

Wilmington Trust
Plan Sponsor Year end Strategies: 401(k) Topics from the DOL Discussed

Moderator:
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Operator: At this time, let's begin today's event, Plan Sponsor Year end Strategies, ERISA basics and 401(k) Thought Topics. At this time, it is my pleasure to introduce your moderator, Robert Barnett, Executive Vice President and Head of Retirement Services Distribution. Rob, you have the floor.

Rob Barnett: Thank you. And thank you everybody for your time. We're very excited today to be hosting our third retirement plan focus webinar of the year. As way of introduction, my name is Rob Barnett and I oversee the retirement businesses for Wilmington Trust. We are very excited for today's discussion and are joined by two ERISA experts to help guide you all as plan sponsors.

Thinking about the last year and the retirement plan marketplace, there are a few things that jump out to me. First is the continued market volatility. We all are impacted by this day-to-day, whether it be how we're thinking about the market volatility related to committee related items or how it's impacting our own retirement savings or our participants' retirement savings.

And one interesting fact. As you think about volatility in 2022 in the markets, I'd like to point out that the market volatility is measured by the VIX. It is actually lower in 2022 than it was in 2000. So as you think about the market that we're in today and how crazy the world is, one thing to remember is that as much as there is volatility today, we've experienced greater volatility more recently. And I believe everybody can say that their retirement plans weathered those -- that the volatility of 2020 well and hopefully, you feel well positioned to weather the volatility of 2022.

The second item that keeps coming up is the Secure 2.0. Now, in March of 22, the House passed a truncated version of Secure 2.0, which actually had a few key provisions fallout. We, Wilmington Trust, have been active, working with our lobbyists and our partners in this space, working to ensure that a robust version of Secure 2.0 is passed by not only the House but the Senate.

The good news is, is the feedback we continue to receive is that Secure 2.0 looks on track to be a piece of legislation that will be passed in some form in 2022. We would expect that it's most likely post-midterm elections and somewhere in the last two to three weeks

of this year. With that, we expect there to be some pretty interesting options for your retirement plans to consider on a go forward basis based on this legislation.

So as you can see, there's never a dull moment when you're thinking about your retirement plan savings and being a retirement plan fiduciary. Today, our goal is to help you as a plan sponsor learn from other mistakes by driving into recent litigations and learning from other plan sponsor mistakes.

The second, and this is probably the most important from my seat, is to help continue to educate you on your fiduciary responsibilities. Fiduciary responsibilities are something that don't go away and my colleague, Jeb Bowlus, who is our lead ERISA counsel at Wilmington Trust, and our partner, Tom Roberts, who is senior counsel at Groom Law, will be spending the next 30, 35 minutes working with you, talking through some of these fiduciary responsibilities and some things that we've seen from other plans that you may not want to do with your plan.

So one of the key pieces is and why we're excited that you joined us here is that fiduciary responsibilities never go away, as I said. But fiduciary training is particularly difficult to obtain. And hopefully you take some what not to do's or things to do away from our conversation today. So with that, I'm going to turn it over to my friends, Jeb Bowlus and Tom Roberts for a healthy conversation about ERISA and some items that you may want to consider not doing with your retirement plan. Jeb, Tom?

Jeb Bowlus:

This is Jeb Bowlus. Happy to start off. We'll pull up the first slide on ERISA's fiduciary framework. 401(k) plans and all tax-qualified plans for private employers are governed by federal law. The rules, often called fiduciary principles or fiduciary standards, are set out in the statute. The Employee Retirement Income Security Act, better known by its acronym, ERISA.

As part of a sound plan oversight process, there should be periodic training on ERISA fiduciary principles. That's what we want to provide for you today along with what we hope is a spicy mixture of hot topics. We are going to speak about how to identify fiduciaries. We're going to speak to how to differentiate between fiduciary and non-fiduciary functions.

As you'll see from the slide, these non-fiduciary functions are often called settlor (ph) functions. That's an odd legal term that comes from trust law. The settlor is the person that sets up a trust. So the employer is a part of a retirement trust is known as the settlor and actions that it can take as its capacity as employer are called settlor functions.

