February 19 401(k) Real Talk

Greetings & a warm welcome to this week's edition of 401k Real Talk. This is Fred Barstein contributing editor at WealthManagement.com's RPA omnichannel and CEO at TRAU, TPSU & 401kTV - I review all of the past week's stories and select the most important and interesting ones providing open honest and candid discussion you will not get anyway else. So let's get real!

To no one's surprise, the DOL filed a motion to put their appeals of TX lawsuits challenging the Biden administration's fiduciary rule on hold citing the need for more time for new personnel to review.

It's de ja vu all over again as Trump's EBSA division in his 1st tenure did not defend court challenges to the Obama rule which eventually died.

Though many firms have adjusted policies and procedures in anticipation of the new rule, right before it was set to go into effect last September, courts temporarily stayed implementation.

No one is expecting that the Trump EBSA will defend or propose a new rule in its place especially as the new administration is looking to dramatically cut new onrulemaking.

Speaking of the DOL, Dan Aronowitz, president of Encore Fiduciary, an insure of employee benefit plans, has been nominated to head the DOL's EBSA division.

A staunch critic of ERISA lawsuits many of which he characterized as frivolous opining that the DOL not trial lawyers should be protecting employees, Aronowitz will be facing immediate decisions about the fiduciary and ESG rules.

Though in theory, the DOL should have stepped in to defend DC participants against blatant conflicts and mismanagement, because they did not it, opened the door for attorneys like Jerry Schlichter to successfully file lawsuits on behalf of DC participants.

Let's hope that EBSA is more proactive under Aronowitz in defending DC employees as he had indicated they should be.

The tide may be turning against DC forfeiture cases, especially when plan docs allow for the use of assets to offset match contributions, with a federal court dismissing a case against HP with prejudice.

The court stated that a company retains discretion on whether to pay plan expenses out of the plan trust noting that, as settlors, the can determine how assets are deployed, and as fiduciaries, to make sure those directives are properly followed.

They also cited a proposed IRS rule that allows for the practice.

All that said, it will be years before the law is settled leaving plans and their advisors wondering what to do although making sure plan docs are in sync is a no-brainer.

After completing their acquisition of $1.6 tr NEPC, Hightower announced that they will be replacing CEO Bob Oros with Larry Restieri, former CEO at Ayco a workplace financial planning, wealth management, and investment advisor owned by Goldman Sachs.

Though Hightower, owned by Thomas Lee, has grown from $60bn to $258 bn as a result of 50 acquisitions under Oros who joined the firm in 2019 and now over

$1.8tr including NEPC, experts believe that Thomas Lee wants more organic growth favored by Wall Street for publicly traded companies especially with private capital getting more expensive. The firm reportedly took Hightower off the market last year after not getting attractive offers.

Though Hightower touted NEPC's access to alternative investments and institutional money management as key drivers for the deal, perhaps Restieri's workplace experience will enable Hightower's over 600 advisors to offer wealth services to NEPC's millions of DC participants leveraging the convergence of wealth and retirement at work.

In a copycat financial services world especially true with the 401(k) industry plagued by clunky technology, regulations, complex distribution and lack of diversity, is it any wonder how little breakthrough innovation happens and, even when it does, so slowly? The most growth capital being deployed today is for consolidation.

Today, diversity is under attack even being blamed for the recent aircraft accident in DC. And while it will be hard to push for more diversity just for its own sake in any environment, but especially now, it might have a chance if it can be proven to yield better results.

Though it might be hard to quantify, read my recent WealthManagement column about why more diverse firms are nimbler and more creative and will be more likely to thrive in a rapidly changing world.

And last but not least, last week's LinkedIn poll asked: Which webinar/group meeting topics resonate most with 401k plan participants? The top 3 topics including financial planning, basic retirement planning and retirement income with debt management last.

Finally, nominations for the Wealthie awards just opened with a big thanks to WM for increasing RPA categories to 10 overall including new awards for BD Retirement Leader and Convergence. WM is well positioned to report on the convergence of wealth and retirement with robust RIA and RPA audiences unlike any other media outlet. For those that support RPAs to improve outcomes, be sure to nominate yourself and save the date on September 4th in NYC which will also be when the BD and Aggregator Roundtables are held.

So those were the most important stories from the past week. I listed a few others I thought were worth reading covering:

1. Cerulli reports RIAs to grow faster than any other channel by 2028
2. Brookings predicts more auto features in SECURE 3.0
3. PE has fueled record number of RIA deals in 2024
4. Vestwell launches emergency savings accounts

Please let me know if I missed anything or if you would like to comment. Otherwise I look forward to speaking to you next week on 401k Real Talk.