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

Kara:

Hello everyone, and welcome to today's webinar, The Keys to a Successful Retirement Plan for Law Firms. Before we get started, I would like to go over a few items to help you know how to best participate in today's webinar. You have joined the presentation listening using your computer speaker system by default. If you would prefer to join over the phone, just select telephone in the audio pane and the dial-in information will be displayed. You have the opportunity to submit text questions to today's presenters by typing your questions into the questions' pane of the control panel. You may send in your questions at any time during the presentation. We will collect these and address them during the Q&A portion at the end of the session.

Today's webinar is being recorded and you will receive a follow-up email within 24 to 48 hours with a link to view the recording. Lastly, under the Investments Advisors Act of 1940, this webinar is defined as an advertisement and includes an uncompensated testimonial by a CAPTRUST client. Please be advised that clients' experiences as described in the webinar do not necessarily represent the experience of all other clients. I would now like to introduce Mike Hudson, Principal and Head of Retirement Plan Consulting at CAPTRUST, Mike.

Mike Hudson:

Thank you, Kara. Welcome everybody to this CAPTRUST webinar series. The topic today, as Kara mentioned, is Keys to a Successful Retirement Plan for Law Firms. We're going to focus on how do you craft a great retirement benefit in a tight labor market when you're trying to solve for a variety of needs from partners to associates to staff. Today, we're joined by two veteran plan sponsors, Jen Halliday from ArentFox Schiff, Don Mazursky, a risk attorney at Smith, Gambrell & Russell. Some of the things that you'll hear about today are plan types. What's the right blend of 401(k) profit sharing, cash balance, defined benefit, 321 versus 338 pros and cons, financial wellness, impacts of record keeper, consolidation, fee benchmarking, and litigation trends. We're going to cover all of those.

And again, we're hosted today by CAPTRUST. We are one of the largest independent advisory firms in the country. Our specialization is retirement. We do it for over 175 law firms, and we oversee just shy of 800 billion in client assets. And really with that asset base and the experience of our team, we generally have leverage in the industry to do more for plans than they could do on their own. And myself, Mike Hudson, 30 years in the business, the last 23 with CAPTRUST, my focus is what the topic is today, advising retirement plan fiduciary.

So let's get our panelists introduced and jump right into the questions. First up, Jen Halli, it's the Chief Human Resource Officer at ArentFox Schiff national law firm with over 1200 professionals in the nation's leading markets. She's a member of the senior leadership team responsible for developing and executing all HR strategies across their business plan. She has extensive experience and lead to full scope of human resource function, including benefits and retirement plans, and is on the retirement plan committee.

She's in Washington DC, and we have worked together for over 20 years. So Jennifer, thanks for joining us. Don Mazursky founded his own firm many years ago. Mazursky Constantine specialized in employee benefits and executive compensation after 26 years. Don and his entire team in 2019 joined forces with Smith, Gambrell & Russ. Don is co-chair of their risk department, chairs their retirement committee. He's been one rated by Chambers and is recognized one of the best lawyers by US News. Don, busy as well. Thanks for joining us today.

Don Mazursky:

Thanks.

Mike Hudson:

Don's had over a 15-year relationship with CAPTRUST about the last four years on his plan as well, the prior years with joint clients. So again, thank you, Don. Jennifer's in Washington DC, and Don is in Atlanta.

So let's get started and we'll start with the basics. Let's give everybody a feel for your firm and retirement benefits. So, Jen, we'll start with you. Tell us a little bit about ArentFox Schiff and the retirement benefit that you guys offer.

Don Mazursky:

Sure thing. We are, as Mike said, we are a national firm. We're in eight locations, largely based on the coast and a Midwest presence together about 1,250 employees, 50/50 split between lawyers and staff. Because of that, we've got a range of savers for retirement and investors. We have three retirement plans currently. We offer two defined contribution plans, a 401(k) and a profit sharing plan. And we also offer a cash balance plan, a defined benefit plan. That is largely the participants are largely our partners and certain senior staff participate in that as well. Our plans have gone through an evolution way back when we used to have 2 401(k) plans and two profit sharing plans, and we split them for testing. We changed that over time, made it easier solved for the testing issue. So that's been nice. And we're on our second generation of a defined benefit plan. We originally had a variable annuity plan and we converted that to a cash balance plan several years ago.

Mike Hudson:

Thank you, Jennifer. And Don, tell us a little bit about your role. We've got a number of hats that you wear at the firm and maybe just the basics on the retirement offering.

