Please note: This is a transcription so there may be slight grammatical errors.

Wendy:

Hello everyone and welcome to today's webinar: Trends in 3(38) for Plan Sponsors. I would now like to introduce Matthew Patrick, manager two of defined contribution at CAPTRUST.

Matthew.

Matthew Patrick:

Thank you, Wendy. Good afternoon, everyone. We really appreciate you taking some time out of your day to listen to our discussion on 3(38), or discretionary relationships and retirement plans. Our plan for the conversation today is to outline what is a 3(38), or discretionary engagement, cover a few trends that we are seeing in the space, and address some common questions that we have received from our plan sponsor clients on this type of arrangement.

As Wendy mentioned, my name is Matt Patrick. I'm a member of the defined contribution investments team here at CAPTRUST. I focus on relationships where CAPTRUST is serving in a discretionary capacity.

I'm joined today by Devin Duex and Paul Owen, who are both financial advisors here at CAPTRUST. Both are focused on servicing our retirement plan clients. Both Devin and Paul are leaders in the retirement plan space and has been recognized as top retirement plan advisors by groups such as the National Association of Plan Advisors, Barron's, the Financial Times, and 401kWire.

Importantly for this conversation, both have a lot of experience interacting with plan sponsors in both the discretionary and non-discretionary fashion. So very knowledgeable group here, and we're going to jump right in.

Devin, I'm going to start with you. I'm hoping just to kick us off, if you could start with, what is a 3(38) investment manager? How does that differ from a more traditional consulting relationship?

Devin Duex:

Yeah, thank you. Thanks for having me today. I'm excited to be a part of the conversation.

This is definitely a trend we're seeing in the industry, so I think what those of you listening today are probably used to seeing is the traditional advisor relationship, which is really more of a co-fiduciary role. Where the advisor works alongside the fiduciary committee and provides ongoing analytics, so the investment lineup recommendations to the committee as appropriate. Typically, helps with the investment policy statement.

And then in this arrangement, if you want to think of it like a pie and how much of the fiduciary relationship that the typical traditional 3(21) engagement holds, it's about 40% fiduciary responsibility on the advisor side, 60% on the plan sponsors. If something were to go awry and you had to stand up behind that decision, the tilt would be towards the plan sponsor in terms of the fiduciary responsibility.

In the 3(38) engagement, which again, this is more of a trend. This is not something we've seen mainstream across the industry yet, but it's definitely something we're seeing more interest in. Especially as you're seeing increased litigation, you're seeing complexity within the retirement landscape. Lots more to think about when it comes to your demographics. If you think about five generations in the workforce and trying to solve for that, now let's layer on the pandemic and everything you've had to deal with as an organization.

We're seeing this shift now towards, hey, as advisors, how can we help you to lift more off your plate? To potentially insulate you from liability and also give you more time back to talk about things that may move the needle more with outcomes.

So in the 3(38) relationship, you're really shifting the majority of the fiduciary responsibility as it pertains to the investments to the investment advisory firm. And in that case, creating an investment manager relationship.

And so the easiest way to think of that is you're now responsible for deciding who that firm is going to be, selecting and then monitoring the ongoing provider of that service. But everything else gets done by the investment advisory firm. Instead of giving you recommendations, having you approve those, and then having those approvals signed off by you as a plan sponsor, the investment manager would actually do all of that from front to end on your behalf and report to you what they're doing.

So that's really the shift that we're going to talk about today.

Matthew Patrick:

Great. Thanks, Devin. Yeah, as Devin highlighted at the end, that transition in responsibilities and the roles involved, that'll be a through line for everything that we're covering throughout here.

So Paul, I'm coming to you with the next one. We've talked about there is a shift in responsibility, more put on to the investment advisor than in the traditional model. Can you walk through, in your opinion, what are the elements of an effective 3(38) practice? What should people be looking for when they're vetting, hiring, a 3(38) investment manager?

Paul Owen:

Yeah, thanks, Matt. Thanks, Devin. I think those are great comments.

One thing that as Devin was talking that I think about, and I'll answer your question. But I think from a plan sponsor perspective as far as one sentence is hitting an easy button. If you think about it, we're all busy. We're all really pushed for time. And so like a lot of things in life, you pay for that convenience. You want that convenience to take things off your plate.

And so that's where I would start as far as the effective operation. If you think about from the lens of a plan sponsor, it's got to make things easier from a risk mitigation, but also literally from an operational perspective. I think, Matt, that really gets into your question as to what makes an effective 3(38) solution. Of course it's the investment screening and analytics, so that's a big block of that.

But the other piece of this is quite frankly is the operations. For lack of a better term, having the piping, if you will, that allows for the throughput to say, hey, we need to make certain decisions on the plan from an investment perspective. And then also communicating those to the provider, and then getting the required documentation, the SOX notices, the participant communication notices, and being able to get those out.

It is clearly the investment piece and having a good investment, analytics, due diligence, and scrub team. But it's also the operations team. To me, tying this back in, that's hitting the easy button. I think quite frankly, that's where when clients are talking to us with our side, our scale, our processes, they're able to say, as Devin is saying, "Hey, you know what? There's a driver [inaudible 00:06:32] risk, but this is also making my life simpler."

