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Subject: **Retirement Plan Advisory Services**

### **An Industry Or A Profession**

Good, bad or indifferent, ERISA is what it is. It may not be fashionable to acknowledge it, but ERISA is based on process rather than results. To avoid liability, the rules must be followed and documentation must be maintained. Regardless of their approach to delegation, **sponsors cannot be entirely relieved from their fiduciary responsibility and or liability.**

While outcomes are important, sponsors are not obligated to offer a retirement plan or to ensure that participants achieve financial independence. It may be desirable, but sponsors are also not required to provide investment advice or education to their plan participants. They are, however, required to administer their plan in accordance with ERISA.

Contributions could always be increased, but based on coverage, participation and asset growth, 401(k) plans are clearly the most successful retirement savings plan ever initiated. Like all retirement plan structures, investments held in 401(k) plans suffered during the 2008 meltdown. 401(k) plans were not the cause of the meltdown, but rather a victim. Over time, equally weighted multi-asset portfolios with annual rebalancing have improved performance and reduced risk. However, other than cash, stable value or treasuries, all asset classes suffered during the meltdown.

Once a participant's initial allocation is determined under an employer sponsored plan, participants make very few changes. Thus, participants generally do not buy high or sell low inside their employer sponsored plans. While some allude to it, navigating major market losses through market timing is simply not possible. **RIAs and other advisors who position around market timing should be eliminated from the RFP process.**

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### **401(k) PLAN EXPENSES**

There are always exceptions, but mid to large plans that use institutional investment vehicles do not incur high expenses. In addition to benefiting from low expenses, the investments held by plans of size are generally subjected to rigorous due diligence far beyond the analysis provided by small practitioners. On the other hand, group meetings and one on one counseling are somewhat rare in large plans.

Plan participants encouraged to rollover their assets and work with an advisor may benefit from that relationship and expanded choice, but their investment related fees are often much higher under that arrangement. While the increased fees applicable to rollover accounts are rarely discussed, the services offered may or may not justify the added cost. **Added value simply depends on the individual advisor and the services provided.**

While mid to large plans incur low expenses, small plan expenses are all over the map. Fees are directly related to plan assets and small plan expenses are generally high because they lack assets. Small plans also generally pay advisory fees as well as recordkeeping/administrative fees from plan assets.

As competition intensifies, fees are converging and while it may sound like heresy, **small plan RIA fees are comparable to the commissions embedded in broker-sold products.** In many cases, they are actually higher. Assuming a 1.00% asset based RIA fee and \$3,500 in fixed recordkeeping/administrative costs, a \$500,000 plan with 50 participants would incur a 1.70% expense structure before considering investment related expenses.

Given their low asset base, small plans should consider alternative savings vehicles before installing a 401(k) plan. Participants would also benefit if the advisory fees and or recordkeeping/administrative costs were paid from corporate assets rather than deducted from the plan.

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## **WHY SPONSORS HIRE FIDUCIARY ADVISORS**

When lacking the required expertise, retirement plan sponsors could benefit from hiring an independent qualified fiduciary advisor, but they cannot be entirely relieved of their fiduciary responsibility or liability under ERISA. Given that hiring an advisor is a fiduciary act, **sponsors must evaluate and monitor the advisor on an ongoing basis**, no small task.

Once hired, the advisor could provide a defense or fuel for litigation. Risk mitigation, shared liability and participant education are some of the primary reasons sponsors hire advisors, but many advisors lack the insurance and capital to underwrite a claim, particularly small independent RIAs.

Although it could change over time, **very few sponsors retain advisors for anything other than investment advice today.** When considering an expanded fiduciary role for the advisor, the sponsor should be educated to the point where they can make an informed decision that meets their plan and participant objectives.

