Fiduciary Matters

Firms try to capture more 401(k) business as they await an important DOL ruling. By Jerilyn Klein Bier

THE U.S. DEPARTMENT OF Labor has divulged few details on how it will expand the definition of fiduciary in its re-proposed rule, expected to be issued this summer. Specifically, advisors want to know how fiduciary duties would relate to 401(k) management. But even as they wait, more broker-dealers and registered investment advisors are gearing up to capture a bigger piece of the fast-growing 401(k) market, no matter how the chips fall.

Morgan Stanley is growing its network of certified in-house retirement specialists, called corporate retirement directors, who can serve as fiduciaries for advisors' clients who sponsor plans. Kevin Chisholm, an associate director with Boston-based global research firm Cerulli Associates, says he has heard a lot of firms talking about such programs. The advisors who partner with fiduciaries for assistance, meanwhile, can stay involved with the retirement plans by serving as relationship managers and providing education, he says.

B-Ds have a big incentive to get onboard with a stricter regulatory environment. Wirehouses accounted for 37.7% of advisor-sold defined contribution plan assets in 2011, followed by regional B-Ds (15.4%), independent B-Ds (15.1%) and RIAs (11.2%), according to multi-sourced data included in the Cerulli report, titled "U.S. Retirement Markets 2012: Market Sizing, Projections, and Segmentation of Public and Private DB and DC."

In March, LPL Financial Retirement Partners launched an elite program to support advisors who focus on the retirement plan market for corporations. Initially, the group will have 87 advisors who provide services for about 4,000 retirement plans with approximately $40 billion in assets. The giant independent brokerage firm is dedicating about 60 employees to the unit. But LPL is expected to expand its already substantial presence in the market, in which more than 1,000 of its advisors provide advice to more than 20,000 plans.

RIAs, which have operated under a fiduciary standard for 50 years, are working to expand their penetration of this market by stressing their fiduciary expertise and building their brands. They have

also begun to use specialists to manage larger 401(k) plans and assist their advisors who dabble in this space.

Every channel is eager to see whether the new rule will require that people or firms are defined as fiduciaries if they help plan participants roll over their assets. For now, firms are taking caution not to solicit rollover business from their clients' plan participants, which is prohibited.

Rehmann Financial, the wealth management arm of Michigan-based Rehmann Group LLC, requires participants who roll over their assets with the firm to sign disclosures acknowledging they were not solicited and they understand that the IRA and 401(k) relationships are totally separate.

Rehmann is picking up 5% to 10% in rollover assets from the amount its clients distribute in a given year to their plan participants who retire or terminate employment. It might pursue rollovers more actively if the Labor Department provides clearer guidance, says Gerald Wernette, a principal with Rehmann Financial and director of its retirement plan consulting group.

Rehmann advises approximately 350 retirement plans with $2.3 billion of assets. It also serves as a third-party administrator for about 1,100 plans. Its Level 1 advisors, those with limited retirement plan business or experience, must bring all this business to Wernette's group except for SEP and SIMPLE plans. The firm's Level 2 advisors, who have experience serving a greater number of retirement plans and who are encouraged to hold professional retirement plan credentials, are permitted to work in the space but are encouraged to seek coaching and assistance from the core retirement team for plans exceeding $25 million in assets.

Wernette wonders how far the Labor Department's new definition of a fiduciary advisor will stretch, or if the DOL will address the other roles or functions firms can perform for plan sponsors. Rehmann, for example, also performs accounting, consulting and TPA services for many of its clients who sponsor retirement plans. "I don't think it will be an issue, but we are paying attention," he says.

Wernette will be a lecturer in a program for plan sponsors being rolled out this year by TRAU, the Retirement Advisor University at UCLA's Anderson School of Management. He will discuss how to measure participants' success, their retirement readiness, the plans' design, expense management and fund oversight. "You can have great funds and low expenses," he says, "but if your participants aren't involved or make bad investment decisions, you're a lousy plan."

Smaller, regional B-Ds are struggling the most under regulatory pressures. Rehmann will position itself to take advantage of their fallout, says Wernette, but he expects the competition to resemble "a swarm of bees." Now that more advisors are searching Form 5500 filings and turning to FreeERISA for plan information, "it's real hard to be the first guy in," he says.

To help make it easier for other independent RIAs to be successful in the 401(k) space, one RIA firm decided to launch a program that serves as a fiduciary to 401(k) plans and provides managed portfolios and one-on-one advice to plan participants.

The result was Advisors Access. It was formed in 2006 by Capital Directions LLC, an Atlanta wealth management firm that continues to run the program under the ownership of turnkey asset management provider BAM Advisor Services in St. Louis.

