
Center for Due Diligence

Information & Strategic Resources For Retirement Plan Advisors

Business Building InnerCircle TeleConference Program

Professionalization Of Retirement Plan Advisory Services: A Ten Year Bull Market In BOR Consolidation

Part II of V: The New ERISA Business Model

BOR Series Sponsored By:
NEW YORK LIFE RETIREMENT PLAN SERVICES
<http://www.nylim.com/retirement>

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Part I: (9/4/2009)

Why BOR Consolidation Is Important

- Economic & Investment Outlook
- Retirement Plans Outlook
- Retirement Plans Industry Outlook
- Finding The Right Umbrella
- Growth Outlook For Retirement Plan Advisors

Part II: (9/28/2009)

The New ERISA Business Model.....

- Professionalizing Retirement Plan Advisory Services
- Menu Of Services
- The New Model
- Evolving Standards
- Strategy & Focus

Part III:

A Profitable/Competitive Approach To Small Plans.....

Part IV:

Effective Marketing & Motivational Sales Strategies

Part V:

Protecting Assets, Clients & Your Practice.....

PROFESSIONALIZING THE RETIREMENT PLANS ADVISORY MARKET: What Are The Drivers

- **Negative Press**
- **Decreased Asset Values**
- **Legal Obligations To Make Informed Decisions**
 - Advisory Opinion 97-15A
 - Advisory Opinion 97-16A
- **Liability Awareness**
 - Claims
 - Litigation
 - Settlements
- **Legislative/Regulatory Reform**
- **Scrutiny**
- **Disclosure**
 - Plan Level
 - Participant Level
 - Conflicts
- **Need For Insulation**
- **More Educated Buyer**

**ARE THE FORCES DRIVING PROFESSIONALISM REAL
No Doubt About It**

- **Bad Press**
 - Extremely Biased & Agenda Driven Media Coverage

- **Increased First Party Fiduciary Claims Against Sponsors**
 - Doubled From 1993-2000
 - Doubled Again 2000-2008
 - 12% Plans Under \$100 Million Incur Fiduciary Claims

- **Jump In ERISA Assessment Claims Against RIAs**
 - Claims During Aug-Sep 09 Exceeded All 08 Claims
 - Insurance Carriers Reluctant To Settle
 - RIAs Hit With Similar Claims From Multiple Clients
 - Protect Those Customer Lists

- **FINRA Claims**
 - 100%+ Ahead Of Last Year
 - Half Receive Awards

- **Barrage Of Fiduciary Breach Lawsuits**
 - Plan Fiduciary Claims Against Service Providers
 - Participant Claims Against Plan Sponsors
 - Plaintiff Complaints Against Sponsors & Related Fiduciaries

- **Lawsuit Implications Unknown**
 - Court Caution In Denying Motions To Dismiss
 - Favorable Defense Rulings
 - Plaintiffs' Victories
 - Failure To State A Case
 - Class Certifications
 - Copycat Claims
 - Additional Disclosure

- **DOL Disclosure Initiatives**
 - Form 5500
 - Before 09
 - Changes Applicable To 09
 - Large Plan Applicability
 - Defining Reportable Compensation
 - Alternative Reporting Option
 - Sponsor Disclosure
 - 408(b)(2)
 - Participant Disclosure
 - 404(a)

- **Intense Scrutiny Required For Defense**
 - Fiduciaries Must Identify, Understand & Evaluate Fees/Expenses
 - Investments
 - Services
 - Advisor Compensation
 - Hard Dollar
 - Indirect Expenses
 - Fees Must Be Reasonable For Services Rendered
 - Continuous Monitoring
 - Initial/Ongoing Advisor Due Diligence

WHAT DO PLAN SPONSORS REALLY WANT

- **Independent/Unbiased Counsel**
- **Lower Costs**
- **Reduced Burden**
- **Insulation**
- **Fiduciary Partner**
 - Prudent Man Rule
 - Exclusive Purpose Rule
 - Duty of Loyalty
 - Prohibited Transaction Restrictions
 - Co-Fiduciary Rules
- **Value**

