

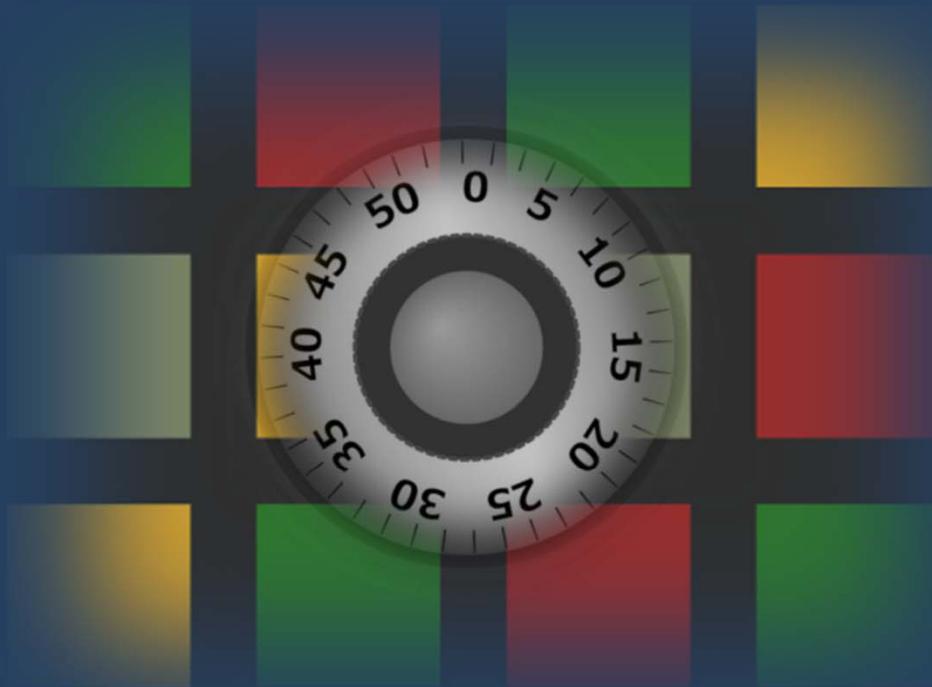
# The *E-Valuator*<sup>®</sup>

*"Customize and Control your Performance Tolerance"*

## DUE DILIGENCE GUIDE

for the

*Supervising Firm*



Developed in consultation with Jason C. Roberts and Bonnie Treichel of Retirement Law Group, PC.

[www.e-valuator.com](http://www.e-valuator.com)

## DUE DILIGENCE GUIDE<sup>1</sup>

### **I. Introduction**

Sweeping reforms have changed the regulatory landscape for retirement plans and their service providers. Indeed, there have been more regulations issued from 2006 to the present than since the Employee Retirement Income Security Act (ERISA) was signed in to law in 1974. Enforcement has also increased significantly in the past few years – particularly aimed at broker-dealers and RIAs.<sup>2</sup>

Consequently, many supervising firms are reevaluating the way their registered and/or investment advisory representatives (Plan Advisors) interact with ERISA-covered clients – particularly with respect to how and to what degree Plan Advisors communicate investment-related information to such clients. In today’s regulatory environment, it is critical to define the Plan Advisor’s status as a fiduciary or non-fiduciary and to ensure the firm has policies and procedures that maintain such status.

Most dedicated Plan Advisors use some form of firm-approved, third-party tools to score investments in accordance with criteria adopted by the plan in an Investment Policy Statement (IPS). These tools, however, vary widely in terms of their methodology, flexibility and output. There are three primary areas of focus for supervising firms to consider when approving investment analytic tools for Plan Advisors:

1. Prohibited transaction under ERISA Sec. 406
2. Reporting requirements under 408(b)(2); and

<sup>1</sup> This guide was developed in consultation with Jason C. Roberts and Bonnie Treichel of Retirement Law Group, PC and is designed, along with the Sample Due Diligence Questions at Exhibit A, to serve as a foundation from which supervising firms may conduct appropriate, additional due diligence based upon their particular products, services and risks.

<sup>2</sup> See, e.g., Results One Financial: \$1.211 million (2012); *Solis v. Hutchinson Walker Advisers* (2012); *Solis v. AA Capital Advisers*: \$58 million (2008); *Solis v. Dietrich & Associates* (2012); USI Advisers: \$1.265 million (2012); Morgan Keegan: \$633,000 (2012); Consulting Services Group: \$277,000 (2009); *Solis v. Zenith Capital* (2008); Merrill Lynch: \$170,000 (2011); CS Capital Management: \$1.1 million (2010); and *Solis v. Beacon Associates* (2009).

### 3. Supervision/suitability.

This Due Diligence Guide describes how the combination of these rules create risk for supervising firms and describes how a new retirement plan resource, The E-Valuator, facilitates compliance and streamlines supervision by incorporating unique reporting capabilities while preserving the flexibility to reflect varying client preferences. Exhibit A contains sample due diligence questions for supervising firms to consider when approving investment analytics tools for Plan Advisors.