When 99% of the time when you can take something off of someone's plate and do it really well and also make it much more efficient for them, then that's really a win-win construct. I think that's what at a

high level makes it effective for plan sponsors. That's what plan sponsors should really be looking at. How can this either reduce my risk and [inaudible 00:06:57] if it can do both, that's a real win.

Devin Duex:

Yeah, and I think, just to add on to that, one of the questions that I think plan sponsors should really be asking, especially if you're vetting this out and to your point on operations is, how does that process work with your record keeper?

We have a story that I'd like to share real just briefly. But we had a client where we were coming on board as the 3(38) investment manager. We got everything up to date. We were online to do the investment manager work, and we had some changes we were going to be making to the investment lineup. We typically, again, as the investment manager, would lead all of that, would sign off on that and everything.

We didn't get that from the record keeper. We thought, well, where's the paperwork? So reach out to the client and find out, well, the paperwork went to the client. The client was asked to sign it. And so of course we intercepted that and said, "Hey, what's going on? We were supposed to sign that we're now responsible for that. We're the ones that are taking that fiduciary role." And they said, "Oh, well that's not how it works with our other 3(38) relationships."

I thought that was really important to note because you want to make sure in a 3(38) relationship that you are not signing off on those anymore. Because otherwise you're just paying more for the same 3(21) service. I think really important to check. Make sure in a good operational procedure that your record keeper is set up to work directly with the investment manager to sign off on all of those changes.

I think that's also to your point, Paul.

Matthew Patrick:

I think that's a great add in terms of if there's more shifting off, there's still an important documentation piece. I think we'll get to some of the what are the responsibilities that remain with the plan sponsor? But I think if you look at if you're hiring someone in a 3(38) capacity, even if we address the investment monitoring and management pieces, is table stakes. You need to feel good about the investment manager's process and the funds that they're selecting and how they're monitoring those.

But I think also looking into how are they documenting that process on their end? It's more is happening proactively. They're taking my risk off, but I want to make sure that I still feel good about the process that they're implementing for me proactively. That could be on monitoring funds or extending to the actual operations like Devin and Paul highlighted.

I think we've established some. I think we've been hammering in here are the good elements of it. We've got risk transfer. We've got work coming off of me, more going on to the investment advisor.

Devin, maybe starting with you. What are some concerns that you hear? When you've had these discussions, is there an element, sound sounds too good to be true? What are concerns that people have with engaging in this type of relationship?

Devin Duex:

Yeah, I think the first one that comes to mind is just probably why a lot of you're here today, just not really understanding the difference. What's the difference between 3(21) and 3(38)? I think also that leads into what's the true ROI on enhancing our experience with our investment advisor to 3(38)? So do I really get a shift of liability? Is it really going to save us time, and how is that going to happen? I think really trying to paint that picture of what that's going to look like in a 3(38) relationship.

And then speaking to your needs. Not every organization is going to have the same needs of why they may consider it. And so just really understanding where this fits in for your organization and what you're trying to accomplish.

I think also there's giving up that decision making ability. I think that's another one. Some organizations for different reasons may want to retain that final decision making ability. Maybe it's unique sector-type funds you want to create within the plan, things that might go outside of what we would consider more of a core structured lineup. And so having that ability to be maybe more in the fiduciary seat could be a consideration that we hear from some organizations.

I think also the firm's capabilities. Is who I'm working with, do they have the capability to even offer 3(38) and do that in a centralized manner? And then if not, how do I go about even considering to do that? Do I RFP? So that's a consideration I think out in the marketplace.

And then finally there is an additional expense to enhancing that service for many different reasons. That organization, the investment advisory firm taking on that relationship now, is taking on more liability. If there isn't a challenge to what's going on with the decisions of the investments, that investment advisory firm now needs to be the one to answer for that. There's more liability there for that firm.

There's also, again, additional cost savings for you because you're not having to spend all that time. It's a balancing act and very relative to the benefits that you receive. But of course there is some cost, and so that can be a consideration for some organizations. Especially depending on how you want to pay for that, whether it's paid for by the company.

I don't know if you see this, Paul, but some of the organizations that have moved us into that role at CAPTRUST, they tend to want to just pay for that themselves because they see that as an additional benefit to the organization. But others may want to pass it through to the plan. There's no right or wrong answer there.

What are you seeing, Paul?

Paul Owen:

Yeah, well one thing is, and I do see it both ways then, I mean the reality is it is a benefit to not only the plan sponsors themselves from a risk perspective. But also it can behoove those 10 participants quite frankly with some of the things that we can do looking at different assets, at different price points, et cetera.

But one thing, going back to that initial question, and I think you hit on it, which is, what are those common concerns or hesitations? It's almost the status quo. For most plan sponsors who are maybe tuning into this, they realize that litigation is real. They realize that there's a driver of risk.

For the folks that we've talked to about it, it's usually like, yeah, that sounds like a good idea. But they don't quite understand why they would do this. And so I think as we get into, it's just the status quo. Well, it's not broken, so let's don't fix it type thing.

