

We will begin our webcast shortly

Best Practices for Producing and Managing Rollover Business



The Fiduciary Advisor's Rollover Toolkit



Conference Call:
(646) 307-1706

Access Code:
462-047-145

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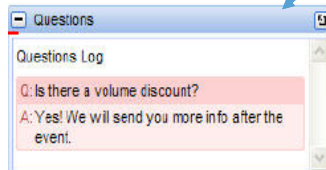
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Presenters:



Charlie Epstein
Founder & Coach
The 401k Coach Program



The401kCoach.com



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Managing Director
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Agenda

1. The Regulatory Divide
2. Problem With Capturing Rollovers
3. The Game Plan
4. Procedural Guidelines
5. Conclusions



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But let's first look at a
Case Study...



<p>Conference Call: (646) 307-1706</p> <p>Access Code: 462-047-145</p> <p>The Fiduciary Advisor's Rollover Toolkit</p> 	<h2 style="text-align: center;">Case Study</h2> <h3 style="text-align: center;">Sprocket, Inc.</h3> <ul style="list-style-type: none">– Precision Manufacturing Company– Been in business over 50 years– 235 employees– 401(k)/Profit Sharing Plan– 27 Million in assets– 1.5M – 2M in annual flow <div style="text-align: right;"> The401kCoach.com</div>
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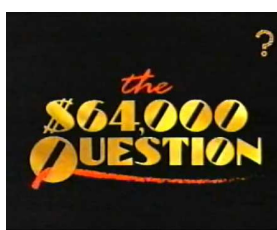
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Case Study

- John Mitchell: Executive at Sprocket, Inc.
- 35 year tenure; planning to retire in 6 months
- Current acct. balance: \$1,790,000
- Approaches Sue for help in rolling out his money and have her manage it in an IRA along with other financial planning services



Can Sue Accept the Rollover funds and manage this IRA for John?



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The Regulatory Divide

Portability of 401(k) Accounts

- Participants may roll over accounts upon termination of employment.
- Rollover IRAs provide investment flexibility.

Services Offered by Advisors

- Plan Services for plan sponsor.
- Plan Services for participants.
- Rollover IRA Services for participants.



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Restrictions Under ERISA

ERISA and Advisor's Services

- Advisor's ability to offer Plan Services and Rollover IRA Services is restricted.

Possible Solutions

- Stop offering Rollover IRA Services.
- Adopt service model which allows Advisor to offer Rollover IRA Services.



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Potential Abuses of Cross-Selling

Issues Arising from Cross-Selling

- Potential conflicts of interest.
- Exploiting trust to sell at unfavorable terms.

Capturing Rollover Assets

- Advisor develops relationships with plan sponsor and participants.
- Potential conflict if Advisor's fees on rollover assets are higher than fees on plan assets.



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DOL Guidance

“Potential for Abuse”

- Policy concern for DOL.
- DOL has issued interpretive guidance for cross-selling of Rollover IRA Services.
- Starting point is ERISA’s general prohibition against self-dealing.



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Prohibited Transaction Rules

Prohibition Against Self-Dealing

- ERISA Section 406(b) and mirror IRC provision.
- Advisor cannot provide fiduciary advice that increases Advisor’s compensation.

Example

- Advisor’s fiduciary advice steers participants to fund with highest 12b-1 fee.
- Advice is tainted even if provided in good faith.



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DOL Rollover Opinion

Advisory Opinion 2005-23A

- Broadly suggests that if Advisor is fiduciary, any rollover advice to participants may trigger PT.
- DOL does not fully explain reasoning.
- If Advisor is not fiduciary, rollover advice will not trigger PT.



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DOL-Related Concern for All Advisors

Advisors Appointed as Fiduciaries

- DOL Rollover Opinion seems to say they cannot capture rollover assets.

All Other Advisors

- If Advisor provides “accidental” fiduciary advice, Advisor becomes fiduciary.
- Therefore, all Advisors may become subject to restrictions in DOL Rollover Opinion.



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Definition of Investment Advice

You provide “investment advice” if:

- Individualized investment advice is provided on regular basis; and
- It serves as primary basis for plan decisions.

Advisors and Investment Advice

- Many Advisors hope their advice does not meet **regular basis** and **primary basis** conditions.
- But Advisors may become “accidental” fiduciaries as contact with plan sponsor increases.



