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Caesars Case Highlights the Value of Retaining a 3(38) Investment Manager

A recent federal court decision involving the Caesars Entertainment 401(k) plan underscores the practical benefits a plan sponsor or other employer plan fiduciary obtain when they hire a third-party, 3(38), discretionary investment manager with day-to-day responsibility to select, monitor, and replace investments in the plan lineup.

In Wanek et al. v. Russell Investments Trust Company, plan participants brought fiduciary breach claims under ERISA against the employer plan fiduciary (a committee of plan sponsor employees), the plan sponsor, and the plan's 3(38) discretionary investment manager that the committee had retained. In a decision on summary judgment, the court allowed claims against the investment manager to proceed, finding that there were factual questions about whether investment decisions were influenced by business interests rather than participant outcomes. However, the court granted summary judgment in favor of the plan sponsor and committee, citing documentation of a prudent process for appointing and monitoring the investment manager, including evidence of a robust RFP process to identify select the investment manager and quarterly meetings to supervise the manager.

Why this matters for employer plan fiduciaries & advisors

The ruling reinforces that plan sponsors and other employer plan fiduciaries can mitigate liability when they:

+ Retain, via a prudent selection process, a third-party 3(38) investment manager with day-to-day discretion over the plan investment lineup, and
+ Prudently monitor and supervise the investment manager on an ongoing basis.

For plan advisors, the ruling illustrates how offering 3(38) discretionary investment services can be a differentiator. It also demonstrates the importance of regular engagement with plan clients to help clients fulfill their supervisory responsibilities over the 3(38) investment manager.

Sources:
https://dockets.justia.com/docket/nevada/nvdce/2:2021cv00961/152649
https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/fiduciary-responsibilities

403(b) Plans and CIT Access: What to Watch as Legislation Moves to the Senate

In December 2025, the U.S. House of Representatives passed, as part of the INVEST Act, bipartisan legislation that would allow 403(b) retirement plans to have the same access to collective investment trusts (CITs), as virtually all other workplace retirement plans, including 401(k)s, governmental 457(b) plans, and the Federal Thrift Savings Plan. While the bill has advanced out of the House, it must still be passed by the Senate before becoming law.

Currently, 403(b) plans are disadvantaged by this lack of access. CITs are neck-in-neck with mutual funds as the most prevalent investment vehicle used by defined contribution plans and often offer meaningful cost savings compared to mutual funds. CIT access would expand the investment toolkit available to 403(b) plan decisionmakers and, when selected, can result in meaningful improvements in financial retirement security for participants. Even seemingly small cost savings, compounded over the course of a career, can result in a major improvement in retirement readiness and financial security.

Why this matters for 403(b) plan decisionmakers and advisors

If enacted, the legislation would:

+ Reduce structural disparities between 403(b) plans and other workplace retirement plans, and
+ Expand access to investment vehicles that may offer lower fees and ERISA-level oversight.

Advisors that serve 403(b) plans should monitor legislative developments and may want to prepare now for CIT access by learning more about this investment vehicle.

Sources:
https://www.callan.com/blog/2024-dc-survey/
https://www.kiplinger.com/retirement/collective-investment-trusts-should-your-401-k-hold-them/
https://greatgray.com/cits-in-403b-plans-back-on-the-table/
https://www.asppa-net.org/news/2025/2/polar-express-not-for-private-db-plans/legislation-to-allow-cits-in-403b-plans-reintroduced/

Private Markets and ESG: Legal Boundaries Remain Unchanged

Private market exposure in defined contribution plan investments and environmental, social, and governance (ESG) considerations continue to be retirement industry hot topics. However, with increased focus in the media, politicization, evolving market practices, and regulatory discussion, it is important for advisors to understand that the underlying fiduciary standard governing these and all other ERISA plan investments has not changed/remains the same.

Under ERISA, fiduciaries must base investment decisions on **financial risk and return considerations**, acting solely in the best financial interest of plan participants and beneficiaries.

When considering investments with private market exposure—whether through private equity, private credit, or other non-publicly traded investments—advisors should evaluate their unique attributes (e.g., liquidity, valuation). But, ultimately, the fiduciary investment standard is unchanged: advisors should select an investment with or without private market exposure if reasonably determined to maximize risk adjusted financial returns. Likewise, ESG factors may be considered only when relevant for this determination. Fiduciaries cannot subordinate financial interests to policy, social, or non-financial objectives.

Why this matters for fiduciaries

+ Media hype and politicization can generate misunderstandings about how fiduciary advisors and their clients should consider hot button issues like private market exposure in DC plans and ESG investing.
+ It is important for all stakeholders to understand the fundamental ERISA fiduciary investment standard that applies to all investment decisions: the decision should be made for the sole purpose of maximizing risk-adjusted financial returns.
+ Regulatory action is expected to address both private market exposure and ESG factors in the coming months.
+ While regulation may provide guidance on how unique aspects of private market exposure and ESG should be considered in plan investment decisions, regulation cannot, and will not, alter the ERISA fiduciary investment standard.

Regardless of investment type, advisors and their plan sponsor and other employer plan fiduciary clients should ensure their governance processes, policies, and advisor conversations consistently adhere to ERISA's long-standing fiduciary duties – and should remember that the fiduciary standard has not changed, even as product offerings evolve.

Sources:
https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/completed-rulemaking/1210-AC03
https://www.federalregister.gov/documents/2022/11/22/2022-25783/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights
https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/information-letters/06-03-2020

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