The reality is it's not about that. It's really about trying to optimize the experience for both of them as the plan sponsor and ultimately the participants. And so I think this call more than anything is hopefully that plan sponsors understand, as we were talking about earlier, the drivers of this quite frankly really are litigation. Certainly on the large end of the market for sure.

Quite frankly, and we'll get into this in just a minute, but just where your focus is. So you could say time spent, but it's where your time is spent. And so that gets back to the thing that we were talking about earlier of hitting the easy button.

So I do think there's real value in this, and I do think for clients that I've talked to this about or even have asked me about, it's like, well, why would we do this? Or why wouldn't we do this? You have to understand the drivers and what the benefit is for them. And so sometimes it's just the old status quo that I see as a hurdle to that adoption. I think this call and the more that we hear in the industry about this trend and the more that we see it, I think that awakens plan sponsors to really inquire more and ask about this.

Matthew Patrick:

[inaudible 00:14:53]

Paul Owen:

Yeah, maybe a nice segue, Matt. The next question if you will.

Matthew Patrick:

Yeah, I think you opened the door, so I guess I'll come to you. Talking, we mentioned a couple times increased efficiency, hinting at time savings. I guess if we're talking about does it save time to hire a 3(30) manager, is where does that time savings come from? And then is that even the right way to think about it? Is it actually a shift in how much time you're spending? Walk me through that.

Paul Owen:

Yeah, and Devin, I'd love to hear your take on this as well. Because obviously we're coming from the east coast and west coast, and so we work with a lot of plans between us all throughout the country. And so what I would say is really interesting is number one is there are clients who say, "Literally, I want to spend just less time," just literally less time.

And so our practice, as you all know, is we're always doing the quarterly due diligence in the meetings. We're ready to go with that. There are some clients who have hired us in a 3(38) capacity that says, look, we may have five to maybe to 10 committee members. The reality is that's a lot of brain power. That's a lot of billable hours or however you want to think about, productivity rather is the word I'm looking for, that cannot be focused on their company. We want to get away and literally do two meetings a year.

Well, the DOL says once a year is prudent, and so they truly are comfortable with going down to two meetings a year. I certainly have plan sponsors that are focusing on just the time savings, just raw time.

The second, this is a derivation of the time, it's really focus. It's where they're spending their time. They may want to continue with the quarterly meeting sequence. But instead of focusing on if the small cap value, small cap value or the small cap growth, or the international growth that has 2.3% of assets is doing like it should and should we make a call on that, it's really focused on outcomes, plan benchmarking, financial wellness for the participants, and overall plan design.

Again, the focus becomes less of dotting the proverbial i's and crossing the t's as far as fees, funds, and fiduciary. It really is about outcomes for the participants. It's a difference in, so you're not saving law time, but you're focusing your time. It's much more intently focused on why we [inaudible 00:17:36] which is for the participants.

I have a camp, if you will, of clients who definitely prefer to focus their time in different areas. It's raw time savings and then just focus.

That's what I'm seeing really from the clients that we work with. Devin, what about you? Any different on that? Any different [inaudible 00:17:55]

Devin Duex:

Yeah, I would say similar, right? You definitely have organizations that want to meet less, and so this is a great fit for that to accomplish that.

But I think more so what we're seeing is the second part, the latter part. We've seeing an increasing demand from employees. This is the shift we're seeing, right? Employees themselves are asking now for personalization and customization assistance and advice and all these other components of what these programs are about. We're now starting to get into the conversations around helping people make their money last. Well, that's a lot of ground to cover in a meeting if you also then have to really dig into the investments.

And so I think that's where we've seen a lot of, if you're talking about time savings, it's time savings on the investment piece. Knowing that you can check that box and that's covered. That CAPTRUST, or whatever investment firm you're using but CAPTRUST in this case, is got your back on that. We can update you on what's happening within the plan and any changes that are being made.

But then shifting the conversation in these quarterly discussions around how are we moving the needle? Are we seeing outcomes that are benefiting the employees? From the new employees that are joining the organization, are we attracting them into the organization? Are we creating ways to retain them? And then also on the folks that are closer to retirement, how are we helping them?

You've got such a wide landscape. This is something we see as a continued trend as we move forward, is this really this demand from employees to help solve for their unique situations. And so again, 3(38) can be a really good fit if that's something you're really looking to drill down on and talk about. I think a lot of organizations that's a yes. That's a yes that they want to talk about that.

Matthew Patrick:

Yeah, I think that's great. Because I think we talk so much about trying to drive participant engagement, and that's the eternal problem that we'll have. How do we get more people involved? I think you've seen some good growth just in general with some of the auto features, auto enrollment into plans, auto escalation plans.

But we haven't solved it yet, so I think being able to free some to give you an opportunity as a plan sponsor to say, what else will work specific for my plan and for my employee base? I think that that's really the value that we see most is driven by offloading some of these investment conversations.

I'm going to pivot a little bit, jump into some trends that we're seeing in the 3(38) space. Devin hit at the top. 3(38) in general, we would classify as a trend. More people are interested. But even within the 3(38) quadrant by itself, we're seeing a little more interests drifting up markets. So if you go back in time, there's a thought of there'll be some appeal for larger plans. But really smaller plans that just have smaller groups managing the plans.