Don Mazursky:

Yeah. Well, we're also Smith, Gambrell & Russell [inaudible 00:05:29] firm. As you said, we're located in headquartered in Atlanta, but we have seven major offices throughout the United States, including the West Coast. And employed benefits is a very significant practice in our firm. We've got about 700 partners, associates, and other employees, and about 85% of those are participants in our four profit sharing plan plan. My main role is working with our clients to help them find practical solutions for their problems. But then I also chair the retirement committee for the last, starting a couple of years ago. And our committee has really full fiduciary and administrative responsibility, selecting record keeper, selecting investment advisors, selecting and monitoring investment funds.

But when any of our plan design decisions are recommended by our committee to our executive committee who makes those decisions. And while we had just the one plan, we had two plans initially, we merged our associates plan into the plan because as Jennifer said, we didn't have any more testing problems. We could merge those together. Our plans permits pre-tax and Roth contributions and plan Roth rollovers. Our firm, we don't have a match, but our firm does make profit sharing plan contributions, a very significant contributions for our staff. And also our partners have various contributions based on various levels of partners, and it's cross-tested so we can maximize the amount we put in for partners.

All of our investment funds are the lowest-cost share class or made up of collective investment trusts, and we thought that was a very important move from a fiduciary perspective. Our participants are also are allowed to choose to invest through individual brokerage accounts. Most of the people who have those are partners, but we do have non-partner who use those accounts. Also, just some of the little bit of work I've started doing on that end, it seems like the very smart people who have the individual brokerage accounts tend not to have as good return as they would've gotten in our target date funds. And our plan really, as little has changed over the last five to seven years, we do have a new record keeper. You have CAPTRUST as our investment advisor, and when we changed CAPTRUST, we went from a 338 arrangement to a 321 investment advisor launch.

Mike Hudson:

Thank you, Don. Very thorough. Share a little bit too about the investment structure of your plan. Is it all active? Is it passive? Do you use a target date fund? Give us a little bit of insight about how your plan is structured, maybe the size as well would be helpful.

Jennifer Halliday:

Absolutely. I think right now we are just south of half a billion dollars. On the AFS plans, we recently went through a merger and combined we're probably approaching a billion dollars in assets. Our DC plans are set up with a conservative passive sleeve all the way through more aggressive investments. We use a QDIA and we also use target date funds, which are very, very popular. CAPTRUST helped us design those target date funds using the investment lineup in our plans. And we do parallel plans between a 401(k) and our profit sharing. So it's very similar. The choices are identical for our participants. We've done that. The DB plan, the cash balance plan is a pooled investment. It's got a very specific risk and return strategy related to that. And again, CAPTRUST helped us design that to stay in line with the investment goals of that plan. And it's very conservative.

Mike Hudson:

And Don, before we leave the plan structure, any things that the committee is thinking about looking forward? Any sector funds or have there been any inquiries from plan participants to think about other things that you're not doing?

Jennifer Halliday:

We haven't had any inquiries from our participants. We recently changed our target date funds from ... It was a fairly conservative index target date fund. We went the T. Rowe Price Blend funds. It's a combination of managed funds as well as some index funds. And while those funds have a higher concentration of equities, we believe that's important to help our participants manage their longevity risk. We've made that change, and these funds have done well, and I think we're very happy with that change. Obviously, CAPTRUST helped us with the analysis and to move in that direction.

Mike Hudson:

Let's stick with you. So you guys have both ... we'll touch both because we're a little bit different. You've both been through planned mergers. Don, you built an incredible firm, then you joined Smith, Gambrell & Russell. Just talk about the joining but how did your prior plan change and maybe share some ideas on how that plan is a little bit different now than maybe what it was when you had your own firm?

Don Mazursky:

Yeah. Well, we've joined the firm in 2019 and since then we've had some other smaller firms join us. And then earlier this year, Freeborn & Peters, which was a large Chicago firm, joined and merged with Smith, Gambrell & Russell. And in all cases, what we did with those plans, our plan and any of the other firms is tried their plans, terminate before closing, and then we just let people roll over. And as far as our plan being different, it was a very similar setup to the plan that we had. Has a little bit higher profit sharing plan contribution than we had, but otherwise, it's very, very similar in the way it's set up. And I think it's a fairly common setup for law firms in general.

Mike Hudson:

And then Jennifer, again, you're in the midst of a merger. Any major differences in what your plan offered versus the new firm that's joining you, the shift plan?

Jennifer Halliday:

Very similar. Very similar. Schiff had a cash balance plan as well, which they have terminated. Structure was similar, not the same, but we were able to map any key differences over into some minor plan design changes upon merger. And on the DC plan front, the decision was made upon the effective date of the merger that we freeze the plans from shift for future integration into the AFS plan. So that's still in process. But in terms of fund strategy, really, really similar. Really, really similar. Some minor differences on the amount of the profit sharing plan, which is generously was similar but not identical. And we made some minor modifications to the plans upon an examination just to really make sure we were capturing the most important features of both firms that both have a very long history. So we made some minor modifications, divesting, and that was really about it. Both plans ...

