DOL Allows 401(k) Savers to Invest in Private Equity

The U.S. Department of Labor has issued an information letter indicating that retirement savers can include certain private equity investments in their defined contribution plans, such as 401(k)s.

In its Wednesday announcement, the DOL pointed to President Trump's recent pandemic-related executive order that directed agencies "to remove barriers to the greatest engine of economic prosperity the world has ever known: the innovation, initiative, and drive of the American people" in order that we may "overcome the effects the virus has had on our economy."

The information letter, issued under the Employee Retirement Income Security Act (ERISA) as a response to an inquiry by Pantheon Ventures, addresses private equity investments that are offered as part of a professionally managed multi-asset class vehicle structured as a target date, target risk, or balanced fund. However, the letter does not authorize making private equity investments available for direct investment on a standalone basis.

"This information letter will help Americans saving for retirement gain access to alternative investments that often provide strong returns," said Labor Secretary Eugene Scalia. "The letter helps level the playing field for ordinary investors and is another step by the [DOL] to ensure that ordinary people investing for retirement have the opportunities they need for a secure retirement."

According to the DOL, private equity investments have long been part of the investment portfolios used by defined benefit plans to fund retirement benefits for many American workers, but they generally have not been incorporated into investment funds used by defined contribution plans, such as 401(k) plans.

Rather, 401(k) plans generally use mutual funds, bank collective investment trusts, and insurance company pooled accounts with portfolios focused on publicly traded stocks and bonds.

The DOL claims that adding private equity investments to these professionally managed investment funds would increase the range of investment opportunities available to 401(k)-type plan options.

"The Department of Labor announcement opens the door to a more diversified platform of alternative investment solutions for plan fiduciaries to consider in the future, including non-listed REITs and BDCs, which can importantly provide investors options to diversify their portfolios," said Tony Chereso, president and CEO of the Institute for Portfolio Alternatives, a trade group representing the alternative investment industry.

Chairman of the U.S. Securities and Exchange Commission Jay Clayton commended the DOL's efforts, saying the information letter, "will provide our long-term Main Street investors with a choice of professionally managed funds that more closely match the diversified public and private market asset allocation strategies pursued by many well-managed pension funds as well as the benefit of selection and monitoring by ERISA fiduciaries."

Ladenburg Launches 401(K) Platform for Advisors' Business Clients

Ladenburg Thalmann Financial Services Inc. (NYSE: LTS), a publicly-traded financial services company, has launched a fully-bundled 401(k) program that allows its advisors to provide qualified employee retirement plans to their business-owner clients.

The new program, called Qui(k), was announced at Ladenburg's second consolidated national advisor conference of the year, which the firm hosted in Washington, DC for advisors affiliated with Triad Advisors, Securities Service Network and Investacorp.

The new 401(k) platform incorporates a selection of investment products that are selected and monitored by Ladenburg Thalmann Asset Management.

The platform is available to advisors across all of Ladenburg's independent advisor and brokerage subsidiaries, and provides administrative and recordkeeping functions, including day-to-day administrative tasks such as reviewing and approving employee loans and overseeing hardship distributions, qualified domestic relations orders, terminated employee distribution requests and terminated employee automatic threshold distributions.

"For small- and medium-sized businesses, having a competitive qualified employee retirement plan is essential in hiring and retaining the personnel they need to grow," said Paul Lofties, senior vice president of wealth management at Ladenburg. "The fiduciary responsibilities and administrative burdens involved in setting up such plans, however, have too often acted as deterrents in offering these benefits in the past."

Ladenburg's subsidiaries include Securities America, Triad Advisors, Securities Service Network, Investacorp and KMS Financial Services.

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FINRA Fines AXA for Misrepresenting Junk Bond Funds as Investment-Grade

The Financial Industry Regulatory Authority has fined AXA Advisors $600,000 for allegedly misrepresenting the credit quality of certain bond funds offered within group annuity contracts for 401(k) retirement plans.

Bonds are assigned credit ratings that represent their creditworthiness and published by credit rating agencies such as Moody's Investors Service and Standard & Poor's. Generally, a bond that receives a credit rating of Baa3 or higher from Moody's, or BBB- or higher from Standard & Poor's, is deemed to be an "investment-grade" bond. Bonds that receive lower ratings are known as "high-yield" or "junk" bonds.

AXA sells group annuity contracts for employer-sponsored 401(k) retirement plans that an affiliated life insurance company issues and administers. The firm is responsible for selling and servicing these group annuity contracts, and receives compensation based on the percentage of plan assets invested in the contracts.

FINRA claims that AXA distributed enrollment forms, investment options attachments, and other documents created by its affiliated life insurance company, which misrepresented that five bond funds offered within some of the group annuity contracts were "investment-grade," when a substantial portion of the funds' portfolios consisted of high-yield or junk bonds.

For example, the fund that affected the largest number of plans and participants, which was represented as an investment-grade fund, held approximately 65 percent of its bond portfolio in high-yield bonds as of March 31, 2015.

FINRA said that AXA distributed approximately 14,500 enrollment forms and 2,500 investment options attachments that misclassified the funds, affecting approximately 800 retirement plans and 6,200 plan participants from September 2010 through November 2015.

