

## **CENTER FOR DUE DILIGENCE**

P.O. Box 8 • Western Springs, Illinois 60558  
(630) 662-0284 • Fax (630) 662-0286

E-mail: [CFDD@TheCFDD.com](mailto:CFDD@TheCFDD.com)

Web: <http://www.TheCFDD.com>

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Subject: **EVALUATING ERISA PLAN ADVISORS: Part I**

As the retirement plans component of their business grows, advisors are forced to evaluate the structure of their practice. They must also determine the type of entity that allows them to provide competitive services that are in the best interest of their clients. This step requires advisors to evaluate the pros and cons of Broker/Dealer association, establishing their own Registered Investment Advisor (RIA) or joining an independent firm.

As the awareness of their fiduciary responsibility grows, sponsors have become more serious about the legal duty to retain qualified advisors with ERISA expertise rather than opting for the comfort associated with channeling business to established relationships. ERISA plan sponsors may find the awarding of business to existing relationships painless, i.e., they avoid fear of the unknown, but their **pain points can't be relieved by generalists.**

As a result of an active press, exposure to qualified specialists and the events of 2008, there is a heightened awareness on the part of plan sponsors as well as retail investors regarding the operating standards applicable to the various categories of advisor registration.

The operating standards applicable to non-ERISA advisors are evolving and in addition to the Administration's recent White Paper calling for a broad fiduciary standard, legislation has been proposed and the investment advice bill has been updated by the Ways & Means Committee. Some also expect the committee to expand the bill to include 403(b) and 457 plans as well as IRAs.

In addition to debating fiduciary standards, investment advisors, consumer advocates, national regulators, state regulators, trade associations, designation providers and others are all lobbying to influence the regulation of advisors. Regardless of the outcome, it is important to note that ERISA fiduciary standards, the highest standards known to law, are already higher than all existing and proposed standards applicable to the BD community.

When evaluating advisors, sponsors should take care to note that like association codes, **registration categories are not credentials and may not reflect knowledge, experience or capabilities.**

Acknowledged or not, and registration category aside, most advisors who service ERISA plans are functional fiduciaries. This means they already have a legal obligation to disclose all forms of compensation, avoid conflicts and operate with a duty of loyalty to the participant.

While they dwell on the importance of standards, none of the lobbyist initiatives mention the **extensive knowledge, experience, training, resources and scale required to service ERISA plans**. This is an important observation because **only a small percentage of the practitioners in any profession reach a high level of competence**. Credentials, designations and a mandated fiduciary standard are good things, but they do not qualify an advisor to service ERISA plans.

As noted previously, some advisors are foolishly willing to assume fiduciary responsibility for ERISA plans under any circumstances. **Advisors who willingly accept fiduciary liability to win new engagements without fully understanding the consequences of their actions do so at their own peril and that of the plan sponsor**. Regardless of acknowledging ERISA fiduciary status, a lowly insurance agent with decades of retirement plans experience, who is already operating as a functional fiduciary, may be far more qualified to service an ERISA plan than an RIA with little or no employer sponsored retirement plans experience.

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## A PRUDENT/APPROPRIATE PROCESS FOR ADVISOR SELECTION

Plan sponsors are becoming increasingly aware of their legal duties under ERISA. Due to time constraints, these duties are, however, rarely prioritized. Given that ERISA requires fiduciaries to retain outside experts when they lack the expertise to perform their duties, **selecting a qualified advisor is the single most important fiduciary decision facing plan sponsors**.

To meet ERISA's higher standards, **sponsors must engage in a prudent process when selecting and subsequently monitoring service providers, including advisors**. After identifying the service to be evaluated, the process should identify the pertinent issues and determine the criteria for advisor evaluation. After gathering, evaluating and benchmarking the appropriate information, the plan sponsor can make a prudent decision based on objective criteria. While subjective, sponsors should also attempt to measure the advisor's added value.

Sponsors are certainly seeking fiduciary partners and advisors to help them benchmark plan costs by service (a problem for many bundled programs), but some are also attempting to benchmark the advisor's impact on participant outcomes.

Only by following a well documented and prudent process can a sponsor demonstrate compliance with ERISA fiduciary standards. Anything less leaves the sponsor vulnerable upon litigation. This can't be emphasized enough as **claims against fiduciaries of all types have increased significantly**. Almost 50% of claims receive an award and according to a recent Watson Wyatt survey, companies with less than \$100 million have a 12% chance of incurring a fiduciary claim. Claims against advisors are also on the rise.

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## ERISA ADVISOR SELECTION CRITERIA

This newsletter is Part I of a series on “How To Evaluate ERISA Plan Advisors.” The series will be followed by our White Paper on the same topic. The White Paper has evolved into a “Procedural Prudence” type of book on evaluating ERISA plan advisors. The guide will also complement our upcoming new online ERISA Advisor Evaluator service for plan sponsors and help specialists showcase their value proposition.