It's really going to make a big difference there. But we're starting to see more and more interest from larger plans. They're kicking the tires on what they're asking about. They're hiring 3(38) investment managers.

Paul, coming to you just for your thoughts on what is driving that increased interest. Do you think that that's a trend that we'll see continue?

Paul Owen:

So what's driving the interest is risk. 100% it will increase.

And so I'll give you a story. It's really interesting. When you're dealing with a larger plan, and I don't know how you want to define larger plan, but let's just for the sake of argument, say north of 250. That's still very much mid-sized market plan, but you get on the radar. You start get over 500 million, you're on another radar. Over a billion, and now you're front center. At some point in time, the committee is focused on of course doing the right thing for the plan and the participants.

But at some point in time, those committee members are going, wow, these assets are getting really large. They Google, and you can see all of the lawsuits. They're a dime a dozen and they're happening all the time. What happens is you sit around the boardroom, and this happened. I've had this happen with a very large private company, that very large public company. The conversation amongst the committee was something akin to this. Why would we be [inaudible 00:22:24] if our job is a risk mitigator as a committee to this organization, why would we not avail ourself of every single possible thing that we could to defer, put off, move that risk to someone else?

And so what what's really interesting is I think in the larger plan market, it's all about risk mitigation. Yes, it's about doing the right thing for participants. But 100% they're sitting there thinking, okay, gosh, just the cost if a suit were to happen to just defend the lawsuit is massive. It's minuscule to the amount of maybe a premium that's charged for 3(38) for their fiduciary to take on the service. That's happened to me twice probably in the past 24 months. Again, I think it is purely driven based upon risk.

And so yes, I think that continues. We don't need to go into this level of detail, but the recent Supreme Court overturning the Seventh Circuit Court, that was an effective green light. I think about as when you're going through a toll way. You've got the fast pass on your dashboard. They effectively put the fast pass on the dashboard and said, "Just come on through."

And so while a lot of plan sponsors and maybe us and the advisor community were hoping, can we maybe do away with some of the frivolous nature? Or can we make it a little bit harder, the burden of proof to be a little bit more to bring a suit to the Supreme Court? That's fine, but they certainly said, "Nope, we're going to green light this." I think that has a cascading effect. And so to deny that that will have a cascading effect, it's not the reality. 100% this trend will continue.

Matthew Patrick:

And I guess, Devin, I'm curious your thoughts. Paul addressed some of the bigger plan into the market. What are your thoughts on smaller end of the market, smaller plans? Does it continue to be a trend there?

Devin Duex:

Yeah, I don't see it any different for small plans. I mean they're just as concerned about litigation as a large plan. In fact, you're seeing it's agnostic to size, right? Cases can be brought against any plan any size across the spectrum.

I don't like, but I like your analogy, Paul, of the fast pass. But I agree litigation is not going anywhere when it comes to fees. And so this is a way we're seeing from all plans of all sizes. If you're risk adverse, if you want to insulate a little more of the company from potential cases that you have to defend, 3(38) is a consideration we think.

You're also seeing, I think, the time. When you get to smaller plans, you may have potentially smaller teams within the organization. And so that's another one, right? Or it could be that we don't know what we don't know. And so we're a little bit more fearful of making a mistake. We're sitting in the seat of signing off on things when we should really have a prudent expert.

ERISA gives you full carte blanche to hire a prudent expert. And so again, this is if you're trying to weigh the risk value of moving to a 3(38) relationship, well, you're really filling your duty to have a prudent expert. You're filling that with the 3(38) relationship with your advisor.

Again, I definitely don't think it's just a large plan strategy. I think it's all plans. All organizations have a lot of very similar concerns, and it's just what are your concerns. How do you rate them, and how can 3(38) potentially be a solution for you?

Paul Owen:

Matt, I just want to throw this out there for both of you guys too, or maybe to underscore this, is if we take the fact that 3(38) is the highest risk transfer allowable under this... That's not us saying this by the way. That's a risk. Okay, so that's just a fact. That's a non-debatable fact. If we take the fact that there is a unique sort of benefit for those who hire a 3(38), what's interesting, and I think what plan sponsors, whether they be large or small, because Devin's point of the suit is a good one, it's not just the large plan sponsors. I mean, whether it's a DOL inquiry, whether it's...

That can happen to anybody. And so a lawsuit can happen anyway. In fact, I had a smaller plan sponsor who literally an employee got sideways, had nothing to do with retirement plan. True story. They had an attorney. The attorney said, "Before you leave, why don't you lob a call, a formal [inaudible 00:27:33] complaint into the DOL about retirement plan?" That's not a multi $100,000,000 plan. So to your point, it can happen anywhere.

But where I was going is, where we think and what we're seeing so far, and I'd be curious if you guys agree this as well, if a plan sponsor hires CAPTRUST or a 3(38) as a professional full discretionary fiduciary, it would seemingly be much harder plaintiff's attorney, who is not a professional investment firm, to poke holes. Have potshots at a professional fiduciary that's probably going to come in with a wheelbarrow of data and analysis. Just again, if that's that highest level of risk transfer, that seems to be something that really resonates with plan sponsors of. There's less likelihood of a suit being potentially filed.

