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Subject: **DUAL REGISTRATION:
Cheerleading Or The Real Thing**

TWO HAT GIG

The pure investment advisor industry hasn't changed much in recent decades. However, with the introduction of fee-based brokerage accounts in the 90s, transaction rooted B-Ds began marketing programs that provide ongoing investment advice for asset-based compensation.

B-Ds often refer to their registered representatives as financial advisors and while they may offer indistinguishable services, they have been providing investment advice outside the regulatory framework governing investment advisors for many years.

Because intermediary regulation has been based on the type of firm an advisor works for rather than the services provided, some feel clients lack the regulatory protection offered by a formal investment advisory relationship. On the other hand, the FINRA oversight of broker-dealers is more considerable than the SEC regulatory oversight of RIAs. The licensing (Series 6 & 7) and CE requirements are also far more stringent for registered reps. To our knowledge, pure RIAs have no CE requirements and some states don't even require the Series 65 examination.

Dual registration has further confused the differences between B-Ds (registered reps) and RIAs. While servicing the same client, the added flexibility allows a registered rep to switch from wearing a non-fiduciary hat to a fiduciary hat almost at will.

By broadening the broker-dealer exclusion and ignoring the legal principal that fiduciary duties apply to the entirety of a client relationship, some feel the SEC has limited the application of the Investment Advisers Act of 1940 and circumvented Congressional intent.

As the competitive marketplace evolves, including the advent of increased litigation & regulation, registered reps are rightly stampeding towards dual registration. **This hybrid status allows advisors to maintain/increase market share, differentiate themselves, provide investment advice beyond that which is incidental, capture high net worth fee-based business and service smaller accounts on a commission basis. The IAR status also facilitates business with more sophisticated plan sponsors.**

WHY DUAL REGISTRATION

The market for financial advice has evolved. Wealthy individuals do not respond to the typical sales pitch and many are looking to simplify their life through account consolidation. The plan sponsor decision making process has also evolved and the savvy are looking for fiduciary partners.

Advisors are seeking investment & pricing flexibility, technology and operational support. When the advisor operates as an IAR under a B-D's RIA, the regulatory and administrative burden, along with liability, could be transferred to the B-D.

Dual registration is complicated. **In addition to the much needed technical support and guidance, it allows advisors to reduce costs and increase profits.** Dually registered advisors also benefit from more time to spend on client support and asset gathering.

B-Ds clearly want to retain successful advisors who have developed fee-based business. They also want their slice of ERISA business. As noted by some, only a bank insurance company or an RIA can become an ERISA fiduciary under section 3(21) and that is why B-Ds enter into contracts under their RIA arm.

This is an important point because the retirement plan engagement morphs a registered representative from rules-based suitability, to principles-based RIA conflict disclosure and finally to an ERISA standard which requires conflict avoidance. The avoidance of conflict is why B-Ds preclude many dually registered IARs from acknowledging an ERISA fiduciary role, particularly those who hold assets long. Refusing to acknowledge a fiduciary role may also help B-Ds resolve disputes based on the suitability standard.

Given the costs of operating a small RIA business, we expected dual registration to become a major trend several years ago. We also talked about reverse migration at the CFDD's 2009 Advisor Conference.

Virtually all the coverage of dual registration by the trade media is positive. Much of the cheerleading reflects manufactured propaganda spewed forth by those who provide support services, including research reports. **While dual registration is clearly good for advisors, the lingering question remains unanswered. Is dual registration good for plan sponsor clients?**

DUAL REGISTRATION IS NOT HOMOGENEOUS

Common law aside, consultants who refuse to acknowledge fiduciary responsibility may be free to pursue self-interests. Contrastingly, an acknowledged ERISA fiduciary role comes with serious responsibility and constraints. As a result, some agreements purposefully omit the acknowledgement of fiduciary status. They may also use carefully crafted language to limit their fiduciary responsibilities and liability.

