

PREFACE



My journey into the world of corporate retirement plans began while I was a rookie broker for one of Wall Street's largest and most well-respected brokerage firms. Assuming that I could generate enough interest from my clients or prospects, a retirement plan was one of many financial "products" that I could get paid for selling. The firm had relationships with seven or eight of the better-known retirement plan providers (or vendors) which I could offer to my clients. Every so often a "wholesaler" (i.e., salesperson) from one of the companies would buy the brokers in our office lunch (known as a "lunch and learn") in exchange for pitching us on the merits of his or her company's product. This discussion usually focused on which investments or "money managers" were part of the vendor's 401(k) plan, what the broker's commission structure was (that is, how much we would be paid), and, most importantly, what kind of "sales ideas" were working in the market place. "Sales ideas" were always critical to engaging current or prospective clients in a conversation because these led to sales pitches which ultimately led to actual sales if you had enough of these discussions. One idea that every wholesaler recommended was to contact business owners and mention the phrase "fiduciary responsibility" and the liability associated with it. You see, fear and greed play a large role in the world of financial services, and fiduciary liability was often a good conversation starter.

Most of the other brokers in my office discouraged me from pursuing the retirement plan market because of the long "sales cycle" required to land a plan and the seemingly low commissions that could be earned relative to the sale of other types of products. In the brokerage (or insurance)

industry, there is a lot of pressure to generate revenue and to do so quickly. Early on, I was told that the attrition rate in the industry was at least 80 percent and the people who survived were the ones who could prospect and sell in the face of intense rejection. As a rookie, I needed to close business and increase my “production” (that is, revenue). A long sales cycle was not an attractive proposition.

However, there were a small number of brokers I knew who “specialized” in retirement plans which meant this was an area of focus for them. Most were established and had enough revenue to support the investment of time necessary to win retirement plan clients. Generally speaking, the retirement plan was looked at as an entree to the business owner and the other company executives. These types of individuals make excellent private clients which made the time investment tolerable. Even still, the focus was almost always product-driven (which I have found continues today).

Periodically, I would come across these types of opportunities and would try to figure out which retirement plan product was the best fit for the client. Truth be told, as a rookie starting out in the financial services industry, I did not fully comprehend how these plans worked because of the complexity associated with them. Just trying to figure out how the compensation structure worked was a chore, not to mention the myriad of legal rules and overwhelming regulations. During this time, one of my best friends was working at a firm similar to mine, and he and I began to discuss the dream of starting our own firm one day. We even put a business plan together. In October of 2004 our dream became a reality, and the firm opened its doors. We had always agreed that one of the challenges of working in the brokerage industry was the conflicts of interest you faced when it came to getting paid. Since we were generally compensated by third-parties to sell their products and services to our clients, the challenge we ran into was that some paid higher commissions than others. For instance, if

one product or company paid a 7 percent commission and another only paid a 1 percent commission, which one should we recommend to our client? To compound the issue, the costs and compensation of products were usually not fully disclosed to clients or not disclosed at all. We felt this put clients at a disadvantage and us in a difficult position.

Our firm began with a very simple premise: we would only accept fees directly from clients and solely for our advice, regardless of what products or services were recommended. To accomplish this goal, the firm was organized as a “pure” Registered Investment Advisor (RIA) as opposed to a Broker-Dealer (B/D). We basically turned our back on a system we believed was conflicted and broken and set against the success of clients, and we’ve never looked back.

At inception, our firm primarily focused on serving affluent individuals and families by providing wealth management and investment advisory services. Along the way, however, we realized that our approach (direct and fully disclosed fees, fiduciary responsibility, independence, etc.) was especially suited for the retirement plan market, and we started an institutional advisory practice aimed at providing fiduciary governance consulting and investment advisory services to retirement plan fiduciaries. I agreed to lead this practice group for the firm and embarked upon learning as much as I could about the retirement plan industry. I was in for quite a surprise.

I chose the title of this book because it embodies my strong belief that the retirement plan industry (and, therefore, many retirement plans) is broken in many ways. I did not come to this realization immediately. In fact, it took me over a year to really get a handle on all the moving parts within a retirement plan and the sleight-of-hand tricks that often take place to propagate the confusion.

Think about the significance of that point for a moment. If I had trouble understanding the complexities of a retirement plan, imagine the difficulty for someone who does not do this for a living – someone like a plan sponsor or

participant. I didn't know what I didn't know, and I made some mistakes. Thankfully, since the retirement plan market does, in fact, have a long "sales cycle," I wasn't able to damage any actual clients!

