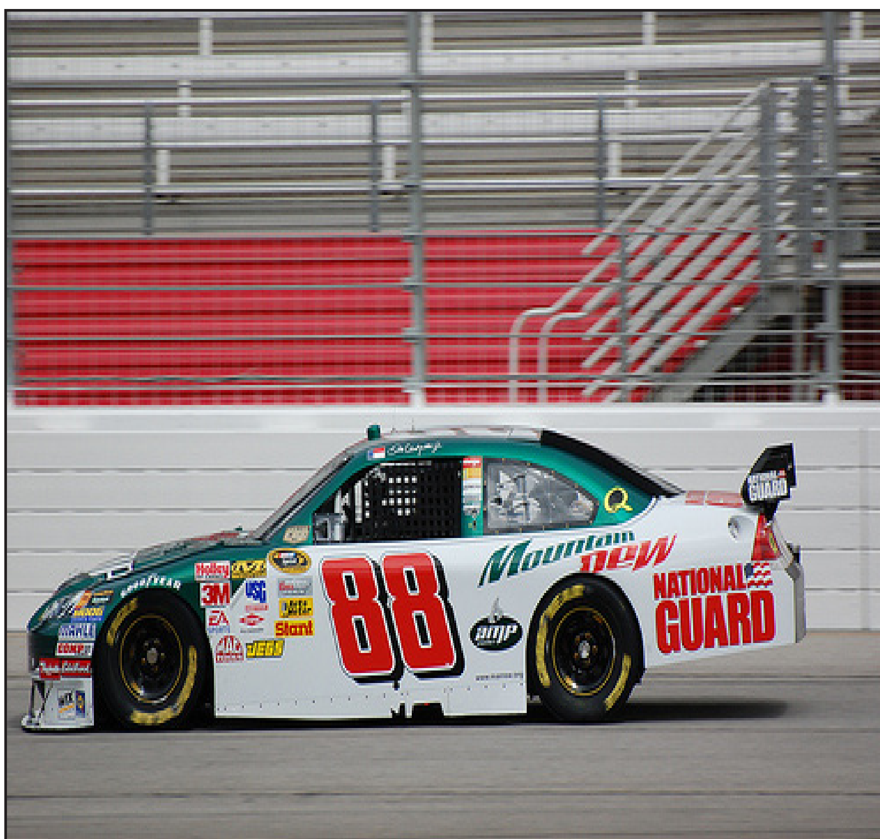
How a Financial Advisor Can Get Business During 401(k) “Crazy Season”

By Ary Rosenbaum, Esq.

In NASCAR, ”Crazy Season” is the period of time during the racing season where racers switch their teams for the next season. It gets a little disjointed when a racer defects to a new team for next year while still racing for the team that he will be a lame-duck for the rest of the current season. When it comes to 401(k) plans, “Crazy Season” is the last few months of the calendar year because it is the time that many plan sponsors decide to make a change of their third party administrators (TPA) and/or financial advisors in order to make a change by December 31, so that they can start the New Year with a new TPA and/or financial advisor in place. While plan sponsors are kicking the tires of potential, new TPAs and advisors, a financial advisor who thinks outside the box may get a leg up on the competition in landing a new client. So this article is suggestions on how a financial advisor can take advantage of 401(k) crazy season as they approach potential new clients.



1. Check the Form 5500. In the movie Caddyshack, Ted Knight’s character Judge Elihu Smails was dumbfounded that Chevy Chase’s character; Ty Webb didn’t keep score on the golf course. Judge Smails asked Ty that if he didn’t keep score, how did he measure himself against other golfers? Ty replied simply: “by height.” As you may know, the Form 5500 is the tax return filed by a qualified retirement plan. It tells you some important information like the type of plan, number of participants, and asset size. Thanks to the transition to fee disclosure, there is now more information regarding plan expenses. The problem is that a Form 5500 doesn’t have current plan information; it’s yesterday’s news that you get to read tomorrow. A Form 5500 doesn’t give you the up to date information for the plan or its current fund lineup or whether there are plan administration or document errors. So a Form 5500 is just a small snapshot of a plan and only when you meet a plan sponsor and review their plan documents, asset statements, and valuation reports, do you get the full picture of the plan. However, Form 5500 can show a chock full of nuggets of information that can show how poor a plan was at the time of the 5500’s filing. A Form 5500 can be evidence that a plan is paying too much in fees, it’s not proof. Proof can only come from a full review. It’s a conversation starter. Unlike golfer’s height, a 5500 is a measure of a retirement plan, not the definitive measure. Like what they show on C.S.I., a Form 5500 is just a little evidence that a retirement plan is not in shape.