Regardless of the establishment of a consulting relationship, contracts lacking meaningful language may not mitigate a sponsor's liability. Given that determining functional fiduciary status is no easy task, **sponsors and their attorneys are increasingly analyzing contract details and the advisor's fiduciary obligations.** This often includes a review of insurance coverage and bonding requirements.

Dually registered advisors who are associated with a wirehouse or major B-D are generally required to use the B-D's RIA contract. Large independent RIAs with a B-D affiliation may or may not be required to use the B-D's RIA contract. Pure RIAs use their own contract. Some B-Ds look the other way, but regardless of the contract source, B-Ds generally supervise the RIA's activities and many require an independent audit.

While independent B-Ds generally don't limit advisors who wish to be dually registered, some wirehouses severely limit the number of registered reps allowed to operate as IARs. **RIA contracts also vary widely.** Indemnification and arbitration language may be similar in most of the hybrid firm contracts, but the fiduciary language, acceptance and threshold varies significantly.

B-D insurance coverage varies widely and may not cover ERISA related IAR activity under the master policy. While independents may be able to purchase a stand-alone E&O insurance policy, intermediaries categorized as employees may not be able to purchase the coverage. Policy aggregation of individual claims may also limit coverage and preclude advisors from participating in a RFP process.

A number of RIA contracts are clearly conflicted for a variety of different reasons. Some B-Ds custody retirement plan assets while others avoid the potential conflict. **Dually registered individuals under the same B-D may also operate quite differently.**

The flexibility to give sponsors what they want is important from a business standpoint. Nevertheless, some dually registered advisors collect non-directed 12b-1 commissions/fees while others operate without conflict. Those who don't direct their commissions to an ERISA account often note that they operate with a fiduciary standard that is required by their designations, but that holds no water when compared to a legal contract.

To avoid conflict on their commission business, other advisors charge the same set fee, but the commissions/fees are redirected and the level compensation is paid from an ERISA budget account. Level compensation may not, however, preclude conflicts. Indeed, **a level 1.00% asset-based trail is hardly non-conflicted.**

Some dually registered advisors focus exclusively on retirement plans business while others maintain profitable retail business as well. Most RIA contracts have not evolved to the point of discussing wealth management conflicts, including affiliate conflicts. However, select B-Ds, like Commonwealth Financial, have done a good job helping IARs avoid wealth management conflicts.

ADVANTAGES & DISADVANTAGES

As noted many times, ERISA requires conflict avoidance. ERISA conflicts generally revolve around the rules governing breach of fiduciary duty and prohibited transaction rules, including self-dealing.

Dual registration offers advisors many business related advantages and is no longer viewed as a transitory step. While dual registration status may not place advisors at a competitive disadvantage below the large plan market, pure RIAs could make an issue of potential conflicts.

Showcasing neutrality is important because **a dually registered advisor who uses an independent RIA contract with insulating language, avoids all conflicts, is not in a position to effect compensation - including affiliate compensation - and whose B-D does not serve as BOR or hold the assets, could still be challenged by a pure RIA looking for an edge**

Some would further note that the myriad of B-D paperwork that has to be signed after an engagement is consummated could make the dually registered IAR look like a broker. On the other hand, a pure RIA contract is tailored specifically for each client, i.e., service deliverables, fees, exhibits, etc., and does not have to go through B-D approval.

2010 CONFERENCE AGENDA: Developing Early

Consistent with our New Age Marketing theme as well as the unknowns surrounding mandatory arbitration, who will regulate advisors and the harmonization of legal standards between RIAs and B-Ds, we have added a thread of sessions to the 2010 agenda to address these issues.

Washington is currently buzzing with activity. The bustle includes the new DOL's advice rule, plan level disclosure and participant disclosure. The House Ways & Means Committee has taken up the issue of ERISA accounts and the Senate Banking Committee is working on a draft to eliminate the B-D exemption. Harmonization is also in the crosshairs and it could lead to a new federal fiduciary standard for B-Ds and RIAs.

Regulatory reform is inching ahead, but the final product, including the impact on daily activities, is a long way off. While it's hard to determine what the major issues will be next year, the effect on the B-D community could be profound, including reduced profitability.

