

The Last Weapon

By Helen Kearney
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After eight years working at Smith Barney, William Meyer and Marcy LePrell had had enough. Clients had grown nervous amid the barrage of headlines surrounding the January 2009 merger with Morgan Stanley, and had to be reassured their assets were safe after Smith Barney's then-parent company, Citigroup, needed government help to survive.

Looking for a firm that hadn't been embroiled in the subprime mess, the pair accepted an offer from Janney Montgomery Scott. But during the duo's first day in their new office in Lancaster, Pa., a call came from Janney's lawyers, saying Smith Barney was accusing Meyer and LePrell of taking client information in breach of the Protocol for Broker Recruiting. Their attorney, Thomas B. Lewis of Princeton, N.J.- based law firm Stark & Stark, says the charge was the last thing the pair expected. "They were certainly surprised," he says. "They knew they hadn't done anything wrong."

They weren't alone. Bernadette Holland and Amy Villani, another Pennsylvania-based advisor team that had jumped to Janney from Smith Barney, were already being sued. Their lawyer could not be reached for comment.

The 2004 protocol agreement, which has been signed by all of the wirehouses and most of the regionals, says departing advisors are permitted to take their clients' basic contact information, but other details, such as account numbers and positions, must be left behind.

Meyer and LePrell are still awaiting their FINRA arbitration but continue to deny any wrongdoing. "This was a clean protocol departure," Lewis says. "There's no evidence of wrongdoing and no evidence they took anything they weren't allowed to under the protocol." Smith Barney declined to comment on the active litigation, but a spokesman said: "We believe strongly in the broker protocol, and will always work to ensure that participants live up to its terms. This is a specific matter and not indicative of a larger breakdown in the protocol.e_SDRq

Smith Barney reportedly lost 539 brokers in the first seven weeks of this year, a rate of nearly 80 advisors per week. That's more than double the rate seen in 2008, when Smith Barney saw an 11% drop in its headcount, to 13,765 from 15,454. Lewis believes the firm is using the protocol to intimidate its brokers. "Smith Barney is attempting to send a strong message to its workforce," he says. "We will look closely at the way you depart." And he doesn't think the approach is limited to Smith Barney. He says that all the wirehouses are losing far more advisors to the regionals now than in the past, even though the regionals don't offer the same huge transition

packages. And the wirehouses are concerned. "Wirehouses have to flex their muscles and send the message that, 'If we have a suspicion of wrongdoing under the protocol, we will see you in court,'" he says.

Dick Sorenson is becoming increasingly familiar with that issue. After 21 years at UBS, he joined RBC last month as director of its Portland, Ore., complex—and immediately began seeing inquiries from other wirehouse brokers looking to make a move. "Advisors in a market like Portland tend not to move very often, but people who have been at one place for 20 years are now willing to talk," he says. He adds that he's well aware of the increased scrutiny around protocol procedures and always careful to talk new recruits through the transition process. Surprisingly, he says, many of the advisors—particularly those who have spent the majority of their careers at one firm—aren't aware of the protocol rules. "We have to make sure they understand how important it is," he says. "We don't belong in courtrooms. We [should be] trying to make this happen for clients."

Bowling Green, Ky.-based Hilliard Lyons normally hires eight to 10 advisors per quarter. Since November, the firm has brought 40 advisors on board, and the majority of those have come from the wirehouses, says Darryl Metzger, director of Hilliard's private client group. In response, Metzger says, the wirehouses have stepped up their enforcement of the protocol's terms. "If anybody even hiccups, or makes an innocent mistake around the protocol, the wirehouses are going after them," he says. "They're trying to stem the flow, but the floodgates are open."

Metzger adds that Hilliard employs three dedicated transition teams to help new advisors bring their clients over to the firm in compliance with protocol procedures. At the moment, he says, all three teams are busy and the firm has another 130 or so advisors interested in joining. "We used to only have potential recruits coming through to look at the firm once a week. Now we're doing it every day of the week," he says.

Rhett Neuman, who recently joined RBC's Stillwater, Minn., office from Wachovia Securities, says RBC provided him and his team members with a guidebook to help them comply with the protocol. Neuman, who oversees \$130 million in client assets, asked his clients to include a copy of their last statement along with their transfer documents and also asked them to sign a letter so his team could access any necessary tax information from Wachovia. Despite the difficulties with moving clients in this market, Neuman says he's happy he made the transition. "The biggest motivation was the ability to control our own destiny. We couldn't do that anymore at Wachovia," he says. "After the Wells Fargo merger we were being strung along, month to month, and not being informed." His team was happy to come to a firm that wasn't involved in the subprime crisis and they gave up a big recruitment deal to do it. "I didn't want to sell my soul," he says. "I hoped to do the right thing for my clients and wanted a platform that really allowed us to do that."

For advisors considering a move, Stark & Stark's Lewis provides a list of dos and don'ts to help his clients comply with the rules of the protocol. Here is what he suggests:

Do:

- Resign in writing to your local branch manager
- Give your branch manager, at exactly the same time that you tender your resignation, a copy of the client information you are taking with you.
- Limit that client data to the following: client name, address, phone number, email address and account name.

Don't:

- Don't solicit clients before resigning.
- Don't take any client information not specified above (including account or Social Security numbers, copies of holding pages or monthly statements) or any information about accounts that you didn't directly service.
- Don't be overly generous with yourself on accounts you share with other brokers, especially if you were working in formal or informal partnerships with those brokers.