

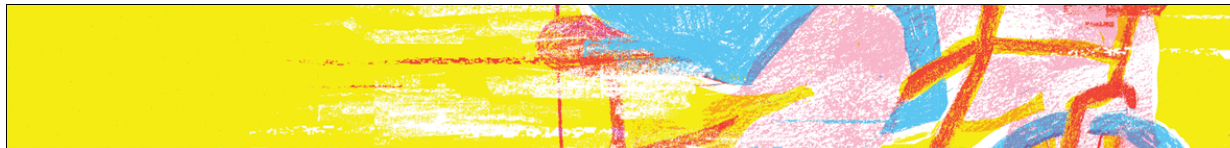
PERFECT PARTNERS

HOW TO FIND THE RIGHT ADVISER FOR YOUR PLAN

HOW do you know which adviser is right for your plan—or whether your current adviser is wrong for it? In the past, many sponsors failed to scrutinize their adviser relationship. “We have always focused historically, as an industry, on recordkeepers and the platform, and very little attention is paid to the adviser, because an adviser is hired on the basis of a relationship. And nobody questions that,” says David Witz, managing director of Charlotte, North Carolina-based Fiduciary Risk Assessment LLC/PlanTools LLC, a provider of fiduciary risk-management solutions.

Now, prompted in part by the 408(b)(2) fee disclosure regulation requiring advisers to disclose their total compensation, that is changing for sponsors, as they switch advisers or attempt to confirm an existing adviser’s value. “Many sponsors think their adviser is doing a good job, and they want to make sure the adviser is doing a good job,” Witz says. “There is more ‘noise’ in the marketplace saying that ‘You have got to look at your adviser and your service provider and evaluate them.’”

Setting adviser expectations, then ensuring they get met, takes a lot of work and knowledge from the plan sponsor. “What we hear from our discussions with sponsors is that, even before they do the search, they do not even know what questions they should ask an adviser, to know who to consider,” says Eric Henon, executive director of the Retirement Advisor Council in East Granby, Connecticut.



The Right Stuff

The keys to an effective search vary from plan to plan, since participants and decisionmakers vary, says Andrew Oringer, a New York-based partner at law firm Dechert LLP. "You will think that certain things are more important than I do, and I may be trying to accomplish different things with my plan. It's not going to be one-size-fits-all," he says.

But, in all cases, the more formal and documented a sponsor's search process, the better the sponsor's position in the event that a lawsuit arises later on. "Hiring the investment adviser is a fiduciary act," says Paul Hamburger, a Washington-based partner at law firm Proskauer Rose LLP. "And the way you manage the fiduciary liability is with a prudent process. That is key."

The federal government has not produced a step-by-step regulatory guide to performing these searches prudently. "Rather than being a problem, that is a solution," Oringer believes. "One of the things that ERISA [Employee Retirement Income Security Act] gets right is deferring to a nonconflicted fiduciary who has

unlike with a 3(38), the sponsor still has bottom-line responsibility for decisionmaking. If a sponsor opts to make the ultimate decisions itself, "you, as an employer, have retained the investment responsibility," Hamburger says. "If your goal was to delegate that responsibility, you have not done it. You have to identify in the RFP [request for proposal] which services an adviser will undertake. Is this investment adviser going to be pulling the trigger on recommendations or giving you recommendations so that you can decide?"

Select, Don't Settle

Once you know exactly what your needs are, consult with industry contacts about advisory firms that have expertise in working on those plan issues, Schleck recommends. Then, identify several advisory team candidates, send them a list of preliminary, pre-RFP questions and do a phone interview.

For the preliminary stage, Schleck recommends talking with advisory firms about their teams' specific qualifications to

A plan may need assistance with participant education, for instance, and the sponsor should determine upfront whether that should be done internally, by the plan recordkeeper, or by an adviser.

gone through a [prudent] process. The idea is that ERISA is not going to set up rules and standards that may not work for them."

A good search process begins with thinking through a few fundamental issues. First, identify what problems the plan needs help on, decide what would constitute success in working with an adviser on those problems and figure out how to measure that, suggests Ann Schleck, a principal at the consultancy Ann Schleck & Co. LLC in St. Paul, Minnesota.

Says Oringer: "The first step is to be introspective and decide, 'What do I feel comfortable doing, and what do I need help doing?'"

A plan may need assistance with participant education, for instance, and the sponsor should determine upfront whether that should be done internally, by the plan recordkeeper, or by an adviser. "The onus is on the plan sponsor to determine what expertise it does not have so it can identify what expertise it needs most from an adviser," Witz says. "If sponsors are not making that assessment, they don't know what they need and they don't know what they do *not* need."

