and ability to make those decisions on behalf of the Plan Sponsor.

Transfer the Responsibility

An investment manager as defined by ERISA Section 3(38) is a fiduciary who has the power to manage, acquire, or dispose of any asset of the plan; is a registered investment adviser; and acknowledges in writing that the advisor is a fiduciary with respect to the plan. Thus, a 3(38) investment manager may be retained by a Plan Sponsor to assume direct responsibility for selecting, monitoring, and replacing plan investment options.

Why Oppenheimer?

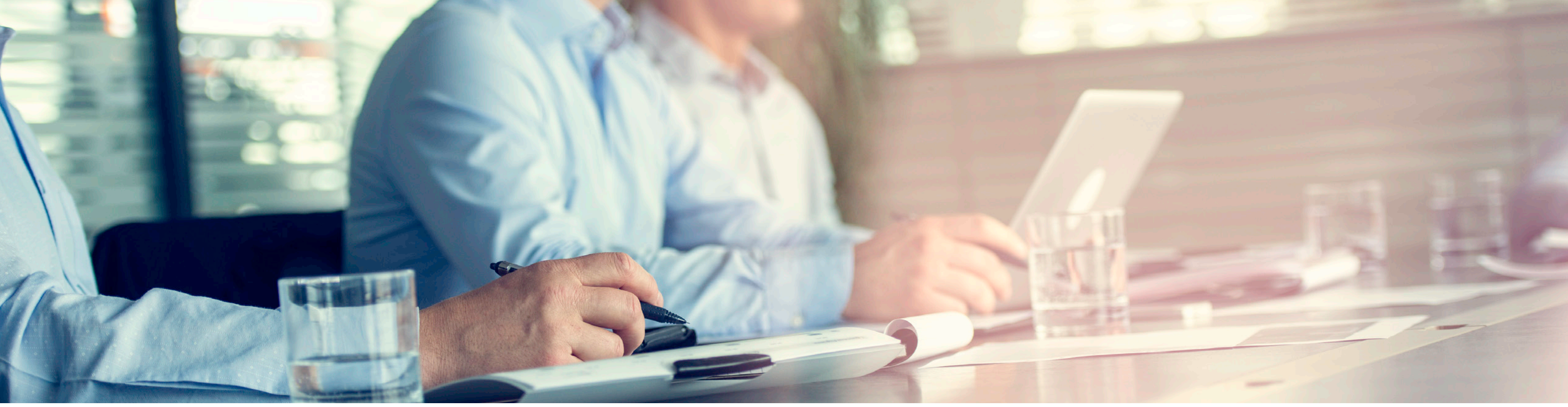
A plan sponsor should conduct an initial due diligence review to select a manager, and should monitor the manager's process and services going forward. The initial review would usually include the provider's professional background, experience, reputation, disciplinary action, insurance coverage, fee reasonableness, and any conflict of interests. Monitoring the manager includes an ongoing review of the investment decisions made, fees, and plan participant satisfaction.

Oppenheimer & Co. Inc. (Oppenheimer) is a full-service investment firm that provides financial services and advice to retirement plan sponsors, individuals, high net worth investors, businesses and institutions. For over 125 years, we have provided investors with the necessary expertise and insight to meet the challenge of achieving their financial goals.

Our Retirement Services Department was established in 1987 to work with our Financial Professionals and their clients to guide them regarding

By utilizing an investment manager in such a way, the plan sponsor ***transfers fiduciary responsibility*** for plan level investment decisions to the manager. The Plan Sponsor's responsibility then becomes to follow a ***prudent process*** to select and monitor the manager.

**Employee Retirement Income Security Act of 1974*



the proper management of their retirement plans, including the prudent investment of plan assets. Together, experts in the department and our Financial Professionals work with plan sponsors and their retirement committees to help them manage their fiduciary responsibilities.

By Oppenheimer acting not only as plan fiduciary but also as a discretionary manager and/or non-discretionary advisor, Plan Sponsors are assured that their plan and its participants receive the highest standard of care. We put in place a documented prudent process for plan decision-making. In this way, the pertinent government rules can be followed, and decisions can be made in the best interest of plan participants.

