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Be certain advice isn't really a sales pitch in disguise

401(k) ADVISER
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Getting a handle on the legal, tax and investment issues that come into play when deciding how to withdraw your money from a 401(k) plan is a daunting task. That is why so many people who retire or change companies look for advice with their 401(k) rollover decision.

The competition to provide you this advice is fierce because of the large amount of dollars at stake. Last year, over $350 billion was withdrawn from 401(k) accounts, and there's another $8 trillion where that came from, according to Cerulli Associates.

While this may seem like the perfect balance between supply and demand for investment advisory services, here's the rub: There is a lot more money to be made in selling investment products to consumers than providing advice to them. It's not even close.

The rules that govern financial advisers allow for a tremendous amount of latitude between selling and advising. A recent article on the front page of The Wall Street Journal highlighted one perfectly legal example of an insurance company offering to reward financial advisers with a new Maserati sports car for "advising" their 401(k) rollover clients to purchase at least $7.5 million worth of a certain annuity product.

With lucrative financial incentives to sell expensive products commonplace, how do you tell the difference between a proposal for advice that is truly in your best interest and advice that is a thinly veiled pitch for a high-priced product or program designed to maximize the compensation of the adviser?

If you are close to retirement or have changed jobs, here are a few questions you can ask anyone who is offering to provide you financial advice about your 401(k) rollover:

■ Is your firm an ERISA fiduciary in our relationship?

ERISA is a body of law specifically designed to protect retirement plan participants from conflicted advice. It is against the law for an ERISA fiduciary adviser to give investment advice to a retirement plan participant that causes the adviser's compensation to increase.

If their answer to this question is no, the adviser is free to sell you as many annuities as it takes to qualify for that car. Buyer beware.

■ Please describe the total compensation you and your firm will derive from my rollover account.

If the adviser it not an ERISA fiduciary, then it is a good idea to understand what conflicts they may have.

What if, after consulting with them, you determine your best course of action is to leave your money in the plan? How will that impact the adviser's compensation?

If you select a product the adviser is recommending, what is the direct compensation that they will receive? Is there any indirect compensation they or their firm will receive?

Beware the lengthy disclosure document — or my personal favorite, the lengthy disclosure document that references another lengthy disclosure document available upon request.

My advice is, if you don't understand their answer, don't buy their product.

■ What are the benefits of keeping my retirement assets in the 401(k) plan?

There are certain rights available only to qualified plan participants, such as access to plan investment options that are no longer accepting new accounts, or institutionally priced products not available outside the plan.

Many forget that, if you are over 70 and still working, keeping your assets in your employer's 401(k) plan shields most from having to begin taking required minimum distributions.

Finally, always keep in mind that your employer's plan offers you the best protection under the law against the repatriation of your retirement assets due to personal bankruptcy.

■ Will my overall fees increase or decrease if I roll my 401(k) assets into an IRA?

Make it a point to become well-versed in your 401(k) plan's total cost structure, both investment management and administrative fees. Only then will you be able to adequately compare the cost structure of any rollover investment program being suggested.

If the cost is higher, that shouldn't disqualify it from consideration. But knowing the answer puts you in a position to ask how the additional expense is justified by additional services.

In the end, it is all about making an informed decision.

If you have recently retired or are thinking of doing so, you probably have a lot of questions about your next move. When you connect with a financial adviser for the first time, while there are plenty of highly qualified professionals able to help, you need to be on the lookout for sales pitches disguised as advice.

You should know what is motivating any adviser you sit down with, and the best way to understand that is to understand how they are compensated.

My last piece of advice is to ask these questions via email and upfront so that way you receive their answers in writing.

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