Jennifer Halliday:

And that was really about it. Both plans also had target date funds designed slightly differently. The AFS plans are age and risk, age and risk, and there are several options they can choose from. It migrates them through. And I believe the other plans were similar but more risk-weighted versus time-weighted. So we've accounted for that going through the merger, but we're not done yet. We are not done yet. We still have more to do; analysis of the funds, making sure that when we get to that asset merger we are aligning all the most important features of the plans. But the basics of the plan designs is now complete.

Mike Hudson:

So one question too about, and we see this with medical groups, we see it with engineering groups, but law firms specific, how do you overcome the challenge if you give a generous... Don, you mentioned it too, you give a generous profit sharing, which is good. It's also good for the testing for the partners, but does it disincent the staff at all to not maybe max out what they could because they're getting this profit sharing contribution? How do you get ahead of that? What's worked for you?

Don Mazursky:

Well, for us, I think what's helped a lot is we also have auto enrollment and so that's why we have such high participation in the plan. We have a large majority of our staff participates. We also have elective auto increase where it's not automatic, but participants in the plan can elect to have their contribution increase each year, and that's used more than most people would think it would be.

Mike Hudson:

Very helpful. So let's shift a little bit. So Jen, we've been together a long time, but prior to that you've been on the committee and involved with the plan more than 20 years. So before having an advisor, how'd you do it and what was the catalyst to change?

Jennifer Halliday:

Yeah, when I first started we did not have an investment advisor and we were really reliant on our record keeper, which is not the best practice. The committee would make the decisions on choices to the fund lineup, making changes, working on that review. We were in that space without an advisor for my first couple of years of employment.

And then we were making changes, implementing best practices, wanting to shift some of the risk, wanting to have a good, strong business partner on fee leveling, making sure we have the best pricing on our plans and really assisting us with the cost and the structure of the plans. So that was the big catalyst there.

Also, at the time, I believe we were also implementing our defined benefit plan for the first time, our first generation, and that we felt very strongly we needed a professional investment advisor to assist us with and to take fiduciary responsibility over that fund lineup. And so, we engaged in a 338 with CAPTRUST when we instituted our first DB plan and that was a big help.

The results have been really strong for us. It helps us manage all the things that Don had talked about with this committee. Our committee is very, very similar. It provides us with a guidepost and a benchmark for funds that we're selecting, what the fee structure is and ensuring that we are always offering the lowest [inaudible 00:16:24] as possible for our fund lineup.

Mike Hudson:

Very, very helpful. And Don, a little bit different question. As an Arista partner, nationally renowned, what mattered to you... And so, Don worked with a firm called Portfolio Valuations Inc., Attila Toth, just a seasoned veteran. Attila and his team joined CAPTRUST just a few years ago, so hence how we met Don. But when you looked at hiring Attila, what mattered to you, especially with the seat that you sit in and the knowledge that you have?

Don Mazursky:

Yeah, there are a number of things, and actually, as a part of my practice, our firm's practice, we do a lot of investment advisor searches through RFPs. So this is something that I look at all the time and on a frequent basis, and I think there's some different factors.

One of the first things we really look at, think is important, is the advisor conflict free? Because that's not always the case and a lot of times it's not the case. To us that's one of the most important factors to look at. Are you getting independent advice?

We look at has the advisor or any of their clients been sued based on investment advice? And again, anybody can get sued in today's environment. Doesn't always mean someone did something wrong, but it's always good to look and see what's going on there. Look at the comparable size of plans they're giving advice to.

What kind of research process do they have? Are they do an in-depth research process? And then the people who are going to be meeting with us and meeting with our committee, do they have access to that research so they can have in-depth knowledge of the funds themselves?

A couple other things, clarity of the written reports. Those are things that would, if you're ever sued, they're going to come up in litigation but do the reports give a clear showing of how the funds are

performing and why we made the decisions we did? And finally, fees. Obviously, fees are always an important aspect of it as well.

Mike Hudson:

I appreciate that. So Jennifer, we worked together for years as a 321 advisor. We gave you advice, the committee made the decisions and then we implemented. Very common. It's been probably five years ago that you shifted to the 338 discretionary basis. You made us the investment manager, you secure the investment policy statement and then we fulfill and execute and report later. What prompted the committee to make that adjustment?