Then we're going to take a little deeper dive into the duties of prudence and loyalty. And often quoted a court statement is that those standards in ERISA are the highest known to the law. And then of course, since they are so high, we need to talk about what is at stake if things go wrong. Fiduciary liability, as we'll discuss, can result in personal individual liability even though otherwise conduct business in a corporate form or a limited liability company form.

And finally, we're going to talk about overall oversight practices. So as we go through the program, please consider the application of these principles to your plan. And of course, if you have questions about ongoing investment oversight, work with your Wilmington Trust advisor. Now Tom, do you want to take us through the definition of fiduciary?

Thomas Roberts: I would be happy to, Jeb. Let me just make sure I'm on the right slide here. Excuse me. There we go. So it's a pleasure to be with you all this morning and I just wanted to add to a little meat on the bones of the framework that Jeb just gave us. You're WITMA (ph) Advisor team is available to assist you in discharging your fiduciary responsibilities.

And of course, the number one question that arises is, well, who is a fiduciary and when am I acting as a fiduciary, and why does that matter. And that's what we're going to get into in the next couple of slides. Every ERISA case that turns on fiduciary liability begins with the question, was the person in question really acting as a fiduciary? That matters a great deal. If they are acting as a fiduciary, they're subject to duties of prudence and loyalty and personal liability.

If they're not acting as a fiduciary, they're not. So really, the cornerstone of virtually every ERISA case begins with the question is the person functioning as a fiduciary with respect to the action in question. So who is a fiduciary to the plan? Well, you can become a fiduciary in one of three ways. It's exercising discretionary authority or control over the management of plan assets. Selecting investment options, replacing investment options, or actually buying and selling individual stocks and bonds that underly those options in certain kinds of a trust and other plan asset vehicles.

You can have discretionary authority over plan administration, deciding benefit claims decisions, deciding issues about the interpretation of the plan. That's fiduciary. Or it's one who renders investment advice to the plan for a fee. That would be your Wilmington Advisor. They give you advice for a fee. They are a fiduciary to your plan and so are you.

Jeb Bowlus: Tom, it may be good to emphasize that second bullet about administration, how important it is that if you're going to be a fiduciary by reason of administration, you need to have discretionary authority. A lot of record keepers that do nothing more than keep participant account balances would not be fiduciaries. On the other hand, as you say, if they're going to resolve benefit claims, that is a fiduciary function. And some of the most interesting litigation we have seen about cybersecurity breaches has turned on whether the administrator in question is functioning as a fiduciary by reason of exercising discretion. Because their position is we're just record keepers. We can't have fiduciary liability.

Thomas Roberts: That's 100% right, Jeb. Discretion is the (inaudible) of fiduciary status. And to your point, those who merely keep records and engage in so-called administrative activities within the framework of policies and procedures established by the plan administrator, capital P, capital A, i.e. the plan sponsor, those folks are not fiduciaries. So I totally agree with your point. It's the exercise of discretionary judgment that transforms one into a fiduciary with respect to plan administration.

The last point I want to make is that a core part of the ERISA statute is making sure that every plan, which has to be reflected in a written plan document, means a fiduciary. Plan participants have the right to look at the plan document. They have a right to know who their plan fiduciary is, who their plan administrator is, who their trustee is. And my guess is that if all of you picked up a copy of your plan document and you opened up the adoption agreement that you signed to adopt it, you would probably see either a committee name or more commonly, your firm. The employer that you work for is a named fiduciary of your plan. That's where fiduciary status resides and fiduciary liability attaches again when you're exercising discretionary authority or control over plan asset management or over plan administration.

Jeb, I'm going to advance the slide and let's get into distinguishing between settlor functions, employee functions, and fiduciary activities.

Jeb Bowlus:

Yes, this distinction is particularly important because when acting as a settlor, ERISA's fiduciary standards do not apply. So we all want to know when we're being subject to ERISA standards and when we're not. So settlor activities, that is employer business decisions, whether to establish the plan, plan design are not fiduciary activities. So that means you're free to consider your business interests primarily or exclusively.

