

-----Original Message-----

From: Ken Holmes [mailto:ken.hlms@gmail.com]

Sent: Tuesday, September 16, 2014 11:02 AM

To: EBSA, E-ORI - EBSA

Cc: Ken Holmes

Subject: Standards For Brokerage Windows

I am writing to you today to convince you to provide concise language regarding the Fiduciary responsibility for Brokerage accounts and to clarify a 100% allocation by participants is permitted.

I believe once a participant moves money into a Brokerage account they are assuming the Fiduciary responsibility and absolving the plan Fiduciary's of any and all liability. A Brokerage account should permit unlimited investments in stocks (with the exception of company stock if requested), bonds and ETF's. The money in a 401K account belongs to the participant and they should have the option to invest it as they see fit and without oversight of the plan Fiduciary's.

For Fidelity's larger company plans about 40% allow a 50% allocation and 80% permit a 100% allocation but we need clarification on Fiduciary liability. Earlier this year Banner Health (the second largest employer in Arizona) reorganized their 401K and moved from a 50% Brokerage allocation to a 100% allocation. They reduced the number of their core funds to a reasonable number and populated it with high quality funds and lifestyle funds. For those that wanted more or who wanted to continue to invest in funds that were removed from the plan they now had a much more robust 100% Brokerage account. This should be the model for most companies especially large ones with many sophisticated highly educated professionals who want to take full control over their retirement future.

By not clarifying the rules far to many companies have taken a very conservative approach to the Brokerage account by limiting the allocation to 50%. This will reduce the potential return and overall net wealth for those who know how to invest in stocks and bonds. For myself I fully utilize the 50% Brokerage window my company provides and my core fund investments are significantly less than those in my Brokerage account. If my plan had a 100% allocation I would have a lot more money available to me retirement.

Some industries see this differently. Take the airline industry for example, every major airline including the freight carriers except American and US Airways (who recently merged) offer a 100% brokerage option for their pilots 401K plan. Other employees as well as the pilots for American and US Airways are limited to a 50% allocation. This is unfortunate because the companies are assuming the other employees are not capable of controlling their investments. Many probably are and those that aren't have the core options available to them.

I urge you to;

- 1- Clarify the language by reducing or eliminating the Plan Fiduciary liability and responsibility other than education for the participants who utilize the Brokerage option.
- 2- Clarify that companies may increase their Brokerage allocation to 100%
- 3- Clarify that participants who utilize Brokerage are assuming the Fiduciary liability for the decision they make within the Brokerage window. A company or plan Fiduciary can not be held responsible for any losses incurred by the participant in their individual Brokerage account.

These clarifications will go a long way to providing piece of mind to companies and plan Fiduciary's while providing pathway for sophisticated investors to significantly increase their retirement nest egg.

Thanks you for reviewing this issue.

Ken Holmes
602-751-3697
ken.hlms@gmail.com