Jennifer Halliday:

There was a lot of reasons. I think part of it was we really wanted to shift some of the risk. We wanted somebody else, the comfort of CAPTRUST and your advisory team looking at the investments on a regular basis, the ability to be nimble should there be a reason to modify the plan, the DB plan more so than the DC plans. That was a big catalyst for doing that and really wanted to share that fiduciary responsibility.

Mike Hudson:

Yeah, I'll give the committee credit too, I remember one of the catalysts too, Jen, was the models that were in the plan, one of your committee members realized that you thought the record keeper was taking responsibility for the actual allocation and they weren't. So that was on the committee. So you realized over time that you were taking on some things that you didn't want to.

Jennifer Halliday:

Yeah, that was pertaining to the gold maker or the target date funds. We specifically, that was a big catalyst. And also, 338 on the QDIA. That was a large concern of the committee as well.

Mike Hudson:

And then Jennifer, we'll stick with you for just a second. We'll go to cash balance. So you've had more than one. You've started one, you've terminated one, you've started one. There's been discussion about maybe is it time for another? What prompted you to start, and then why did you terminate to start a new one?

Jennifer Halliday:

So we started it because we needed and wanted an additional deferral opportunity for our partners. Like most law firms, we have a very high revenue, high [inaudible 00:20:27] in our population and they were capped at the DC limits. So this gave the ability to defer more. That was something that was very important to our partnership and this gave us the ability to do that.

We initially set it up as a variable annuity plan and that had some complications with the administration. It also had some risk involved with top 20 revenue earners to the firm and we wanted to avert that over time. So that's why we ultimately had to terminate that plan. And then we started with the cash balance plan thereafter. That plan design is a little bit more straightforward, quite frankly. It's a little bit more flexible in the design and it accommodates our needs.

We have brand new partners who might be first year promoted from associate all the way through partners who are approaching retirement with varying ranges of revenue and earnings in that. So we

have to accommodate all of it and this plan allows us to design it very specifically to tackle all of those needs. So that's worked out very, very well for us. It's a good draw for our laterals as well that are looking to join the firm. It gives them that initial deferral based on the plan eligibility.

Mike Hudson:

So we talked earlier about if you have a staff member that's getting this generous match, they may not max out so much. I like Don's answer on the auto enrollment. You mentioned that your younger partners, it can be expensive to them, you make it mandatory. So how do you manage that too? That's a tricky one too. Could be a future star, you don't want to mess the benefits up so they're not happy.

Jennifer Halliday:

That's exactly right. So we have put some amendments into the plan to accommodate and think about what happens when you're newly promoted. Because you go from being an associate where everything's covered to footing the bill as a partner. So we have what I would call entry level glide paths into the plans.

The 401(k) is always voluntary, so new partners may choose to turn that on or off at their choosing, but then they are required to go into the profit sharing and into the cash balance plan. So what we do is we set an entry level floor coming in of $10,000 in the DB plan. Very affordable. It scales up over time based on earnings and position.

And in the profit sharing plan we do the same thing. We are actually in the process of amending our plan now to drop that down a little further. It was 25,000, now it's going to be 10 for the first two years of partnership. We have a tiered partnership based on the tiered partnership. So we're working on that. And we've done a study, we've looked at the way our new partners invest and how they elect their choices. And we think this will accommodate most of them.

For new laterals, they have to make an irrevocable [inaudible 00:23:26] upon joining the firm before they participate in any plans. And they can choose which plans they would like to participate in or not, but whatever they choose is what they live with going forward. But that also is a very nice feature. Our partners appreciate that. Our lateral partners appreciate the ability to pick and choose upfront one time their participation in the plans.

So we've tried to put some flexibility where it's permissible and where we can to address that. So that's worked out very well for our platform.

Mike Hudson:

I think you've done a nice job of understanding your population, meaning you could be a young partner and future star, but not that far removed from college loans, young kids in private school live in New York or DC, these expensive places, Atlanta's expensive as well. But you and I have both seen it, they may not love that first contribution in, but 10, 12 years later that grows pretty significant.

And we learned together too about you change plan types trying to minimize the chance it could ever be underfunded. The prior one could be, the market rate very little. And then your committee chair, Bill [inaudible 00:24:33], used to speak on this and really studied it a lot. And we learned too as you start and stop these, in many cases you start a cash balance so you can terminate it and give the investment control back to the partner.

And then it was Bill that educated me on these stages of a cash balance. Early on you want to be really conservative, you call it capital preservation. If you have a negative year early, you can't get ahead of the

compounding. Then you think about growth, then you think about liquidity, rinse and repeat. So it's been an interesting, I know it's served your partners really well.

Don, I'm going to shift you on a topic we could probably talk about for days. So I'm going to let you give me your thoughts, you can give me opinions and then maybe give us all some advice. And the topic's litigation. It's up a hundred fold over the last couple years. I think during COVID, these litigators had time on their hands to file. So, thoughts on current litigation trends and maybe some things that we could all do to safeguard ourselves?