But it's important to note that plan assets cannot be used to pay for settlor activities. So sometimes if there are record keeping, revenue sharing payments, you need to make sure that those aren't being used to pay for non-statutory required amendments that are made by the employers and its discretion. Also, business folks are used to having attorney/client privilege when they speak with their lawyer.

There is an important exception to attorney client communications when you're receiving legal advice as a fiduciary. There, the privilege flows through to the beneficiaries, the plan participants or beneficiaries so that the employers' communications in a fiduciary capacity may well not be privileged. And you probably are safest to assume that they wouldn't be privileged.

So let's look at the chart below on the slide. The settlor activities are the ones we've talked about, establishing, amending, terminating, adding features. So again, plan assets cannot be used to pay for those. The fiduciary activities, those that are subject to the ERISA standards, are appointing and monitoring plan service providers, trustees, record keepers, appointing and monitoring investment managers, selecting plan investments, monitoring plan expenses, developing an investment policy statement, discretionary eligibility determinations, handling disputed claims, and communicating the plan terms to participants and beneficiaries.

Those actions are held to the ERISA standards. So Tom, maybe you want to meet us in exploring those standards?

Thomas Roberts:

I'd be glad to, Jeb, and I'm so glad you took us through this. There's an expression that Jeb and I, and other ERISA attorneys use a lot, which is that an employer and people who work for an employer that sponsor a plan can wear two hats. When they're engaging in fiduciary activities, they're wearing their fiduciary hat. When they're engaging in settlor activities, they're wearing their settlor hat, their employer hat. And it's important to keep the two straight.

As Jeb took us through, when you're amending the plan you're not wearing a fiduciary hat. So you can amend a plan to change a benefit, to reduce your match, to increase your match. You would like to terminate your plan. All of those would be problematic, or at least two of them would be if you were wearing a fiduciary hat for the reasons we'll get into in a moment. But when you're wearing your settlor hat, your employer hat, by engaging in settlor activities you are permitted to look out for your own interests as opposed to the exclusive interests of the plan.

So when I'm wearing my fiduciary hat, what comes with that? Well, ERISA says that the duties of fiduciary responsibility to plans and to participants under that stature are the highest known under law. There's several of them but the two most important that form

the foundation of all fiduciary responsibilities or the duty prudence and the duty of loyalty.

Prudence is what most fiduciaries need to think about most of the time. It means that when wearing a fiduciary hat, one needs to go about the business of making decisions in a considered way and in an informed way. This comes up particularly with respect to decisions about designated investment alternatives. Did the plan sponsor, wearing its fiduciary hat, regularly review the menu of designated investment alternatives. In a considered manner, was it informed? Did it look at competing investments?

Those tasks do not come naturally to most plan sponsors. Plan sponsors who do not operate in the financial services business may not have ready access to that sort of information. So ERISA says that's not fatal but it is important to obtain expert input and expert advise. Again, this is where your WITMA (ph) advisor becomes so important because they can bring the necessary information to the table that can assist your fiduciary process.

A little bit on the duty of loyalty. Loyalty, which goes hand in hand, truly the twin companion with prudence, requires that an ERISA fiduciary act solely in the interest of the participants and beneficiaries. One who is a fiduciary may not put their own interests ahead of those of the plan. Going back to our earlier discussion when Jeb was emphasizing the distinction between settlor and fiduciary functions, that's why it's so important.

Wearing a settlor hat, an employer can consider its own interests lawfully. Wearing a fiduciary hat, it generally cannot. It must act solely in the interest of participants and beneficiaries. Jeb, I am going to advance the slide and I'm going to ask you just to take us through our timeline here or our chat on how one goes about making a decision.

Jeb Bowlus:

Sure, Tom. Again, fiduciary actions are really a process, a process that takes skill and information. So the first step is to identify the necessary information that it takes to make a judgment. And as part of that, you need to make sure that your information is coming from a reliable source. And ERISA standards, because they're high, you're held to an expert standard even though you're not an expert.

So you have a duty to consult with experts, as necessary. In other words, it's no excuse to say, well, I wasn't an expert. You have an obligation to obtain advice to make a prudent judgment. And then the next step is something, as Tom says, it doesn't come naturally, particularly to busy business folks, and that's to document the underlying basis for decision and the materials that you had on hand and considered when you made that decision.

