

Multiple Employer Plan Developments



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Breakout Session Participants

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Session Overview

- I. What's New & Multiple Employer Plan Basics – Power
- II. The Opportunity for Advisors – Montgomery
- III. The Value of MEP's - Rosenbaum
- IV. Questions & Answers

Terrance P. Power,
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So....What's new?



**Multiple Employer Plan
Issues Raised**

**Massachusetts Creating
Country's Largest Open
Multiple Employer Plan**

Forbes

**401(k) Outsourcing:
The Next Big Thing**

PLANSPONSOR

*Multiple Employer Plans -
An Enticing Alternative
For Plan Sponsors*

Drinker Biddle

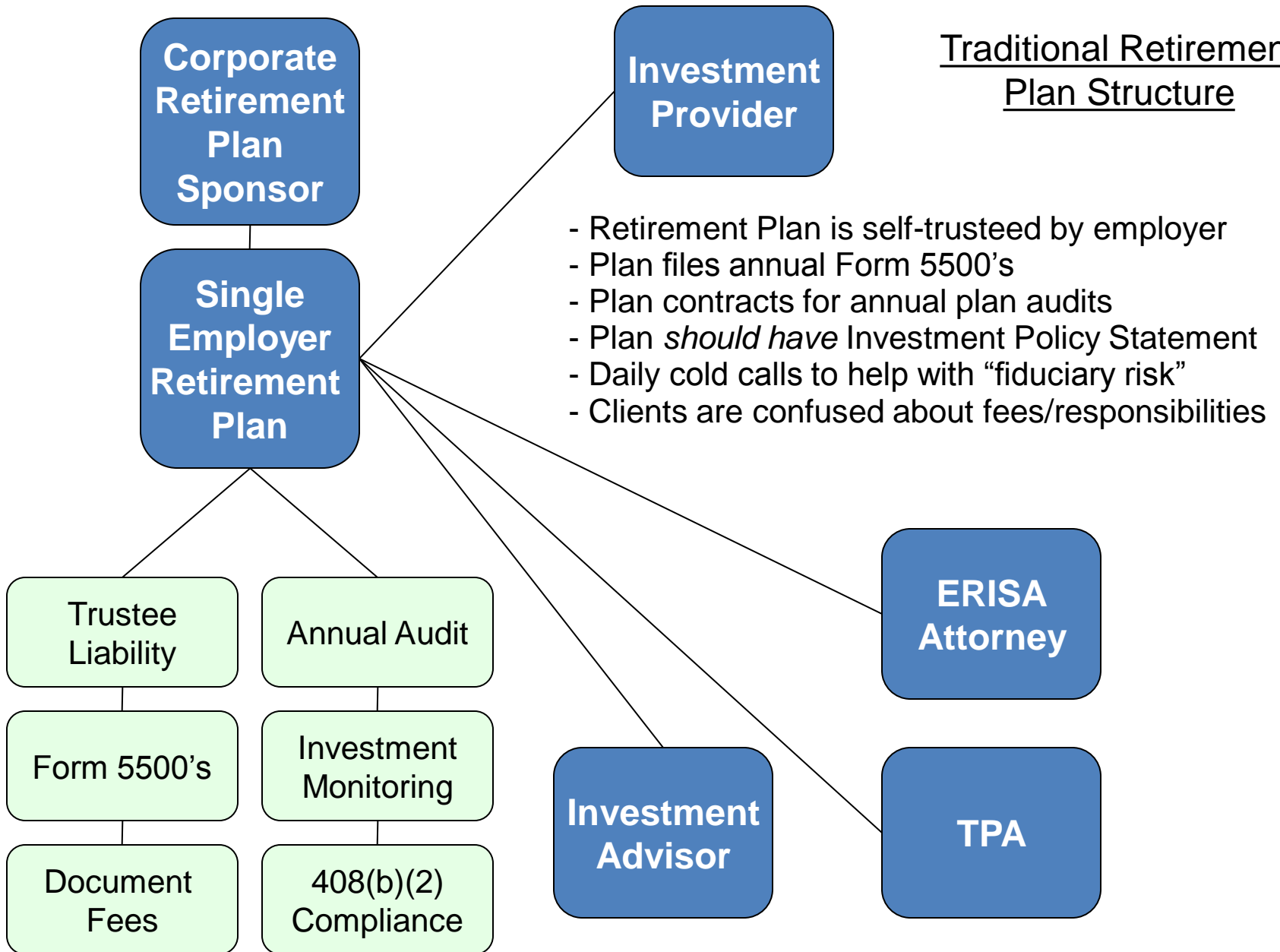
**Open Multiple Employer Plans:
Tax and ERISA Considerations**

A White Paper by Fred Reish,
Bruce Ashton and Joshua Waldbeser

What is a Multiple Employer Plan?