Don Mazursky:

Sure. This 401(k) litigation, as you said, it is just rampant and we just don't see it slowing down at all. And the main claims we see are that the planned fiduciary is allowed to plan to pay excessive record keeping fees. They selected expensive underperforming funds. And also, another line of cases about managed accounts. Managed accounts where usually somebody from the record keeper or a program through the record keeper where a participant can sign up in the Morningstar or Financial Engines.

Don Mazursky:

... can sign up and the Morningstar or financial engines will actually make the investments for the participants among the funds that are in the plan, for a fee of course. And these cases are not dreamt up by... As you've said, not dreamt up by some participant where one morning they just wake up and say, "Hey, I think my plan's charging me too much." I mean, these plaintiff's firms go out, they look at Form 5500s, then they go out and try to find a participant who might serve as the lead plaintiff. And they'll put ads in social media and newspapers and eventually you have a lawsuit.

And they're ruthless. I mean, they'll make claims that, "Hey, you should have selected this fund." "Well, that fund wasn't available." "Well, then you should have selected this fund." It's some crazy, crazy types of things. But what we're seeing is a lot of these cases, if the fiduciaries are unsuccessful in getting a motion to dismiss granted, then they go to settle and the attorneys uniformly get a third of the settlement is their fees. And so they're getting large fees for not doing a lot of work. And so that's where you see these cases just continue. Some of the cases, I think sort of the seminal cases and the things that you see really serve as a basis for all the other cases. One is Tussey versus ABB Corp, which is brought I think in 2006, one of the early, early cases and Fidelity was the record keeper. They were charging a percentage of assets.

What the participants claim was that the fiduciaries didn't even know how much they were paying. They should have gone back to Fidelity and said, "Hey, you need to charge a lower percentage since our assets are growing. The fees weren't competitive." There's some other claims along with that. And the court agreed. And there were some other claims too, but that case was eventually settled for $55 million.

Tibble versus Edison was filed in 2007. What they claimed was the fiduciaries picked retail funds. Instead of getting the lowest cost share class, picked three retail funds in 1999, another three retail funds in 2002, and just kept them in the plan. And what the court initially said was, "Well, the funds you picked in 2002, that was inside the statute of limitations. And yes, that was a fiduciary breach, but the others are outside." And it went up to the Supreme Court and the Supreme Court clarified, selecting the funds is one action, but you have a duty to continually monitor those funds. So the statute of limitations never runs on that.

And eventually, again, there was a big award in that. And the last one just to really talk about is Hughes versus Northwestern, which was just decided just very recently. And what the US Supreme Court said that they had just had... It was sort of like they let the record... They had multiple record keepers as a lot

of university plans used to have, and then each one put in all their funds. It might be all the Fidelity funds, all the TIAA-CREF funds. And what they said there was that it was that the fiduciaries have a duty to evaluate each and every fund. And if any fund is not prudent, whether it's underperforming, too expensive, they have a duty to remove it within a reasonable period of time where it's a fiduciary breach. So based on those three cases, that's what you're seeing almost all these cases being sort of keyed off of.

One other case just to talk about, a very recent case is against Magna International. And they sued claiming you allowed excessive record keeping fees, had impudent investments, expensive investments, and the fiduciaries came back and said, "Well, look, we've met two to four times a year. We had an investment policy statement. We took all these prudent steps." And the court said, "Well, having a deliberative process is important, but there are deliberate processes and deliberate processes and you have to show that you actually did that in a prudent way. Just carrying out the steps is not enough." And they were able to show that the fiduciaries really didn't understand the terminology. They didn't understand what revenue sharing was. They didn't understand what in looking at target date funds, what the Department of Labor guidance was.

And what we see with CAPTRUST, at least in our plan and plans I work with, they've actually gone through and explained this terminology. They actually go through, and at least once a year, go through and say, "Here's what the Department of Labor requires for target date funds, here's how your funds match up." So it's really having a deliberate process and really knowing what you're doing is really, really important.

Mike Hudson:

That's a good summary, Don. I think the social media piece is right. I had a client that frankly it did not go to class action, but they've had some employees being contacted on Facebook. And the only ask from the law firm was, "Do you wish you had more in retirement?" Well, first of all, who wouldn't want more in retirement?

"If you would, can you send us your disclaimer?" And then they get the disclaimer and they're looking for problems. So that's still going on, by the way. And I had one, it was an inquiry. It didn't go to action that just said it's imprudent to have an active target date. I hope we get a judge someday that says some of these are a little frivolous because you can win these and still spend a few hundred grand.

