Q1 2024:
FIDUCIARY ROLES & RESPONSIBILITIES

Presented by CAPTRUST

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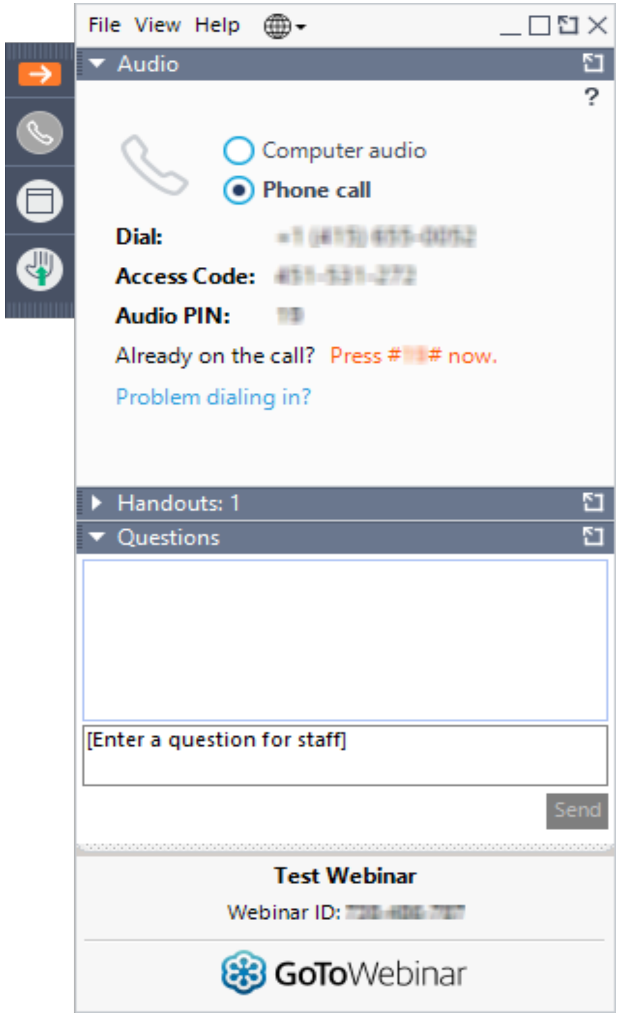
Information about Today’s Session

- Select “Phone call” to dial in.
- All attendee lines are muted.
- Questions can be asked by typing them into the questions pane on the control panel, and there will be time at the end of the session to answer questions.
- Submitted questions will not be visible to other audience members.
- Today’s session is being recorded.



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ERISA Overview

Fiduciary Responsibility

- ERISA imposes the “highest” fiduciary duty under law.
- This standard is supplemented by ERISA’s prohibited transaction rules.

Administrative Requirements

- ERISA has several rules regarding reporting and disclosure, plan documentation and governance, claims procedures, and governing custody and control of *plan assets.*

Liability and Enforcement

- ERISA has an extensive liability and enforcement regime, which includes personal liability of fiduciaries, as well as co-fiduciary liability.

ERISA Obligations Apply to Fiduciaries

A person is a *fiduciary* to a plan to the extent that person

- has any authority or control over the management of plan assets;
- has discretionary authority over plan administration; or
- renders investment advice to the plan for a fee.

Named Fiduciaries

- ERISA also requires that every plan have a *named fiduciary*, which means that certain fiduciaries must be identified (or identifiable pursuant to a procedure described) in the plan document.

***Fiduciary* status is the basis for fiduciary duties and liability.**

Settlor vs. Fiduciary Activities

Importantly, ERISA's fiduciary standards do not apply to settlor activities.