WHAT DO PLAN SPONSORS REALLY NEED

- **Investment/Fiduciary Advisor**
- **ERISA Council**
- **Fiduciary Insurance/Bonding**
 - First Party Fiduciary Insurance
 - Help With Reviewing & Shopping For Effective Coverage
 - ERISA Bond
- **Prudent/Documented Approach To ERISA Governance**
- **Investment Policy Statement**
 - Objectives & Monitoring Process
 - Investment Watch List & Removal Procedures
 - Must Be Followed
- **Establish A Committee**
 - Charter
 - Rules & Responsibilities
 - Follow IPS
 - Meet Regularly
 - Keep Minutes
 - Monitor
- **Monitor**
 - Plan Fiduciaries
 - Service Providers/Agreements
 - Investment Managers
 - Investment Performance
 - Fees, Expenses & Participant Disclosure
 - Revenue Sharing & Other Indirect Expenses
 - Contribution Of Deposits
 - Compliance & Administration Policies /Procedures
 - Frequency

- **Indirect Expense Analysis**
 - Soft Dollars
 - Sub-Transfer Agent Fees
 - 12b-1 Fees
 - Finders Fees
 - Other Commissions/Fees
 - Up Front Sales Charges
 - Surrender Charges
 - Plan
 - Participant
 - Ongoing Contributions
 - CDSCs Applicable To NAV Purchases
 - Wrap Fees
 - Investment Management Fees
 - Revenue Sharing
 - Float
 - Stable Value Lift-Off
 - Stable Value Discontinuance
 - Other

- **Advisor Due Diligence**
 - Conduct RFP For Services
 - Evaluate Organization & Team
 - Registration Status
 - RIA
 - Dually Registered
 - Registered Rep
 - Insurance Broker
 - Professional Credentials
 - Retirement Plans Experience
 - Retirement Plans Book
 - Retirement Plans % Total Business
 - Areas Of Expertise
 - Menu Of Services
 - Plan
 - Participant
 - Advice
 - Wealth Management
 - Fiduciary Insurance
 - ERISA Fiduciary Flexibility
 - Review ADV For Conflicts
 - Interviews & References
 - Complaint History

MENU OF SERVICES

- **Fiduciary Risk Management Oversight**
 - Administrative/Investment Protocol
 - Plan Consulting/Review
 - Plan/Fee Benchmarking
- **Investment Policy Statement Design**
- **Manage/Lead Investment Committee Meetings**
- **ERISA Fiduciary Acceptance**
- **Plan Design Consulting**
- **Compliance Consulting**
- **Investment Consulting/Reporting**
- **Custom QDIA Solutions**
 - Outsourced
 - Retained By Advisor
- **RFP/Vendor Comparative Analysis**
- **Conversion Services**
- **Vendor Oversight/Management**
- **Education/Communication**
- **Enrollment**
 - Individual
 - Group
- **Menu Of Participant Advice & Wealth Management Solutions**
 - Advisor
 - Team
 - Divisional
 - Outsourced

- **Gap Analysis**
- **Proactive DB Plan Consulting**
- **Asset Allocation For DB Plans**
- **Terminal Annuity Procurement For DB Plans**
- **Executive Compensation**
- **Financial/Executive Planning Solutions**

**THE NEW ERISA BUSINESS MODEL:
Suitability Or Less Trumped By The Fiduciary Standard**

- **Professional Designations**
 - Fiduciary
 - Qualified Plans
 - Consultative
 - Investments
 - Accounting
 - Financial Planning
 - Other

- **E&O Insurance Coverage When Acting As A Fiduciary For Clients**
 - Affirmative Fiduciary Coverage
 - Advisor & Firm Coverage
 - Exclusions & Limits
 - Carrier Quality
 - Indemnification

- **ERISA Bonding**
 - ERISA Bond On A Per Plan Basis
 - Employee Dishonesty Bond For Non-ERISA Clients

- **Unbiased & Independent**

- **Fiduciary Standard**

- **Full Disclosure**

- **Conflict Management**

- **Flexibility To Offer ERISA Fiduciary Acceptance As A Core Offering**
 - Plan Level
 - 3(21) or 3(38)
 - Limits Sponsor's Investment Risk
 - Reserves Fiduciary Policy For Sponsor Errors & Non-401(k) Plan Problems
 - Participant Level
 - Advice Solution
 - Minimum Requirements

