

We will begin our webcast shortly

Best Practices for Producing and Managing Rollover Business



The Fiduciary Advisor's Rollover Toolkit



Conference Call:
(646) 307-1706

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462-047-145

The Fiduciary Advisor's Rollover Toolkit



WELCOME

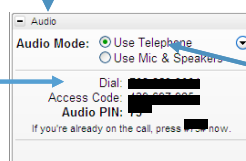
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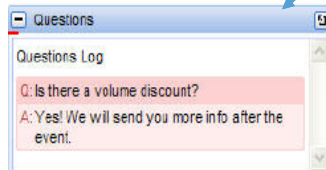
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Presenters:



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Founder & Coach
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Agenda

1. The Regulatory Divide
2. Problem With Capturing Rollovers
3. The Game Plan
4. Procedural Guidelines
5. Conclusions



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But let's first look at a
Case Study...



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<p>Conference Call: (646) 307-1706</p> <p>Access Code: 462-047-145</p> <p>The Fiduciary Advisor's Rollover Toolkit</p> 	<h2>Case Study</h2> <ul style="list-style-type: none">– Advisor (15 year tenure): Sue Lawson– Service Agreement clearly states she is a 3(21) fiduciary– Assisted trustees with IPS– Provides quarterly investment and due diligence reviews– Makes recommendations on plan investments– Provides vendor benchmarking and RFP services– Provides semi-annual education meetings and offers one-on-one meetings to all participants  <p>The401kCoach.com</p>
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<p>Conference Call: (646) 307-1706</p> <p>Access Code: 462-047-145</p> <p>The Fiduciary Advisor's Rollover Toolkit</p> 	<h2 style="text-align: center;">Case Study</h2> <ul style="list-style-type: none">- John Mitchell: Executive at Sprocket, Inc.- 35 year tenure; planning to retire in 6 months- Current acct. balance: \$1,790,000- Approaches Sue for help in rolling out his money and have her manage it in an IRA along with other financial planning services <div style="display: flex; justify-content: space-around; align-items: center;"><div data-bbox="618 674 891 894"></div><div data-bbox="932 684 1195 827"><p>Can Sue Accept the Rollover funds and manage this IRA for John?</p></div></div> <div style="text-align: right;"><p>The401kCoach.com</p></div>
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The Regulatory Divide

Portability of 401(k) Accounts

- Participants may roll over accounts upon termination of employment.
- Rollover IRAs provide investment flexibility.

Services Offered by Advisors

- Plan Services for plan sponsor.
- Plan Services for participants.
- Rollover IRA Services for participants.



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Restrictions Under ERISA

ERISA and Advisor's Services

- Advisor's ability to offer Plan Services and Rollover IRA Services is restricted.

Possible Solutions

- Stop offering Rollover IRA Services.
- Adopt service model which allows Advisor to offer Rollover IRA Services.



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Potential Abuses of Cross-Selling

Issues Arising from Cross-Selling

- Potential conflicts of interest.
- Exploiting trust to sell at unfavorable terms.

Capturing Rollover Assets

- Advisor develops relationships with plan sponsor and participants.
- Potential conflict if Advisor's fees on rollover assets are higher than fees on plan assets.



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DOL Guidance

“Potential for Abuse”

- Policy concern for DOL.
- DOL has issued interpretive guidance for cross-selling of Rollover IRA Services.
- Starting point is ERISA’s general prohibition against self-dealing.



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Prohibited Transaction Rules

Prohibition Against Self-Dealing

- ERISA Section 406(b) and mirror IRC provision.
- Advisor cannot provide fiduciary advice that increases Advisor’s compensation.

Example

- Advisor’s fiduciary advice steers participants to fund with highest 12b-1 fee.
- Advice is tainted even if provided in good faith.



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DOL Rollover Opinion

Advisory Opinion 2005-23A

- Broadly suggests that if Advisor is fiduciary, any rollover advice to participants may trigger PT.
- DOL does not fully explain reasoning.
- If Advisor is not fiduciary, rollover advice will not trigger PT.



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DOL-Related Concern for All Advisors

Advisors Appointed as Fiduciaries

- DOL Rollover Opinion seems to say they cannot capture rollover assets.

All Other Advisors

- If Advisor provides “accidental” fiduciary advice, Advisor becomes fiduciary.
- Therefore, all Advisors may become subject to restrictions in DOL Rollover Opinion.



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Definition of Investment Advice

You provide “investment advice” if:

- Individualized investment advice is provided on regular basis; and
- It serves as primary basis for plan decisions.

Advisors and Investment Advice

- Many Advisors hope their advice does not meet **regular basis** and **primary basis** conditions.
- But Advisors may become “accidental” fiduciaries as contact with plan sponsor increases.



