3(21) & 3(38) Advisory vs Broker

There are three ways to engage a financial professional to assist with the advisory operations of your retirement plan.

1. 3(38) Discretionary Fiduciary Advisor
2. 3(21) Non-Discretionary Fiduciary Advisor
3. Broker of Record (BOR)

A 3(38) fiduciary assumes the decision making process and liability from the plan sponsor regarding the selection of investments; the advisor is able to implement necessary investment changes without the Plan Sponsor's authorization.

A 3(21) advisor makes nondiscretionary recommendations regarding plan investments to the Plan Sponsor. The Plan Sponsor must then either accept or reject the recommendations. By making these recommendations and not the actual decisions, a 3(21) does not assume the full fiduciary responsibilities that a 3(38) does.

Both 3(21) and 3(38) Fiduciary Advisors are held to a Fiduciary Standard of care and must act in the best interest of plan participants. The Fiduciary Advisor should also have the resources and tools to deliver objective reports on the investment fund performance, benchmark the performance to peers and validate if a fund should be considered for replacement. These resources should be independent of any plan provider or investment company; their allegiance should be exclusively to the plan participants.

Advisors are typically paid a fee based on the amount of assets in the plan, or flat fee for the scope of the work to be done; unlike a Broker of Record (BOR).

A Broker of Record is a person that charges a commission for executing buy or sell orders submitted by an investor. In a retirement plan a BOR receives compensation (also known as 12b-1 fees) from the mutual fund companies that are represented in the investment line-up. The BOR is therefore incentivized to use investments that pay such commissions. BORs are not Fiduciaries to the Plan or Plan Participants so they do not have to act in the Best Interest of participants, only to select investments that are suitable; theydo not have any fiduciary responsibility.

** utilizing a fiduciary advisor does not eliminate fiduciary responsibility from the Plan.