### **II. Overview of The E-Valuator Features**

The E-Valuator is designed to assist plan fiduciaries and advisors analyze and monitor mutual funds and ETFs. In addition to scoring traditional risk/return metrics, The E-Valuator’s unique methodology allows investment selection and monitoring criteria to be customized to reflect the “Performance Tolerance” of individual clients/plans within the following categories:

1. Rate-of-return/performance – by defining the target performance and/or permissible variance above or below peer groups or benchmarks;
2. Duration – establishing a time period for which the lagging performance will be tolerated; and
3. Credit Attribution – allowing credits to be assigned to various performance timeframes depending upon the needs, focus, and preferences of the plan (*See Figure 1*).

#### **Tolerance Settings, Watch Lists & Monitoring**

	A straight-forward “dial” interface allows the plan fiduciaries to specify the plan’s Performance Tolerance by the amount of: 1) desired excess return above the benchmark; and 2) tolerable lagging return or underperformance.
	Performance timeframes, from 10-year to 2-year annualized to 1-year to 1-month total return, are assigned credits to produce the optimal performance score based upon the most important time periods for each asset class as determined by the plan fiduciaries
	Sliders are used to establish the duration for which outperformance or underperformance would trigger keep, watch or replace status in the monitoring reports and Investment Finder.
	Monitoring reports use green, yellow and red to simplify the classification of investments as keep, watch and replace based upon the plan’s preferences and the IPS.

The plan fiduciaries, in consultation with the Plan Advisor, can specify the performance criteria for establishing the keep, watch and replacement zones. The E-Valuator’s proprietary methodology allows further customization of the duration and timeframe credit attributions. An optional “tolerance wizard” can be launched in a separate pop-up window to provide guidance when establishing tolerance settings relating to traditional screening criteria.

As further described below, this approach allows the Plan Advisor to utilize a standardized IPS for all plan clients – promoting consistency in the delivery and supervision of investment-related services – while allowing any unique preferences of a plan to be pre-programmed and tied to the watch list. The monitoring reports, therefore, will systematically capture the client’s preferences and deliver reports that mirror the plan’s IPS.

If the plan is selecting investment options for the first time, or when the IPS requires a fund to be replaced, the Investment Finder feature generates a list of qualifying funds and scores them based upon the plan’s unique, predetermined preferences relating to alpha, beta, Sharpe Ratio, standard deviation, costs, etc. Additionally, the Investment Finder can be configured to only show investments that meet certain indirect compensation-related criteria (i.e., 12b-1 fees).

**Investment Finder**

	<p>When selecting or replacing investments, the Investment Finder factors in the above-referenced preferences of the plan fiduciaries in terms of Performance Tolerance, Duration and Timeframe and can be configured to screen the investment options available through the plan to list only those that, for example, pay that same 12b-1 fees.</p>
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**III. Legal & Regulatory Risks for Retirement Plan Services**

Those who make decisions on behalf of their employer-sponsored retirement plans are held to a fiduciary standard of care under ERISA Sec. 404.<sup>3</sup> To

<sup>3</sup> ERISA imposes the trust-law duties of loyalty and prudence on plan fiduciaries. 29 U.S.C. 1104(a)(1); see *Varity Corp. v. Howe*, 516 U.S. 489, 496 (1996). Thus, plan fiduciaries must act “solely in the interest of the participants and beneficiaries” and “for the exclusive

meet their fiduciary duties, the plan fiduciaries must follow a prudent process that takes into account relevant information (or that which they should know to be relevant) in order to make well-informed decisions concerning, among other things, the selection, monitoring and replacement of plan investment options. Where they lack the requisite expertise to do so, ERISA requires the plan fiduciaries to seek professional assistance.<sup>4</sup>

Often times, plan fiduciaries rely upon Plan Advisors to assist with: 1) the establishment and maintenance of an IPS that meets the needs of the plan and its participants; and/or 2) providing reports, education or advice regarding investments available under the plan and assessing the degree to which those investments meet the criteria described in the plan’s IPS.

If the Plan Advisor limits his/her services to providing general education, then he/she will not be considered a fiduciary under ERISA; on the other hand, if he/she provides ongoing advice or recommendations that are individualized (e.g., based upon the plan’s IPS) and serve as the primary basis for the plan fiduciaries’ investment decisions, then the Plan Advisor (and his/her supervising firm) will be subject to a fiduciary standard of care under ERISA.

