These Might Not Be The 401(k) Plan Providers You Should Be Looking For

By Ary Rosenbaum, Esq.

Hiring a retirement plan provider is an important task for you as a 401(k) plan sponsor. There are many reasons why you may hire a specific provider. As both a plan sponsor and fiduciary, the decision to hire a specific provider has to be prudent. While there are valid reasons why you should hire a provider, there are some reasons that you might think again about because they might not make sense. This is what this article is all about.

They sponsor an organization you're affiliated with

There is a funny scene in Back to School when the son of Rodney Dangerfield's son wants to buy used books at the college bookstore because they've been underlined before, by a previous student. Rodney's character thought it was a bad idea because maybe the prior student was a maniac. I'm not trying to say those plan providers that sponsor any type of trade organization or not for profit are a maniac. What I am trying to say is that the organization is sponsored by a plan provider that hasn't vetted them, other than depositing their sponsorship check and making sure it didn't bounce. Otherwise, how would you know whether that plan provider was good or not? Sponsoring a trade organization or not for profit might be laudable, but the whole point of sponsoring these organizations by a plan provider is to get noticed for their services. Years ago, my client was considering hiring a third-party administrator (TPA) that also had their own advisory organization, only because they sponsored their local trade association. After reviewing what this producing TPA was offering, I knew it was going to be a bad fit and a step backward for my client. While this TPA did provide me with some greats Mets tickets, that gesture didn't change my mind. There are many reasons why you should hire a plan provider and I think the fact that they sponsor an organization you're affiliated with, isn't one of them.

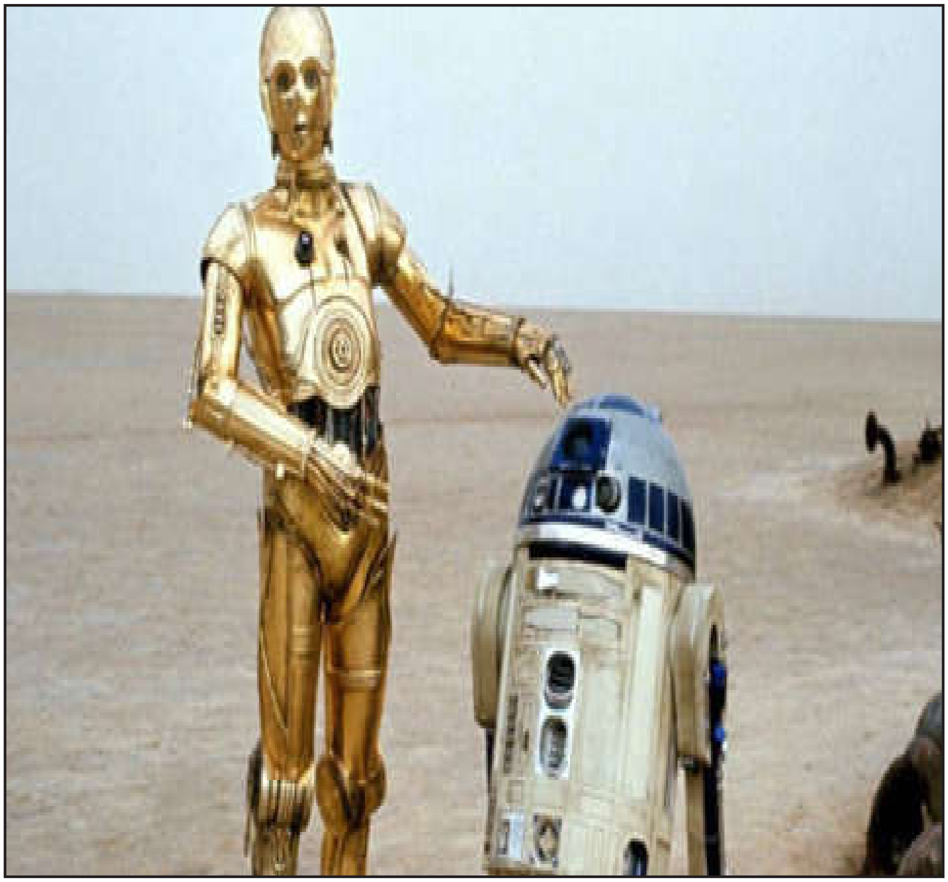
They're related to you or someone you know

Maybe because most of my family are screwups, I'm just not fond of nepotism.