- A Multiple Employer Plan, also known as a “MEP”, is a qualified retirement plan that covers employers that are not commonly owned.
- These employers each become “adopting employers” when they elect to join the MEP.
- These plans can be Defined Contribution (DC) or Defined Benefit (DB) plans. We’ll be discussing Section 413(c) Defined Contribution plans in this session.

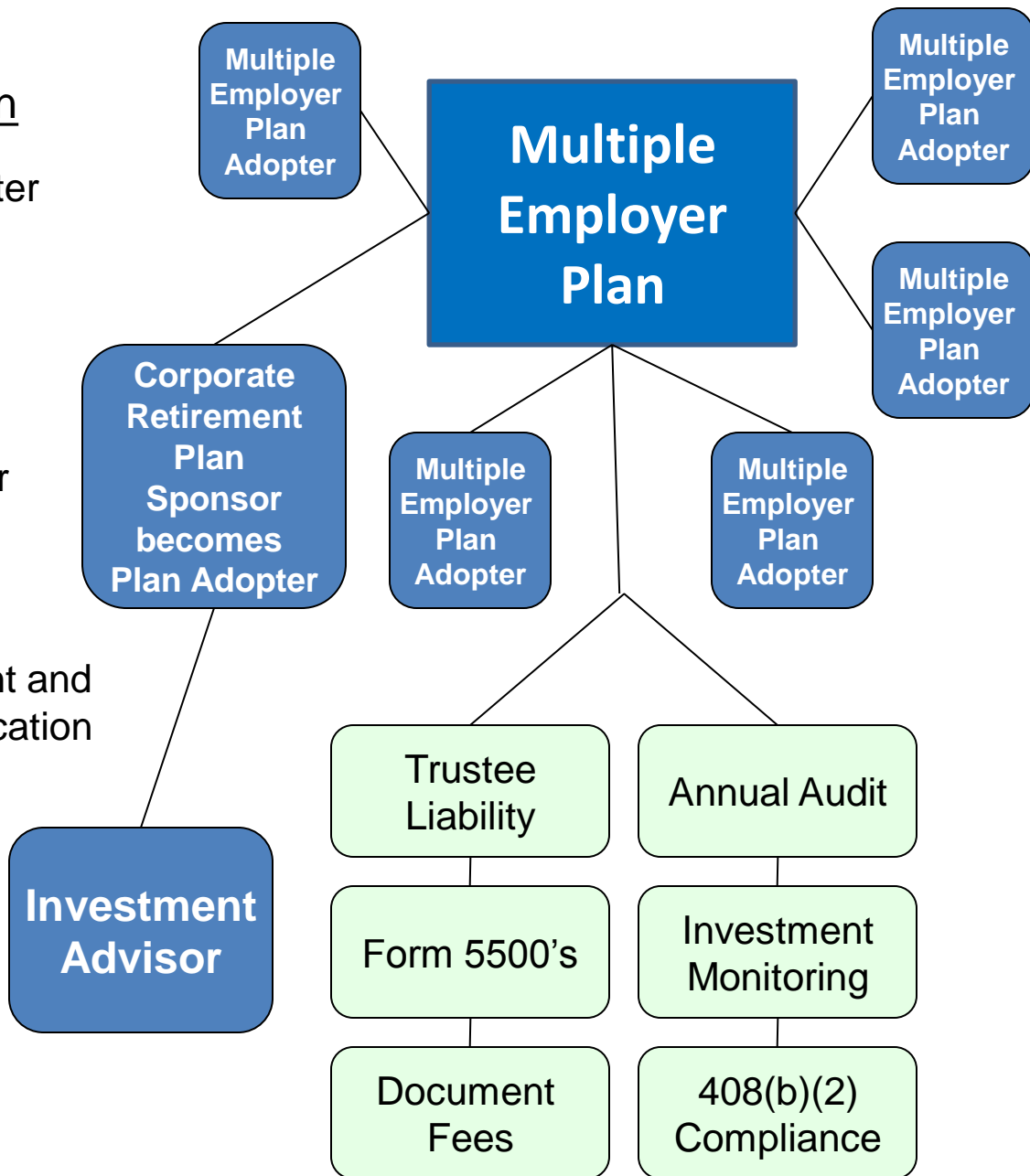
Traditional Retirement Plan Structure



Multiple Employer Plan Solution

- Plan Sponsor becomes new Adopter
- No employer trustee-level liability
- No more 5500 filings for employer
- No more plan audits for employer
- ERISA 3(38) Investment Manager
- No more cold calls to the employer

Advisor concentrates on investment and program monitoring and asset allocation Issues.