- **Meaningful Retirement Plans Experience**
 - Most RIAs Lack ERISA & QP Plan Expertise
- **Retirement Plans Scale & Efficiency**
 - Plans, Participants & Assets
- **QP Team Breadth & Depth**
- **Defined, Repeatable & Documented Processes**
- **Collateral Resources**
- **Reasonable Fees For Services Rendered**
 - Can't Get Rich Off Retirement Plans
- **Fee-Based Model**
 - % Assets
 - Ceiling/Cap
 - Hard Dollar (Sponsor Must Want It)
 - Project
 - Ongoing
- **Investments**
 - Open Architecture
 - Low Cost
 - Best Of Breed
 - Avoid Revenue Sharing, 12b-1 & Other Fees
 - Increased Emphasis On Passive Investing
 - Low Cost
 - Prudent
 - Performance
 - Easy To Defend
- **Advisory Agreement**
 - Defined Roles & Responsibilities
 - Services Provided
 - Fees
 - Indemnification
 - Liability Limits On Non-Fiduciary Services
 - BD vs. Independent Contract
 - ERISA Fiduciary Acceptance
 - Arbitration

- **Centers Of Influence/Referral Driven Sales & Marketing**
- **Strong Vendor Relationships**
- **Clearly Defined Value Proposition**
- **Cross Selling Strategy**
- **Risk/Liability Management**
- **Client Retention Program**

EVOLVING STANDARDS

- **Growing Awareness Of The Difference Between Investment Professionals**
 - Insurance Agents/Benefit Brokers
 - Registered Reps (Advisors, Brokers, Financial Consultants, etc)
 - RIAs
 - State Insurance Licensing, FINRA & SEC
 - Suitability Standard vs. Fiduciary Standard
 - ERISA vs. Securities Law
 - Registered Fiduciary vs. Unregistered Functional Fiduciary
 - Retirement Plans Skill Set Is Independent Of Licensing

- **Proposed Regulatory Reform**
 - Fiduciary Standard
 - Exclusive Purpose
 - Duty Of Loyalty
 - Prudent Man Rule
 - More Disclosure
 - Conflict Management

- **New/Higher Standards If Proposal Enacted**
 - Possible FINRA Dilution
 - Industry Exemptions

- **Suitability vs. Fiduciary Standards Debate Will Help Educate Plan Sponsors & Retail Clients**

- **Fiduciary Duty Of Loyalty Is Likely To Emerge As The Winner & Define Advisor Expectations**

STRATEGY & FOCUS

- **Retirement Plan Advisor Challenges**
 - Uncertain Recovery/Vulnerable Investment Markets
 - Mature Retirement Plans Market
 - Increased Liability
 - Intense Competition
 - Higher Standards Evolving
 - Choosing The Right Umbrella
 - Increased Sponsor Demands
 - Pressure On Fees
 - Fiduciary Cross Selling Restrictions
 - Difficult To Earn A Reasonable Profit

- **Of The More Than One Million Licensed Intermediaries, Far Less Than 5,000 Have The Skills, ERISA Business Model, Scale & Efficiency To Profitably Support The Retirement Plans Business**

- **Unless New Strategies Are Developed, Generalists & Advisors Without Scale Will Lose The Majority Of Their Retirement Plans Business To Specialists**

- **Generalists & Advisors Without Scale Should Forge Fee Sharing Alliances With Retirement Plan Specialists & Focus On More Profitable Cross Selling Opportunities**

- **Case Splitting/Fee Sharing Could Become A Path To Growth**

- **Should You Be Focusing On Retirement Plans?**

- **Can You Profitably Support & Grow Your Retirement Plans Business?**

- **What Differentiating Sales & Marketing Strategies Will You Use To:**
 - Prospect
 - Target Market
 - Build Brand
 - Get In The Door
 - Communicate Your Value Proposition
 - Get Hired

• TELEMARKETING & TRADITIONAL MARKETING ARE NO LONGER EFFECTIVE

- **Are You Pursuing Target Marketing?**
- **Do Your Sales & Marketing Activities Focus On Referrals & Centers of Influence?**
- **Do Your Sales & Marketing Efforts Vary By Market Segment?**
- **Have You Identified The Decision Makers?**
- **Do You Offer A Menu Of Participant Advice & Wealth Management Services?**
- **Do You Have An Effective Cross Selling Strategy?**
- **Are You Pressing The Right Buttons?**
 - Lower Costs
 - Provide Insulation
 - Reduce Burden
 - Are You Communicating Accomplishments For Similar Clients
Emphasize Specific Centers of Influence

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