Don Mazursky:

Well, just like on that case, there've been a number of cases saying you should have used the index target date funds instead of the active ones. And that's been almost uniformly by every court I've seen saying that's not... You have to have a meaningful benchmark in comparison and you can't compare actively managed to index funds. They have different goals and they operate differently. So you can't really compare those. Almost all of those have been dismissed.

Mike Hudson:

It's interesting too, and we like index target date funds. We like blends. We have clients that are passionate about active and we're getting them the cheapest and best performers. So across the board, but this year is the first year that Vanguard's kind of been the Cinderella that it's a tough environment for them. So interest rates rising, they're fully indexed in bonds. So they eat all the interest rate impact and then they're a little bit more conservative than the peer group, not the benchmark, but the peer group. So they're not really participating in all the US rise. So some of these lawsuits last year saying really fully active is imprudent. If you look at it this year, they're all outpacing Vanguard. So these things

have been flowing over long periods of time. Don, if you had to share one to three things that folks should do every year just to kind of stay proactive against these litigation claims?

Don Mazursky:

Yeah, I do think it's important to have a fiduciary calendar. And again, I think CAPTRUST has done it. They really helped us with that. But so it's important to look at the funds every quarter. And if you keep a fund that's underperforming really in your minutes and in your discussion to know why you've kept it, even though it might not have performed well during that quarter or over a three-year period or something. But it's also important to look at the other things that fiduciaries are responsible for. And having a fiduciary calendar, for example, one quarter you might look at cybersecurity. Is your record keeping doing everything they should to protect your participants' data?

You might look to take a deep dive on a stable value fund, a deep dive on a target date fund, but space those out during the year so you don't have one committee meeting where you're meeting for 10 hours during the day. But yeah, I think just going through all those types of things, if you have managed accounts, doing a deep dive on those. So it's really important to look at all of the things the fiduciary is responsible for at least once during the year.

Mike Hudson:

So Jennifer, let's shift again to record keeper consolidation. I think I'll set it up and you can clean it up if you want to do that. So tons of consolidation out there. Record keeping is not a profitable business. You need scale. You need more participants to spread costs. Quite frankly, you need to sell all the products that have profit. But Jennifer's own legacy firm, ArentFox with Prudential acquired by Empower. The firm that's joining them, Schiff, was with MassMutual bought by Empower. So you've got two integrations going on side by side. So tell us lessons learned and where are you on that? What would be helpful for the group to know?

Jennifer Halliday:

By and large, the integrations are going well. One down. The legacy Schiff plans have migrated from MassMutual to Empower pretty much without issue, but a few bumps here and there. You have to be really specific on that plan setup. You have to do it just like you're a new client with the record keeper and review everything in that setup from the record keeping standpoint to make sure that all the plan features are addressed appropriately. But from a participant standpoint went very smoothly.

The AFS points have not yet. We are on the cusp. We are converting from Prudential to Empower next month. So we are on deck for that. That process is going well. What we are finding is based on the Empower merger, there are things from both legacy fund platforms that don't translate over to Empower. So that requires some changes and a review of what is going to be grandfathered, what can't be grandfathered, what changes do you have to make to your existing fund lineup. It'll also require us, and we'll be doing this soon, to revisit all of our pricing, all of the fees, and we're going to treat it just like any new relationship with a record keeper.

So we are going through those things. Empower, so far their technology platform is much stronger. So that's a benefit. Better access to investments and information about the investments at a much deeper level that both MassMutual and Prudential, were needing to upgrade, but because of the merger, they stopped. So we're looking forward to that. But we're going through the process right now, but so far so good. I will let you know in about a month on how it really looks. And the big show will be when we merge the assets, but that's not on deck until sometime next year perhaps.

Mike Hudson:

I do think that anybody who is joining us today, and you're either an acquirer or a pending merger of equals, the unique interest... Many of these plans use a product called Stable Value as their safe product and the unique interest rate environment, 11 raises in 20 months has put pressure on some of those products. So interest rates were flat for so many years that some of those stable value products, extended duration, they bought longer bonds to get yield to win space for performance. But it creates risk when interest rates rise.

Duration should have been three years. They went out to seven and a half years in some of these cases. So if you're acquiring somebody, merge with somebody, or even looking at that product today, just make sure you understand the risk, not necessarily just the return in cost. We've seen some that, again, these should be you get your dollar back plus a little bit. Some are down 30%, which you wouldn't think. So again, more of an FYI. Let's talk about financial wellness. We joke about it at CAPTRUST, so many people define that differently. So I'm not sure if there's a definition for that word, but what about providing advice, budgeting, planning, beyond what the record keepers can do from an independent standpoint? Don, what do you think about it? And then what do you advise your clients on all those kinds of things?