In addition to the $600,000 fine, AXA must also pay restitution totaling approximately $172,500 and send corrective disclosures to all affected plan participants.

AXA is based in New York City and has approximately 5,993 registered persons and 1,029 branch offices.

GPB Capital Acquires Surge Resources, Extends PEO Footprint into New England

GPB Capital Holdings LLC, a New York-based alternative asset management firm, has purchased a majority ownership stake in Surge Resources, a provider of professional employer organization (PEO) services to small and medium-sized businesses located primarily in New Hampshire, Massachusetts, Vermont and Maine. Financial details were not disclosed.

Surge is based in Manchester, New Hampshire and provides payroll administration, safety and risk management, benefits administration, tax compliance, unemployment, 401(K) plan, human resource consulting and other PEO services to over 150 companies with approximately 2700 employees.

The acquisition represents GPB Capital's second acquisition within the business services sector, following the acquisition of Jacksonville-based MatrixOneSource in January.

GPB Capital will provide capital as well as strategic and operational assistance to help Surge expand its presence in New England.

"The acquisition of Surge, which closed on October 30th, 2018, with its proven record of success, creates a PEO platform in New England for GPB Capital into which the firm can integrate 'tuck-in' acquisitions going forward," said David Gentile, founder and CEO of GPB Capital.

Additionally, GPB noted that "numerous potential synergies between Surge and MatrixOneSource have been identified and may result in both financial and operational improvements going forward."

GPB Capital focuses on acquiring or investing in income-producing companies and assets and has raised more than $1.5 billion in capital.

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FINRA Bars Broker for Improper REIT Recommendations

The Financial Industry Regulatory Authority has barred a former Independent Financial Group broker for making unsuitable alternative investment recommendations to many of his senior customers. He is also accused of inflating their net worth and investment experience to make the investments appear suitable.

FINRA claims that between 2008 and 2015, while associated with IFG, Kyusun Kim solicited numerous individuals who were retiring or had retired to liquidate their 401(k) and pension plans and invest in alternative investments, such as non-traded real estate investment trusts and structured notes.

All of the customers had moderate or conservative investment objectives and risk tolerances, which was inconsistent with Kim’s recommendations to invest a large portion of their retirement assets and liquid net worth in illiquid alternative investments.

For example, Kim recommended that a 71 year-old customer with a moderate risk tolerance liquidate his 401(k) and pension in order to invest 75 percent of his net worth into non-traded REITs and structured notes. Similarly, he recommended that another elderly customer do the same and invest 50 percent of her net worth in the same securities.

FINRA claims that Kim failed to disclose the risks associated with these products, including their speculative nature and illiquidity. As such, his customers “suffered substantial losses”.

IFG's policies limit the amount of a customer's net worth that could be concentrated in alternative investments. In order to circumvent these procedures, Kim allegedly entered inaccurate and inflated net worth, liquid net worth, and investment experience figures for certain customers on their new account forms and other documents.

Kim left IFG in March 2016 and was associated with Sandlapper Securities LLC until April 2017. His BrokerCheck profile includes more than 20 customer dispute disclosures in the last decade, with many still pending.

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Cetera Launches Web-Based 401(k) Training Program

Cetera Financial Group, a network of six independent broker-dealer firms, has launched a 401(k) practice development program for advisors currently serving retirement plans and those seeking to expand into this market.

The program was developed with Nationwide Financial and retirement plan advisory consultancy KnowHow 401(k), and features six live web-based training sessions held over the course of three months, covering topics such as marketing, business planning and meetings with plan sponsors.

"Cetera's vision for empowering advisors to provide objective holistic guidance echoes in everything we do. This extends far beyond simply providing advice about investments to providing support for sponsors of and participants in company retirement plans – which, for many Americans, represent their most significant savings vehicle," said Tim Stinson, head of wealth management for Cetera.

He added, "With plan sponsors increasingly searching for solutions that can help them meet their fiduciary responsibilities and maximize participant engagement, our new 401(k) practice development program provides both experienced advisors and those new to this market with the knowledge and tools they need to address these opportunities confidently and expand their retirement plan businesses."

The training sessions will be conducted by KnowHow 401(k) founder and managing director Chris Barlow and are free for Cetera advisors. Enrolled advisors will also have access to KnowHow 401(k)'s resource center and will receive support during and after the program from Cetera's retirement plan solutions consulting team to implement the strategies taught during the sessions, the company said.

Jon Anderson, Cetera's head of retirement services, said "The response so far has been tremendous, with approximately 250 advisors attending each of our first couple of live training sessions and providing overwhelmingly positive feedback. We are very excited to work alongside Nationwide Financial and KnowHow 401(k) to bring this vital new offering to our advisors."

Cetera Financial Group is the second-largest independent financial advisor network in the nation by number of advisors, as well as a leading service provider to the investment programs of banks and credit unions. Cetera's network includes Cetera Advisors, Cetera Advisor Networks, Cetera Investment Services (marketed as Cetera Financial Institutions), Cetera Financial Specialists, First Allied Securities and Summit Brokerage Services.

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