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FIDUCIARY FOCUS:

The Best Practices of Retirement Plan Committees

This material is an educational discussion of the best practices of retirement plan committees which provides ideas and suggestions on this topic and should not be construed as legal advice. Plan sponsors and others should consult their own counsel and designated advisor, if applicable, for specific guidance on their particular circumstances.

Executive Summary

For many plan sponsors managing a 401(k) plan can be an overwhelming job. It doesn't have to be. A growing number of companies are using pension committees to oversee their 401(k) plans.

In the past, pension committees were limited to managing defined benefit plans. This is changing and it's easy to understand why. The bear market of 2008-2009 spurred hundreds of lawsuits filed by plan participants against their plans on the grounds of fiduciary negligence. In some of these cases, plaintiffs pinpointed the blame on the plan sponsor, often an overworked human resource manager who lacked the time, experience and knowledge to serve as an effective steward and protector of the plan's financial well-being.

As a result, many organizations have come to realize that a 401(k) plan committee comprised of qualified internal representatives, aided by outside advisors, can bring a diversity of knowledge, insights and ideas to help in mitigating a plan's fiduciary and compliance challenges.

This article provides a step-by-step process for starting, structuring and managing a 401(k) plan committee. Even if your company already has a similar committee, you may find that some of the suggestions described on the following pages offer more effective use of this group's collective time.

Revive—or start from scratch?

Many companies establish a 401(k) committee with great fanfare, only to have enthusiasm and commitment peter out over time. Personnel changes and other corporate objectives often take precedence. If you're new to the role of plan sponsor, you can go through the files of your predecessors and look for a committee charter or bylaws or minutes from past meetings. If this documentation can't be found, ask senior management. Chances are that they won't know the answer and you'll need to start a committee from scratch.

Getting commitment

If senior management resists the idea of starting a committee, you may need to explain its necessity.

- **Fiduciary risk.** Failing to apply ERISA's requirements of accountability, objectivity and due diligence in managing the plan investment assets can put the company at legal risk. These responsibilities are too great for one person. Sharing these responsibilities can help to reduce risk.
- **Regulatory risk.** The Department of Labor and other regulatory bodies are constantly changing regulations governing 401(k) plans. While the plan's administrator and investment advisor may assist in implementing these changes, it is ultimately the company's responsibility to make sure the plan is in compliance.
- **Commitment.** A robust 401(k) plan is one of the most important benefits a company can offer. A 401(k) plan committee demonstrates the company's commitment to making sure that the plan is meeting the retirement investing needs of its employees.

Who should be on the committee?

At the very least, your 401(k) plan committee should include:

- Anyone who serves as a plan fiduciary. These individuals (or roles) will be indicated on the plan documents.
- At least one member of senior management, preferably the CFO or COO.
- The company's legal counsel.
- One or more participants. These individuals can represent the views and concerns of rank-and-file employees.
- One committee secretary. This person is responsible for taking notes and documenting discussions and decisions during committee meetings.
- External vendors. Representatives from the plan's trustee, recordkeeper, administrator and investment advisor may attend specific meetings, depending on the topics to be discussed.

While plan fiduciaries and senior managers may be permanent members of the committees, plan participants and committee secretaries might change on an annual basis. Participation should be voluntary, and should be recognized in annual performance reviews.

Establishing bylaws

If you want your 401(k) committee to be effective, its members must understand what they're expected to accomplish. Before your first meeting, you should prepare and circulate a draft of bylaws that defines its purpose, responsibilities, and its processes for conducting reviews and resolving issues. For example, a typical document might look like the following:

Bylaws of the XYZ, Inc. 401(k) Plan Committee

Purpose: The XYZ Inc. 401(k) Plan Committee is responsible for ensuring that the plan is being managed in compliance with all ERISA and Department of Labor regulations and that it continues to meet the needs of XYZ employees. The Committee will also be charged with conducting a search for a new plan provider or advisor if and when such a need arises.

Responsibilities. Members of the Committee are responsible for: providing fiduciary oversight over the plan's investments; ensuring that participants have the resources they need to make informed enrollment, deferral, and investment decisions; making sure the plan is compliant with industry regulations; and identifying and implementing best practices for resolving issues relating to plan administration, compliance, enrollment, and operations.

Logistics. The committee will meet on a quarterly basis.

Required attendees. At every meeting, attendance is mandatory for: The Director of Human Resources, the Chief Financial Officer, the designated Participant Representative, Company Counsel, and the Administrative Assistant to the Human Resources Director.

Optional attendees. The first meeting of a calendar year will be attended by the plan's investment advisor and a representative of the plan's recordkeeper, who will provide an annual review of the plan. These individuals may be asked to attend other meetings as needed.

Documenting proceedings. The Administrative Assistant will take notes of all discussions and decisions made by the committee and these will be archived for a minimum of five years.

