

Publications

Brokerage Windows: The DOL may have more regulatory guidance coming

ATTORNEYS & PROFESSIONALS

Jason Lee

jlee@groom.com

202-861-6649

PUBLISHED

02/28/2014

SOURCE

Plan Sponsor Magazine

SERVICES

Author: Plan Sponsor Magazine

In May 2012, the Department of Labor (DOL) stated in a Q-and-A that an administrator of a participant-directed individual account plan may need to treat an investment alternative through a brokerage window as a “designated investment alternative” and therefore provide certain disclosures regarding the investment alternative – if a “significant number of participants and beneficiaries” invested in it. Also stated in DOL Field Assistance Bulletin (FAB) 2012-02 Q-and-A 30: “Unless participants and beneficiaries are financially sophisticated, many of them may need guidance when choosing their own investments from among a large number of alternatives” and the suggestion that plan fiduciaries may have a duty to “designate a manageable number of investment alternatives.”

In response to mostly negative reactions, the department replaced the Q-and-A in July 2012 – FAB 2012-02R – with Q-and-A 39, which states that a plan fiduciary’s attempt to avoid making disclosures required under the participant disclosure regulation by not designating any investment alternative – and offering only a brokerage window – may be inconsistent with the plan fiduciary’s statutory duties of prudence and loyalty. Please see the attached article for further discussion.

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