Because audits from the Department of Labor, or heaven forbid, litigation, come up years later. And it's very helpful to have a folder for each meeting where you have your agenda, where you've identified key questions, where you put the materials that you had that helped you answer those questions and that you keep it together until you need. So in other words, all those materials together along with a curious inquiry state of mind go for making informed decisions.

Tom, I think it's time now to look at sort of what can go wrong and being an ERISA fiduciary, the dreaded liability issue. You want to take us through some of those considerations?

Thomas Roberts:

I'd be happy to, Jeb. This is never a happy topic to talk about but it's an important topic. It's a topic of concern I think to every single individual that serves on a plan committee or that administers the plan on behalf of an employer sponsor. Liability comes with serving as a fiduciary. It comes with the territory. So what is that liability? Well, ERISA says that one who is a fiduciary and who breaches or again who isn't prudent or one who is disloyal would be a breaching fiduciary.

If you do that and the plan suffers a loss, you are personally liable for the recovery of those losses. And who can recover from you? Well, participants can. The Department of Labor can. Other fiduciaries can. But the number one source, I think, of fiduciary liability these days is probably the private Plaintiffs Bar and probably followed closely behind that is the U.S. Department of Labor.

And so if you pick up the business section of the Wall Street Journal or the New York Times, you will read with regularity about lawsuits filed on a class action basis by participants in 401(k) plans who allege that the fiduciaries responsible for the selection of investments for their plan acted imprudently. And typically, what they will allege is that the fiduciaries fell asleep at the switch, that they didn't keep their eye on the ball. They didn't shop around for more advantageous or lower cost investments. And/or they allowed funds that had poor performance and sustained poor performance over a long period of time to remain in the plan when better performing alternatives were available.

Those are probably the number one source of lawsuits and the DOL will bring similar allegations as well. Now, Jeb a moment ago, made a very important point. He talked about the importance of documenting decision making. Because the best defense that a fiduciary has against those sorts of lawsuits that that acted imprudently is keeping records and minutes. And showing, if anyone asks, that you did, as a fiduciary, have your eye on the ball. That you did, on a regular basis, get together and consider these matters. And most importantly, probably, you did review and oversee the competitiveness of the investment options you were offering. And you've got a record of it.

And the law says that so long as you engaged in a prudent decision making process, you had met your duty of prudence. You are not a guarantor of positive financial performance. You merely have to be diligent, and considered, and informed in your decision making. So what can participants sue for? Well, participants can sue for benefits and equitable relief. I'm not going to dwell too much on that part of the statute because the more active area are the claims for civil monetary penalties. You, the fiduciary, breached. I, the participant, in bringing a lawsuit on behalf of the plan and I want you to make whole my loss. That's where most of the action is.

One footnote to all of this and one positive note in this otherwise rather intimidating picture that we're painting here for you is that ERISA preempts state lawsuits. So a participant may not bring a suit against a plan fiduciary for negligence, for example, or for breach of contract. Those sorts of claims are preempted and they get decided, if to the extent they pertain to the plan, in federal court under ERISA standards.

I think Jeb, what we're going to do now, is transition a little bit and we're going to get into some hot topics that really are examples of where the federal government and developments, I think, in the marketplace are bringing to the fore some really challenges for those who function as fiduciaries to plans. And we've got a big one as our hot topic number one. Jeb, talk to us about crypto.

Jeb Bowlus: Keeping time in mind, we'll probably touch rather briefly on this where crypto is certainly a hot investment topic. And a lot of crypto advocates said it provided additional diversification. It wouldn't go in the same direction as the stock market. Well, that hasn't yet been supported by the evidence. And the Department of Labor, because there was such interest in crypto, in March came out with sort of an enforcement bulletin that warned plan fiduciaries that they have to exercise extreme care.

Well, that is saying something because ERISA standards are already high. So they're saying to people thinking about crypto, you've got to use extreme care. And they pointed out the volatility, the confusing nature of the investment, and basically said, hey, the experts can't really understand this. We don't see how plan sponsors can. We really don't think that crypto has a place in the retirement investment sphere. And they actually said that they're setting up an enforcement program so that any plan that invests in crypto can expect to have an investigator knocking on the door.