**A. Fiduciary Breach & Prohibited Transactions**

Like the plan’s fiduciaries, ERISA Sec. 404 requires a Plan Advisor, who serves in a fiduciary capacity, to follow a prudent process to arrive at well-informed decisions that are solely in the interests of plan participants. Additionally, there are certain

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purpose” of providing benefits and defraying plan expenses. 29 U.S.C. 1104(a)(1)(A). Plan fiduciaries also must discharge their responsibilities “with the care, skill, prudence, and diligence” that a prudent person “acting in a like capacity and familiar with such matters” would use. 29 U.S.C. 1104(a)(1)(B). Further, plan fiduciaries must act “in accordance with the documents and instruments governing the plan,” so long as they are consistent with ERISA. 29 U.S.C. 1104(a)(1)(D).

<sup>4</sup> See e.g., *Liss v. Smith*, 991 F. Supp. 278 (S.D.N.Y. 1998), “where the trustees lack the requisite knowledge, experience, and expertise to make the necessary decisions with respect to investments, their fiduciary obligations require them to hire independent professional advisers.”

prohibited transactions that apply only to fiduciaries under ERISA Sec. 406(b).

For example, it is a prohibited transaction for a Plan Advisor to provide investment advice that causes the Plan Advisor or his/her supervising firm (or an affiliate) to receive additional compensation. This prohibition is commonly referred to as the “level compensation” requirement.

It would be a prohibited transaction for a fiduciary Plan Advisor to provide recommendations or advice to the plan fiduciaries that results in a greater 12b-1 fee paid to his/her broker-dealer. We have found this risk to be one of the primary reasons most broker-dealers require their registered representatives to limit their investment-related services to non-fiduciary education and investment monitoring (vs. ongoing, individualized investment advice).

### 1. Investment Advice vs. Education

The distinction between investment education and advice is subtle and based upon the particular facts and circumstances of the Plan Advisor’s interactions with the plan fiduciaries (and potentially participants). For example, a Plan Advisor may provide guidance to the fiduciaries regarding the number and types of asset classes that may be appropriate for a plan with similar goals, demographics, sophistication, etc. without being considered to be a fiduciary under ERISA. Recommending specific investments to fill one or more of the asset classes, if provided on an ongoing basis, will likely trigger fiduciary status under ERISA.<sup>5</sup>

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<sup>5</sup> In general, a person will be considered to be rendering “investment advice” only if: 1) the person renders advice to the participant or beneficiary as to the value of securities or other property, or makes recommendations as to the advisability of investing in, purchasing, or selling securities or other property; and 2) the person, either directly or indirectly, (A) has discretionary authority or control with respect to purchasing or selling securities or other property for the participant or beneficiary, or (B) renders the advice on a regular basis to the participant or beneficiary, pursuant to a mutual agreement, arrangement or understanding (written or otherwise) with the participant or beneficiary that the advice will serve as a primary basis for the participant’s or beneficiary’s investment decisions with respect to plan assets and that such person will render individualized advice based on the



*Once the Plan Advisor and/or fiduciaries establish the number and type of asset classes available through the plan, The E-Valuator’s Investment Finder feature provides an objective process for identifying qualifying funds based upon the plan’s predetermined criterion.*

The key to limiting the Plan Advisor’s status to non-fiduciary is to provide general investment education – by helping the plan fiduciaries narrow the possibilities down to a manageable number of qualifying funds and providing education about those funds that allows the plan fiduciaries to make well-informed decisions regarding fund selection or replacement. However, we have seen a number of firms struggle with implementing appropriate supervisory procedures to limit the non-fiduciary Plan Advisor’s role to education-only. More often than not, the plans are held-away limiting the supervising firm’s visibility and access.



*If the Plan Advisor seeks to offer only investment education and not advice, the fiduciaries can use the scoring feature of the Investment Finder to select investments that have the highest score (versus relying upon the advisor to provide a specific recommendation. (See Figure 2).*

As is the case with most litigation or enforcement proceedings, without adequate process and documentation, it becomes a “he said/she said” inquiry. The methodology used and reports produced by The E-Valuator, however, can serve to demonstrate that the non-fiduciary Plan Advisor provided a range of options and information from which the fiduciaries ultimately used to make their decision to select or replace an investment option.

### 2. Level Compensation

If the Plan Advisor limits his/her education to investments that pay a level 12b-1, the risks of engaging in a prohibited transaction are substantially mitigated. Even if the non-fiduciary Plan Advisor crosses the line and provides fiduciary investment advice, there would be no “losses” that would serve as the basis for recovery under Sec. 406(b).<sup>6</sup>

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particular needs of the participant or beneficiary. See DOL Reg. 29 CFR 2510.3-21(c).

<sup>6</sup> There are, however, a number of additional considerations that are in play when a registered



The E-Valuator allows the Investment Finder to be programmed to limit the universe of available funds to match a predetermined amount of 12b-1 fees. For example, if the plan fiduciaries determine 30 bps to be a reasonable amount of ongoing compensation to be paid to the broker-dealer (and Plan Advisor), the Investment Finder will only show available funds that pay a 30 bps 12b-1 fee.<sup>7</sup> Supervisors can access the “Replacement History” feature to confirm whether or not there has been an increase in 12b-1 fees (See Figure 3).