Because quite frankly, as we all know, the plaintiff's attorney, which is now a cottage industry, they're looking for a sale. And so they're looking for someone basically saying, "Okay, we caught them. I didn't have a great process." The likelihood that if you're hiring a 3(38)... I can only speak for CAPTRUST. If you're hiring CAPTRUST at 3(38), the likelihood that we didn't have a good process with nil.

And so I do think that that's sometimes if we back up for a second zoom out, plan sponsors might be thinking, okay, well great, you're 3(21). Why 3(38), I do think it's that inherent. But that's the highest risk transfer. That there seems to be less likely for a lawsuit being even coming up, and certainly coming out with a victory of selling those sorts in [inaudible 00:29:21] capacity.

I don't know if you guys have any different commentary or take on that, but that's certainly from a lot of what I'm hearing, reading, and seeing from the legal community, et cetera. That certainly still rings true.

Matthew Patrick:

And I think, Devin, I want to get your thoughts on that. But I guess we can weave in too we got a question from the audience, so appreciate that. Keep those coming in.

But just around, given the nature of it feels like anybody can sue anybody, is there that risk transfer? Is there any benefit to hiring a 3(38) or am I still vulnerable to that? So I guess thoughts on Paul's question, and then if we could work that into that would be great.

Devin Duex:

Yeah, actually in anticipation of today's discussion, I did talk to about five or six different ERISA attorneys. They work with lots of different plans across the industry, some that are more visible than others. Really, they all agreed there's not a study out there yet, although they were very intrigued if somebody would take it on, around quantitatively putting it into percentages. The risk that you might have of having a case brought against you if you had a 3(38), would it be lower?

But they did agree that it's a little bit harder... Essentially as a practical matter for 3(21) advisors, the committee is still the primary fiduciary for selecting and monitoring the investments. If you had an allegation against you in a 3(21) environment of poorly chosen investments, it would be directed at you as a plan sponsor.

But if you're in a 3(38) arrangement and you had some sort of similar claim, then that would be directed to the 3(38) advisor. You claim, or your portion of the claim as a plan sponsor, would be your selecting and monitoring of that advisor. Which would be much more easily satisfied than having to stand behind potentially the main part of the lawsuit, right? So in that answer, yes, there is a very big transition or shifting of risk.

The other thing that was said by one of the attorneys that I thought was interesting is if you look at the cases where there are "losers" in the case, none of those cases had a 3(38) advisor. They were in a 3(21) advisor relationship. I think that's important to note that we haven't seen. Now some of that could we argue is because most of the relationships are 3(21) maybe, but 3(38) relationships exist. I mean we have many at CAPTRUST.

The point is though that we haven't seen any cases yet come through or we haven't seen a positive result where a 3(38) was attached. And so I think you have to think of it that way. The insulation is clear. There is absolute transition of risk. If there is a case brought against the organization, your job then is to show that you selected and monitored that provider.

But what is done by the provider, the decisions and the choices, that would be on the provider to defend. And so I think you are clearly insulating yourself from risk.

Hopefully that helps. I mean, this is ongoing. I know we have a lot of industry folks on this discussion as well. So we put the challenge out to you. If you want to take on that study of quantifying what kind of shift of risk, we'd love to be a part of that as well. More to come on that.

Matthew Patrick:

I think there's also a lot of thought too around fiduciary liability insurance. It feels like premiums for that have been increasing as the litigation environment has picked up. And so there have been some studies done just to... Again, not really quantifiable at this point, but just a sense for as you're looking at these insurers, do they value the fact that you've hired a 3(38) manager?

There seems to be at least some at least moderate interest. We would reduce premiums knowing that. Because I think to the point of there's more likely to be a consistent and documented process than that, and we feel better about ensuring that risk that exists. More to come terms of tangible numbers-

Devin Duex:

Yeah, I've seen that. That to me Matt, that's like the good driver discount.

Matthew Patrick:

Yep, yep. Exactly.

Devin Duex:

Okay. Are you prone to an accident or are you not prone to an accident? Where do you fit on that spectrum? That's those excessive fee questionnaires we're seeing coming in. The favorable results are coming in when you have a good, consistent, prudent process.

And so you could argue that a 3(38) relationship with a centralized system where everything's happening timely as potential changes may have to come up and you can pivot really quickly. Well, that would put you in a lower risk category for your premium review. And so hence, you get the good driver discounts.

So I think those are definitely we're seeing more and more of that coming up. The more you can prove a good, consistent, prudent process that you're looking at your lowest share classes... Which again, we haven't even talked about this yet, I know we're going to get to it as a benefit, that's a huge benefit of having a 3(38). Unlocking and opening share classes you can't access as a singular 3(21) plan. That's going to also I think help to prove that you're a "good driver" when it comes to fiduciary process.

Matthew Patrick:

Well, you went there, Devin, so we might as well address the investment vehicles, share classes piece. Yeah, we can start.

