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## Could the Dallas Cowgirls be ERISA fiduciaries?

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By Editor Test     *Mon, Jan 7, 2013*

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If background checks were run tomorrow, 5-10% of all retirement plan advisors would probably be replaced, writes Phil Chiricotti, the president of the Center for Due Diligence, in his most recent public letter.

“Similarly,” he added, “if E&O insurance and ERISA bonding were subject to meaningful due diligence, more than 50% of all advisors would be replaced or required to improve their coverage.”

Chiricotti voiced strong opinions about the need for more thorough vetting of retirement plan advisors by plan sponsors and higher standards for plan fiduciaries generally.

“After the SEC investigation of pension consultants was released in 2005, the DOL issued tips for selecting and monitoring service providers. These tips were designed to help sponsors determine the quality of services, the reasonableness of fees, conflicts and the willingness to accept a fiduciary role. While helpful, the tips do not uncover the information required to determine expert status,” Chiricotti wrote.

He continued:

“At a minimum, a diligent advisor evaluation process must include background checks for the primary advisor & team members, certification of bonding & insurance coverage, fiduciary responsibility, compensation methodology, full disclosure, conflict safeguards, specific duties, deliverables and validation that the services are rendered by a *qualified* expert. The advisor’s succession plan and firm, particularly small firms, should also be subject to due diligence.

“Moving beyond the industry hype, the most important question a sponsor can ask an advisor is NOT: “Do you have a legal obligation to act in the best interests of the plan and its participants?” The most important question is: “Are you QUALIFIED to service my retirement plan needs?” This is paramount to understanding the evaluation process because registration status is not a qualifier, i.e., the industry is full of unguided fiduciary missiles.

“While qualified advisors can be a positive catalyst for success, these highly skilled and experienced advisors represent a small percentage of the advisor population. Unfortunately, anyone can call themselves independent, an expert, a professional, a decision maker, an ERISA fiduciary or any combination of the aforementioned, including the Dallas Cowgirls. In reality, it is the standards established by the courts that determine whether an advisor is an expert. Those standards focus on experience, education, skills, training, processes, etc.”