Investment advisory representatives, while often approved to deliver fiduciary investment advice to ERISA-covered plans, may benefit from using a consistent and predictable tool such as The E-Valuator. Assuming the only fees received in connection with their fiduciary services are level, asset-based or flat advisory fees, which do not vary based upon the investment(s) recommended, then the prohibited transaction risk described above may not be at issue.<sup>8</sup> Nevertheless, in order to protect against claims of fiduciary breach and to comply with general securities rules, the advice must be supervised to ensure that the Plan Advisor utilizes a prudent process to arrive at well-informed recommendations (i.e., relating to the selection or replacement of plan investments) that are consistent with the plan’s IPS.

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representative inadvertently delivers fiduciary investment advice to an ERISA-covered plan. For example, fiduciary services may not be covered by the firm’s errors and omissions policy. Additionally, the firm may not have adequate policies and procedures to avoid “co-fiduciary” liability under ERISA Sec. 405 or to limit exposure relating to the solicitation of IRA rollovers. See e.g., DOL Advisory Opinion 2005-23A.

<sup>7</sup> In the event the universe of 30 bps funds within a certain asset class is limited or non-existent, then the Investment Finder can be programmed to display only qualifying investments that pay a specified amount of 12b-1 fees or are identical to the amount paid by the fund that is being replaced. If the plan fiduciaries specify an acceptable amount of 12b-1 for a given asset class, then the Plan Advisor will not engage in a prohibited transaction so long as the Plan Advisor cannot affect his/her compensation (or that received by an affiliate) by recommending one fund over another within each asset class.

<sup>8</sup> There may be cases in which proprietary or sub-advised investments, offered by an affiliate of the RIA, may create un-level compensation; however, these scenarios are beyond the scope of this guide.



As discussed in more detail below, The E-Valuator links the plan’s IPS to the Investment Finder and Performance Tolerances to ensure that investments are systematically monitored in accordance with the plan’s IPS.

### **B. Reporting Requirements – ERISA 408(b)(2)**

In 2012, the DOL implemented changes to ERISA Sec. 408(b)(2). As a result, all “covered” service providers (CSPs), including broker-dealers and investment advisors, are now required to deliver detailed disclosures to the plans they serve outlining, among other things: (i) the services provided; (ii) all direct and indirect compensation received (by the CSP or any affiliates) in connection with the services provided; and (iii) an acknowledgment of fiduciary status when services are expected to give rise to such status.

If the disclosures are not timely or accurately delivered, the arrangement between the plan and the CSP may be considered prohibited under ERISA, and the CSP could be subject to considerable penalties, including disgorgement, excise taxes under the Internal Revenue Code,<sup>9</sup> civil penalties and other remedies under ERISA.<sup>10</sup>

The written disclosures are required to be delivered to a “responsible plan fiduciary” reasonably in advance of entering into, renewing or extending an arrangement to provide services to a covered plan. On an ongoing basis, CSPs must disclose changes to initial information as soon as practicable, but no later than 60 days from when the CSP is informed of such change.<sup>11</sup>

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<sup>9</sup> Excise taxes under IRC Sec. 4975 range from 15 to 100 percent of the amount involved in the prohibited transaction for each year.

<sup>10</sup> See e.g., ERISA Sec. 506(l) authorizing the DOL to impose a fine of up to 20 percent of the “applicable recovery amount” paid pursuant to any settlement agreement with the DOL or court order.

<sup>11</sup> Sec. 408(b)(2) allows for timely corrections of an error or omission in required disclosures when a CSP is acting in good faith and with reasonable diligence. Such corrections must be made not later than 30 days from the date that the CSP knows of the error or omission.

We have found that broker-dealers often have difficulty complying with the compensation-related disclosure requirements – particularly when it comes to reporting indirect and variable compensation. Fees associated with transactions (i.e., ticket charges, confirms, postage, etc.) are considered to be direct compensation when paid by the plan from plan assets. Other fees, which are received from the plan’s other service providers or investment companies, are classified as indirect compensation. Examples of indirect compensation include commissions, finder’s fees, revenue sharing and 12b-1 fees.

Generally, direct compensation is much easier for broker-dealers to obtain and disclose as these fees are typically known in advance and/or readily available from the broker-dealer’s clearing firm. Commissions and finder’s fees that may be paid indirectly (e.g., by the plan’s recordkeeper or mutual funds) are also relatively easy to disclose in advance based upon information contained in selling agreements or compensation schedules from product sponsors or by reviewing “commission runs.”