I guess Paul, I'll start with you, but that's a trend we're seeing, something we've been talking to with asset managers. It seems like it's a trend that is pervasive across the industry when operatings at 3(38). So maybe walk through what is Devin talking about in terms of screening investments and other opportunities that might be available when you hire a 3(38).

Paul Owen:

And just to, again, back up in what all's said here, so right now, if you're a plan sponsor, you're going, okay, the risk, you know that I can potentially transfer. There potentially maybe time or focus that I can shift. And so just skeptically if I'm on the other side, if I'm on plan sponsor, I'm like, eh. That won't really ring true for me.

But what's undeniable and what does ring true, and may be a surprise benefit if you will, is in the asset management. What I mean by that is just raw costs. It actually might be less expensive for a plan sponsor to pay a little bit more to have the advisor be at 3(38). And then in a discretion capacity, when we go back to the asset manager. We're not only this ABC retirement plan. We're all of a sudden, hey, the investment manager is looking, saying, "Oh, CAPTRUST is your 3(38), so how many total assets does CAPTRUST have?"

So as the case of maybe a target or index fund, or anything where there's a collective investment trust, which is commonly used obviously for larger assets, it's like as a individual plan, that plan may not qualify for that particular share class or that particular asset level. But when all of a sudden the asset manager looks and says, "Oh, CAPTRUST has discretion. They're the decision maker," then effectively they're looking at all of the assets that CAPTRUST has with said asset manager. They're going, wow, now you're able to get a share class that's much, much, much more cost-effective because it may be tens of billions of dollars versus 100 million.

I have seen that happen numerous times. Now, I mean if it was that easy, right? It doesn't [inaudible 00:37:20] all the time. But going back to what you're saying is for those plan sponsors, like I don't really buy the risk trade off, that's fine.

I mean, I'm not an attorney. We can make that decision. We all make those decisions. Or the time thing, it's just dollars and cents. So I would really encourage plan sponsors to look.

Devin, I'm sure you may have a take on this, but where it's really common is in the target date funds? But guess what? That's the [inaudible 00:37:46] the default, so there's a lot of liability there. And guess what? When all those lawsuits come, they're always talking about, well, you'd use the lowest share price. Well, if you're utilizing a 3(38) and utilizing the total buying power, if you will, CAPTRUST with that asset manager, that's not even a question. A lot of times on what might be large assets that are in particular investment target dates, indexes, those can really add up quickly.

Two basis points here or there not only is good from a risk limitation, but it's also real dollars, savings, that are going straight back into pockets every year. Versus using a higher share class and [inaudible 00:38:31] we're fine. We're going to stay status quo. So to me, that's one that all plan sponsors should really evaluate, particularly as it pertains to target dates. Again, also, I see a lot of this right now in the index. So again, your large cap index should bond index, et cetera.

So real dollars and cents there. Again, the key is that the asset manager views CAPTRUST for all the assets that they have where discretion manage versus just the amount of assets that got sponsored as in their plan. That's a game changer. Not every asset manager does it exactly the same way. But there are lots of asset managers, particularly with the proliferation of CITs and lower share classes, even when see having multiple CIT share classes, collecting, investing, trust share classes. That's a big, big, big deal.

Deviun, I'm just curious, or Matt, what's your thoughts or comments on that would be?

Matthew Patrick:

Yeah, I think just to add, I think really it's a consolidation of the decision makers. You're going from millions of individual plans making these decisions and you're shrinking that number down. And so that creates a little more competition to get those assets in the plans, make sure that it's performing well, and really the plan participants benefit from that competition because the fees are driven down.

I think if you went back even five years ago, these conversations were starting. But most people weren't interested in engaging in something like this. It's something we've seen pick up a lot of momentum over the last couple years. To your point, Paul, I think it's worth at a minimum asking about. Because it's not always going to be available to your point, but it's at least something we should check out as part of it.

Devin Duex:

Yeah, I think if share class lawsuits are prevalent, making sure you have the lowest share class, and so this is a box you can check. To say, well, not only do we use the lowest share class as a singular plan, but if the 3(38) relationship makes sense for all these other reasons, look, we also lowered our share class because we elevated our relationship and got into this 3(38) relationship. Where now I can get this even lower share class because we're being looked at as an aggregation of other plans using this fund.

I'm not an attorney so I can't speak to the defense of that, but I mean that seems like a pretty good argument if I had to stand in front of somebody and tell them my process. I think that that's just something worthy of noting. I think if you're just looking at dollars and cents, that could be a really big reason to potentially tip in that direction.

Matthew Patrick:

I think, Paul, you in there touched on, I think, an important piece in terms of the order of operations there. It's like you need to the investment first. You have to fully vet the investment and you have to say, "I would recommend this if it was the more expensive version. I think they're best in class in this asset class or this type of strategy."

But after that, if you can leverage better pricing, that's the right way to go. But I think an important piece of monitoring the process is if you want to chase fees, that's going to be there for you. But are you really benefiting anybody from chasing fees and putting inferior investment products in there? So I think important as part of monitoring that process, what is the order of events that are making sure that you don't lose the investment monitoring piece in there?