So sufficed for now to say, if you're thinking about crypto, there's a lot of considerations. Even though some major vendors are making it available on their platform, the DOL has responded to those efforts by saying, hey, not on our watch. So you're on notice but our next hot topic is something that plan sponsors cannot avoid and that's cybersecurity. You want to address that?

Rob Barnett: Real quick on crypto, I think you touched on something there that I think it's important for the audience to understand. Based off of the outline you and Tom discussed, when you said certain vendors are making crypto available to retirement plans, would you mind talking through their fiduciary obligation versus the plan's fiduciary obligation?

Jeb Bowlus: Yes. That's a good point, Rob. These are major vendors. For example, Fidelity says that it wants to open up its platform to allow participants to invest up to 20% in crypto. And the Department immediately responded with a public pronouncement saying that, in the Department's view, was not appropriate for plan assets. So the sponsor of the crypto, in other words, the platform provider, certainly would have a duty to educate the plan fiduciary. But unfortunately, it's the plan fiduciary that decides to make the crypto available that will have primary liability there.

So as a plan sponsor, if you decide to add a crypto feature, you're on the hook for the Department of Labor's response to that. And you can take steps to mitigate that risk by limiting the percentage of the account that can go in the crypto, by having professional explanations as to why it's prudent and desirable. But it's your exposure on the line if you make that decision. And you want to find out how much support you can expect from those platform vendors if you implement.

Rob Barnett: Thanks, Jeb. And before we get to the next topic, just wanted to make everybody aware, we will be going to a question and answer session after the prepared remarks by Jeb and Tom. And please feel free to put any questions you have in the question and answer section of the tool here on the right hand side. And we'll get to as many as we can. Thank you.

Jeb Bowlus: Tom, I don't know if you wanted to add any additional comments on cryptocurrency.

Thomas Roberts: Well, I think you did a great job covering the topic. The only thing I would say is obviously, earlier in the year, crypto was shining a lot more brightly in the eyes of many investors than it is right now. But it still draws a lot of interest. A lot of plan sponsors get

pressure from participants to add it or at least get asked about it. And I think it's an interesting example where the Department of Labor says, listen, you cannot leave participants on their own. You cannot offload totally your fiduciary responsibility. To the extent you make available an investment option in the plan, it's subject to duties of prudence.

And as Jeb mentioned, they have very serious doubts about whether at this point in time it's really possible to prudently select crypto. It's a controversial position, by the way. A lot of folks disagree with the DOL's position but they are quite adamant about it and Jeb is right about the real risks of investigation that come with those who select it.

So I'm going to move onto hot topic number two, cybersecurity. Cybersecurity is red hot and the reason it's so hot is that a lot of vendors have suffered not pure cyber attacks in the sense in that their systems have not been hacked into by external actors so much as they have been duped by fraudulent impersonators. Fraudulent impersonators are people with malicious intent who obtain personal information about plan participants and how have gotten very, very good at making plan record keepers and trustees and the customer service centers think that when they call into obtain participant balance information and to request withdrawals that they are in fact the participant when they're not.

And when they can successfully withdraw funds, those funds very quickly move overseas and are very rarely recovered. So imagine the situation that some participants have found themselves in. Their 401(k) statement comes in the mail. They open it up and the account savings that they had been relying upon, due to no activity or fault of their own has gone to zero. That's been happening. It's been happening with alarming frequency. Some vendors, most vendors are quite good about making participants whole in those situations but not all of them are.

And unfortunately, there have been some cases where participants have been told, gee, we're so sorry that that happened to you. Good luck. It's not our fault. And those folks have brought lawsuits and the Department of Labor is quite interested in supporting those lawsuits. And it's that kind of background that has the Department of Labor really trying to get the plan sponsor community to take an active interest in cybersecurity. So as they did with crypto, they are putting out guidance.

Their guidance, it takes the form of reminding plan sponsors who are responsible for engaging service providers as fiduciaries that you really need to ask about cybersecurity. You can't just assume that the vendor you select has everything -- has their act together. So really what the Department of Labor is looking for here is they want plan sponsors to ask the question of their plan record keepers. What are your cyber practices? Do you have good policies and procedures? Do you do audits? Do you report out when you had accidental exposures. Do you make participants as whole when that sort of stuff has happened?