When it comes to complying with 408(b)(2), it is the 12b-1 fees that often present the greatest ongoing challenge for broker-dealers. While some providers have transitioned to level compensation platforms (e.g., paying a set amount of “trail” compensation to the broker-dealers), a number of the mutual fund and open architecture platforms pay the 12b-1 fees directly to the broker-dealer.

We have seen some firms adopt a manual approach to satisfying 408(b)(2) (i.e., requesting the fund line-up from the provider at the point of sale or, in some cases, the Plan Advisor then using the ticker symbols to look up and report the 12b-1 fees to the responsible plan fiduciary), but the ongoing requirement to update the disclosures still results in challenges. Unless the broker-dealer is able to capture plan-level transaction data, then the risk remains that the plan replaces one or more of the investment options (perhaps with no involvement or knowledge by the Plan Advisor) with a fund that pays higher or lower 12b-1 fees.

Given recent market conditions and heightened regulatory scrutiny, plans are increasingly making changes to their investment options such that a manual approach to ongoing reporting is likely to

become unwieldy. Because the penalties for non-compliance can be substantial, we recommend automating disclosures and using a manual verification solely for reconciliation.

 *Because The E-Valuator reports can be customized to include the necessary identifying information about the broker-dealer and the reports may be automatically emailed to the “responsible plan fiduciary” (as well as the Plan Advisor and his/her supervisor) it may be possible to obtain an acknowledgment from the fiduciaries that the periodic monitoring reports, which include 12b-1 fees for the plan’s investment options, will be considered to supplement the firm’s 408(b)(2) disclosures.*

### **C. Suitability & Supervision**

In addition to the legal and regulatory risks discussed above, there is always a practical risk that the Plan Advisor fails to deliver on the terms of their arrangement with the plan or otherwise fails to act in accordance with the client’s stated objectives. For example, he/she may not assist with monitoring investments at the desired frequency and/or recommends investments that do not meet the criteria established by the plan fiduciaries in the IPS.

 *The E-Valuator may be configured to automatically email investment monitoring reports to the plan fiduciaries at the intervals specified in the plan’s IPS (e.g., monthly, quarterly, semi-annually, etc.).*

Additionally, ERISA Sec. 408(b)(2) requires the service provider disclosures to be delivered to the “responsible plan fiduciary.” This person must have the authority to enter into arrangements on behalf of the plan. In some cases, the responsible plan fiduciary may not be the Plan Advisor’s primary contact and the disclosures could be considered ineffective. Because relief from ERISA’s prohibited transaction rules are predicated upon effective delivery of the disclosures, we recommend copying the responsible plan fiduciary on all communications relating to the plan, including investment monitoring reports – particularly if the reports contain compensation-related information (e.g., 12b-1 fees).

Lastly, many investment analytic tools do not allow the user(s) to weight certain categories or establish any preferences that are unique based upon the

needs of the plan or its participants. This limitation creates the temptation for Plan Advisors to either adopt a one-size-fits-all approach to screening and monitoring investments or go “off script” using extraneous data from potentially unapproved sources to adapt the reports to the plan’s IPS.



*Because the tolerance settings can be adjusted to fit the needs of the client, it is less likely that the Plan Advisor or fiduciaries will require outside information in order to evaluate the plan’s investment options. Supervising firms may consider establishing pre-approved tolerance settings of their own and periodically review the reports for exception reporting purposes.*

#### **IV. Conclusion**

In today’s retirement plan market, open architecture platforms are increasing in terms of popularity, as they provide greater flexibility and the ability to assemble component pieces for a particular plan; many open architecture platforms pay variable compensation to broker-dealers, which in turn creates a challenge for complying with ERISA generally and ERISA Sec. 408(b)(2) specifically. Further, plan sponsor clients have different expectations and different risk and performance tolerances. Many of the tools available in the retirement plan marketplace today have minimal or no flexibility with respect to these factors, but The E-Valuator does provide the ability to define parameters such as 12b-1 fees, alpha, beta, Sharpe Ratio, standard deviation, etc.

Moreover, The E-Valuator mitigates fiduciary liability by delivering an easy-to-use, unbiased process that is systematically documented. The E-Valuator provides a defensible position, both for plan fiduciaries and for Plan Advisors, to support why a particular investment was selected, retained or replaced. The settings of The E-Valuator include a relationship to an IPS addendum that assists in providing a more complete documentation process, while the reports are automatically emailed to the plan fiduciaries, keeping clients current on the status of all investments in the plan. The E-Valuator is unique in its ability to deliver a multitude of benefits to Plan Advisors, supervising firms and plan sponsors both with respect to time and risk management.