I do want to hit on one thing. We've gotten a few questions on this. I think just stepping back a little bit to, we talked at the top about what is 3(38). What is the transfer that comes over? But I think a little more clarification, Devin, coming to you on, if you hire a 3(38), what responsibilities rest with that 3(38)? What actually rests, still remains, with the plan sponsor? And then I think getting to the end of that would be what is an effective way to monitor your 3(38)?

I've handed all this to them, how do I make sure they're doing a good job?

Devin Duex:

Okay, let me unpack that. I think we have a slide too to pull up that shows a little bit more visually of what that looks like. But essentially-

Matthew Patrick:

Wendy, could you put the responsibilities slide?

Devin Duex:

Yep. So essentially the good news is your job as a plan sponsor is really selecting and monitoring the firm that's going to do the 3(38) role. So you can see on the left side investment decision and supporting analysis is what you see. You're going to see that. That doesn't mean you're necessarily going to do that. You're going to see the participant communication letters and you're going to see the go live date. So you're going to have reporting to you. That's essentially what we're saying here.

Your duty though in this relationship is to select and to monitor the 3(38), so you know how you would go through that. Obviously if you were already working with CAPTRUST, you've selected CAPTRUST is a 3(21). You've gone through some process to get into that relationship. You would obviously have additional conversations to understand the 3(38), understand the capabilities.

If you're working with an advisor or you're looking to change advisors in a sense, you could RFP or do a review of that nature as well to understand the 3(38) capabilities.

Then on an ongoing basis in terms of how CAPTRUST works, we actually offer an RFI to all of our clients every single year on all of our capabilities, our process, our procedure to help you monitor us on an ongoing basis. We're continuing to provide you quarterly reporting, as Paul was mentioning early on in our discussion.

What we're doing, you can see on the right side. Everything here we're flagging. We're doing analysis. We're creating commentary. We're documenting everything that's happening within the process. It's happening in a centralized system so that it's all being pushed out equally to all of our 3(38) relationships. That also helps us to leverage the size of the assets in different funds to open up share classes, which we just talked about as a benefit. That's the dollars and cents benefit as well.

We're reviewing the participant communications. We're working with the provider. We're signing off on all of the changes that are happening. Really, all the lift is coming off your plate. You're visually just seeing what's happening through reporting and ongoing updates.

You're still in a sense the boss of the 3(38) relationship. You have the ability to hire and fire, but at everything else is being passed on. And so that's where the liability insulation comes into play.

Matthew Patrick:

There's another question in this realm around IPS. Does it shift for 3(38) versus 3(21)? From our perspective, there is an update because the roles do change. So everybody's IPS is a little different, but generally there's a section addressing roles and responsibilities of the committee versus the advisor that's involved.

At least we can speak for how do we address it. All of the investment monitoring, all of that process, is the same. It's really just we're taking a more proactive approach, but there's no shift in the way that we're monitoring funds or addressing those. We see generally pretty minor shifts in the actual IPS to just change some of those action words in them. To say instead of CAPTRUST recommends to the committee, it would be CAPTRUST will replace funds as necessary or monitors the funds on a quarterly basis. So I think a minor shift there depending on what the investment policy looks like.

Paul, anything you would add from a plan sponsor monitoring their 3(38) investment manager?

Paul Owen:

No, I think Devin did a nice job on that. I'm glad you talked to that question she had to unpack. No, I think CAPTRUST tries to make it very simple. Again, with the easy button for the plan sponsor that RFI of what qualifications, what our processes are.

Because again, that's your role. You can literally take that RFI and literally go through sequential and say, okay, this is how CAPTRUST is meeting in one of them. Again, when I think about trying to make [inaudible 00:47:00] sponsor, that's it. That really is it. We try to practice that.

Matthew Patrick:

I guess one other tangential question, we got one I think hitting on, Devin, you were talking about you're still in charge of the relationship there. The question was around what kind of input. Is there still input that I as a plan sponsor can have over asset classes? Is there any input on types of strategies that are in there? Retirement income, those types of those items. Is that open? Are we very strict about that?

What is our flexibility to address some of those maybe more plan goals and investment menu structure questions?

Devin Duex:

Yeah, I think any successful relationship, whether it's 3(21) or 3(38), is that. It's a discussion and a dialogue and an understanding of what you want to accomplish. So it's not just in a box and you're never going to change and that sort of thing. We think there needs to be thoughtful discussion and understanding out of the gates.

But then once we have that discussion and we've all been in agreement, move down the road and we're continuing to operate accordingly. So that really speaks to the investment policy, which drives everything that happens. And so that discussion upfront, again refreshing it if you move into a 3(38) relationship, is important before we engage in and kind of continue down the path.

Paul, do you have any other thoughts on that one?

Paul Owen:

No, I know just one thing that I have heard from several of client, we seem to go with your CAPTRUST recommendations most of the time. Why wouldn't you do this? That's something that I hear. So I think as we think about implementing and going into 3(38) relationship, to your point, process is the same. Just the roles and the way that we execute, and frankly the risk, is different.

