

July 21, 2021

U.S. Department of Labor
Employee Benefits Security Administration
Advisory Council on Employee Welfare and
Pension Benefit Plans
Washington, D.C. 20210

Filed Electronically

RE: Brokerage Windows in Self-directed Retirement Plans

Dear Sir or Madam:

Thank you to the ERISA Advisory Council for this opportunity to participate in better understanding brokerage windows in self-directed retirement plans. I appreciate the Department's efforts to ensure that plan participants who invest through brokerage windows and other similar arrangements receive appropriate protections under ERISA.

In my position at Empower Retirement, I am point of contact for clients with their recordkeeping and administrative needs. The clients in the division of the company of which I am part are made up of large to mega corporate clients, with large being defined as having \$50M+ in assets and mega being defined as having \$500M+.

My position as well as my background as President and co-chair of the governmental affairs committee for the American Society of Pension Professionals & Actuaries (ASPPA) may lead you to believe that my statements are based on my positions either for Empower Retirement, who supports 67,000+ plans, or for ASPPA and the American Retirement Association who is made up of over 25,000 members. However, this is not the case as my comments are my own and based on my knowledge and background as a participant utilizing a brokerage window as a solution to reach the initiative I have set forth to meet my retirement readiness objective.

As background, Plan Sponsors make available brokerage windows based on the requests by participants whose investment objectives cannot be met by the plan's designated investment alternatives. Typically, this is an accommodation by the plan and not one that is widely marketed. It is my belief that the lion share of the plans that offer such windows are larger plans. Additionally, the individuals that take advantage of the brokerage windows are more astute investors looking for opportunities beyond the designated investment alternatives provided by the plan sponsor.

From my experience, plans typically set a percentage limit on the portion of an individual's account that can be placed into a self-directed brokerage window. This structure, while providing fiduciary protections set forth from the designated investment alternatives provided in the plan, also meets the demands of the individuals who wish to use a brokerage window.

While many providers support the notion of clarifying the disclosure rules so that participants understand the differences in cost, risk, and fiduciary oversight when investing through a window as compared to designated investment alternatives provided under the plan, I would caution that careful consideration be given to ensure unintended consequences do not come from such clarification. Again, these windows are used by astute investors and are already provided disclosures that provide a solid basis of the costs and risks. This is done through both the plan sponsor's disclosure (DOL Reg. §404a-5), the initial and annual disclosure describing the window and any fees associated with using it, a quarterly disclosure of any fees charged to the account and the services provided, as well as disclosures mandated by the brokerage window such as the SEC required disclosures (SEC Rule 10b-10), confirmations of account activity, monthly or quarterly report disclosing investment positions held and any transaction activity for the period as well as prospectuses. Clearly, we need less disclosures not more.

I believe that any new rules that would increase a plan fiduciary's responsibility for monitoring the performance of brokerage window investments, which would likely cause plan fiduciaries to cease offering these arrangements.

While plan sponsor fiduciaries can choose to add restrictions, beyond limiting the percent of a participant's account that can be invested in the window and/or requiring a minimum investment in DIAs, they can also limit investments to things such as no load/no transaction fee funds only, mutual funds only, listed stocks only as well as prohibiting investment in specific mutual fund families or individual mutual funds, or prohibiting investment in employer stock. I know there have been questions about the types of investments individuals are choosing and how frequently are they changing their positions in such investments. So I thought it would be beneficial to share how I view the brokerage window offering. In order to meet my long-term investment objective, I utilize a self-directed brokerage window to do a few things. First and foremost to accumulate wealth for retirement. This is through selecting low fee investments such as ETFs. I also utilize the window to have access to stocks that I would like to hold a direct position in. Rather than in a mutual fund where I may only hold a small percentage in the underlying investment. My positions are buy and hold and are traded very infrequently. That said, I do check my account much more often (than prior to utilizing the brokerage window) and stay up on the market due to these investments. In turn, this has led me to also watch my designated investment accounts offered by the fiduciaries of the plan. I also expect to use this brokerage account as I move from the accumulation to decumulation phase of my life, to ladder investments in a way that helps me manage the risk and payout objectives.

You might have picked up from my description of how I utilize the self-directed brokerage account, that this option made available by my employer sponsored plan has led to being a better steward and provided the fiduciaries of my plan greater assurances far beyond what might be achieved through expanded disclosures or through limiting investment selections to the core lineup of the plan.

While my experience is just one, and we know that individual's investment decisions are highly customized/individualized, I am happy to address your questions.

Thank you,

Frank Porter



President of ASPPA and Relationship Manager for Empower Retirement