MEP's as a Fiduciary Solution Tool

- Client is no longer the plan sponsor or a plan trustee.
- Use of an ERISA 3(38) outsources investment selection and monitoring to a third party.
- No “residual oversight” of 3(38) by client as in traditional 3(38) structure.
- There are both settlor and fiduciary aspects in adopting or de-adopting a MEP.
- 408(b)(2) documentation paper chase is eliminated for adopters as they do not “contract” with a service provider.



W. Michael Montgomery

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- The Role of the Advisor in a MEP
- MEPs as a Fiduciary Risk Mitigation Tool

“A person is only a fiduciary with respect to things over which he has control and discretion”

F.H. Krear & Co v. Nineteen Named Trustees, 810 F.2d 1250 (2d Cir. 1987)

A Multiple Employer Plan Adopter has no control or discretion to:

- **Select the plan’s ERISA 3(38) or 3(21)(a) fiduciary**
- **Select the plan’s investment options**
- **Select the plan’s service providers**
- **Sign Form 5500’s**
- **Establish Investment Policy Statement**
- **Approve QDRO’s or Hardship Withdrawals**
- **....and much more**

- Investment Considerations in a MEP Environment
- Where do we go from here?

Ary Rosenbaum

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Internal Revenue Code Section 413(c):

“Plans maintained by more than one employer”

413(c) Plans maintained by more than one employer. In the case of a plan maintained by more than one employer - (1) Participation Section 410(a) shall be applied as if all employees of each of the employers who maintain the plan were employed by a single employer. (2) Exclusive benefit For purposes of section 401(a), in determining whether the plan of an employer is for the exclusive benefit of his employees and their beneficiaries all plan participants shall be considered to be his employees. (3) Vesting Section 411 shall be applied as if all employers who maintain the plan constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary of Labor. (4) Funding (A) In general In the case of a plan established after December 31, 1988, each employer shall be treated as maintaining a separate plan for purposes of section 412 unless such plan uses a method for determining required contributions which provides that any employer contributes not less than the amount which would be required if such employer maintained a separate plan. (B) Other plans In the case of a plan not described in subparagraph (A), the requirements of section 412 shall be determined as if all participants in the plan were employed by a single employer unless the plan administrator elects not later than the close of the first plan year of the plan beginning after the date of enactment of the Technical and Miscellaneous Revenue Act of 1988 to have the provisions of subparagraph (A) apply. An election under the preceding sentence shall take effect for the plan year in which made and, once made, may be revoked only with the consent of the Secretary. (5) Liability for funding tax For a plan year the liability under section 4971 of each employer who maintains the plan shall be determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary - (A) first on the basis of their respective delinquencies in meeting required employer contributions under the plan, and (B) then on the basis of their respective liabilities for contributions under the plan. (6) Deduction limitations (A) In general In the case of a plan established after December 31, 1988, each applicable limitation provided by section 404(a) shall be determined as if each employer were maintaining a separate plan. (B) Other plans (i) In general In the case of a plan not described in subparagraph (A), each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer, except that if an election is made under paragraph (4)(B), subparagraph (A) shall apply to such plan. (ii) Special rule If this subparagraph applies, the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed any such limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary. (7) Allocations (A) In general Except as provided in subparagraph (B), allocations of amounts under paragraphs (4), (5), and (6) among the employers maintaining the plan shall not be inconsistent with regulations prescribed for this purpose by the Secretary. (B) Assets and liabilities of plan For purposes of applying paragraphs (4)(A) and (6)(A), the assets and liabilities of each plan shall be treated as the assets and liabilities which would be allocated to a plan maintained by the employer if the employer withdrew from the multiple employer plan.

The Value of MEP's

A Bigger Bang for the Buck

- Economies of scale
- Separate plans within one
- One Form 5500 and only one audit

The Downside of MEP's

- Not For Everyone
- Better Value For Smaller Plans
- Limited Choices in Plan Design
- Picking The Wrong MEP
- One Apple Can Spoil The Bunch*
- The DoL hub-bub – much ado about nothing

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