And so for me and for my clients, it is a lot of them, they really see this as, hey, I'm not giving up control of this. Funny enough, one of my clients said, "Well, I can fire you tomorrow, right?" Sure. And so Devin's point, we're not coming in there in a box and saying, "Well." It's a consultative nature. We already usually have that trust. And so this is a way for us to, again, offload from a risk, from a work, and refocus.

And so that's the way that I have seen most plan sponsors that we've had a real discussion about this. That's how most of the them have [inaudible 00:49:48] is that what they're really doing is they're outsourcing the specific investment manager decision. But it's their plan. They have control. Yes, of course we're going to be flexible. But no, if they ask for a cryptocurrency investment, we're not going to put that in there. But we wouldn't put that in there at 3(21).

I mean, there's certain just that from [inaudible 00:50:13] perspective aren't going to fly. I know other clients that have moved through this feel like they're restricted. In fact, they feel freer. Because that's what they said is I feel freer to do other things, to focus in other areas, on their time.

Devin Duex:

Yeah, I think that's a really good point. It's not a giving up of control. It's an outsourcing of the role. I think you put that really well because I think that's a misunderstanding that we often hear is I'm going to give up control of the plan.

You're not really doing that. You're just saying, "Hey, this one component, we want to have someone else do that because we don't want the risk. We're already doing everything in the 3(21) relationship." Which frankly, I've actually heard in the ERISA attorney world when they've talked about it. That if you're doing everything that your investment advisor is saying and you're not questioning and you're not involved in the process, you're actually at more risk than if you had them be your 3(38).

And so that would be a challenge I think for a lot of people to think through is, how involved are you currently in the process if you're not extremely... I'm not saying you're coming to the meetings, we're coming to the meetings and all that sort of stuff. But if you are really following along with what your investment advisor recommendations are, not a lot of additional commentary or conversation, then maybe this is a good fit.

That might be a good consideration. So I love that, Paul. I'm going to use that. I think it's not giving up control. It's outsourcing the role. I think that's really important to note.

Matthew Patrick:

All right, I'm going to hit you all with two rapid-fire questions since we're in the closing minutes here.

We got one that came in that asked about non-ERISA plans, so 3(38) is an ERISA designation. Is there something similar? Can you implement something similar for non-ERISA plans, Devin?

Devin Duex:

Yes. The short answer is yes, we talk about 3(38) today, but really you can use discretion interchangeably. We're really just talking about having discretion over that role, that responsibility.

And so in the non-401(k) arena, you can have discretion with your investment advisor. Certain plans there are limitations, but most of the plans are open territory for that kind of exploration. If you're looking for that kind of relationship, you would just call it discretion.

The short answer to the long answer is yes.

Matthew Patrick:

And then we opened the door on fees earlier. We mentioned that generally there is a pricing premium for that.

Paul, question that came in was just, understanding that all situations are different, but what is a reasonable range that we see from that type of premium?

Paul Owen:

Well, I think I would underscore your first thing, which is every situation's different. We don't have a lockstep the way, well this, there's not a grid per se that we're pricing.

That said, we are maintaining certain tenants. And what I would tell you is simply is that generally, 20 to maybe 25% premium is what we see generally. That would be the rule of thumb that I [inaudible 00:53:37] and sponsor. And then again we get into the situational specifics. That's probably a good watermark or anchor point for [inaudible 00:53:49]

Matthew Patrick:

Great. Well, I think as we look to wrap up here in the last couple of minutes, we've got just a few key takeaways if you've got nothing else from this conversation that we wanted to highlight. I think for your ERISA plans, like we were discussing, 3(38) investment management, that is your highest level of investment risk transfer that is allowable.

I think we talked a lot about litigation, looking for ways to offload risk. If you're looking for one avenue to go from the investment perspective, hiring 3(38) or hiring a discretionary manager is going to be your best option for offloading that and putting that responsibility on a different party.

3(30) engagements they're growing in. The interest is growing for plans of all sizes. Started as maybe the target was for smaller retirement plans where we're seeing more and more interest grow. At the large income market, it seems like there's a commonality there. Again, litigation is on top of everybody's mind. What can I do to offload risk? What can I do to make my plan more efficient and easier for me to manage?

The time savings element, so tactic from two different angles. There is an avenue to go where maybe you're, hey, I'm offloading this. I'm going to meet less frequently. I'm going to spend less time addressing the plan because I have an industry expert that's monitoring this constantly. They'll let me know if there's something that I need to be aware of and I need to address for my plan. Or the idea of it's just shifting your focus. So not necessarily less time all in, but less time on investments frees you for more time for how do I drive engagement? How do I come up with better solutions for my employee base to get them prepared for retirement, which is the goal that we all have for everybody invested in the plan?

And then a few trends that we're looking at are increased interest from larger plans. In particular, increased use in collective investment trusts and just really share class and investment vehicle screening in general. Maybe more opportunities becoming available, we can access them through a 3(38) relationship.

I think just the continued monitoring of the legal environment. Is this a way to help offload some of your risk to address some of that? Maybe if you're looking to just mitigate risk in general, that's something worth exploring and asking your advisor about.

If you look to wrap up here, I want to thank you all for the time spend an hour with us to talk about 3(38). We really appreciate it, and we hope that you all have a great rest of the day.

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