#### **Exhibit A – Sample Due Diligence Questions for Retirement Plan Investment Tools**

- ✓ How will you ensure that the Plan Advisor’s recommendations are suitable/prudent based upon criteria contained in the plan’s IPS?
- ✓ Will the monitoring reports capture the same data points required to be evaluated in the IPS?
- ✓ Can the IPS criteria be easily adjusted to reflect the needs of a particular client/plan?
  - If yes, will the monitoring reports automatically to reflect the client’s preferences?
- ✓ Do the reports contain objective criteria that enables the replacement funds to be scored or ranked for consideration?
- ✓ Do the reports account for 12b-1 fees?
  - If yes, can the user limit the display of possible replacement funds to those which pay 12b-1 fees that are equal to the fund(s) being replaced?
- ✓ Does the tool include a process for delivering the monitoring reports to the client on a recurring basis?
  - If yes, is there an ability to copy supervisors?
- ✓ How can the tool help ensure the Plan Advisor presents/recommends only firm-approved funds?

## Exhibit B – Responses to Sample Due Diligence Questions from The E-Valuator

✓ **How does The E-Valuator meet industry standards for prudent investment stewardship?**

*Response:* Plan Advisors will want to use The E-Valuator for the following reasons:

- This system assists Plan Advisors with helping plan fiduciaries understand, establish, and document their unique performance demands and expectations;
- The system will track and report each investment's performance relative to the plan fiduciary's specific expectations and can provide suggested replacement alternatives that meet the unique criteria associated with each plan fiduciary's asset management requirements;
- The automated system provides reports based on the plan fiduciary's preferred intervals without any additional work (time) required by the Plan Advisor, or his/her support staff;
- The reports transform what is typically very complicated and complex data into easily understood and comprehensible reports;
- For qualified plan clients, this system provides a very thorough evaluation process required by ERISA to help the Plan Advisor mitigate fiduciary liability; and
- The integration between the system and the IPS enables the Plan Advisor to maintain the proper documentation to help mitigate fiduciary liability.

✓ **How will you ensure that the Plan Advisor's recommendations are suitable/prudent based upon criteria contained in the plan's IPS?**

*Response:* The E-Valuator provides an online tutorial and wizard to assist plan fiduciaries with the identification and establishment of their performance tolerance settings. Once established, these settings are directly linked and integrated into the plan's IPS. These settings can easily be adjusted in the future as the plan's tolerance standards change over time. The IPS, as well as the automated client reports, is immediately updated anytime a setting is changed.

✓ **Will the monitoring reports capture the same data points required to be evaluated in the IPS?**

*Response:* Yes, The E-Valuator's reports are the culmination of analyzing Morningstar, Inc. data based on the settings and controls as defined inside each plan's IPS. The reports are immediately updated as changes occur inside the IPS. The E-Valuator's "Dashboard Report" provides the plan's performance tolerance settings as well as the investment criteria screening parameters.

✓ **Can the IPS criteria be easily adjusted to reflect the needs of a particular client/plan?**

*Response:* Yes, the customizable settings for each plan can be adjusted very easily by simply selecting the adjustment field (i.e. dial setting, credit attribution, duration, etc.). The IPS is immediately updated whenever a plan's settings are changed.

○ **If so, will the monitoring reports automatically reflect the updated client's preferences?**

*Response:* The reports are immediately updated in "real-time" whenever an adjustment is made to the plan's settings and/or IPS. The automated reports that are emailed to the plan fiduciary are generated based on the plan's settings as of the date the report.

✓ **Do the reports contain objective criteria that enables the replacement funds to be scored or ranked for consideration?**

*Response:* Included in the reports are the objective criteria being used to select and monitor the investments (i.e., performance, Sharpe ratio, 12b-1 fee, expense ratio, alpha, beta, etc.). This multi-phase, multiple screening selection and monitoring process supports an objective approach that is transparent and unbiased. When it has been determined an existing investment option is no longer meeting the standards specific to a plan's demands, The E-Valuator will provide alternative investment options in the same investment category that meet the plan's IPS. A maximum of three alternatives can be presented in a consolidated report.

✓ **Do the reports account for 12b-1 fees?**

*Response:* Yes, 12b-1 fees are a sortable criteria within the investment selection and monitoring process.

- **If so, can the user limit the display of possible replacement funds to those which pay 12b-1 fees that are equal to the fund(s) being replaced?**

*Response:* Yes, the user has multiple methods of establishing the criteria specific to 12b-1 fees. For examples, the 12b-1 criteria could be set to equal a specific amount (12b-1 = .25%); less than a specific amount (12b-1 < .25%); greater than a specific amount (12b-1 > .25%); or within a range (12b-1 > .20% AND 12b-1 fee < .30).

✓ **Does the system include a process for delivering the monitoring reports to the client on a recurring basis?**

*Response:* The E-Valuator provides cost-efficient, automated reporting on intervals that are suitable to each plan fiduciary's demands. The Plan Advisor simply selects the reports for each plan from the report options menu. Next, a selection is made for the frequency the reports are generated (i.e., monthly, quarterly, etc.). The automated reports are electronically transmitted to the plan fiduciary in the form of a .pdf file. The E-Valuator will generate and deliver each plan's customized reporting package without any additional time requirements from the Plan Advisor, or his/her staff. The underlying performance data for every report is updated daily via a direct data feed from Morningstar, Inc.