Additional meetings. The Committee reserves the right to schedule additional meetings as needed.

These bylaws should be reviewed, edited and approved at the first meeting.

Start with the fiduciary basics

Since your committee will be charged with overseeing the financial well-being of the plan's investments, you may want to start every meeting by handing out a printout of ERISA's five fiduciary requirements:

- The plan must provide an appropriately diversified selection of investment options.
- The plan's assets must be managed in a prudent manner.
- The plan's costs must be reasonable.
- Decisions about investments should follow guidelines specified in the plan document (unless plan provisions don't conform to ERISA specifications).
- All decisions must be made in the best interests of the plan and its participants.

While the committee will discuss all aspects of plan administration, most of its attention will probably center on investments. Members will need to understand the difference between making investment decisions as a participant and making these decisions as a plan fiduciary. Your plan's investment advisor should be able to provide education on this important topic.

The investment review

Your plan's investment advisor should attend your first committee meeting to present an investment review. If your plan has an investment policy statement, the advisor should follow its guidelines. If your plan doesn't have an IPS, ask the advisor in advance to be ready to present:

- Annual, 3-year, 5-year and since inception of fund total returns for all of the plan's investment options versus their associated benchmarks.
- Qualitative and peer group rankings of investments from third parties (examples of these include Morningstar and Lipper).
- Risk-return and volatility data for each investment option.
- Detailed fee information for each option in the plan.
- An overview of economic and market factors that affected performance of asset classes in the plan and an outlook for the months ahead.
- Any recommendations for adding or replacing investment options, and the rationale for such recommendations.
- Updates on regulatory initiatives that may affect the plan or the advisor's relationship with the plan.
- If applicable, an ERISA 404(c) review that confirms that your plan meets ERISA's minimum standards of portfolio diversification and availability of updated investment information for plan participants.
- An overview of resources the advisor can provide to aid in participant education and retirement planning decisions.
- A template for an investment policy statement that can be adopted for use by the plan.

Other issues

While investment practices will occupy a good portion of your meeting, make sure to leave time for discussion of other issues. These may include:

- **Enrollment updates.** The plan sponsor can provide an update on the number of new participants and their contribution levels, report any current noncompliance risks, and get feedback on the quality of enrollment and investment education resources.
- **Client service issues.** The participant representative can report any problems participants have had in getting their questions or requests resolved.
- **Regulatory updates.** A representative from the plan administrator may wish to provide an update of any new or proposed changes in ERISA or DOL regulations that may have an impact on plan administration.

Identifying and preventing conflicts of interest

A plan fiduciary is required to act solely in the interests of the plan and its participants. This means that anything that might prevent a committee member from doing so needs to be identified as a potential conflict of interest. These situations might include:

- The plan's investment advisor is a committee member's relative or spouse, making it difficult for that member to objectively evaluate that advisor's effectiveness, particularly if there is a request to search for a new advisor.
- A member who is a limited partner in a privately owned real estate fund strongly suggests that the fund be offered as an investment option in the plan for highly paid employees.
- The CEO's personal broker has promised to fast track his application for membership to his country club if the CEO will appoint him as the plan's new investment advisor.

In case you are wondering, all of these situations have actually occurred. These conflicts need to be identified as they happen, and procedures need to be put in place to ensure that these conflicts will not interfere with the committee's ability to carry out its activities in an objective manner.

This may require that a member be excluded from discussions of a specific topic, or that the committee may need to prepare a response to improper requests from non-committee members (such as the CEO in the third example above) that explains why this request violates ERISA rules against engaging in prohibited transactions.

The importance of documentation

Documenting the proceedings, deliberations, and decisions made in these meetings is critical, since this paper trail may someday be needed to provide 'fiduciary cover' should the plan be sued or face ERISA scrutiny.

A Retirement Plan Committee is in the bests interests of the plan

There's an old joke in business that a camel is a "horse designed by a committee." While this may be true in some situations, an effective 401(k) plan committee is the exception to this rule. No single individual possesses all of the legal, investment, and administrative knowledge needed to master the administrative and fiduciary complexities of a managing 401(k) plan on their own. Bringing the knowledge and expertise of a qualified team together to provide oversight of your plan will not only reduce legal and fiduciary risk but will reinforce the idea that helping employees save for retirement is everybody's business.

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This article was written by Jeffrey Briskin, President of Briskin Consulting, a marketing and creative services firm. Jeff has more than 15 years of experience working with 401(k) plan providers to deliver strategies and programs that help plan sponsors and plan participants understand and mitigate the complexities of making investment decisions. Jeff is also the author of The Briskin Consulting Study of Small Retirement Plan Sponsors, a research study that explores the reasons why plan sponsors select, stick with and switch plan providers. For more information, visit www.jeffbriskin.net.

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