The aforementioned issues could be transformational and we are pleased to announce that Ron A. Rhoades, JD (Director of Research, Chief Compliance Officer & Private Wealth Manager, Joseph Capital Management, LLC) will discuss the consequences of financial reform during his presentation on: ***RIA/BD DUAL REGISTRATION: Reform Implications for Retirement Plan Advisors, BDs & Plan Sponsors.***

Given the CFDD's trench level focus, Randy Long (Managing Principal, SageView Advisory Group) will also discuss ***B-D Supervision Of Independent RIA Activities.*** Rounding the triad off, ***RIA Compliance & Retirement Plan Specialists*** will discuss the specific compliance issues faced by advisors who service ERISA plans in a fiduciary capacity.

The session on ***Registration Status & Competitive Positioning:*** will include a lively panel of retirement plan specialists. The panel will consist of a neutral moderator, a registered rep, a dually registered wirehouse advisor, a dually registered independent B-D advisor and a pure RIA. If you would like to participate in this session, contact the CFDD.

Similar to last year, the CFDD 2010 Advisor Conference agenda will include a broad menu of investment related sessions that go beyond ERISA. MPI will make noteworthy presentations on: ***Identifying Problem Managers Before They Blow-Up*** and ***How To Distinguish Your Research & Reporting Capabilities.*** Continuing the investment theme, Gene Huxhold (Senior Managing Director, John Hancock Mutual Funds, DCIO) will lead the sessions on ***INVESTMENT REPORTING TOOLS: A Side-by-Side Comparison*** and Thomas Idzorek (Chief Investment Officer, Ibbotson Associates) will address: ***Asset Allocation In A Non-Normal World.***

One year of intense effort is required to develop and populate a large, content rich agenda. With over sixty different sessions, more than half of the CFDD's 2010 Advisor Conference agenda is already developed. If you would like to participate or have topic suggestions, please email them to: CFDD@TheCFDD.com.

ONE STOP SHOPPING FOR CE CREDITS

As the industry matures, becomes more competitive and advisors seek to distinguish themselves, **designations, credentials and association memberships have become key components of the sales, marketing and selection process** for professionals.

Buyers are also becoming more cognizant of the differences between the various registration and licensing categories as well as the legal fiduciary standards that may or may not apply.

As the CFDD's new online ERISA Advisor Evaluator service for plan sponsors professionalizes advisor selection, the EAE will become a center of gravity and a library of intellectual capital on how to select advisors. **The EAE will also help sponsors evaluate designations, licensing, registration status, fiduciary standards, disclosure, conflicts, insurance coverage, experience, recognition, collateral resources, organizational depth and much more.**

Based on increased business demands and the growing importance of professional development for competitive positioning, CE credits have become invaluable to overburdened advisors. To meet these needs, **the CFDD's conveniently located Chicago-based Advisor Conference is THE one stop shop for core CE credits.**

Widely known as the unbiased King of Content, CE credits applicable to the various designations from the **IMCA, ASPPA, fi360, NIPA** and **FSS** are all available to attendees of the CFDD's 2009 Advisor Conference.

The conference was also awarded an unprecedented 41 hours of CE credits by the **CFP** Board and 30 hours of credits by the **IBF**. Additionally, CE credits apply to the various designations offered by **The American College** and the **College for Financial Planning**, including the CLU, ChFC and the CRPS.

While acceptance varies, select B-Ds will apply CFDD Advisor Conference CE credits to **FINRA's** annual Firm Element requirement.

Information on **NASBA, SPARK, CLE** and **CFA Institute** credits will follow. To stay current on the expanding CE credits applicable to other designations, please visit the CFDD's continuing education page at: http://www.thecfdd.com/continuingeducation_2009.

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 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.

To bridge the conference's educational demands and create a relaxed atmosphere, **CFDD '10 will feature a lively 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, poodle skirts, pony tails, ducktails and network in a 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, 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 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.

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 registrants. **To benefit from the maximum discount, you must register before year-end.** To register early and save up to \$1,000, click [HERE](#)

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

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