Probe of high-profile 401(k) fiduciary advocate could cost advisers business

DOL investigating claims Hutcheson stole money from plan sponsors; he trumpeted fiduciary standard to Congress

By Darla Mercado
November 10, 2011 3:35 pm ET

A Labor Department investigation of well-known fiduciary advocate Matthew Hutcheson is raising fears that small businesses will shy away from offering plans or from turning to advisers.

Mr. Hutcheson, who has appeared before Congress to talk about the merits of advisers' adhering to the highest standard of care when dealing with retirement plans, is facing allegations from the clients of the plans he oversees that their retirement funds went missing, according

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to Bloomberg.

Bit an attorney for Matthew Hutcheson asserted his client had done nothing wrong and that the money is safe.

At least two small business clients of Mr. Hutcheson have claimed that funds from their plans have gone missing, according to Bloomberg News. One client, a North Carolina dentist, alleged that $275,000 in his plan was gone. Another client, who complained to the DOL, claimed $1 million went missing during a transfer to a new plan. Both small businesses were reportedly in multiemployer plans, which bring together a group of related employers to keep costs lower.

A spokesman for the Labor Department confirmed that the agency is investigating Mr. Hutcheson, but would not comment on what specific allegations caused it to initiate the probe.

“My client has at all times been a prudent manager of the funds he is charged with overseeing,” his attorney Dennis Charney wrote in an e-mail to InvestmentNews. “Simply put, Mr. Hutcheson has advised me that the funds are safe and have fared better than funds placed by other managers in other plans.”

Rodney Thompson, co-owner of Thompson Audiology and a member of the same multiemployer plan as the North Carolina dentist, said he doubted the attorney’s denials.

"He's been giving us that story since August," said Mr. Thompson. "We tried to nail him on where the funds are, and he won't tell us."

Mr. Thompson added that the adviser's attorney had indicated that they would work out a solution to resolve the situation by the end of November. He said he’s "99% positive that nothing's going to happen."

If the charges are true, it would be a fall from grace for Mr. Hutcheson. He has been an ardent and vocal advocate of 401(k) advisers acting in the best interest of their clients and has testified on the fiduciary issue before Congress.

The DOL investigation is a concern to the retirement industry, as it comes at a time when regulators and legislators are preparing to clash over the Labor Department’s upcoming re-release of a rule that would expand the definition of “fiduciary” for retirement plans.

As a result, some have questioned whether the investigation will set back efforts in the push for higher standards. Others expect greater skepticism and scrutiny coming from plan sponsors who are looking to hire an adviser or adopt a retirement plan.

“I’d like to see the results of the DOL’s investigation,” said Marcia Wagner, an an attorney who specializes in the Employee Retirement Income Security Act. “But if it doesn’t go well, this undercuts the message. You need to apply fiduciary standards, but who can you trust?”

Blaine F. Aikin, chief executive of Fi360, which oversees the Accredited Investment Fiduciary Analyst designation, noted that the DOL investigation actually makes the case for stronger standards for advisers.

“We get tied up in the regulatory perspective, but this demonstrates that professional

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standards need to be raised, as well as the regulatory standard; we need to police ourselves," he said.

Mr. Hutcheson carries the AIFA designation and could lose the accreditations if the allegations against him turn out to be true, Mr. Aikin added.

In the shakeout following news of the investigation, industry observers generally expected plan sponsors to be a little more skeptical of working with advisers.

"That skepticism from plans is a natural reaction, but the industry has seen almost all kinds of dirty dealings we can think of — including activities that brought about the existence of the [Employee Retirement Income Security Act of 1974] in the first place," said Michael Francis, president of Francis Investment Counsel LLC.

Others fear that among the smallest businesses, there may be some hesitation to start a retirement plan in the first place.

"We don't want small businesses to lose confidence in the system, and it's cases like this that can have that kind of effect," said Brian Graff, executive director of the American Society of Pension Professionals and Actuaries. "It's important that we don't forget about those small business owners who allegedly thought they were working with someone they could trust."

Indeed, some plan sponsors who become cynical about working with a financial adviser might simply opt to work with the biggest names in the 401(k) space.

"If [news of the investigation] went more mainstream, I can see this driving more plan sponsors to the largest providers, that safety in choosing a big name," said Mike Alfred, co-founder of BrightScope Inc., a research firm that rates 401(k) plans.

Plan sponsors who continue working with advisers will likely search for more details on what's going on with their plans.

"Plan sponsors might put in some firm limits, taking control of the plan," Mr. Alfred said. "They might require multiple signatures to make transfers from accounts."

"We go back to President Reagan's 'trust but verify,'" said Don Trone, chief executive of 3ethos, which recently started its own fiduciary education program. "I think certain plan sponsors will ask for more verification of what's going on."