Don Mazursky:

Well, I've got some clients actually offer... I think the record keepers, a lot of them are getting more and more of a robust offering in that regard. And then we've also seen as far as the financial wellness, the use of point in time service as far as getting investment advice just as a point in time. Also, then the managed account programs, which again, you have to be very careful with because of the litigation, but those can be very helpful. I do have some clients that have engaged third parties to provide investment advice and financial wellness in addition to what they can get through the record keeper. And I think that some of the things to be very careful of there is making sure that the advice is somewhat... There's a process and it is repeatable. So that if two participants go in with exactly sort of the same type of situations, they're going to get the same advice, not just sort of off the cuff, "Well, why don't you do this and you might do this." So you want to make sure that the advice-

Don Mazursky:

Well, why don't you do this? And you might do this. So you want to make sure that the advice is repeatable and standardized. And I think that's really important from a fiduciary standpoint. The other thing to remember is that the fiduciary committee is delegating that service, is delegating their fiduciary duties to this third party. And so I think it's important to note for the committee to remember that if it does that, it has the duty of oversight. And so it really needs to get reports. How many people did you talk to? What kind of advice did you give? And to document that, to show that the fiduciary committee has carried out their duties and can document and show that they did.

Mike Hudson:

I make a good point. I mean, for many Americans, the largest two largest assets are their home and their 401K account, and it is just so darn hard to get independent advice plus from someone that actually understands those benefits. So for sure, and you got to be careful in all this piece. But Jennifer, how about your thoughts on financial wellness and advice?

Jennifer Halliday:

So as a firm, we have steered away from independent investment advice. That has not been part of our platform, but financial wellbeing, wellbeing in general, is something that is important. So we have engaged in retirement education, retirement planning, programs that we've offered out to our participants that are really, it's generic, reputable information. It's not specific to the individual. Really well received and also based on time to retirement. So we have offered that. That's an area that I hope that we can enhance within the confines that Don had mentioned because those are issues that are top of mind for the retirement committee.

But I do think that we need to start treating financial wellness the same as we treat general wellness. We have EAPs and mental health wellness campaigns, flu shots, all of that. And I believe that financial wellbeing, if we can craft it appropriately, should just be part of the normal platform going forward.

Mike Hudson:

There's no question if there's confusion about saving, budgeting, current cashflow, all those kinds of things, saving for all things that matter in future is absolutely distraction and leads to less productivity at the office, for sure. So one of the questions we have reached is some of the things you do annually. I know Jennifer, you have us talk to senior leadership, not the retirement committee, but once a year you have us engage your most highest leadership. Talk about why you do that. And we've done it for years and how that helps the other partners.

Jennifer Halliday:

You know, and even though the retirement committee, much like Don's committee, all major changes are cleared through our executive committee. That's always been our process. That will continue to be our process. However, the executive committee, the very top leadership of the firm do not sit on the retirement committee. So we put a process in place many years ago where once a year the CAPTRUST team will have a one-on-one with the chairman or other members of the executive committee as they define, and they will talk about the way the health of the plans, the way that the plans are designed, why they're designed, future issues that we may be looking at. For example, the stable value would be a perfect topic for this year.

And they sit down and they go over and it's an open forum. It's an open forum for our leadership to ask questions about the health of the plan and the management of the plans. We have done that for a very long time and it's pretty well received. It's a nice way to kind of open up the dialogue with our executive committee about the plans.

Mike Hudson:

I think it's done a good job to let the senior leadership answer questions when they've come up from partners. Why do we make a change in cash balance allocation? Why was there a request for an asset class we didn't add? Because sometimes we're thinking individually and we've got to think globally about the whole plan. So I think it's really helped the communication flow. Don, I know on an annual basis you talked about you were really pleased with some of the fiduciary training the committee gets. Kind of talk about what, you know this stuff, so I wouldn't think you need it. So how does that help you or why do you think that's important?

Don Mazursky:

Well, I just think it's important. I mean, for example, if you get into litigation, one of the things they're going to do or Department of Labor audit, one of the questions they're going to ask is what kind of training, did you understand your responsibility? So I think it's really important to have training for all

the members. And a lot of members on our committee are not employee benefits professionals. And same thing with our clients.

So having that training, having updates so they know what's going on in the industry, what are changes they need to know. For example, when the Department of Labor came out with their missing participant guidance or their cybersecurity guidance, it's really important for the committee to know that. And then they can put in policies and procedures to deal with that. Or for example, ever-changing guidance on ESG funds. What are their responsibilities? Obviously it's gone back and forth so much, it's really confusing. So what are their responsibilities? What can they do? What should they focus on?

