



PENSCO TRUST NEWS

Second Quarter 2009

NEW, IMPROVED PENSCO WEBSITE COMING IN AUGUST

This August, we will be launching a new, improved website. While the same comprehensive educational content that you are used to will remain, the navigation by which you find it will be highly improved. We have also ramped up production on the internal 'logged in' sections of the website, and will be rolling out further enhancements later, such as automated payment scheduling and other cutting edge features. For now, we'd like to give you an introduction to the new menu items, so that you are ready for it when launch time comes.



What will change most is our home page layout. To log in, you will now click on the words "Log In" at the top right. We did this so that the center of our home page could be used for more timely educational notices – such as links to our most recently posted articles, Tom's blog posts, and announcements of upcoming educational events.

The main menu items have also changed - in location and in content. No longer down the left side, they will be across the top, and will segment information more clearly, into categories such as PLANS, EDUCATION, INVESTING, PROFESSIONALS, INVESTMENT SPONSORS, and COMPANY.



What is different about these categories?

Before, because we've focused solely on self-directed IRAs, all of our Plan information was lumped together under IRAs. However, we do – and have always – had the capability of acting as custodian for various other plan types. Now all of the available plan types will be clearly consolidated and explained within our new PLANS section.



Also, there are two wholly new sections of the site, dedicated to two of our key audiences: PROFESSIONALS and INVESTMENT SPONSORS. Having two new dedicated areas of the website will allow us to clearly communicate to these readers how they might best use self-directed plans, alternative assets, and our custodial services to best help you, the investors, as well as grow their own businesses. Our Education section will still be as robust as it now is, and will have all the favorite elements such as our Ebook, and our Archive of Webinars. However, we will be expanding it to include external investor resources (firms that provide self-directed IRA related services) as well as helpful testimonials and case studies from you, our clients. We hope that you enjoy the new site and that you will let us know which features are most important to you going forward. It is our goal to have the most informative and user-friendly site in the industry. Please feel free to let us know what you like, and more importantly, what you would like to see. You may forward any website suggestions to heather.anderson@pensco.com.

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PENSCO SYMPOSIUM SERIES : penscotrust.com/symposium



“Checkbook Control” Related To Single-Member Or Family-Owned Entities

Over the past two years, various regulators, including the FDIC, SEC, and IRS have expressed concern over the approach frequently marketed on the Internet called “Checkbook Control”. Essentially, the promoters emphasize what they feel are attractive features of the approach (e.g., not having to deal with a custodian, potentially lower custodial fees, and ability to act quickly when investing (by having access to the checkbook on the bank account holding your IRA assets within the context of an entity such as an LLC)). With good reason, the regulators are concerned about the first of these three reasons used to promote the product approach.

Regulators don't like the idea of the client having direct access to their retirement funds. They believe that more self-dealing will go on (which creates prohibited transactions, invalidating the person's IRA), or money laundering. Of course, this view is consistent with the rules originally set up for IRAs, which is why the law requires that a legally authorized custodian or trustee hold these types of retirement accounts.

Regulators know that custodians are more familiar with the prohibited transaction rules and that most custodians proactively inform clients of potential conflicts before a transaction is entered into, preserving the integrity of their IRAs.

The concern has been so serious, that in the case of one of our competitors, the FDIC forced the custodian to relinquish their “checkbook” IRA accounts. As a result of this action, many of our remaining competitors have ceased accepting single-member or family-only owned entity structures funded by IRAs.

Effective September 30th, PENSCO will be requiring that all parties desiring to create such an entity structure, appoint an independent (non-related) professional for the purpose of reviewing all transactions performed by the entity to prevent prohibited transactions. The IRA owner will have to sign a new form and agreement, as will the professional, identifying and agreeing to the role of the professional. We will also be asking for a modification of the by-laws or operating agreement to indicate that such a function and review is required.

We feel this is the best approach because it preserves the opportunity for the investor, while also adding protection from losing the tax-exempt status of their retirement account. In addition, we believe this approach will satisfactorily address the regulators' concerns as well.

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Tom's Column

Q. I have an LLC that was funded by my IRA and my friend's personal funds. My stake, through my IRA, is 65 percent. We purchased a rental property that we lease out that now needs repair. Each of us needs to provide more capital, which we understand we need to provide a pro-rata basis. Is doing that OK?

A. This is a straightforward question that unfortunately does not have a similar answer. Attorneys are conflicted over the legality of doing this due to regulation IRC 4975. The rule clearly states that an IRA may not transact with an entity of which it (along with the investments of any directly related persons or accounts of such persons) owns 50 percent or more. In your case, your IRA owns 65 percent, which would exceed the 50 percent limit. There is no provision to address follow-on investments or capital calls from parties or accounts that made initial investments, if their initial investment exceeds 50 percent of the entity ownership.

Pursuant to this known omission and expressed need from other clients, I recently contacted the Department of Labor to see what position they would take. The first person I spoke to wasn't sure, so he sent me to a senior person in the Office of Regulations and Interpretations. The response I received was that this scenario was under consideration and that input could be provided until September 30th, after which they will decide on this issue. Unfortunately, that doesn't solve the problem for those dealing with this question today. My advice would be to try to accommodate the matter by making a personal investment (not an IRA investment) to bring in the necessary capital. Stay tuned as we will report on the outcome at the DOL.

Fair Market Value v. True Market Value? An excerpt from Tom's blog, posted May 26th, 2009

“Because of the need to protect investors - particularly those who are investing their retirement savings - from the surprises of Enron, Worldcom and dot.bomb, the Government has begun to discuss the issue of how to value “hard to value” assets.

Before the difficulty of determining the “fair market value” or the “true market value” of such “hard to value” assets can be discussed, the terms themselves, and how they apply to “standard assets” have to first be put into perspective. While the intent to apply such standards is worthy (that is to protect investors from surprises), actually doing so is an imperfect effort at best, and more an art than a science.

Whether you choose to determine value by selecting the last price on a public stock sold in the public markets, or choose to spend \$40,000 to have an external valuation by a professional valuation company, there is no pure method that can determine the actual value of any company, public or private...”

Read more about this on Tom's blog at www.selfdirectedira.com.