Maybe I'm naïve, but I believe that plan providers should be selected on merit and not because they were juiced in. Plan providers should be selected on what they know and not who they know. So hiring someone as a plan provider because they're related to you or someone else is silly. What you do with your business is your business. What you do with your retirement plan may make you personally liable as a plan fiduciary. I believe that if things don't look like they are on the up and up, there is an implication that things aren't on the up and up. You can't afford for things to look bad and hiring relatives is bad. In addition, based on the nature of the relationship, hiring a relative could be a prohibited transaction. Heck, I know a plan where a man who owned a company hired his wife as his 401(k) advisor. They say that charity starts at home, but that doesn't include your 401(k) plan.

They're secretive about how they work

Bernie Madoff was able to perpetuate a Ponzi scheme for so long because he avoided answering questions about his investment strategy. Anyone who poked around and asked questions was told by Bernie to get lost. That is why very few financial experts knew that he was creating one of the largest and most notorious Ponzi schemes in United States history. I succeeded Matt Hutcheson as the fiduciary of the one 401(k) multiple employer plan he didn't embezzle from and it took me a couple of weeks before finding out his fraud because of the secretive actions, dealing with the two plans he did steal millions from. Serving as a financial advisor for a 401(k) plan isn't a secret formula like Coca-Cola or the Colonel's secret recipe of herbs and spices. The 401(k) advisor needs to details their strategy in managing the fiduciary process of the plans they work on. They need to be as transparent as the fees they charge because as a plan fiduciary, you can't afford to expect any less. The same goes for TPAs. Vantage Benefits was a TPA that also served as an ERISA §3(16) administrator. The principals of the company stole as much as $15 million from their clients' 401(k) plans because wearing both hats as TPA and ERISA administrator allowed them the opportunity to raid 401(k) plans to prop up their business. One way to avoid any embezzlement by a plan provider is to make sure their assets are held by a well-regarded custodian (a Madoff company was the custodian of the assets he claimed to have) and check trust statements for any strange outflows from the plan.



They demand you change other providers to suit their need

I hate moving houses. I've done it so few times, but I just hate it. I'm already thinking about the move I'll likely make when my kids graduated high school. It's the same when I would change jobs. A lot of times, I changed jobs because I wanted to leave a job, rather than going to a new job. That's why I'm not a fan of changing plan providers for the sake of changing plan providers. Changing any plan provider isn't fun and there needs to be a great reason for doing such. Saving a lot of money for the same level of service or unhappiness over the competence of the current provider are just some of the great reasons to change plan providers. Hiring a financial advisor or TPA that wants you to jettison another plan provider for one that they like working with, I'm not a big fan of. While I understand why an advisor wants all their plans consolidated with one TPA or a TPA wanting to work with an advisor they're comfortable with, I just think this is something you should avoid. Changing plan providers should benefit you as a 401(k) plan sponsor, not benefit your "new" plan provider.

You never bothered to vet them

Whether you hire a plan provider because they sponsor your association's endeavors or they reached out to you through mail or phone or they've been recommended others, one of the biggest mistakes is to not vet a plan provider you're hiring. I once hired a waterproofing company to work on the lower level of my split-level ranch home. I hired them based on a Google ad and talking to the salesperson. Like an idiot, I didn't check that they had numerous complaints with the county's contracting licensing department and a further Google search would have revealed that the person running the company was a Podiatrist who lost his medical license over Medicare fraud. Jeff Richie, the embezzling owner of Vantage Benefits was previously barred from the securities business by the Securities and Exchange Commission for 3 years. Where I come from, we call that a clue, and I'm sure that almost every 401(k) plan that hired Vantage missed that clue. Vetting a plan provider isn't just a Google search, it also involves asking around the 401(k) industry. Vetting any plan provider you hire is a necessary task, just to avoid potential heartache (no matter how unlikely) down the road.

They bear gifts or suggest something shady

One of my favorite movies is The Godfather Part II and a great scene is when the Little Italy mob boss Don Fanucci is shaking down Vito Corleone to "wet his beak." There will always be potential plan providers that will come bearing gifts. Quite honestly, taking anything of substantive value that leads you to hire a plan provider could be construed as a prohibited transaction because as a plan fiduciary, you would be using plan assets for your own pecuniary gain. Free tickets to a sporting event are nice, but it leads to the impression that your fiduciary decisions are not above board. In addition, any plan provider suggesting something shady or uncomfortable is something to avoid. As an ERISA attorney, I charge flat fees for the work I do for my clients. Yet, over the years, I've had a cringy worth time of telling financial advisors that I can't accept a fee for referring my clients to them. My advice and commitment to my clients aren't for sale and I've never made a referral to these advisors after such a cringe worth conversation. If you have a plan provider suggesting something that just doesn't sound right, that is a pause forconcern.

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