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Subject: **DISCOUNTED INSURANCE PROGRAMS:  
For Plan Sponsors & Advisors**

As noted in our last newsletter, most plan sponsors lack fiduciary liability insurance and while they may not realize it, most advisors lack E&O coverage for fiduciary services provided to ERISA plans. As discussed later in this newsletter, most advisors serving retirement plans also lack ERISA Investment Bonds.

Many advisors who have left their B-Ds and launched their own practice have dropped their E&O Insurance. These short sighted advisors fail to realize that **those who lack adequate insurance coverage and appropriate bonding will be the first to be eliminated** from the RFP process by knowledgeable plan sponsors and high net worth investors.

The devil often lurks in the details and as the advisor selection process becomes professionalized, advisors who lack the full suite of coverage below will be operating at a competitive disadvantage.

- E&O Insurance With Affirmative Fiduciary Coverage For The Advisor & Their Entity That Is Free Of ERISA Exclusions
- ERISA Investment Bond
- Employee Dishonesty Insurance

**The lack of adequate E&O insurance coverage for fiduciary acts will accelerate the consolidation of advisory services and drive advisors who lack adequate coverage out of the retirement plans business.** To remain competitive and stay in the game, retirement plan advisors should be proactive by affirming their coverage of fiduciary acts for others. Advisors should also be prepared for expanded vetting of their insurance policies.

## WHO QUALIFIES FOR THE DISCOUNTS

To ensure adequate insurance coverage, the CFDD's guide on "[Evaluating Retirement Plan Advisors](#)" notes that plan sponsors, ERISA attorneys, advisors, RIAs, consultants and B-Ds **may have their policies reviewed** by the CFDD's resource contributor on Errors & Omissions (E&O) Insurance.

In addition, we have gone one step further and are pleased to announce the availability of a **first party fiduciary and E&O Insurance discount program**. First party fiduciary liability insurance is purchased by plans sponsors and third party E&O insurance is purchased by advisors or their firms.

**Plan sponsors and advisors using the ERISA Advisor Evaluator (EAE) Program are now pre-qualified to receive a significant discount on their respective fiduciary liability and E&O Insurance.** Advisors registered for the upcoming CFDD Advisor Conference with proof of attendance qualify for the same E&O insurance discount.

Professionalism has its virtues and independent of EAE usage, the CFDD has taken still another step forward. **The CFDD's current advisor clients (EAE Users & Conference Registrants) may offer the fiduciary liability insurance discounts to ALL of their plan sponsor clients.**

The discounts and coverage are important to plan sponsors and advisors. Many fail to think about it, but fiduciary liability insurance helps protect advisors from non-advisor negligence. This is important because class action litigation against employers, corresponding financial exposure, fiduciary breach claims and settlements have all increased sharply.

The discounts may be worth more than the cost of the EAE Program and the conference registration fees, but you must be a current CFDD client to qualify. For more information on the discounted insurance program, contact NAPLIA's Gary Sutherland or Tom Schrandt at (866) 262-7542. Gary can also be reached by email at [Garys@naplia.com](mailto:Garys@naplia.com) and Tom can be reached at [Toms@naplia.com](mailto:Toms@naplia.com).

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## ERISA BONDS

An ERISA Bond is an amended Fidelity bond that meets the requirements of ERISA law. Unlike a Fidelity Bond, which pays losses to the insured, an ERISA Bond pays losses directly to the client whose assets are managed.

The bonding requirements are **designed to protect employee benefit plans from the risk of loss due to fraud or dishonesty** on the part of persons who “handle” plan funds or other plan assets. ERISA Bonds do not protect plan fiduciaries from breaches of their fiduciary duties.

Unlike the optional first party Fiduciary Liability Insurance and E&O Insurance, **ERISA Bonds and ERISA Investment Bonds are required.**

Unless exempted (banks, insurance companies & Registered B-Ds), section 412 of ERISA states that every fiduciary of a funded employee benefit plan, and every person who “handles” funds or other property of the plan, to be bonded.

Based on direct interface, the DOL acknowledged that section 412 is confusing and not worded well. Nevertheless, their intentions are clear in that **every fiduciary and any other person who “handles” funds must be bonded.** In other words, being an ERISA fiduciary alone does NOT mandate bonding.

In addition to the ERISA Bond requirements for plan officials, **third party service providers, including advisors, who control plan assets and make investment decisions for ERISA plans are required to maintain an Investment Advisor ERISA Bond.**

A person who provides investment advice, but does not exercise, or have the right to exercise, “discretionary” authority with respect to buying or selling plan assets is not, however, required to be bonded solely by reason of providing such investment advice.

The term “handling” carries a broader meaning than just physical contact with plan funds or property. In other words, **a person is deemed to be “handling” funds or property when their duties or activities carry a risk that the funds could be lost in the event of fraud or dishonesty,** whether acting alone or in collusion with others.

When defining “handling,” the power to transfer funds, disbursement authority, authority to sign checks, supervisory or decision-making responsibility over activities that require bonding, fiscal controls, the closeness of supervision and who has final responsibility for disbursements most all be considered.

## INVESTMENT ERISA BONDS & ADVISORS

The issue over who is required to be bonded comes up frequently. Professional opinions vary widely and many advisors feel they are exempt from bonding requirements because they do not “handle” or custody assets.

On the other hand, insurance experts have concluded that **advisors who have ANY ability to commit fraud or dishonest acts against their ERISA plan clients are REQUIRED to be bonded.** This includes the ability to withdraw advisor fees directly from the plan, contact with the custodian, recommendations to move the funds and any other potential for forgery.

