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PRESIDENTIAL ACTION ON DEFINED CONTRIBUTION INVESTMENTS

On August 7, 2025, the President of the United States signed an [Executive Order] titled "Democratizing Access to Alternative Assets for 401(k) Investors" (the "**Order**") directing three US government agencies to change the investment rules that apply to defined contribution retirement plans in the United States to make defined contribution plan investments in alternative asset classes ("**alts**") (e.g., private equity, private real estate, private credit, crypto, hedge, etc.) easier to achieve and more likely to happen.

The Order does not itself change the rules that right now limit or make it challenging for defined contribution plans to invest in alts. The Order instructs the Department of Labor, the Department of the Treasury and the Securities and Exchange Commission (the "**SEC**") to change the rules and legal standards as needed in order to help facilitate defined contribution plan investment in alts.

In the United States, there are two kinds of pension or retirement plans that employers provide: (1) *defined benefit pension plans*, in which the employer bears the investment risk of the pension promises made to workers, and (2) *defined contribution plans*, in which the workers have a say in how their accounts are invested, and the workers bear all of the investment risk that such plans carry.

Currently, there is about US$3.2 trillion in private sector defined benefit pension plans. A little more than 20% of that is invested in alts.

There is more than US$12.2 trillion in private sector defined contribution plans in the United States, a small fraction of which has been invested in alts.

To be clear, US defined contribution investments in alts are already permitted. However, alts currently only exist in these plans in small amounts, mostly in other products that appear in such plans' curated investment fund lineups that participants select from when managing the investment of their retirement accounts. There are some products currently being offered to a small group of defined contribution investors that have a significant alts component.

The Order directs the two executive departments and the SEC to change the rules as needed so that more plans will include alts in their fund lineups:

- Department of Labor: It will be asked to alter or relax the ERISA fiduciary standards so that plan fiduciaries will more willingly offer products that allocate to alts.
- Department of the Treasury: It may be asked to change the current nondiscrimination rules that apply to these plans, which prohibit discrimination in favor of highly paid employees. It may be easier for plan fiduciaries to offer alts if they are not required to make them available to all participants.
- Securities and Exchange Commission: It will be asked to reverse thirty-one years of guidance that treated every defined contribution plan participant as an individual investor, which has made it impossible to allow plan participants to select individual private funds as investment choices for their plan accounts.

There is a widespread belief that the real inhibition to broad acceptance of alts in defined contribution plans comes down to two considerations: (1) Most current investment choices available in a typical defined contribution plan are inexpensive –total expenses of less than 100 basis points, and for passive index investing, often less than 10 basis points. Because the expenses directly affect the plans' investment returns, investors are sensitive to these, because the expenses over time can significantly impact the ultimate size of the retirement account, and (2) the consequence of item (1) is that plan fiduciaries are routinely sued by participants when the investment choices made available in a plan are more expensive than cheaper alternatives.

It may be difficult to convince retirement plan consumers to select what they see as expensive investment funds, and plan fiduciaries are unlikely to make alts available if they have to worry about being sued.

The federal departments and agency could make rules this year that would turn defined contribution plans into more welcoming investors in alts. However, unless there is significant litigation reform and Congressional action, any favorable actions taken now to make investing in alts easier can be undone by the next administration.

Even if the rules and the litigation environment do not change meaningfully this year, the executive order will bring more attention to the alts market, and in the end, defined contribution plan participation in alts should begin a steady climb, given the size of the US retirement market and investor appetite for alts exposure.

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