

## OVERVIEW

The Employee Retirement Income Security Act (ERISA) requires that fiduciaries of employee benefit plans administer and manage their plans prudently and in the interest of the plan's participants and beneficiaries. In carrying out these responsibilities, plan fiduciaries often rely heavily on pension consultants and other professionals for help. Findings included in a report by the staff of the U.S. Securities and Exchange Commission released in May 2005, however, raise serious questions concerning whether some pension consultants are fully disclosing potential conflicts of interest that may affect the objectivity of the advice they are providing to their pension plan clients.

Under the Investment Advisers Act of 1940 (Advisers Act), an investment adviser providing consulting services has a fiduciary duty to provide disinterested advice and disclose any material conflicts of interest to their clients. In this context, SEC staff examined the practices of advisers that provide pension consulting services to plan sponsors and trustees. These consulting services included assisting in determining the plan's investment objectives and restrictions, allocating plan assets, selecting money managers, choosing mutual fund options, tracking investment performance, and selecting other service providers. Many of the consultants also offered, directly or through an affiliate or subsidiary, products and services to money managers. Additionally, many of the consultants also offered, directly or through an affiliate or subsidiary, brokerage and money management services, often marketed to plans as a package of "bundled" services. The SEC examination staff concluded in its report that the business alliances among pension consultants and money managers can give rise to serious potential conflicts of interest under the Advisers Act that need to be monitored and disclosed to plan fiduciaries. To encourage the disclosure and review of more and better information about potential conflicts of interest, the Department of Labor and the SEC have developed the following set of questions to assist plan fiduciaries in evaluating the objectivity of the recommendations provided, or to be provided, by a pension consultant.

## QUESTIONNAIRE

**1. Are you registered with the SEC or a state securities regulator as an investment advisor? If so, have you provided all the disclosures required under those laws (including Part II of Form ADV)?**

YES. ThePension401k is a registered investment advisor with the state of Colorado. In addition to investment advice, The Pension401k provides independent, fiduciary consulting services, assessments and CEFEX certification of conformance to a global fiduciary standard of excellence.

**2. Do you or a related company have relationships with money managers that you recommend, consider for recommendation, or otherwise mention to the plan for consideration?**

NO. We do not have—nor have we ever had—any alliances or financial or other relationships with any outside money management firms, mutual fund companies, broker-dealer firms, or insurance companies. Plan&Act is a related firm that offers fee-only financial planning and fiduciary investment advice to individuals and small business owners.

*SEC Tip: When pension consultants have alliances or financial or other relationships with money managers or other service providers, the potential for material conflicts of interest increases, depending on the extent of the relationships. Knowing what relationships, if any, your pension consultant has with money managers may help you assess the objectivity of the advice the consultant provides.*

**3. Do you or a related company receive any payments from money managers you recommend, consider for recommendation, or otherwise mention to the plan for consideration? If so, what is the extent of these payments in relation to your other income (revenue)?**

NO. We do not receive commissions or fees from any outside sources.

*SEC Tip: Payments from money managers to pension consultants could create material conflicts of interests. You may wish to assess the extent of potential conflicts.*

**4. Do you have any policies or procedures to address conflicts of interest or to prevent these payments or relationships from being considered when you provide advice to your clients?**

Not applicable. Our policies prohibit such conflicts of interest.

*SEC Tip: Probing how the consultant addresses these potential conflicts may help you determine whether the consultant is right for your plan.*

**5. If you allow plans to pay your consulting fees using the plan's brokerage commissions, do you monitor the amount of commissions paid and alert plans when consulting fees have been paid in full? If not, how can a plan make sure it does not over-pay its consulting fees??**

Not applicable. Our policies prohibit such conflicts of interest

*SEC Tip: You may wish to avoid any payment arrangements that could cause the plan to pay more than it should in pension consultant fees.*

**6. If you allow plans to pay your consulting fees using the plan's brokerage commissions, what steps do you take to ensure that the plan receives best execution for its securities trades?**

Not Applicable. Our policies prohibit such conflicts of interest

*SEC Tip: Where and how brokerage orders are executed can impact the overall costs of the transaction, including the price the plan pays for the securities it purchases.*

**7. Do you have any arrangements with broker-dealers under which you or a related company will benefit if money managers place trades for their clients with such broker-dealers?**

Not Applicable. Our policies prohibit such conflicts of interest

*SEC Tip: As noted above, you may want to explore the consultant's other service providers to weigh the extent of any potential conflicts of interest.*

**8. If you are hired, will you acknowledge in writing that you have a fiduciary obligation as an investment adviser to the plan while providing the consulting services we are seeking?**

Yes, both ThePension401k and Plan&Act will acknowledge their fiduciary obligations in written engagement documents. Those fiduciary obligations will vary depending on the scope of services for which each firm is retained.

If retained as the investment advisor, ThePension401k acknowledges its fiduciary obligations to all the retirement plans it advises. This acknowledgment is provided in writing through execution of an Investment Advisory Agreement that acknowledges our status as an ERISA-defined 3(38) "investment manager" in accordance with ERISA section 3(38) and as an "independent fiduciary" in accordance with ERISA section 405(d)(1). Our acknowledgment makes ThePension401k solely responsible for the selection and monitoring of the investments options offered by your retirement plan.

*SEC Tip: All investment advisers (whether registered with the SEC or not) owe their advisory clients a fiduciary duty. Among other things, this means that advisers must disclose to their clients information about material conflicts of interest.*

**9. Do you consider yourself a fiduciary under ERISA with respect to the recommendations you provide the plan?**

Yes. ThePension401k is an ERISA defined fiduciary as described in the immediately preceding question. Because we receive no fees from third parties as a result of our recommendations, no ERISA-defined prohibited transactions occur.

*SEC Tip: If the consultant is a fiduciary under ERISA and receives fees from third parties as a result of their recommendations, a prohibited transaction under ERISA occurs unless the fees are used for the benefit of the plan (e.g., offset against the consulting fees charged the plan) or there is a relevant statutory or class exemption permitting the receipt of such fees.*

**10. What percentage of your plan clients utilize money managers, investment funds, brokerage services or other providers from whom you receive fees?**

Not applicable. ThePension401k and Plan&Act accept no such fees from any money managers, investment funds, brokerage services, or other service providers.

*SEC Tip: The answer may help in evaluating the objectivity of the recommendations or the fiduciary status of the consultant under ERISA.*

## FOR MORE INFORMATION

For more information on the SEC staff's findings, please read Staff Report Concerning Examinations of Select Pension Consultants. Plan trustees, pension consultants, and other service providers can learn about their fiduciary responsibilities under the Employee Retirement Income Security Act (ERISA) by visiting the website of the Department of Labor. Pension consultants who have questions concerning their obligations under the Investment Advisers Act of 1940 should either consult with an attorney who specializes in the federal securities laws or contact the staff of the SEC's Division of Investment Management. <http://www.sec.gov/investor/pubs/sponsortips.htm>

Content is current as of 1/8/2012 and is subject to change without notice.