ERISA 3(16) Services

White Paper

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Introduction

Hiring a fiduciary that will serve a retirement plan under Section 3(16) of the Employee Retirement Income Security Act ("ERISA") is full of important decisions on the part of an employer and abounds with hidden complexity.

It is understandable that many retirement Plan Sponsors would like to absolve themselves of their fiduciary liability to an outsourced party. But is the increasingly popular idea of engaging a "3(16)" service provider practical or is it even safe?

This white paper offers insights into the principles that underlie conduct for 3(16) Plan Administrators. It also draws a line between third parties who are qualified to provide ERISA's comprehensive fiduciary 3(16) role and those that only pretend to do so.

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Overview

A quick review of the entirety of Plan Sponsor responsibility will help in understanding the pivotal role that a **3(16) Plan Administrator** plays in managing the Plan Sponsor's fiduciary function. *Fiduciaries*, according to ERISA, are individuals who have been given by their employers the responsibility to administer their organizations' retirement plans and invest their plans' assets. Under the wide umbrella of the Plan Sponsor's fiduciary responsibility exist specific duties, categorized under four main disciplines: **Governance**, **Administration, Investments**, and **Controls**. The 3(16) Plan Administrator, which is the supreme fiduciary, acting on behalf of the Plan Sponsor, bears significant personal liability for decisions made within each of these disciplines.

Because each of the disciplines requires specific expertise and significant time to execute properly, ERISA encourages fiduciaries to obtain help in satisfying these duties by delegating certain of the responsibilities to qualified third parties. Until recently, the Investments and Administration functions required to properly manage an ERISA plan are the disciplines that received most of the attention for delegation. That, however, is changing.

Many Plan Sponsors are now turning to independent 3(16) Plan Administrators to ease the weight of their legal duties. Why? Because an independent 3(16) can be the secret weapon to ensuring all disciplines of fiduciary duty are performed correctly under ERISA, including the daunting task of ensuring vendors are selected and managed prudently.

What is a 3(16) Plan Administrator?

Section 3(16) of ERISA describes the role of the Plan Administrator, not to be confused with a "Pension Administrator" or a "Third Party Administrator." The primary duties of a Plan Administrator include the following:

- **Vendor Management**: Hire and monitor vendors that serve their ERISA plan;
- **Filing Accuracy**: Verify that all filings with the federal government are timely;
- **ERISA Compliance**: Ensure compliance with all available exemptions from prohibited transactions within ERISA;
- **Disclosure Distribution**: Deliver various disclosures to plan participants; and
- **Plan Oversight**: Manage the plan in accordance with the plan's policies as defined in such documents as a trust agreement, investment policy statement, data security policy, and conflicts of interest policy.

For practical as well as cultural reasons, Plan Sponsors historically have reserved the above duties for themselves.

The 3(16) Landscape

Plan Sponsors are familiar with two categories of vendors; investment providers and firms that provide ministerial services (they include recordkeepers and third-party administrators).

Both categories represent roles that are instrumental to the effective management of a retirement plan, as articulated by ERISA. By outsourcing these responsibilities to well-qualified experts, Plan Sponsors put themselves in an ideal position of complying with ERISA, minimizing their legal risk, and optimizing their retirement plans for the benefit of their plans' participants.

While investment consulting and ministerial support are essential parts of the fiduciary function, they are also very specialized roles: investment firms select mutual funds and other securities for the retirement plan, and recordkeepers process contributions of plan participants and their employers.

One provider role, however, encompasses every facet of fiduciary duty: the independent 3(16) Plan Administrator. The landscape for vendors of 3(16) services has shifted in recent years. The vendors fall into one of three categories.

The "New Branding on Old Solutions" Vendors
Savvy marketers of administrative services are branding their sales materials with a "3(16)" designation. Investigation of their claims reveals that many such vendors are simply delivering the same services they have always provided. Their purported relief from fiduciary liability for a Plan Sponsor may not exist due to indemnification language in the vendor's service agreement and a lack of explicitly stated responsibilities.

The Limited Services Vendors
The most frequently occurring 3(16) service model offers additional administrative (ministerial) services, such as distribution approvals or notice fulfillment, to the executive acting in the 3(16) plan administrator role. Such a vendor is not an authentic 3(16).