Oppenheimer has no proprietary investment products that would cause a conflict of interest with the advisory services that we provide to 401(k) plans. We place our investment advisory clients' interests in front of our own, with our decisions made in the best interest of plan participants, based on the guidelines set by each plan's investment policy. Oppenheimer's compensation is disclosed in a written fee agreement in which the amounts and sources of compensation are clearly outlined for your review. Oppenheimer only receives the compensation outlined in our fee agreement.

The Process of Transferring Management

It is important that a Plan Sponsor and its investment committee understand the process that is followed when hiring a 3(38) manager for their participant directed 401(k) plan. After an investment manager is retained to assume responsibility for a plan's investment offerings, neither the Plan Sponsor nor the investment committee members will exercise control or discretion in any plan investment decision – if either party were to exercise discretion, the 3(38) manager's discretionary relationship would be compromised and fiduciary duty delegation and protection will be lost.

Once the decision has been made, the process of transferring investment management responsibility is relatively straight-forward:

- Oppenheimer is appointed by the Plan Sponsor to manage the 401(k) plan investment process
- A written Agreement which outlines services and fiduciary status is signed
- The Plan Sponsor provides the plan recordkeeper with the required authorization documentation, transferring investment responsibility to Oppenheimer
- Oppenheimer is solely responsible for the selection, monitoring and replacement of plan investment options
- The Plan Sponsor and other plan fiduciaries are relieved of responsibility for plan investments
- The Plan Sponsor retains the fiduciary duty to monitor Oppenheimer's services and make sure it carries out its appointed duties

Using the plan's investment policy statement as a blueprint, Oppenheimer will select, monitor and replace investments as needed. The Plan Sponsor is notified of changes as they take effect, and all decisions are well documented as part of our maintenance of a fiduciary audit file. In all other respects, the plan may continue to operate as it had previously.

Combined Services – 3(21) investment advisor fiduciary and 3(38) investment manager fiduciary

While a 3(38) manager will take responsibility for the selection and retention of plan investments, thereby eliminating the Plan Sponsor's fiduciary responsibility for this aspect of the plan, a 3(21) investment advisor will not take discretion but may also serve to reduce a Plan Sponsor's fiduciary responsibility. Unlike a 3(38) manager, which is a "do it for me" approach, a 3(21) adviser does not take direct authority over plan investments. Rather, the adviser provides expert guidance to the plan sponsor on why investment decisions should be made and recommends investment decisions based on the specific needs and objectives of the plan, a "help me do it" approach.

As advisor to a plan, Oppenheimer can act in multiple capacities. 3(38) discretionary services are typically paired with 3(21) advice to help the plan sponsor and/or participants make prudent decisions. The following assistance may be provided in our capacity as a 3(21) investment advisor.

- **Investment Policy Statement (IPS) development and maintenance**
  - –Asset class representation
  - –Selection criteria
  - –Monitoring criteria
  - –Replacement criteria
  - –Comparative peer group representation
  - –Comparative benchmark index representation
  - –QDIA selection
- **Periodic investment committee meetings**
- **Asset allocation modeling**
- **Plan participant investment advice**

Non-Fiduciary Services

Some services that Oppenheimer may provide are not investment advisory or investment management services. However, they can be a critical part to the successful maintenance of an employer's retirement plan. The following may be provided in our capacity as plan consultant.

- **Plan design recommendation**
- **404(c) compliance review**
- **Regulatory, legislative and industry updates**
- **Vendor selection and monitoring**
  - –Recordkeeping
  - –Custodian
  - –Administration
  - –Trustee
- **Transition services to new vendors**
- **Vendor management and issue resolution**
- **Fee benchmarking**
- **Employee education**
  - –Strategy
  - –Materials
  - –Meetings

Formalize the Services

Whether a Plan Sponsor retains Oppenheimer as an investment manager or investment adviser, a written agreement will spell out the terms of the services. The agreement details the scope of our services and responsibilities, and indicates in what fiduciary capacity we are acting. Oppenheimer's fiduciary services may be retained a la carte, or in one comprehensive service agreement. The choice is up to the Plan Sponsor, given the capabilities of its plan decision makers and the needs of its employees.

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