And again, those types of things are the things that keep committees from being sued because their records stay very clean. Or if they are sued, it's going to be something that helps them to get the case dismissed as quickly as possible.

Mike Hudson:

Very helpful. So in regards to RFP for record keeping, Jen, we've done it a handful of times over the years, even though you weren't unhappy. Just talk about your thought process on how often you think you should go out to market. We're always looking at fees, but we've done it pretty formally a handful of times and you've interviewed people, but what's your thoughts on how often you should do that?

Jennifer Halliday:

I think we've done it every five years or so on a regular basis. I think it's just good hygiene, it's good pressure testing of your fee structure, the capabilities of the record keeper, even if you're happy with your record keeper. It's a really good benchmark of what's available in the market for your plan size because assets continue to rise. And that's been a very good education for us.

It's also a good education for the committee to not get comfortable with just working with one service provider. It's really, really important I think, to hear the capabilities of the other service providers out there. And I think it's also really important for everyone to sharpen their pencils every five years to make sure that you're getting the best pricing available.

So I think that's been an important part of the process for us. It either confirms that you're in the right spot or that you need to consider making a change.

Mike Hudson:

And things change. Consolidation actually creates opportunities if you're not impacted. Merging creates opportunities. And Don, it sounds like you went through this recently. How often would you recommend to a client to go actually out to bid? I know you look at fees annually, but actually out to bid.

Don Mazursky:

Yeah. Well, what we normally recommend and what Jennifer's doing, I think that's a fine way, but a lot of our clients don't want to go to a full RFP quite that often. So we usually recommend doing an RFP every six years. And a lot of times that bleeds into seven. And then in the middle of that period do an RFI where you're, we're not going out to actual market, but you're going out on a no names basis to record keepers and saying, "If this was your plan with these features and these statistics, what would you charge?" And a lot of times that can result in a negotiation with your record keeper to lower their fees.

In fact, earlier this year I had a client that we did the RFI and the fees were too high and based on that, and the current record keeper wouldn't negotiate, so they went straight from that to an RFP. So again, but three. So I think that's a good argument. Again, as Jen said, if you're just doing it every five years,

you're probably, but that way you're doing a full-blown RFP every five years. It's a little more often than my clients would want to do. But it's a great way to do it.

Jennifer Halliday:

Lot of work to do that.

Don Mazursky:

Yeah. It is.

Mike Hudson:

So one last two part question for both of you and we'll wrap up and I appreciate everybody's time to join us. So it'll be the same for both. Jen we'll start with you. Historically, a change that you made with the retirement program that you think was best received and then looking forward, something you might do different.

Jennifer Halliday:

I think it's interesting, the target date funds, I did not think they would have the success that they have. When we implemented those many years ago, the ease of investment choice for participants with good education around that, they're wildly popular. And I would not have thought that when we initially put that in place, which is interesting. I think also we made some changes to the vesting to make it a little easier. Our profiteering provides a two-year wait to get into the plans, but then you're fully vested and it has a requirement for how many hours you work. We made that a little bit easier.

On the surface, it looked like a very small change, but it just kind of made everyone take a little bit of an exhale and say, "Okay, I could still participate in this plan this year, even though I might be planning to retire or I might be planning to make another change." And that was really well received because it's a lot more flexible and it's approaching, it's reflective of the way people are working today.

So those would be two things that I would say are good. I think the DV plan, that implementation has been a game changer for our partners and our ability to defer more though.

Mike Hudson:

I think so too. So Don, something you've done in the past that was received well, something maybe down in the future the committee is just starting to talk about.

Don Mazursky:

I think we've made some very significant changes in vendors, and I think going to CAPTRUST was an important change. And when we went to CAPTRUST, we actually made so many changes to our funds, we actually did a whole re-enrollment of investments. We said we were going to go into the target date funds unless you make new elections. And we picked new target date funds at that point. And I think before that we didn't even have target date funds. So all of that's been really, really well received. Again, beginning of this year we did a record keeper change, and that's also been well received because of the increased level of service, not only from the employer side, but especially from the participant side.

Mike Hudson:

Well, Jennifer and Don, both absolute professionals. I know you're very busy. We appreciate the relationship we have as the advisor. We appreciate your time today and everything that you've shared. I

kind of wrap with this. You both talked about process consistency, benchmarking, fiduciary training, litigation, try to be proactive with it and the profit sharing really matters. I love the auto enrollment piece so people don't not contribute. Cash balance was critical and is there the right place for some financial advice and wellness to marry in. But any questions before we wrap?

I think that'll do it. Thanks everybody.

Jennifer Halliday:

Thank you.

Don Mazursky:

Thank you.

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