The Authentic 3(16) Providers
An authentic 3(16) service provider performs seven key functions for Plan Sponsors:

- Avoids conflicts of interest;
- Installs a formal compliance framework;
- Coordinates with the retirement plan's financial auditor to manage the auditor's requests and timelines;
- Installs and administers governance policies that align intentions with actions;
- Opines on the value of vendors' services and the reasonableness of their fees;
- Conducts an annual fiduciary review; and
- Provides fiduciary training.

Why Hire a 3(16) Service Provider?

Maintaining a qualified cadre of service providers in today's retirement plan market is one of the three legally most risky activities for Plan Sponsors. The other two include conformance to the plan's governance documents and amendments, and management and safekeeping of participants' personal data. Those activities present a major challenge to most executives who have been charged by their employer to serve as the Plan Administrator.

Relief from an Unwanted Burden

C-suite leaders and human resources executives by trade, lack the training and specialized experience necessary for the job of vendor management, fiduciary process management, and investment decision making management. It is not surprising, therefore, that the ability to discharge some or all of those activities to a qualified, unbiased independent Plan Administrator makes sense for a large percentage of this executive population.

Engaging the services of an independent 3(16) Plan Administrator eliminates a Plan Sponsor's need to possess expertise and credentials in connection with selecting vendors in the investment, recordkeeping, and custodian sectors. Once engaged, the 3(16) takes over that role, both functionally and legally.

Consequently, the Plan Sponsor is freed from the burden of performing the four fiduciary disciplines at a high level of competency – and is only left with ERISA's requirement to formally monitor the 3(16), usually on an annual basis.

In summary, the 3(16) Plan Administrator can be a Plan Sponsor's best (outsourced) friend – *if the right one is selected.*

How to Evaluate 3(16) Candidates

Challenge

In the new era of accountability being enforced by the U.S. Department of Labor (“DOL”), buyers of fiduciary support services want assurance that the vendors in their supply chains are trustworthy. That holds true for all vendors, including investment consultants, recordkeepers, third party administrators, money managers, and custodians.

The DOL’s pace of enforcement has produced staggering numbers. Many of the causes behind the DOL's fines and sanctions are repeated year after year, and include:

- excessive fees by service providers;
- providers' conflicts of interest; and
- lack of proper plan oversight.

These recurring issues highlight Plan Sponsors’ struggle to adequately perform complex fiduciary duties on their own – and demonstrate the need to outsource these critical responsibilities to an independent, qualified 3(16) Plan Administrator.

Solution

In order to help Plan Sponsors evaluate and choose a trustworthy ERISA 3(16) Plan Administrator, the following is a list of traits embodied by the best providers in the industry:

1. Communicates with clients in jargon-free language;
2. Reconciles fees for services easily;
3. Doesn't overreach on claims of fiduciary status;
4. Are transparent about all sources of income;
5. Employs an automated workflow that makes monitoring and auditing easy;
6. Updates contract as services change;
7. Delivers relevant, succinct status reports;
8. Doesn't provide such services as recordkeeping or third-party administration;
9. Facilitates formal fiduciary training for clients; and
10. Produces a regular independent review of the client’s fiduciary support systems and practices.

The biggest culprit that thwarts a successful 3(16) provider relationship is the existence of conflicts of interest. Simply stated, a vendor offering multiple services under the same umbrella can more easily hide an excessive fee structure for which Plan Sponsors are accountable.

Conclusion

An independent ERISA 3(16) Plan Administrator can relieve Plan Sponsors, and all of their in-house fiduciaries, of the responsibility of managing ERISA's burdensome fiduciary role. As responsibilities typically borne by Plan Sponsors are shifted to this qualified third party, the Plan Sponsor's risk management profile is vastly improved.

In addition, Plan Sponsor executives, who typically lack the training and specialized expertise to properly execute each of the four fiduciary disciplines, are enabled to spend time on those leadership activities that are as equally important to their company – and for which they are more than adequately qualified.

Without interruption since 2000, Roland|Criss Fiduciary Services has solved problems for organizations that are charged with the legal duty of managing other people's money. We have provided fiduciary assessment and governance solutions to those serving in the Plan Administrator role during that entire period. While many vendors are just now releasing so-called 3(16) solutions into the market, 3(16) is not new to us. This is our core business; *our only business*. We serve plans of all sizes from startups to complex, layered plan arrangements with billions of dollars in assets.

Contact us at **(800) 440-3457** or by e-mail at **excellentfiduciary@rolandcriss.com**.