- **If so, is there an ability to copy supervisors?**

*Response:* Yes, multiple email addresses can be added to the list of recipients.

Figure 1 – Performance Tolerance & Trending Analysis

E-Valuator Score	E-Valuator Trend
<b>34.59</b>	<b>↓ Negative Momentum</b>
E-Valuator Indicator	Based on the average total credits for the past 5 month(s).
<b>R</b>	

	5 Qtrs. Back			4 Qtrs. Back			3 Qtrs. Back			Previous Qtr.			Recent Qtr			MTD
<b>5 Yr. Ind.</b> Annzld Return	-2.25%	-1.36%	0.88%	0.18%	0.74%	-0.09%	-1.51%	-0.73%	0.90%	0.75%	5.81%	12.66%	14.86%	13.18%	14.45%	18.69%
Perform. Credits (0 to 20)	20.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00	20.00	18.59	19.16	18.02	19.97	19.32	16.98	
<b>3 Yr. Ind.</b> Annzld Return	5.47%	6.04%	9.19%	8.41%	7.05%	7.60%	10.40%	9.10%	7.88%	8.16%	7.10%	7.09%	8.55%	5.91%	3.86%	4.36%
Perform. Credits (0 to 18)	18.00	18.00	18.00	18.00	18.00	18.00	16.29	11.89	15.02	12.83	12.12	12.27	8.38	3.64	9.12	
<b>2 Yr. Ind.</b> Annzld Return	5.68%	3.82%	5.20%	2.99%	3.22%	2.41%	1.97%	0.93%	3.98%	6.75%	17.43%	12.63%	14.50%	15.69%	8.23%	8.11%
Perform. Credits (0 to 17)	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	17.00	8.63	11.03	5.48	5.61	2.73	0.00	
<b>1 Yr. Ind.</b> Total Return	14.47%	21.44%	15.71%	8.83%	10.93%	14.23%	24.53%	12.08%	14.48%	8.82%	13.16%	15.13%	14.53%	10.21%	1.23%	8.11%
Perform. Credits (0 to 16)	16.00	16.00	14.58	16.00	16.00	0.72	1.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
<b>6 Mo. Ind.</b> Total Return	16.82%	14.22%	15.54%	11.31%	9.92%	11.14%	6.60%	-1.88%	-0.92%	-2.24%	2.94%	3.59%	7.44%	12.32%	2.17%	8.03%
Perform. Credits (0 to 13)	6.64	7.68	0.93	6.76	8.23	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
<b>3 Mo. Ind.</b> Total Return	4.92%	6.32%	9.19%	6.09%	3.39%	1.79%	0.48%	-5.10%	-2.66%	-2.71%	8.47%	6.42%	10.43%	3.55%	-4.00%	1.83%
Perform. Credits (0 to 10)	2.49	2.97	1.41	7.28	10.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.13	0.00	0.00	
<b>1 Mo. Ind.</b> Total Return	1.57%	3.95%	3.41%	-1.31%	1.31%	1.81%	-2.58%	-4.32%	4.42%	-2.62%	6.67%	2.45%	1.04%	0.03%	-5.02%	6.46%
Perform. Credits (0 to 8)	0.64	2.32	0.00	6.00	5.24	0.00	0.00	0.00	0.00	0.00	1.55	0.00	6.00	0.00	0.44	
Total Credits 100 Max	80.77	83.97	71.92	91.04	94.47	55.72	54.33	48.89	52.02	40.05	43.86	35.77	41.09	25.69	26.54	
Monthly Indicator	K	K	K	K	K	W	W	W	W	R	W	R	R	R	R	

The E-Valuator Trending Analysis

	5 Qtrs. Back			4 Qtrs. Back			3 Qtrs. Back			Previous Qtr.			Recent Qtr		
<b>5 Month Trending Analysis</b>	90.15	86.94	83.30	82.68	84.43	79.42	73.50	68.89	61.09	50.20	47.83	44.12	42.56	37.29	34.59
Average Monthly Credits from the previous 5 months, on a rolling basis	↓	↓	↓	↓	↑	↑	↓	↓	↓	↓	↓	↓	↓	↓	↓

**The E-Valuator Dial Settings**

Keep Dial

Replace Dial

**Credit Attribution Table**  
Setting: Customized

<input type="checkbox"/> 10-Year	---	<input checked="" type="checkbox"/> 3-Year	18
<input type="checkbox"/> 9-Year	---	<input checked="" type="checkbox"/> 2-Year	17
<input type="checkbox"/> 8-Year	---	<input checked="" type="checkbox"/> 1-Year	16
<input type="checkbox"/> 7-Year	---	<b>Month</b>	
<input type="checkbox"/> 6-Year	---	<input checked="" type="checkbox"/> 6-Month	13
<input checked="" type="checkbox"/> 5-Year	20	<input checked="" type="checkbox"/> 3-Month	10
<input type="checkbox"/> 4-Year	---	<input checked="" type="checkbox"/> 1-Month	6

