

Some Predict Broker Protocol Overhaul

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Some lawyers and executives anticipate an overhaul to the broker protocol agreement, which has gotten unruly with the growing number of signatory firms, the rising number of exceptions attached to the agreement and the high rate of advisors switching firms these days.

◆ In 2004 [when the protocol was created] none of the firms could have anticipated the mass exodus of advisors in 2008, 2009, ◆ says Stuart Porterfield, the former National Sales Manager for Wachovia Securities Financial Network (Finet) and a signatory on the protocol when Finet signed on. Porterfield is now principal of advisory consultancy, Advisor PT. ◆ If the protocol continues to grow in numbers, and other firms join in with addendums, it is my opinion that the original agreement may need to be addressed by all parties. ◆

When the protocol was first created, it was an exclusive pact between three wirehouse firms. Today, approximately 420 b/ds and RIA firms are signatories to the agreement. Originally put in place to prevent expensive litigation every time an advisor switches firms, and to protect client privacy and freedom of choice, the agreement stipulates that member firms will not sue brokers who depart for other protocol-member firms as long as they follow certain rules. Under these rules, the brokers cannot ask clients to follow them to a new firm until they have resigned from the old firm, and they can take only limited client data.

Now some firms are adding letters to clarify their participation in the protocol. For example, last June, Ameriprise Financial filed the first letter to protocol firms with clarifications on excluding advisors joining Ameriprise franchises from the protocol. Then, in December, Merrill Lynch, one of the original signatory firms, wrote a letter to other protocol firms excluding Bank of America advisors (bank brokers) being merged into Merrill Lynch from participating in the protocol. And in January, LPL issued a letter that clarified that advisors working with its credit union and banking partners do not fall under the protocol.

It could become very unruly if each company has its own side letters and sets its own rules as to compliance or noncompliance with the protocol, agrees Thomas B. Lewis, a partner in the employment litigation division of Stark & Stark. ◆ I think the think protocol becomes ineffective at that point, and something has to be done as to the clarification letters because there is no telling where it may stop. ◆

Some say the protocol never significantly added to the protection of brokers anyway; advisors still fear litigation when departing from one firm for another, protocol or no protocol. Richard M. Gelb, an industry attorney, says advisors are most concerned about the period between leaving their old firm and getting their license transferred to their new firm. They worry about their firm bad mouthing them to clients or cannibalizing their accounts.

Indeed, there is still plenty of litigation over advisors who switch firms. On Monday, Morgan Stanley Smith Barney was granted some of the terms of a temporary restraining order it sought against a team of five advisors known as The Strata Group, who recently left for HighTower Advisors, an RIA aggregator.

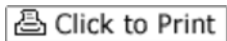
In the ◆ lift-out ◆ lawsuit, filed with New York state court in Manhattan, MSSB alleges the team of advisors solicited clients to liquidate their accounts while they were still employed by Morgan Stanley, and took confidential information with them when they left for Hightower, including performance reports and other account data. The judge ruled that the Rye, New York-based team, which managed \$500 million in assets with Morgan Stanley, could continue to solicit their MSSB clients, but could not otherwise use their account information.

Both MSSB and HighTower are members of the broker protocol. HighTower CEO Elliot Weissbluth says the firm respects MSSB ◆s claim, but says HighTower is a ◆ disciplined follower of the protocol. ◆ Weissbluth calls the protocol a ◆ superb example of market participants self policing their conduct. ◆ However, in order for the protocol to work, member firms have to want it to work and be collaborative in how they are self policing, he says. ◆ So the fact that you have more people signing on and more people refining their participation from my point of view is very healthy, ◆ says Weissbluth.

◆ Morgan Stanley Smith Barney has a strong case. It would not have filed it otherwise," MSSB said.

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