RECORD KEEPING

What Are the Best Practices in Share Class Conversions?

An informal poll of recordkeepers finds differing opinions on how a share class disclosure process should go.

BY DAVID WITZ AND MIKE BUSHNELL

While historians will likely highlight rulings on same-sex marriage, the Affordable Care Act and redistricting as the most noteworthy rulings of the U.S. Supreme Court's 2014-15 session, the justices recently made a ruling that seems likely to ultimately put more pressure on plan sponsors and recordkeepers to be vigilant about fulfilling their fiduciary duties to the employees they serve.

The case in question, *Tibble v. Edison International*, originated with Glenn Tibble and other employees of Edison International, a utility holding company based in Rosemead, Calif., alleging that the company didn't perform its fiduciary duty because, since 1999, it had offered retail-class mutual funds instead of identical institutional-class funds that charged lower fees.

Edison claimed that the suit was invalid because ERISA bans claims filed more than six years after "the date of the last action which constituted a part of the breach or violation." The federal district court case that initially heard the case agreed, and dismissed the case, and after years of appeals, the 9th U.S. Circuit Court of Appeals ruled in Edison's favor.

However, on May 18, 2015, the U.S. Supreme Court ruled that a fiduciary's obligations to monitor investment expenses resets the statute at each point in time expenses are evaluated which arguably should occur on an annual basis. The Supreme Court unanimously agreed to vacate the lower court's ruling and return this case back to the 9th Circuit Court for re-hearing.

With the Supreme Court ruling that the statute of limitations rule reset each time expenses were evaluated, the 9th Circuit must now decide the *Tibble* case on its merits; namely, defining standards for what exactly would constitute a "continuing duty" that would reset the statute of limitations, and ruling on what meets the standard of a breach of fiduciary duty.

While the details are far from settled, we now appear to be on the cusp of a new era in fiduciary management, where the definition of a fiduciary duty breach is widened and the responsibility to fix it never ends, making recordkeepers more important than ever. In light of the issues addressed in the *Tibble* case, we spoke to more than a dozen recordkeepers about how they convey plan changes to employees, and what their best practices are for implementing them. Here's what we found.

DIFFERENCES IN OPINION

In cases where a client wishes to change share classes, like the lower-cost options that the *Tibble* plaintiffs sued over not having access to, some recordkeepers give weeks of notice, while others make the changes instantly.

Haskell Weiss of TWG Benefits, based in the Chicago suburbs, said that his firm provides all participants with a 30-day notice that they are changing funds whose only difference is the share class. Others, such as Ed Proulx of American Pensions in South Carolina, say their protocol is to preemptively file a notice mandated by Sarbanes-Oxley, while also following the same mapping approach as if the plan sponsors were switching investment tactics altogether. "In the case of share class conversions, we believe this is overkill, but it is safer," Proulx says.

Brian Raymond, Chief Investment Officer at ABC Portfolio Strategies in Michigan, says his firm does not use a blackout period, but they also allow 45 days for class transfers, including a 30-day window for participant notification. John Blossom of Alliance Benefit Group reports that his system can also process share classes changes in the same day, while they have a one-day blackout period to ensure that their updated plan settles in its entirety at the same time.

But other large firms look to their client's objectives to determine the timeframe. Mel Hooker, senior vice president and head of relationship management at Wells Fargo Institutional Retirement and Trust in Charlotte, says they're able to provide clients flexibility depending on the objectives they are trying to achieve. For clients who are changing share class only, Wells Fargo can and does meet that need within about 30 days. However, Wells Fargo's experience is that clients are not simply changing share classes when they go about a fund line-up change.

"What we see is clients making multiple changes at one time within their fund line up, and for that, we are able to meet both regulatory required notices as well as participant communications within a 45-60 day time period." Hooker says. "Most of our clients are taking advantage of their fund line-up changes to re-communicate the importance of saving and investing for retirement. This window of time gives them maximize opportunity to take full advantage of the event."

More responses are provided in the accompanying table, "Share Class Conversion Industry Practices."

FIG. 1: SHARE CLASS CONVERSION INDUSTRY PRACTICES

Time to Switch	Notice of Change	Time Frame for Notice	Blackout Applies
3 business days	Yes	Not full 30 days	No
1-8 days	Yes	30-90	No
Hours	Yes + mapping	30 days	Yes
45 to 60 days	Yes + mapping & 404a-5		No
Same day on Schwab	Yes	Same day	No
30-35 days	Yes	30 days	No
Same day, max 3 days	Yes	Preapproved forced change same day; others full 30 days	Depends
Allow 45 days	Yes + 404a5 report	30 days	No
Same day	Yes	Same day	No – since same fund in sub-account
Same day	Announcement is made	Same day	No
Same day	Yes with mapping	Same day	No
35-40 days	Yes	30 days	Yes
45 days	Yes	30 day	Yes
Same day	Yes + mapping & 404a-5	30 day	No
Within 3 days	Yes	Within 3 days	No

CONCLUSION

Recordkeepers and plan sponsors have differing opinions on how a share-class disclosure process should go. If the 9th Circuit Court's final ruling in the *Tibble* case ultimately turns out the way most seem to expect it will, you can expect that these best practices will be put to the test more than ever. PC



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