Short-Term Focused Long-Term Focused

**Duration Tolerance**

5 months

**Total Credit Legend**

Indicator	Total Range
K	60.0 - 100
W	50 - 60.0
W	42.5 - 50
R	0.0 - 42.5

Figure 2 – Investment Finder Scoring Feature

**1** Filter with:

Values From Investment Selection Criteria ([Edit](#))

**2** Search for:

Benchmark:

**3** Limit to:

Investments with The E-Valuator score greater than:  
  
 (see Total Credit Legend)

**Find Matching Investments**

		Ticker	Name	Benchmark	E-Val Score	1 Year Return	3 Year Return	5 Year Return	Mgr Tenure	Exp Ratio	12b-1 Fee
<input type="checkbox"/>		MFQAX	AMG I:AMG FQ TxUS Eq;Inv	Large Blend	94.71	13.12%	19.80%	18.28%	7	1.24	0.25
<input type="checkbox"/>		HGISX	Hartfd:Disc Equity;R4	Large Blend	90.61	15.91%	20.86%	16.79%	5	1.2	0.25
<input type="checkbox"/>		HAIAX	Hartfd:Disc Equity;A	Large Blend	88.60	15.74%	20.68%	16.64%	5	1.35	0.25
<input type="checkbox"/>		DIGIX	Transam P II:Inst Lg Cre	Large Blend	83.63	15.46%	20.68%	16.92%	10	0.9	0.25
<input type="checkbox"/>		BHGSX	Baird LargeCap;Inv	Large Blend	80.14	13.94%	17.62%	15.20%	1	1	0.25
<input type="checkbox"/>		GDSX	GE Inst:S&P 500 Idx;Svc	Large Blend	77.45	13.62%	18.16%	15.47%	14	0.4	0.25
<input type="checkbox"/>		DVGIX	Transam P:Large Core	Large Blend	77.17	15.16%	20.37%	16.58%	11	1.15	0.25
<input type="checkbox"/>		JICAX	JPMorgan:Intr Adv;A	Large Blend	72.41	12.87%	19.61%	16.35%	9	1.16	0.25
<input type="checkbox"/>		MSOAX	MainStay:Common Stk;A	Large Blend	68.19	15.32%	20.30%	15.79%	8	1.07	0.25
<input type="checkbox"/>		NWGHX	Nationwide:HM LCC Eq;A	Large Blend	58.55	12.01%	17.80%	14.94%	6	1.22	0.25

For illustrative purposes only.

Figure 3 – Replacement History Report

## Replacement History

Investment that was Closed	Ticker	12b-1 Fee	Date	Replacement Investment	Ticker	12b-1 Fee
JPMorgan:LgCp Gro;A	OLGAX	0.25	12/3/2014	Nuveen Mid Cp Gr Opp;A	FRSLX	0.25
Nuveen Mid Cp Gr Opp;A	FRSLX	0.25	12/3/2014	American Fds PS B;R4	RBAEX	0.25
American Fds PS B;R4	RBAEX	0.25	12/3/2014	Nuveen Mid Cp Gr Opp;A	FRSLX	0.25
American Fds PS B;R3	RBACX	0.50	12/3/2014	American Fds PS B;R4	RBAEX	0.25
JPMorgan:Core Bond;A	PGBOX	0.25	9/8/2014	American Funds Gro;R-4	RGAEX	0.25
PIMCO:Inv Grd Crp;A	PBDAX	0.25	9/8/2014	PIMCO:Inv Grd Crp;A	PBDAX	0.25

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Prior to founding PRI and RLG, Jason was a partner and co-chair of the Financial Services Group at a leading ERISA law firm and the head of the Investment Fiduciary practice for a prominent securities industry legal defense firm.

Jason has been recognized as one of the “100 Most Influential in Defined Contribution” by the 401(k) Wire and a “Rising Star” by SuperLawyers Magazine. He received his B.S.B.A. in Finance & Banking from the University of Missouri and his J.D. from UCLA Law School.



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Prior to joining PRI, Bonnie was an associate with Edgerton and Weaver, where her practice was dedicated to civil litigation for financial services clients, both brokerage firms and individuals, in matters before state and federal courts, FINRA, the SEC and other regulatory bodies.

Bonnie is active in the Women’s Legal Association of Los Angeles and the National Association of Plan Advisor’s Government Affairs Committee. She graduated with honors from Truman State University, earning a degree in Political Science, and she earned a J.D. from Pepperdine University School of Law, where she earned a certificate from the Palmer Center for