

MEMORANDUM

TO: Catholic Diocesan Plan Fiduciaries

FROM: Mary Brunson, Vice President, Investing for Catholics

DATE: May 23, 2011

RE: Fiduciary Commitment -- Investing for Catholics, a division of Index Funds Advisors, Inc.

Executive Summary: The following statement is intended to provide background information relative to the current status of fiduciary responsibility that lies with Catholic institutions, dioceses and Bishops.

In retirement plans, decisions made on behalf of the plan participants must be made solely in their best interest. Those who hold the discretion to make these decisions are known as fiduciaries and carry liability for the decisions. Based on Canon Law, discretion for retirement plan decisions ultimately rests with the Bishop, making him vulnerable to participant claims and lawsuits.

While much of this liability is unavoidable, the Bishop has the ability to transfer to a third party, who will accept in writing both the Bishop's and the diocese's fiduciary liability for the selection, monitoring, and replacement of retirement plan investment options. In the ERISA universe (Employee Retirement Income Security Act of 1974), this is known as an ERISA 3(38) Fiduciary. Investing for Catholics (IFC), a division of Index Funds Advisors, Inc., will accept the same principles for Catholic organizational retirement plans, effectively indemnifying the Bishop's liability with respect to these issues. The Bishop may wish to inquire if the current financial advisor to the plan has accepted this particular level of fiduciary liability.

It is reasonable to describe the ERISA standard as indicative of a "best practice" though not necessarily legally required. To the extent that state trustee law is modeled on ERISA and there is no state law on point in a dispute, state courts may look to available case law in the federal ERISA context for guidance, but this will not necessarily happen, as ERISA technically does not apply.

Background:

Although Catholic dioceses may be formally exempt from complying with ERISA, this does not equate to a lack of fiduciary duties. There are many benefits to bringing plans in line with regulations outlined for ERISA plans

1. Benefits of Adoption of ERISA standards
 - a. The levels of "care, skill, prudence, and diligence" required by ERISA already largely apply to non-ERISA plans. Many of the state laws regulating plans either mimic ERISA provisions, reference them directly, or draw heavily upon them.

- b. Effective January 2009, the federal 403(b) regulations requiring all plan sponsors to play a more active role in plan design and administration indicate a greater shift toward ERISA-type requirements.
 - c. Compliance with ERISA regulations may extend beyond current fiduciary standards, but will ensure adherence to the regulations currently governing plans.
2. Four overarching duties outlined by ERISA:
- a. Act prudently (the most common state prudence laws applying to non-ERISA plans today are identical to ERISA's "prudent investor" standard). Other prevailing laws apply a "prudent person" standard. Despite the semantics, however, they all point to the same goal: fiduciaries must behave as if their own money is on the line.
 - b. Diversify plan assets
 - c. Act with loyalty and for the exclusive benefit of participants and beneficiaries
 - d. Act in accordance with the plan's terms and with ERISA provisions

Fiduciary obligation:

A Fiduciary is an individual, corporation, or other entity that holds assets and has legal authority to make financial decisions on behalf of another party. In Catholic dioceses, this responsibility tolls to the Bishop.

Delegation of the fiduciary responsibility:

Because Plan Sponsors make decisions on behalf of the participants, they are accountable for the process they used to make those decisions. Fiduciaries of qualified retirement plans can delegate their day-to-day investment fiduciary responsibilities and liabilities to others. This has been allowed by ERISA since its inception.

Sponsors may appoint a professional named fiduciary to implement the dictates of a strict fiduciary service model. ERISA does not allow a Plan Sponsor to delegate the fiduciary responsibility of selecting the named fiduciary. However, under section 3(38) of ERISA, they can delegate the discretion to a third party. Without discretion they are no longer liable for the choices.

A 3(38) fiduciary accepts in writing 100% of the liability associated with:

- 1. Selection of plan investment options in accordance with the plan's Investment Policy Statement
- 2. Monitoring of all plan investment options
- 3. Replacement, if necessary, of the plan investment options
- 4. Provides a report to plan sponsors with an overview and documentation, at least annually, regarding the selection of the investment options offered to plan participants
- 5. Follows the general principles set forth in the Uniform Prudent Investment Act

An ERISA 3(38) fiduciary can only be (a) a bank, (b) an insurance company or (c) a registered investment adviser (RIA) subject to the Investment Advisers Act of 1940. Investing for Catholics is a 3(38) fiduciary.

An ERISA 3(38) fiduciary has ERISA legally defined "discretion" that makes it a decision-maker and legally liable (making the plan sponsor no longer liable).

An ERISA 3(38) fiduciary will consult with the plan sponsor to discuss its rationale for selecting and/or replacing given plan investment options before actually making changes. However, the 3(38) fiduciary has the sole legal responsibility (sole legal liability) for these decisions.

The plan sponsor retains the power to rescind delegation from the 3(38), thereby retrieving the responsibility (and liability) to select, monitor and replace plan investment options.

Investing for Catholics is an ERISA 3(38) fiduciary:

As an independent investment advisor that accepts the highest standard of fiduciary care, IFC harbors no conflicts of interests. Most investment service providers are incapable of accepting this higher standard of care because they are paid by revenue sharing of plan assets, casting pallor of doubt on their ability to act solely in the best interests of the diocese and its participants.

IFC will fully disclose, in writing, all fees, detailed in quarterly notices with description of how such fees are calculated and charged. This practice provides for simple fee benchmarking and cost comparisons for diocesan staff to ensure prudence and solid process.