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<p>Conference Call: (646) 307-1706</p> <p>Access Code: 462-047-145</p> <p>The Fiduciary Advisor's Rollover Toolkit</p> 	<h2 style="text-align: center;">Core Analysis in <u>Varity Corp</u></h2> <h3>Factual Background for Case</h3> <ul style="list-style-type: none">- Employer transfers money-losing division to subsidiary.- Falsely communicates that benefits are secure.- Benefits forfeited after subsidiary goes bankrupt. <h3>Was Employer Acting as a Fiduciary?</h3> <ul style="list-style-type: none">- Employer argues its communications to employees were not fiduciary acts.- Court disagrees. <div style="text-align: right;"> <small>The401kCoach.com</small></div>
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<p>Conference Call: (646) 307-1706</p> <p>Access Code: 462-047-145</p> <p>The Fiduciary Advisor's Rollover Toolkit</p> 	<h2 style="color: #0070c0;">Three-Factor Test from <u>Varity Corp</u></h2> <p>Court examines 3 key factors:</p> <ul style="list-style-type: none">– <u>Factual context</u> of communication.– <u>Plan-related authority</u> of person providing communication.– <u>Plan-related nature</u> of communication. <p>Applicability to Advisors</p> <ul style="list-style-type: none">– Need to ensure 3-Factor Test is met by Advisors when offering Rollover IRA Services. <div style="text-align: right;"> <small>The401kCoach.com</small></div>
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Meeting the 3-Factor Test (cont'd)

2nd Factor: Plan-Related Authority

- Request written confirmation letter from plan sponsor.
- Letter confirms that Advisor's Rollover IRA Services are unrelated to Plan Services.

3rd Factor: Plan-Related Nature

- Request written acknowledgment from participant.
- Acknowledgment form explains that Rollover IRA Services are not a plan fiduciary service.



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Document-Related Issues

Plan Sponsor/Participant Will Not Sign

- Advisors appointed as fiduciaries should not offer Rollover IRA Service.
- All other Advisors may offer Rollover IRA Service if certain that there has been no fiduciary advice.
- Protection of written forms necessary for Advisors acting as fiduciaries.



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Procedural Guidelines

- 1) Discussion of Rollovers at Plan Meetings
 - Advisor may discuss availability of rollover distributions, but not advisability.
- 2) Promotion of Rollover IRA Services
 - Limit promotion of Rollover IRA Services at Plan meetings.
 - Do not indicate that Rollover IRA Services are part of Plan Services.



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Procedural Guidelines (cont'd)

7) Acknowledgment Form for Participant

- If participant refuses to sign, do not offer Rollover IRA Services if fiduciary advice has been provided.



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Conclusions

Advisors and Rollover IRA Services

- May offer Rollover IRA Services consistent with procedural guidelines.

Purpose of Procedural Guidelines

- Factual context is non-plan related setting.
- Rollover IRA Services are not offered under Advisor's authority to provide Plan Services.
- Participant understands non-plan related nature of Advisor's offer.



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Conclusions (cont'd)

Advisors Appointed as Fiduciaries

- Should follow procedural guidelines carefully.

All Other Advisors

- Should also strongly consider following procedural guidelines as "best practices" matter.
- Any Advisor may become an accidental fiduciary.



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Conclusions (cont'd)

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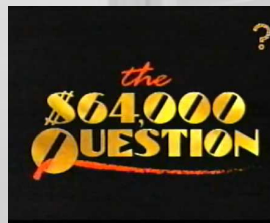
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Case Study



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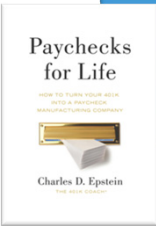

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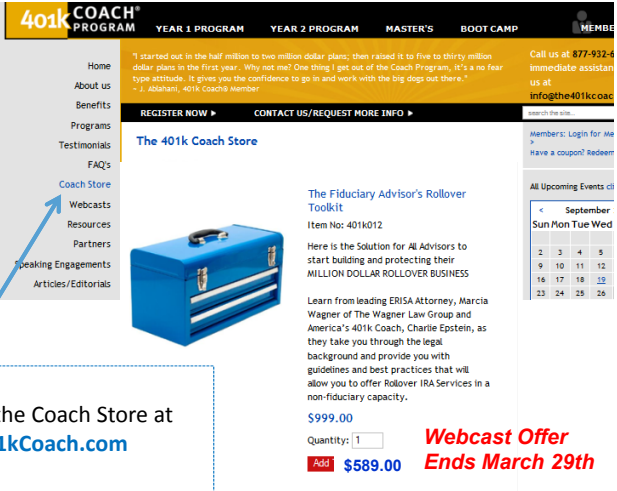
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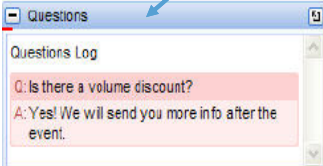
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