As a recognized leader of unbiased and conflict free advisor guidance, **the CFDD is committed to providing an accurate, authoritative and functional guide on the evaluation and selection of ERISA plan advisors**. As the CFDD's brand spreads to the plan sponsor market, our guide will also help specialists participate in the consolidation of retirement plan advisory services.

Most of the criteria below will be part of the minimum requirements to qualify for listing in the upcoming ERISA Advisor Evaluator (EAE) service directory. By discussing different components of the criteria in a continuous series of newsletters, the CFDD is allowing time for industry input to enhance the vetting process. To stay current, the dynamic advisor selection guide will be subject to modification as conditions and circumstances change.

- Registration Status
- Operating Standards
- Disciplinary History
- Entity Status
- Size, Strength & Resources
- Professional Associations/Memberships
- Awards, Recognitions & Honors
- Education/Certifications/Designations
- E&O Insurance
- Fidelity Insurance
- ERISA Bonding

- Flexibility To Assume Fiduciary Role
  - Retirement Plans Experience
  - Menu Of Services
  - Areas of Retirement Plans Expertise
  - Book Of Business
  - Scale & Efficiency
  - Collateral Resources
  - Benchmarks For Participant Outcomes
  - Defined Processes, Practices, Procedures
  - Retirement Plan Fees
  - Retirement Plan Fee Methodology
  - Non Retirement Plan Fees
  - Non Retirement Plan Fee Methodology
  - Disclosure
  - Conflicts
  - Service Agreement
  - Asset Custody
  - References
  - Investigative Resources
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## **EXPANDING CE CREDITS & 2010 CONFERENCE AGENDA**

Widely known as the king of content, we are pleased to note that the CFP Board awarded the CFDD's 2009 Advisor Conference an unprecedented 41 hours of CE credits. In addition to IMCA, ASPPA and fi360 credits, the IBF also awarded our conference thirty hours of credits towards their designations. Based on network feedback, it has become obvious how important these credits are to over burdened advisors. In addition to being distinguished by content, value, advisor attendance and packaged exhibitor advertising, **the CDDD is pursuing a major initiative to expand the CE credits offered at the conference.**

It takes ten months of intense effort to develop a large content rich agenda. As a result, the CFDD's 2010 Advisor Conference agenda is developing early. If you would like to participate or have topic suggestions, please email them to: [CFDD@TheCFDD.com](mailto:CFDD@TheCFDD.com).

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Consistent with our BOR consolidation initiatives, Eric Henon, President of EACH enterprise, LLC, is pursuing the two research projects below. Given the importance of this subject matter, Eric will also moderate these presentations at the CFDD's October 6-8, 2010 Advisor Conference in Chicago, IL. If you would like to participate in the research or the conference presentations, please email us at the aforementioned address.

- **SMALL PLAN ADVISOR SERVICE MODEL: How To Service Small Plans Effectively & Profitably**
- **BOR CONSOLIDATION: How Providers Can Accommodate Specialists Consolidating Retirement Plan Advisory Services**

Given the nation's steady march towards Socialism, a smaller market and more knowledgeable/demanding clients, be assured that we will also be discussing opportunities in the NFP, HNW, NQDC markets as well as outsourced third party solutions. Additionally, we will be introducing some **exciting new plan design ideas in the weeks ahead that could have a monumental impact on the nation and the industry.** Indeed, to quote the French Foreign Legion, "March or Die."

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## **EXPANDED GROUP DISCOUNTS TO CFDD ADVISOR CONFERENCE**

To facilitate training, the CFDD has offered Advisor Conference group discounts to select BDs in the past. Rather than continue the selective offer, the conference registration discounts are now available to all CFDD clients. **To benefit from the maximum discounts, you must register before year-end.** The maximum discounts and group offers will NOT be available after 12/31/09.

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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 enhanced learning, advanced concepts and deeper networking.** Specific education tracks will be threaded throughout the event and more advisor roundtables will be included in the program, including spirited after hour meetings.

In addition to new age marketing, **CFDD '10 will feature a 50's theme**, including a Fonz look-a-like contest, hula hoop/twist contests, an Elvis impersonator, professional entertainers and major photo-ops for sponsors. Consistent with our theme, the conference will feature authentic 50's Attire Awards and a Grand Prize Trip to Graceland for two. The '57 Chevy may be no more than a ghost, but cats & chicks can still roll up t-shirt sleeves, don retro sunglasses, hoop skirts, pony tails, ducktails and network in a relaxed, fun & outreach friendly environment.

The Chicago Fairmont can only accommodate sixty exhibition booths and while one-third are already committed; **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 and attracts more accomplished retirement plan advisors than any other industry event. To add even more value, **exhibitors who register early could 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 a **15% early registration discount**, extended complimentary advertising and exposure to the industry's most powerful database of retirement plan specialists, exhibitors should click [HERE](#) to register early.

**Individuals who register before 12/31/09 can also save up to \$1,000.**

For more information, contact us at: [CFDD@TheCFDD.com](mailto:CFDD@TheCFDD.com) or visit us at: <http://www.thecfdd.com>.

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