## **SPECIALIZATION, REGISTRATION& BUSINESS MODELS**

Rather than favoring any registration status, business model or fiduciary status, the CFDD has always been pro specialist. We identified the advantages of the RIA model a decade ago and took some heat for it as a result. Nevertheless, **the licensing, insurance, educational, supervisory and capital requirements to become an independent RIA and accept a fiduciary role are too low.**

While the independent fiduciary concept has been around for many years, it is interesting to see the industry encourage ill-equipped generalists to adopt the RIA and independent fiduciary model to grow their retirement plans business. While this may make sense from a distribution standpoint, **encouraging generalists to sell ERISA plans perpetuates the substandard sponsor experience.**

Higher standards and disclosure are good things, but regardless of their registration status, generalists of any stripe are not qualified to service ERISA plans, particularly in a full scope capacity or as an investment manager. ERISA is not the place for on the job training and this trend may not end well. Generalists, including RIAs, who wish to enter this space, would be wise to team with others who specialize in ERISA plans.

In the end, the sponsor process of hiring an advisor boils down to one question and it has nothing to do with registration or fiduciary status. The suitable question to ask is: **Do you have the knowledge, experience, skills, scale and resources to guide us and help us make prudent decisions?** Anything less is arguably a fiduciary breach. Another suitable question to ask is: What are you going to do to earn your fees?

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## **FAILED PROMISES & BOR CONSOLIDATION**

Ignoring flawed surveys, 50% of today's small plan business consists of broker of record (BOR) changes. Given that BOR turnover has increased sharply in recent years, one must conclude that advisors are not delivering the promised services or they don't know what services to deliver.

This lack of sponsor satisfaction validates the need for a plan sponsor to thoroughly evaluate the advisor through a documented and prudent process, including **the determination of fee reasonableness for services rendered.** This requirement is now specifically articulated in the new ERISA 408(b)(2) regulations.

There are many different fiduciary titles and almost thirty different categories of services advisors provide to retirement plans. As a result, **the advisor's fees and services must be contrasted against comparable fees and services from other qualified advisors.**

Rather than engage in industry cheerleading, we will continue our efforts to turn the retirement plans advisory industry into a profession. As a result, subsequent articles will discuss how sponsors should evaluate plan and participant level advisors as well as how independent fiduciary advisors should position themselves.

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### **CFDD 2010 ADVISOR CONFERENCE**

The CFDD's Advisor Conference offers more value, unbiased content and CE credits than any other industry conference. The conference also **attracts more accomplished retirement plan advisors than any other industry event.**

The CFDD '10 bottom-up agenda consists of **over fifty "different" breakout sessions**, including daily keynotes. The content rich agenda is populated by a *Who's Who* of over one hundred industry experts, including **more than fifty (50) accomplished retirement plan advisors.**

In addition to pertinent topics, high value takeaways and unbiased guidance, the conference will provide new media sales, marketing, growth strategies and compliance guidance. We will also analyze the future of national retirement policy, the impact of regulatory reform on ERISA plans and the various fiduciary roles assumed by advisors. Populated by highly skilled advisors, multiple back-to-back sessions will compare all the major investment reporting solutions and professional designations.

In addition to a strong agenda and one stop shopping for CE credits, **registrants benefit from "discounted" insurance programs, a CD-ROM of the entire conference and access to all prior year conference presentations.** Attendees further benefit from a major kick-off party, valuable prizes & awards, complimentary breakfast/lunch/cocktail parties and VIP vendor invitations.

In short, the CFDD's Advisor Conference provides the industry's most valuable takeaway content. To view descriptions of the more than fifty different breakout sessions, click on Topic Descriptions located on the conference homepage at: <http://www.thecfdd.com/CFDDconference2010>.

You may also register for the CFDD's October 6-8, 2010 Advisor Conference from the Register Online link on the conference homepage or go directly to: <http://www.regonline.com/Checkin.asp?EventId=780348>.

To enhance your conference experience, *The CFDD Station* interviews with exhibitors and speakers are available 24/7 at: <http://www.bmbc.tv/channels.php?n=3>. For even more information, please visit our Virtual Exhibit Hall at: <http://www.virtualexhibithalls.com/cfdd>.

The CFDD's conference hotel - the downtown Chicago Fairmont - is sold out, but overflow hotels are available.

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