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Critical Supreme Court Guidance

Varity Corp v. Howe (1996 Supreme Ct.)

- Cited in DOL Rollover Opinion.
- Court rules that same person may operate in fiduciary and non-fiduciary capacities.
- Legal analysis also applies to Advisors and Rollover IRA Services.

Game Plan

- Advisor is clearly acting in non-fiduciary capacity when offering Rollover IRA Services.
- Consistent with Varity Corp decision.



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Core Analysis in Varity Corp

Factual Background for Case

- Employer transfers money-losing division to subsidiary.
- Falsely communicates that benefits are secure.
- Benefits forfeited after subsidiary goes bankrupt.

Was Employer Acting as a Fiduciary?

- Employer argues its communications to employees were not fiduciary acts.
- Court disagrees.



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Three-Factor Test from Varity Corp

Court examines 3 key factors:

- Factual context of communication.
- Plan-related authority of person providing communication.
- Plan-related nature of communication.

Applicability to Advisors

- Need to ensure 3-Factor Test is met by Advisors when offering Rollover IRA Services.



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Meeting the 3-Factor Test

Rollover Communications

- Manner and content must satisfy all 3 factors.

1st Factor: Factual Context

- Non-plan related setting.
- Refrain from promoting Rollover IRA Services at Plan meetings.
- Offer Rollover IRA Services at one-on-one meetings with participants.



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Meeting the 3-Factor Test (cont'd)

2nd Factor: Plan-Related Authority

- Request written confirmation letter from plan sponsor.
- Letter confirms that Advisor's Rollover IRA Services are unrelated to Plan Services.

3rd Factor: Plan-Related Nature

- Request written acknowledgment from participant.
- Acknowledgment form explains that Rollover IRA Services are not a plan fiduciary service.



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Document-Related Issues

Plan Sponsor/Participant Will Not Sign

- Advisors appointed as fiduciaries should not offer Rollover IRA Service.
- All other Advisors may offer Rollover IRA Service if certain that there has been no fiduciary advice.
- Protection of written forms necessary for Advisors acting as fiduciaries.



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Procedural Guidelines

- 1) Discussion of Rollovers at Plan Meetings
 - Advisor may discuss availability of rollover distributions, but not advisability.
- 2) Promotion of Rollover IRA Services
 - Limit promotion of Rollover IRA Services at Plan meetings.
 - Do not indicate that Rollover IRA Services are part of Plan Services.



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Procedural Guidelines (cont'd)

3) Offering Rollover IRA Services

- Make offer at one-on-one meeting with participant, but not at Plan meetings.

4) Meeting with the Plan Sponsor

- Ask plan sponsor to sign written confirmation letter.
- Plan sponsor should not endorse Advisor's Rollover IRA Services to participants.



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Procedural Guidelines (cont'd)



5) Meeting with Participant

- Ask participant to sign written acknowledgment form.
- Do not suggest that participant is obligated to work with Advisor as part of Plan Services.

6) Confirmation Letter for Plan Sponsor

- If sponsor refuses to sign, do not offer Rollover IRA Services if fiduciary advice has been provided.



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Conclusions

Advisors and Rollover IRA Services

- May offer Rollover IRA Services consistent with procedural guidelines.

Purpose of Procedural Guidelines

- Factual context is non-plan related setting.
- Rollover IRA Services are not offered under Advisor's authority to provide Plan Services.
- Participant understands non-plan related nature of Advisor's offer.



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Conclusions (cont'd)

Advisors Appointed as Fiduciaries

- Should follow procedural guidelines carefully.

All Other Advisors

- Should also strongly consider following procedural guidelines as "best practices" matter.
- Any Advisor may become an accidental fiduciary.



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Conclusions (cont'd)

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Future case law or other legal and regulatory developments may impact the analysis and information presented.



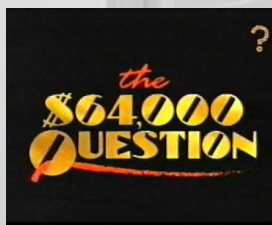
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Case Study



Can Sue Accept the Rollover funds and manage this IRA for John?



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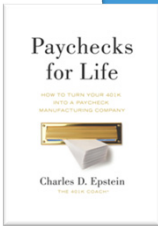

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"Charlie, your timing couldn't have been better! We are working with a plan, as a fiduciary, that is terminating this November and thought we were going to lose all the assets to a non-fiduciary advisor. Now, thanks to the Fiduciary Advisor's Rollover Toolkit, we have meetings scheduled with all of the employees to discuss their rollover options!"

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