Your Wilmington Advisor is familiar with the cyber hygiene and the practices of the record keepers that are available for recommendation to you. We just mention this because it's topical. It's important and going back again to the fact that no fiduciary is required to have 2020 hindsight but is required to be considered and deliberate in making their decisions. This is an instance where part of considered decision making is asking the question.

And Jeb, I've got my eye on the clock so I'm going to--

- Jeb Bowlus: Me too (inaudible). Along with that, and this is where your Wilmington Trust Advisor can help you, is Department of Labor is going to expect to see some inquiry and report about your record keeping platform cybersecurity and your minutes. So don't forget to include that in your minutes. Also, this is a region where you can do more than just investigate.
- You should make sure that your platform record keeper is actively promoting best practices to participants. Because a lot of the losses have been the result of carelessness by the plan participant not using two-factor authentication, other avoidable mistakes. So reminding your participants that they have a lot of money at stake and that they need to be vigilant with their credentials, use appropriate passwords, change passwords, et cetera. So anyway, document that and include it in your communications.
- So hot topic three is DOL investigations. I think given the time, we can simply note that the DOL authority is very broad. So they don't have to have any kind of probable cause to investigate a plan sponsor. They can investigate for any reason or no reason. Tom, if you want to turn to the next slide, I think there's a couple points we'll make there.
- Thomas Roberts: Be happy to Jeb. Absolutely. So why might the Department of Labor come knocking at your door if you're a sponsor of a 401(k) plan? Well, the number one reason, in fact, probably 90% of all the cases is they've gotten a participant complaint. Someone in the plan is not happy and typically that someone, they've called the record keeper and they haven't gotten the response they wanted and they called HR and they haven't gotten the response they wanted. And then they called the Department of Labor.
- I mention that because if you get participant complaints and inquiries, it really is a benefit to you, the plan sponsor, to dealing with them expeditiously and not allowing that level of frustration to percolate that they call the Department of Labor regional office. Because when the Department of Labor arrives, as Jeb said, they have very broad powers. They can be quite challenging to deal with, largely because they're very nice people but they can be challenging to deal with in large part because they will expect a lot of documents and they will expect a lot of time and effort to be expended furnishing information to them, answering their questions, et cetera.
- So really, it's a good investment of time to try and address participant complaints quickly if one can. Other places--
- Jeb Bowlus: You're absolutely right about the time commitment that a DOL investigation takes. And one thing plan sponsors can keep in mind is a hot topic for the DOL is missing participants. People that leave employment and the plan sponsor loses contact with them. And the DOL keeps pushing and pushing sponsors, have you done enough, have you used search menus. So a good way to avoid a time consuming and sort of hostile audit is to make sure that you don't lose track of your former employees so that they know how to claim their benefit. But go ahead, Tom. That's just something that people kind of forget about. It's the silent people that have left your employment that still have accounts.
- Thomas Roberts: I'm so glad you mentioned it, Jeb. That is without a doubt one of the foremost priorities the Department of Labor has is participants who have moved, who may have worked for the company 10, 20 years ago and who have just plain forgotten that they even have an account balance. The Department will ask if they come auditing what have you done to contact these people recently. And if the mail has been returned undeliverable, as Jeb

said, what have you done or what has your vendor done to do a bad address search and track those folks down.

So if the Department of Labor does arrive at your doorstep, what to do? What to do? Well, number one action is cooperate. Provide documents. You may want to obtain legal counsel but there are dividends to be paid to working with the Department of Labor to be transparent, to show them your records, to show them the documents you have, to answer their questions.

As you do so, although you although you want to be friendly with them, keep in mind that very often, they will ultimately be looking for some monetary compensation to make the plan whole. They will call that voluntary compliance. But part of the way they judge - - their own employees have performance objectives at the Department of Labor, part of their performance objectives is have they been successful in recovering dollars for plan participants where they believe violations have occurred.