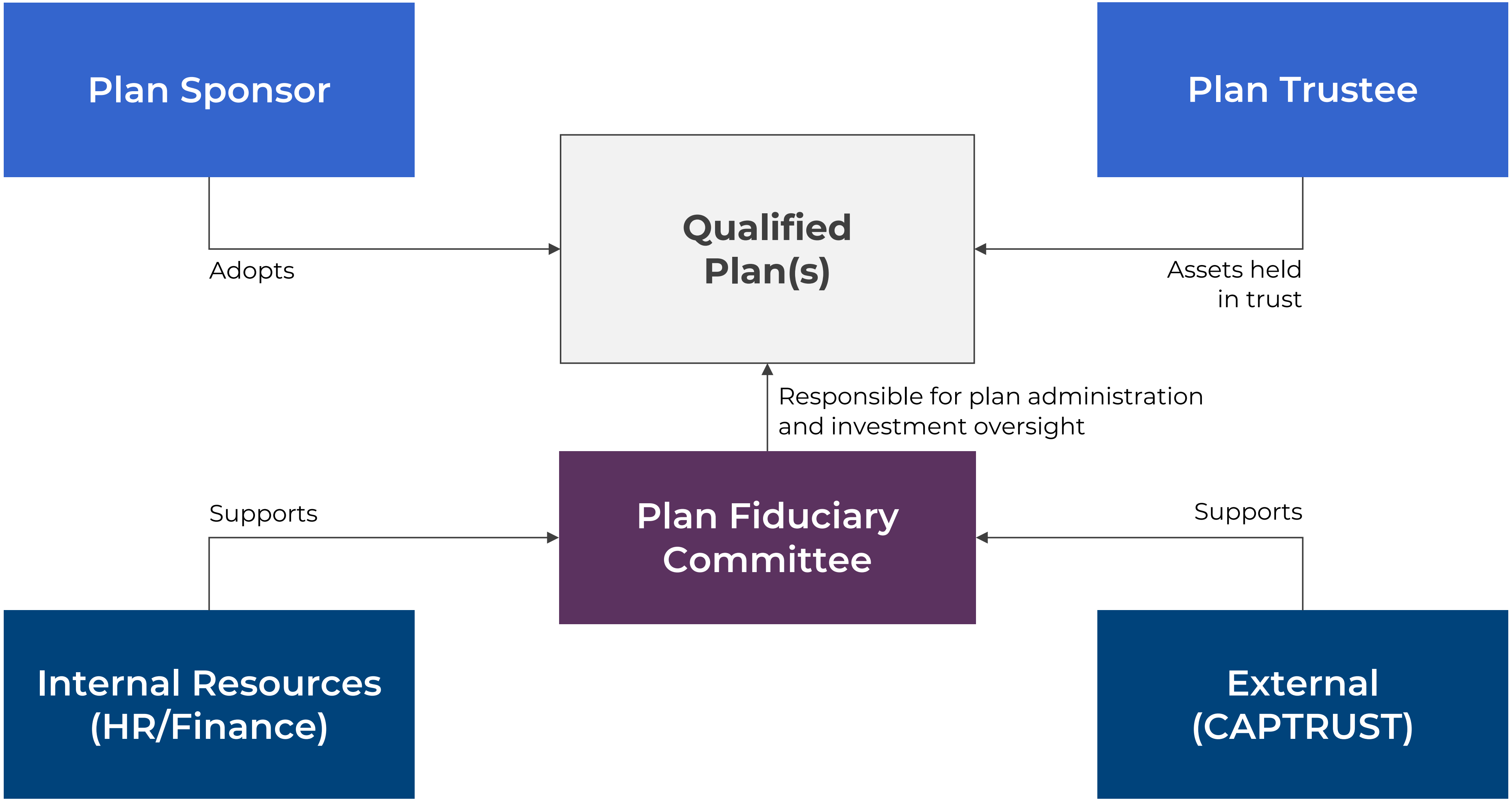
Settlor Decisions

- Establish plan
- Terminate plan
- Decision to amend plan
- Decisions regarding plan funding

Fiduciary Decisions

- *Implementation* of plan amendments
- Investment decisions
- Decisions regarding use of plan assets
- Claims and appeals
- Plan-related litigation and settlement decisions

Sample ERISA Fiduciary Structure



Fiduciary’s Duty of Prudence

Process, process, process…

- A fiduciary need not guarantee success of its decisions but must ensure a prudent decision-making process.
- Good intentions are not enough—“A pure heart and an empty head are not an acceptable substitute for proper analysis,” Donovan v. Cunningham, 716 F.2d 1445 (5th Cir. 1987).
- It’s necessary to document prudent decision-making.
- A prudent process is one that would be employed by a *prudent expert* and not a *prudent layman*.

Fiduciary's Duty of Prudence

Identify the necessary information.

Obtain information from a reliable source.

Consult with experts, as necessary.

Document underlying basis for decision.

MAKE INFORMED DECISION.

Fiduciary's Duty of Loyalty

- Must act solely in the interest of participants and beneficiaries
- Committee members may wear two hats
  - Employer/Settlor Hat: Need not consider participants' interests (e.g., plan amendments)
  - Fiduciary Hat: Must make decisions *solely in the interest* of plan participants

Duty to Follow the Plan Document

- Plan fiduciaries should understand how their plan works, review it periodically with their third-party providers, and ensure that they remain current.
- Plan documents must be updated to reflect changes in the law.
- Plan documents must also be updated to reflect changes that occur within the company.
- Plan documents identify the named fiduciary and their roles and responsibilities.

Duty to Monitor and Supervise

- Evaluate managers at least quarterly.
  - How did the manager perform against the appropriate benchmark?
  - How did the manager perform relative to the appropriate peer group?
  - Were there any changes to the manager’s style or organization?
- Evaluate services provided to determine if fiduciary investment advice is following the impartial conduct and best interest standards.
- Evaluate your service providers every few years.

Duty to Ensure Reasonable Plan Costs

- Analyze and document total plan costs.
- Compare plan costs to the market for similar plans every 2–3 years.
- Understand the use of revenue-sharing arrangements on your plan costs.
- A fiduciary is required to know how much they are paying; they are not required to have the least expensive plan.

Liability and Enforcement under ERISA

Potential Liabilities and Penalties

A fiduciary who breaches their responsibility can be found liable. Penalties may be imposed for up to six years after a fiduciary violation, or three years after the party bringing suit had knowledge of the breach.

- Restore lost profits plus 20% penalty
- Criminal penalties for willful violation
- Civil actions by participants
- Removal as fiduciary
- Loss of personal assets, home, and business

Key Takeaways | Helpful Fiduciary Practices

1	Clear fiduciary structure
2	Regular fiduciary committee meetings • Document process and decisions
3	Outside investment advisor
4	Ongoing fiduciary education

QUESTIONS