The aforementioned insurance experts estimate that the majority of advisors and/or their employees have some ability to commit fraud or dishonest acts against their ERISA plan clients. Given that the unscrupulous rarely ask for approval, they further believe that **plan sponsors who allow outside vendors to service their plans without the required bonding may be breaching their fiduciary duties.**

Advisors with the proper bonding may have a marketing edge, but some very accomplished retirement plan advisors recommend against allowing any fee withdrawal flexibility on the part of advisors and structure their advisory agreements accordingly.

One thing seems certain, **investment professionals with access to plan funds in any way are required to purchase a bond from an approved insurance company.** The amount of the bond is 10% of the plan’s assets up to the maximum of \$500,000 for each qualifying plan without company stock. Plans with company stock require a \$1 million bond.

These bonds can be written on an individual basis, where each plan is identified, or as a blanket bond covering all plans. A blanket bond would include any new plans added after the policy effective date and each year the application would capture all the current plans.

Plan officials may purchase ERISA bonds with plan assets, but they are under no obligation to purchase the ERISA Investment Bonds applicable to advisors and other third parties. **Service providers generally purchase their own separate bond insuring the plan and add it to the cost of their service.**

For an additional layer of protection, **plan sponsors will increasingly require all third party vendors that “handle” plan funds to provide a copy of a current in force ERISA Bond with the individual plan named as the indemnitee.**

## **EMPLOYEE DISHONESTY INSURANCE**

The last component of the full suite consists of Employee Dishonesty Insurance, coverage that can be purchased by employers and advisors to **protect non-ERISA funds from theft.**

Employee Dishonesty Insurance is purchased by employers to protect them from financial loss due to fraudulent activities on the part of employees or a group of employees. Employers are also protected from loss due to burglary and destruction. Given the rise in workplace fraud and embezzlement, employers should consider this coverage.

In addition to the rise in crime mentioned above, the Madoff era of fraud has intensified the scrutiny of financial professionals. Indeed, the majority of clients who terminate their personal advisory relationship mention trust as one of the key reasons.

Retirement plan purists may not need Employee Dishonesty Insurance, but **advisors, including team members, who cross-sell to retirement plan participants and other employees should have this coverage.** While some B-Ds require their reps to carry this coverage, large advisory clients may require higher limits as well as limits dedicated to their individual exposure.

As noted in the introduction to this newsletter, **advisors who lack adequate insurance coverage and bonding will be the first to be eliminated from the RFP process by knowledgeable plan sponsors and individual investors.**

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## **CFDD 2010 ADVISOR CONFERENCE: The Fonz Lives**

The CFDD's October 6-8 (Wednesday-Friday), 2010 Advisor Conference, *NEW AGE MARKETING: What Worked In The Past Is No Longer Effective*, will return to the downtown Chicago Fairmont - Millennium Park Hotel, Chicago, Illinois.

Given the evolving decision making process, the retirement industry must adapt to the new environment to maintain and increase market share. The CFDD's sole purpose centers on **helping specialists grow their retirement plans business and professionalizing the advisor selection process.** Given our mission, the new ERISA Advisor Evaluator program for plan sponsors will play a key role in the consolidation of retirement plan advisory services.

While CFDD '09 was another homerun, CFDD '10 is designed more intimately to facilitate deeper networking and enhanced learning. Specific education tracks will be threaded throughout the event and more advisor roundtables will be included in the program, including spirited after hour meetings.

The CFDD's conferences sell out early and **more than 1,000 retirement plan experts will attend the 2010 Advisor Conference, including more than 500 accomplished retirement plan advisors.**

To bridge the conference's educational demands and create a relaxed atmosphere, **CFDD '10 will feature a lively 50's theme**, including an Elvis impersonator, professional entertainers, a Grand Prize Trip To Graceland for two and major photo-ops for sponsors. In addition to authentic 50's His & Her Attire Awards, the Kick-Off Party will feature hula hoop, twist and Fonz look-a-like contests. The '57 Chevy may be no more than a ghost, but cats & chicks can still roll up t-shirt sleeves, don retro sunglasses, poodle skirts, pony tails, ducktails and network in a friendly environment.

The Chicago Fairmont's exhibitor space is limited to sixty exhibition booths and while only twenty are left, all booth locations are equally traffic friendly. To facilitate increased networking, **all food and beverage will be served in the exhibition area.**

As a bonus, **the 2010 exhibition package includes complimentary advertising on the CFDD's website and in our email newsletter with a value up to \$25,000.** The website is currently experiencing more than 300,000 page visits per month and our newsletter reaches a highly targeted audience of over 35,000 retirement plan professionals.

The CFDD already offers more value, unbiased content, CE credits and attracts more accomplished retirement plan advisors than any other industry event. To add even more value, **join exhibitors who register early and benefit from banner ad exposure on the CFDD's entire website and our email newsletter for up to one year without additional cost.**

Our limited 2010 booth space will sell out early. To secure your space now, **benefit from extended complimentary advertising and exposure to the industry's most powerful database of retirement plan specialists**, exhibitors should click [HERE](#) to register.

Rather than continue to offer selective group discounts to large organizations, we are donning our Robin Hood hats and making the discounts available to all individual advisor registrants. **To benefit from the maximum discount, you must register early.** To register early and save, individual advisors should click [HERE](#)

For more information on the conference, visit: <http://www.thecfdd.com/CFDDconference2010>.

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