2. Ask for an investment policy statement and asset statement. You should always ask a potential client a copy of their investment policy statement (IPS) and a copy of their asset statement from their plan custodian. So many plans don’t have an IPS, so it’s a great way to spot a huge error because a lack of an IPS is a red flag for potential fiduciary liability in 401(k) plans whether it’s participant directed or not. Asset statements are also important because it may show that the Plan has too many investment options (is 52 enough), underperforming funds, or improper share classes based on the plan size (using retail share classes when cheaper institutional shares are available for the very same funds).

3. Ask for a copy of the fee disclosures. With fee disclosure regulations finally implemented, plan sponsors should have the fee disclosures provided to them by their service providers as well as the disclosures that they provided to their plan’s participants. Clearly if required disclosures are missing, that’s an important conversation

to have with the potential client. Check if there is any sneaky fees like bloated custody fees, make sure the revenue sharing disclosures make sense as well.

4. Ask for a copy of the service agreement with the TPA and/or the custodian. If the Plan is using any type of provider (especially an insurance company provider), you should check if there are any surrender charges or termination fees. Get an ERISA attorney (cough, cough) to make a quick review so the plan sponsor doesn't get sticker shock about changing providers. Find out what the notice requirements are in changing providers.

5. Check the stable value contracts. If a plan offers a stable value fund, have the contract reviewed. Make sure there aren't any suspicious termination costs or market value adjustments. I have come across a few 401(k) plans over the past because the stable value funds' CUSIP is attached to the TPA. Of course, what these plans didn't know was that their registered investment advisor was pocketing extra 25 basis points for pushing that particular stable value fund.

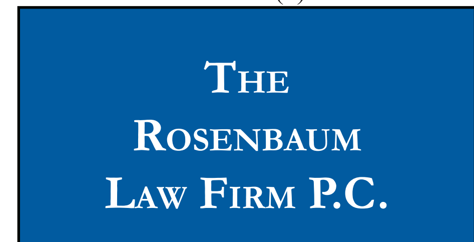
6. Check the plan design. Too many plan advisors think within the box and don't consider whether the plan's design still fits the needs of the plan sponsor. Partner up with a TPA and/or ERISA attorney (more coughs) who can help you out with a plan design review. Does a safe harbor plan design make sense? What about new comparability that can give greater contributions to highly compensated employees? The more comments you can give your potential clients about plan design, the smarter you look.

7. Review the plan's administration. Some times, the TPA does mess up. Employees can easily be misidentified as non-highly compensated employees or what is known as non-key employees, when they really are. Again, partner up with the experts to determine if the discrimination testing for coverage, salary deferrals, matching contributions, and Top Heavy make sense.

8. Check the plan document. Has it been properly updated? Are they using a prototype document that may require the plan document to be completely redone because the plan is changing providers? Again, check with the plan experts for a quick plan document review.

9. Ask for the fiduciary liability insurance policy. Fiduciary liability insurance should not be confused with an ERISA bond, which is required to protect plan assets from theft. A fiduciary liability insurance policy protects plan sponsors and fiduciaries from litigation from plan participants and is not required. So a plan sponsor that doesn't have a policy in place will be glad to know from you that they can cost effectively protect them from a large, potential liability by purchasing liability coverage.

10. Check the materials given to plan participants. Are plan participants in a participant directed plan getting investment education or is the potential client just giving the participants, a copy of the Summary Plan Description and a bunch of Morningstar profiles? A lack of education on directed investment options wouldn't protect the plan sponsor under ERISA §404(c) which is supposed to limit a plan sponsor from losses incurred by plan participants when they direct the investments in their 401(k) account.



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