Understanding the different types of fiduciaries

Scott Simon, Principal, Prudent Investor Advisors
Scott Pritchard, Managing Director, Advisors Access, Capital Directions
Rich Lynch, COO, fi360

Outline

- Introduction
- Fiduciaries as per the Investment Advisors Act of 1940 (1940 Act)
- ERISA 3(21) fiduciaries
- ERISA 3(38) fiduciaries
- Q&A

Introduction

- Current financial services environment very focused on fiduciary responsibility
- Increasing number of questions related to how one markets their fiduciary services and what is the associated liability
- When does marketing become too confusing or misleading?

1940 Act Fiduciaries

- Defines "investment adviser" as any firm or person that:
  - For compensation;
  - Is engaged in the business of;
  - Providing advice to others or issuing reports or analyses regarding securities.
- Includes money managers, investment consultants, and financial planners
- Excludes certain organizations and individuals (e.g. brokers, lawyers, and accountants, where services are incidental to conduct of their business)

1940 Act Fiduciaries

- Fiduciary duty imposed by operation of law as a result of relationship of trust established between advisor and client
- Clients include endowments, foundations, retail investors, retirement plans, and trusts
- 1940 Act and associated Rules specify acceptable conduct

Scott Pritchard, AIFA®

- Capital Directions, LLC
  - Atlanta-based RIA, with $800 million in AUM
  - www.capdir.com
- Advisors Access
  - Capital Directions’ turnkey 401(k) solution for RIAs
  - www.advisorsaccess.com

Capital Directions, LLC

- Serve as a 3(21) fiduciary advisor in certain engagements.
- Serve as a 3(38) investment manager in other engagements, including Advisors Access, our 401(k) TAMP.

ERISA 3(21)

- Any plan sponsor that lacks the technical knowledge and experience to properly manage investments is required by ERISA to hire knowledgeable advisors.
- Historically, those advisors have been 3(21) fiduciaries.

Types of 3(21) fiduciaries

- Full-Scope: Effectively take the role of the plan sponsor in hiring and monitoring all service providers. Typically performed by an independent fiduciary.
- Limited-Scope: The predominant role played by advisors today and the focus of my comments.

Duties of a 3(21)

- Recommending investments to the plan sponsor.
- Monitoring those investments and suggesting replacements as appropriate.
- Providing participant education (can include one-on-one advice).
- Advising the plan sponsor in following a fiduciary process, including the Investment Policy Statement.

Duties of a 3(21)

- Recommending investments to the plan sponsor.
- Monitoring those investments and suggesting replacements as appropriate.
- Providing participant education (can include one-on-one advice).
- Advising the plan sponsor in following a fiduciary process, including the Investment Policy Statement.

Overview

- A 3(21) advisor provides counsel and guidance.
- A 3(21) advisor does not have discretion.
- Responsibility for investment decisions still rests with the plan sponsor.

W. Scott Simon, J.D., CFP®, AIFA®

- Prudent Investor Advisors, LLC (California-based SEC RIA Firm)
  - PIA is an ERISA § 3(38) Investment Manager operating as a discretionary investment fiduciary to retirement plans
  - www.prudentllc.com
- Prudent Retirement Services (a division of PIA)
  - PRS offers fiduciary turn-key outsourcing solutions to RIAs, B/Ds and TPAs nationwide (i.e., TAMP)
  - www.gotoPRS.com

W. Scott Simon, J.D., CFP®, AIFA®

- Columnist – Morningstar “Fiduciary Focus” since 2003 (fiduciary investment matters)
- Author – The Prudent Investor Act: A Guide to Understanding
- Author – Index Mutual Funds: Profiting from an Investment Revolution

ERISA § 3(38) Investment Manager

- Appointed by Plan Sponsor to manage the investment process of the retirement plan (APPOINTMENT/DELEGATION)
- Only an RIA, a bank or an insurance company qualify to accept appointment (ACCEPTANCE)
  - Can a B/D be a § 3(38) Investment Manager?
- The Plan Sponsor–Investment Manager agreement must be in writing
- The Investment Manager must acknowledge its fiduciary status in writing