Second, decide whether the plan requires an adviser to serve as a named fiduciary—and, if so, whether as a 3(21) invest-

address the plan's needs. Sometimes sponsors get too focused on finding advisers who specialize in working with similarly sized plans, she says. "It is less about the plan size. The point is: 'What plans have they worked with that have the same kind of workforce, philosophy and plan provisions that we have?'" Also, determine how much effort the adviser would devote to your plan by asking questions such as how many hours a quarter the advisory firm expects it would work on it. Plus, check into an adviser's insurance coverage and get three sponsor references, she suggests.

After firming up a candidate list comes the request for proposal. Sending the RFP to dozens of firms "could be overwhelming" for sponsors as they deal with the responses, Henon says. "They probably need to send it to five or six," he says. An RFP template from the Retirement Advisor Council, available on the council's website, breaks the solicitation down into nine topics: advisory firm/team; service team; investment services; participant services; provider/vendor services; fiduciary status and compliance; fees; technology; and security and business continuity.

The RFP may require substantial follow-up, since some advisory firms tend to give stock responses on their services



necessary to make a comparison before you get to the interview process," she notes.

Sponsors usually pick finalists at this point, then talk with them, face-to-face. Spend sufficient time on qualitative factors during the interview phase, Schleck advises. "I think that the mistake sponsors make is trying to 'spreadsheet' the adviser," she says of the selection process. "When you look at a spreadsheet, the scope of services an adviser provides is very similar from one firm to the next." In reality, she says, it is not.

Schleck suggests taking a case study approach at this stage—identifying the plan's major problems and asking adviser candidates to troubleshoot how they would solve them. For example, a potential adviser might walk the sponsor's plan committee through a mock delivery of a typical committee meeting. It is important to get a feel for how an adviser works and for what ideas he has for confronting the plan's issues.

Finally, make the decision—with an eye to value given for services provided. Remember that sponsors are not obliged to pick the least expensive adviser, says Sarah Downie, a New York-based partner at law firm Orrick, Herrington & Sutcliffe LLP. "The fees just have to be reasonable for the services provided," she says, adding that sponsors have discussed extensively in recent months how to confirm that (see "Strategic Value," on this page).

Services Rendered

Avoid the hassle of a time-consuming search that gets derailed in contract negotiations by addressing the service agreement at the RFP stage, Hamburger says. "The contracting process can be tricky—and the contracting process starts with the RFP. When you send that out, have a sample investment-adviser agreement that an advisory firm acknowledges it will sign. Or you might have certain provisions that you want, such as the level of indemnification. Put that in the RFP—exactly what you want—and have them agree in writing that they will do this."

Service agreements should spell out both the adviser's and the sponsor's responsibilities very clearly, Norris says. And they should pinpoint the fees and deadlines for each adviser service, as well as the consequences if the adviser misses the deadlines, she adds.

Asked for his advice on a good service agreement, Oringer says, "Make sure that the responsibilities are clearly outlined. Make sure that you will get the proper information and reports, so you can monitor the adviser. And really understand the fees,

Strategic Value

Putting advisers' fees in context

Under 408(b)(2), sponsors now have basic fee-benchmarking data. The challenge is to put that data in context.

"The question is: What role does an adviser play in terms of strategic value?" says consultant Ann Schleck, a principal at Ann Schleck & Co. LLC.

"There is no industry standard on how to assess value," says FRA/Plan Tools' David Witz. "So, it is really at the plan sponsor's discretion to assess value for fees paid. They can do an RFP [request for proposal] or benchmark adviser fees to document that they engaged in a prudent process to support a claim that fees are reasonable for services rendered."

"Given that there has been no methodology in the past, it was basically fee-versus-fee," says Craig Rosenthal, senior vice president at Lake Oswego, Oregon-based Fiduciary Benchmarks Inc., of benchmarking advisers. "What sponsors and advisers need is independent, third-party data that supports the determination of fee reasonableness, including how an adviser is helping the plan to achieve its goals and whether the fees charged are in line with what other, similar advisers charge for delivering similar services, value and participant success to similarly sized plans." —JW

First, a sponsor may want to spell out details on indemnification and limitation-of-liability provisions, she says, such as specifying that, if the adviser commits a breach of the agreement, the sponsor's recovery is not capped and is not limited to merely recovering compensatory damages, depending on the nature of the breach.

Second, make clear the requirements if the adviser subcontracts plan services, to ensure that the subcontractor gets held to the same standards and requirements as the plan's adviser.

Third, given the number of mergers and acquisitions among advisory firms in recent years, Downie suggests thinking about a provision to address the possible ramifications of personnel or company changes. "If a sponsor hires an advisory firm because the sponsor knows that person X and person Y are the key advisers, should the service agreement have a termination provision if the business is acquired or those key advisers stop working on the plan?"

Fourth, cover transition services, in case there is a breakdown in the sponsor/adviser relationship and the agreement needs to terminate somewhat abruptly. Typically, that can mean specifying a 60-day transitional period in which the outgoing adviser continues to do work such as investment reviews, at the option of the sponsor, and shares necessary information with the new adviser.