Ultimately, the process leads up to a closing conference and a closing letter. And when you get a Department of Labor saying that they have completed their investigation and are closing their file, that's the moment at which you know the investigation is over.

Jeb Bowlus: We'll cover this quickly because Rob, I see we've gotten a question that's very interesting and it's one that Tom and I will have a lot to say. But the three key takeaways here are know your responsibilities. In other words, what as a fiduciary are you responsible for? And basically, anything that you delegate you have an ERISA responsibility to monitor. So even if there's a delegation, you have to remember your responsibility for prudent monitoring.

The second one is to document your process. It is very nice to do everything right but if three to six years later, you can't prove that you did things right, you're in hot water. So careful minutes. Careful record keeping. Have it associated with your minute meetings. And then third is remember, the touchstone of ERISA is retirement income security. The exclusive benefit of participants and beneficiaries in keeping plan expenses reasonable.

So use that as your loadstone when you make these judgments. Ask what is best for participants. Rob, why don't we get to the questions/ The one in the window looks interesting.

Rob Barnett: Thanks, Jeb. Thanks, Tom. Fantastic overview. First question we have is what services can plan sponsors not outsource in regards to fiduciary responsibilities?

Jeb Bowlus: Well, I will start and then I will gladly share this with Tom. There aren't any responsibilities that you can't outsource provided you monitor your outsourcing vendor appropriately, providing you do a thorough investigation of the vendor that you select and depending on the type of outsourcing. Now, in regards to investments and how you use a Wilmington Trust advisor, there are two types of help that you can get for an investment advisor. You can get so-called ERISA 321 services, which is literally investment advice for a fee. Or you can get ERISA 338 investment management, where you actually delegate full investment authority to a third party. And Tom, do you want to explain the nuances of those two types of delegation?

Thomas Roberts: I'd be happy to, Jeb, and I think you make a great point. ERISA, it affords a plan sponsor the ability to delegate quite a bit. So the 338 delegation that Jeb mentioned means that the

plan sponsor has designated discretion to a third party to select and monitor the investment options of their plan on its behalf. And that's very powerful. And it's advantageous if one has done a good job selecting a 338 investment manager because the statute provides that where you've prudently selected the investment manager and prudently monitored the investment manager, you are not liable as a plan sponsor for the decisions that that investment manager makes day-to-day.

But here's the catch and Jeb referenced this. Any fiduciary that delegates or outsources authority, they can do that. But what comes with the territory is that the delegating fiduciary can't just leave the scene entirely. They need to periodically come back and check in to make sure that the person or company to whom authority has been delegated is doing a good job and (inaudible) for fee.

Jeb also mentioned 321 advisory services. Similar to the 338 investment management services but different in the sense that there's no discretion involved with the 321 advisor. An advisor recommends to a plan fiduciary what decision to make and the plan fiduciary is entitled to rely on that advice. But the 321 advisory will not make the decision.

So let me stop there and I see we've got a couple minutes left. Rob, I didn't know if you had any questions on your blotter or if there's any more from the audience. But we can pick those up if you do.

Rob Barnett:

Tom, I think we've had a great time here. Want to be respectful of everybody's time. Fantastic conversation. Tremendous insight. We appreciate everybody's attention to the poll here. We're constantly looking to figure out better ways to communicate with you and provide value add. So if you could take two seconds and think about what would be interesting to you from a next webinar perspective, we would truly appreciate it. And we take that feedback and we use it.

Second thing is next week, for all of you fiduciaries, on Tuesday, Groom is hosting a fiduciary bootcamp. And if you contact your Wilmington Advisor, they will be more than happy to help you -- be more than happy to get you information on that and help you register should you be interested. We would -- like I said at the beginning of this, fiduciary training, fiduciary information is very hard to come by and continually educating yourself and your committee on your fiduciary responsibilities is going to be important, especially given everything you heard from our two panelists today.

So with that, I would like to say thank you for your time, thank you for your partnership, and we look forward to seeing you soon. Have a great day.

Operator:

Thanks so much, Rob, and thank you again for joining us today. Once you close the webcast here in just a moment, you will see a survey pop up on your screen. We would greatly appreciate your feedback on today's session. Thank you again and have a great rest of your day.