



CAPTRUST

# PLAN SPONSORS' BIGGEST SURPRISES ABOUT 3(38)

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# Agenda

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- What is a 3(38) investment manager and how does it compare to a 3(21) investment advisor?
- What responsibilities are you left with as a plan sponsor?

02

- Which is right for you—3(38) or 3(21)?
- What do I look for when hiring a 3(38) investment manager?

03

- Top five surprises from our clients about 3(38)

# What Does a 3(38) Investment Manager Do?

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3(38)

INVESTMENT MANAGER

When sponsors engage investment advisors as 3(38) fiduciaries, they hire an investment manager to make investment **decisions**.

- The investment manager may select, monitor, remove, and replace investment options offered to plan participants.
- 3(38) investment managers are defined as fiduciaries contracted with full discretionary authority over plan investments.
- Although plan sponsors retain the responsibility for the selection and monitoring of the investment manager, **the 3(38) investment manager is responsible for an investment decisions made.**

# Hire a 3(38) Investment Manager and What Are You Left With?

ERISA § 405(d) states, “The plan sponsor and/or trustees of the plan are not liable for acts or omissions of the 3(38) investment manager, and are under no obligation to invest or otherwise manage any asset of the plan which is subject to the management of that investment manager.”

An ERISA § 3(38) arrangement represents the highest level of investment liability transfer possible under ERISA, but that doesn't mean a plan sponsor has eliminated all investment-related fiduciary duties.

The process of selecting and engaging a 3(38) investment manager itself is a fiduciary responsibility.

# How Does a 3(21) Investment Advisor Compare to a 3(38) Investment Manager?

Moving Options	Responsibilities	Liabilities	What's the Parallel to ERISA?
Move yourself	You do it all	You break, you buy	You select and monitor the investment menu without advice from an ERISA 3(21) or 3(38) investment advisor/manager and have full liability for investment decisions.
Hire someone to help you move	You share the work	You break, you buy/they break, they buy	You select and monitor the investment menu with an ERISA 3(21) investment advisor and share fiduciary responsibility for investment decisions.
Outsource the move—hire someone to move for you	They move, you supervise	They break, they buy	You hire an ERISA 3(38) investment manager to select and monitor your plan's investment options and outsource the fiduciary responsibility associated with investment decisions.

# Which Is Right for You?

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One size doesn't fit all. It depends on:

- Does the plan sponsor desire to be involved in investment decisions?
- What is the ideal amount of time the plan sponsor would like to devote to investment decisions versus a discussion of other plan initiatives?
- How difficult is it to get the committee together to make investment decisions?

# What Should I Look for When Hiring a 3(38) Investment Manager?

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- ✓ A rigorous process
- ✓ Investment oversight
- ✓ Operational excellence
- ✓ Dedicated personnel
- ✓ A partner that goes beyond the basics
- ✓ Holistic retirement plan advisor
- ✓ Proven track record
- ✓ Helps you monitor investments
- ✓ Insurance coverage

# Top Five Surprises

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## Timeliness of Fund Changes is Greatly Improved

### Why?

- Scheduling committee meeting is not necessary
- Committee members are not asked to debate any potential fund changes
- Making investment decisions is not an easy process and can be time-consuming



# Top Five Surprises

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## Fewer Meetings Can Result in Lower Costs

### Why?

- Committee meetings can take time away from the core business operations
- Travel costs and considerations
- Fewer people needed on committees

# Top Five Surprises

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## 3

### Committees Often Experience Less Worry and Stress Related to Plan Decisions

#### Why?

- Investment and mapping decisions are made by a third party
- 3(38) investment managers assume the risk of fund selection and monitoring
- Personal liability for plan-related decisions may be reduced
- Execution of fund changes with the recordkeeper becomes more efficient

# Top Five Surprises

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## More Time is Available to Spend on Other Plan-Related Initiatives

### Why?

- Participant engagement becomes a primary topic for discussion
- More opportunity to discuss plan design modifications
- Optimizing retirement plan vendor offering
- Committees can continue to refine their fiduciary process

# Top Five Surprises

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**5**

## **Committees Don't Actually Miss the Control or Involvement in the Investment Decision-Making Process**

### Why?

- Meetings are filled with robust dialogue around the participant experience
- Committee members are not burdened with difficult investment decisions
- Fund change process is streamlined with minimal client involvement

# Key Takeaways

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- A 3(38) investment manager represents the highest form of liability transfer available under ERISA and is different than a 3(21) investment advisor.
- When selecting a 3(38) investment manager, it's important to consider qualifications such as an investment manager's track record with defined contribution discretion, specifically, operational efficiency and holistic approach.
- The benefits of engaging a 3(38) investment manager manifests itself differently for each plan sponsor, but can often save a plan sponsor time and resources, as well as relieve an emotional burden or stress related to investment decisions.



**QUESTIONS?**

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