The first area that I felt was sorely misunderstood and which could help both companies and participants was the area of fiduciary responsibility. For all the talk about its importance, I came across very few people who really grasped this confusing and technical area. This included the vendors I dealt with, other advisors I competed against, and, most importantly, the owners and executives of the companies I called upon who were actually fiduciaries themselves. To compound the issue, I felt like the industry did a poor job in terms of disclosing conflicts of interest, making the job of a fiduciary even more challenging, confusing, and risky.

I quickly came to believe that every decision of consequence about a retirement plan was actually a fiduciary decision, so I determined that I would do everything in my power to develop a considerable base of knowledge. I read everything I could get my hands on that discussed fiduciary matters and spoke to anyone who would talk about the topic. Fortunately, I had the opportunity to search out and meet some extremely knowledgeable and helpful folks who invested considerable time and effort to speed up my learning process. One of the best pieces of advice that I followed was to actually read the Employee Retirement Income Security Act of 1974 (ERISA) which is the law that governs retirement plans. It is amazing how much you can learn when you go straight to the source. Because I had a frame of reference to compare many of the things I was being told, my understanding grew exponentially. Fairly quickly, I began to see that I had a better knowledge of fiduciary issues than most of the people I interacted with on a regular basis. This was both encouraging and scary! Over time, this understanding has been critical in allowing us to effectively counsel our clients on matters regarding their company's retirement plan.

I believe plan fiduciaries must make sound decisions in the following three critically important areas for their participants to benefit substantially in terms of achieving a successful retirement:

1. Effective Plan Design
2. Successful Investment Experiences
3. Cost Containment

This book is a culmination of that basic philosophy and approach which I have developed over the years and that we utilize for our own clients. It is meant for anyone who is considered a retirement plan fiduciary. Like everybody, I have my own biases that I stand behind and that I share in the pages that follow. As you will see, I express strong opinions about how retirement plans should be designed, delivered, paid for, and governed, many of which run counter to the way the retirement plan industry currently operates. Many of these ideas (especially when it comes to fees, compensation, and service providers) are not always popular with a lot of the people who work in the retirement plan arena.

My journey has led me to develop a set of core beliefs which guide and influence how our firm advises and works with plan fiduciaries and participants:

- I believe that companies have a responsibility to do everything they can to help their employees retire successfully.
- I believe that fiduciaries have a duty to become better educated about what is required of them, to do their jobs more effectively, and to hold accountable the people they rely on for “advice”.
- I believe good fiduciary decision-making depends upon developing and executing a sound fiduciary governance process.

- I believe the industry makes it far too confusing to determine who is responsible for what and that there should be full and easy-to-understand fee disclosure by every person and/or company who provides services to a plan.
- I believe that far too many service providers talk about the importance of fiduciary responsibility but are unwilling and/or lack the knowledge to effectively serve in this capacity.
- I believe that plan fiduciaries and plan participants are best served by a Registered Investment Advisor (RIA) who is appointed as an ERISA §3(38) “investment manager” due to the high likelihood that most participants will achieve sub-optimal investment experiences.
- I believe that the financial success of most Americans (both current and future) depends to a great degree upon making prudent decisions about the retirement plans that will get them to and through retirement. Unfortunately, my experience leads me to believe that this is not the practice in the vast majority of our country’s retirement plans.

All of these ideas (plus others) are discussed in the ensuing chapters.

I hope this book serves as a useful resource to the reader and leads to better decision-making by anyone who has influence over a company-sponsored retirement plan. My primary goal is to provide a high level understanding of how these complex plans work, ways they can be designed and delivered most effectively, as well as the basic responsibilities of an ERISA fiduciary. Finally, I outline some actionable steps fiduciaries can take to gain better visibility into their own plans, to hold their service providers accountable, and

to make better decisions on behalf of their participants which should lead to successful retirement outcomes and meaningful benefits. I want to stress that the fiduciary process should come before and drive any product-related decision, rather than vice-versa.

This book is not meant to serve as a deeply technical or comprehensive resource on all components of a 401k plan. Reading it will not turn you into an expert on all fiduciary and/or retirement plan matters by itself. However, it should be a good starting point. I am also not providing legal advice or legal opinions. There is no substitute for professional expertise in these matters, and every plan sponsor would be wise to utilize the combined services of a competent ERISA attorney, CPA, investment advisor, and plan provider as necessary. I have included a Glossary of Terms that explains many of the technical terms and concepts used by industry professionals as well as several appendices that may be helpful. The first usage of each term has been bolded and italicized for convenience.

As a fiduciary, you have a significant responsibility and incredible opportunity to positively impact the retirement experience of your participants. By understanding your duties and following certain best practices, you can increase the likelihood they will have a successful and enjoyable retirement experience. I hope this book helps!

*Joshua P. Itzoe, CFP® , AIF®
Greenspring Wealth Management, Inc.
Towson, Maryland
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