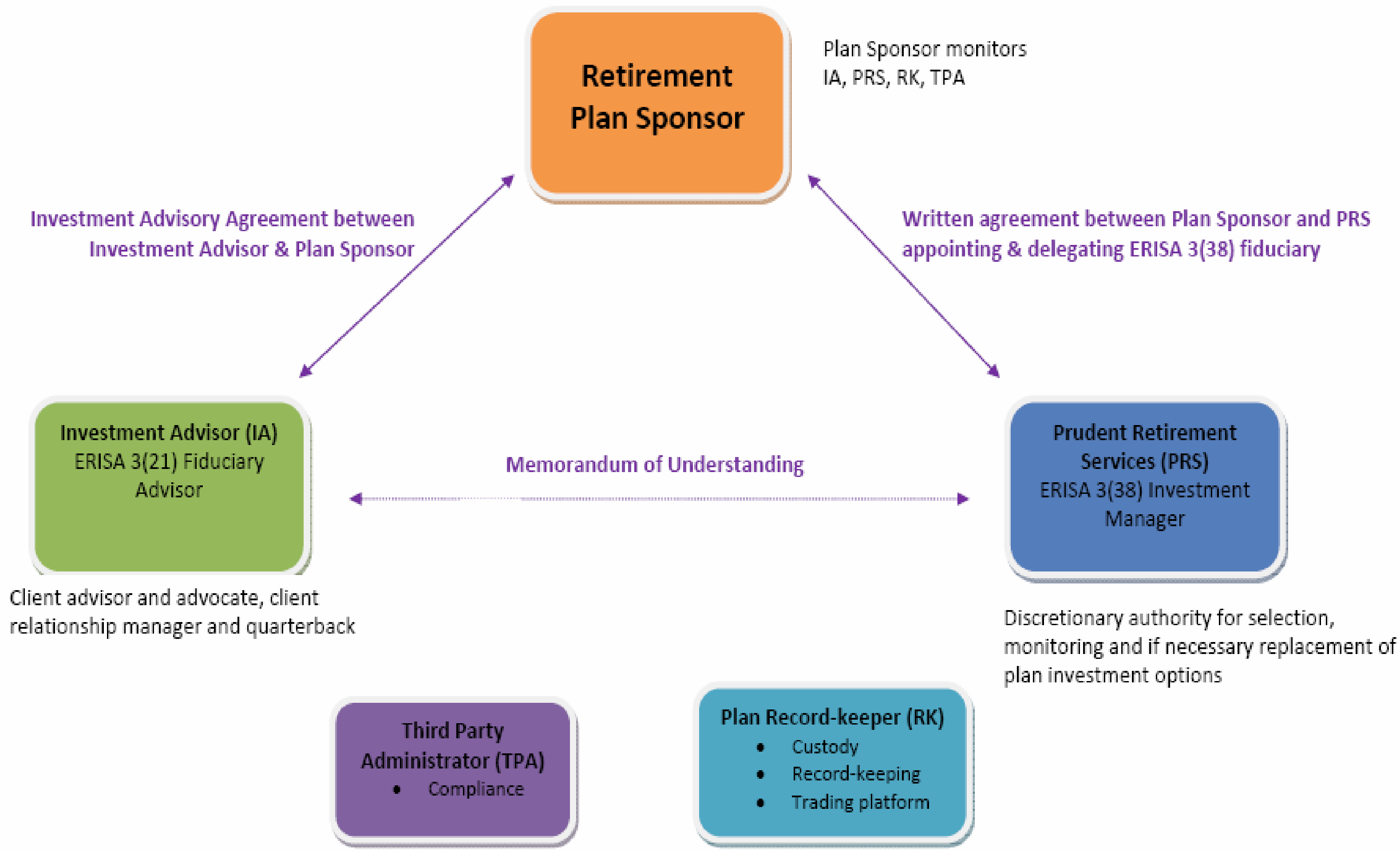
ERISA § 3(38) Investment Manager

- The Investment Manager becomes “solely” responsible for the selection, monitoring and replacement of plan investment options (DISCRETION)
- The Plan Sponsor and other plan fiduciaries are relieved of the responsibility for the Investment Manager’s decisions (FIDUCIARY RELIEF – ERISA § 405(d)(1))
- The Plan Sponsor retains a residual duty to prudently select the Investment Manager and make sure it is carrying out its appointed duties (OVERSIGHT)

ERISA § 3(38) Investment Manager

- The Investment Manager is not a consultant who “advises,” “recommends,” “assists” or “helps”
- The Investment Manager is a decision-maker with fiduciary discretionary authority who “decides”
- The Investment Manager is solely responsible for the day-to-day investment decisions (plan level)
- The Investment Manager does not provide fiduciary relief to a Plan Sponsor for poor investment decisions made by plan participants (404(c) provides this relief)

Fiduciary Outsourcing Model



Prudent Retirement Services
A Division of Prudent Investor Advisors, LLC

Q & A

Questions?

Announcements—Thank you

- A recording of this and previous webinars will be available in the archive: www.fi360.com/webinars
- Report attendance for one hour of CE for your AIF or AIFA designation on your next designation renewal form.
- Visit the fi360 Blog to continue the dialogue in the comments section: blog.fi360.com
- Email resources@fi360.com for any follow up questions

fi360 updates

- The agenda for the 2010 fi360 Conference, May 5-7 in Orlando is now available: www.fi360.com/conference

- The 2010 AIF/AIFA Training calendar is now available—contact training@fi360.com to learn more about available options and special pricing for Webinar attendees!