RIAs that work with Advisor Access can serve as Erisa Section 3(21) fiduciaries for qualified retirement plans, while BAM works as the Erisa Section 3(38) investment manager and takes total responsibility for plan assets, choosing portfolios and offering access to different funds. The program now oversees $1.6 billion in 401(k) assets. Investment policy committee members from BAM and Capital Directions decide which asset classes to target and conduct due diligence on funds.

The portfolio strategies used by Advisors Access, which takes a passive investment approach, have an average expense ratio of 0.24%, says Scott Pritchard, managing director of Advisors Access and a principal at Capital Directions. Dimensional Fund Advisors is a heavy part of the program's strategy; Advisors Access also uses some Vanguard funds.

Less than 10% of U.S. plans work with Section 3(38) fiduciaries, says Pritchard. "I love the fact that the fiduciary debate is getting more of a spotlight," he says. "I think it will ultimately benefit plan sponsors and participants." He expects the new regulations to expand sponsors' awareness of the different levels of responsibility.

As for last summer's fee disclosure rules, "I'm disappointed we haven't seen more plan sponsors up in arms," he says. He thinks many still don't understand the information and says a lot of disclosures remain opaque.

Best Practices

Independent B-D Raymond James Financial is training its approximately 1,800 advisors, who manage 8,000 DC plans, to employ numerous best practices. This includes engaging 401(k) plan sponsors with written agreements that detail responsibilities and terms of service; benchmarking fees and services to make sure fees are reasonable; helping plan sponsors understand their fiduciary responsibilities; and encouraging plan sponsors to have written investment policy statements and regularly monitor investments to make sure they are in line with plan objectives.

"These are some best practices no matter what the DOL decides, but will be especially important if there are changes to the rules," says Bo Bohanan, director of retirement plan consulting for Raymond James. "We will have to wait and see what explicit changes the DOL makes in order to fine-tune these practices and provide further education and resources that are timely, relevant and appropriate."

Raymond James is using the "Goal Planning and Monitoring" tool it introduced last year to identify retirement plan opportunities. It will be looking at plan design to serve more professional services clients such as doctors, attorneys and engineers. It is also putting much effort into its "capturing rollovers" campaign, which includes education and marketing materials. "While we believe, based on demographics, the rollover business will remain strong," says Bohanan, "new rules/definitions could certainly impact how an advi-

sor approaches this market opportunity."

Folsom, Calif.-based Gasber Financial Advisors Inc., a fee-only firm managing $100 million in assets, also has ambitious 401(k) goals. Founder Gerry Gasber, who has worked in financial services for over 30 years, hopes to grow his 401(k) practice to the size of his private client business. The firm created its "GFA 401(k) Retirement Plan Solution" about two years ago and targets plans with assets below $5 million.

Gasber describes this market as very underserved and notes that many plans of this size use advisors who work with just one plan. He currently serves six passively managed plans, including one for an insurance agency, a kitchen remodeler, an accounting firm and a dentist. Gasber is looking to hire a junior advisor to help prospect in the area and provide education for plan participants.

"It's a slow build. It takes a lot of work up front," admits Gasber, who says it can take three to six months to do a conversion to a new plan. He isn't worried that the Labor Department fiduciary rule will hinder his practice. "I think I'm already where they're headed," he says. His plans' fund fees typically cost about one-third less than what clients paid for previous plans, he says.

Chisholm of Cerulli Associates expects to see more plans with less than $10 million in assets begin to partner with service providers who will accept fiduciary responsibility—firms such as Morningstar Investment Management and Mesirow Financial Holdings.

Law and Order

Not a fiduciary? "Don't panic," says Marcia Wagner, a managing director of the Wagner Law Group, a Boston-based firm specializing in Erisa and employee benefits. "Look at your client base. Are clients demanding you to be a fiduciary? What can you do institutionally?"

Being a fiduciary, she says, is not for everyone. But advisors who aren't must make sure they are not getting too close to this changing regulatory line and figure out what information they can and cannot provide, she says. And those who are fiduciaries must determine how to get level compensation—based on basis points or flat dollar amounts rather than commissions—so it doesn't look like they are favoring certain investments. "Even if it doesn't skew the advice, it could be problematic," says Wagner, who notes that much recent litigation has been about what is a reasonable fee.

Wagner suggests that fiduciaries develop best fiduciary practice tool kits with everything from checklists for plan sponsors to information about how to effect rollovers. "You don't want to be low-hanging fruit for a DOL audit or a class action lawsuit," she says. FA