

# RIABiz

*Exceptional Values,  
Exceptional Practices.*

## RIAs drive explosive growth of the Broker Protocol

*The wirehouse legal truce is now a mandatory poaching tool for advisory roll-ups; Merrill Lynch applauds its wide use*



*Thomas B. Lewis: "There are RIA firms joining that are trying to recruit large producers."*

The number of firms signed on to the Broker Protocol is exploding and the kinds of firms joining it are changing.

The number of signatories to the no-fault poaching truce among advisory employers has tripled in the past year, between November of 2008 and November of 2009. There were 118 firms that had signed by the end of last November; at the beginning of this month, the number was more than 370.

While most people think of the Protocol as something the breakaway broker joins, in the cases where the broker is joining an existing RIA, the existing firm is the signatory. Some RIA firms may be joining the protocol before they even have a breakaway broker lined up. In fact, the explosion of growth in the Protocol is as much a sign of the aspirations of existing RIAs as it is of the actual breakaway movement.

"There are RIA firms joining that are trying to recruit large producers," said Thomas B. Lewis, a shareholder of Stark & Stark, Princeton, N.J.-based law firm that counsels financial advisors.

The number of existing RIA firms signing the protocol may be growing — at a rate exceeding 200% — even faster than the number of breakaway brokers.

The Protocol is an agreement created by three firms – Smith Barney, UBS and Merrill Lynch – that provides a way for brokers to change firms without sparking legal action.

### ***Side effect***

Though the document was initially established to ease a rising tide of expensive legal action between the big firms, the agreement has had a side effect. It gives breakaways and firms that want to recruit them a legal path for the departure, and for the solicitation of clients shortly thereafter.

There are no signs that the big firms regard the steady out-flow of advisors as an issue large enough to necessitate pulling out of the Protocol. With the war for talent heating up again on Wall Street, the larger problem likely remains keeping a lid on litigation between the big firms.

Merrill Lynch, for instance, has no plans to pull out, according to Bill Halldin, a spokesman for Merrill Lynch.

"We're pleased that the protocol has been successful," he said "We're also pleased it's been embraced widely by the industry."

Joining the protocol is as simple as sending an e-mail to the firm that maintains the list of signatories, Wachtell, Lipton, Rosen & Katz of New York.

Every year, a growing number of firms do just that. The growth has been almost exponential. At the end of 2004, there were four firms signed on. At the end of 2006, there were 19. By the end of 2008, there were 126. In the past 10.5 months, more than 240 have joined. Signatories get a regularly updated copy of the list.

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Concert Wealth Management of San Jose, Calif., joined in May 2007, and has used the protocol to help bring 40 breakaways under its ADV. It offers back-office and administrative services, but the advisors establish their own brands and function independently, says Paul Spitzer, managing director, San Diego. He and CEO Felipe Luna spend about three-quarters of their time recruiting breakaways – and the Protocol makes that work much easier.

### *Business-like attitude*

The Protocol and its business-like attitude toward one of the realities of a competitive market have helped create the fluidity of the advisory and securities business, notes Lewis of Stark & Stark. In other industries, such as insurance and pharmaceuticals, restrictive covenants are common and limit the degree to which people can move around.

The securities business is the exception, not the norm – but it may not be surprising that a business concerned with money has ensured that more of it goes to profits than to lawyers.

Concert has embraced the principle of fluidity in its agreements with advisors who join its platform. It asks brokers only for a 90-day notice if they wish to depart. “Our agreement with our brokers is ... we don’t have one,” said Spitzer. “If you don’t like it here, just give us 90 days’ notice.”

Though the Broker Protocol serves as a legal shield if it’s strictly followed, the consequences can be severe for neglecting its dictates, according to Brian Hamburger, managing partner of The Hamburger Law Firm of Englewood, N.J. [This point is further elucidated in the article: The number one obstacle to making a clean breakaway from a wirehouse.]

A wirehouse broker — and Hamburger client utilizing the Broker Protocol — called him after Labor Day weekend. The client informed Hamburger that he was planning to play golf with his boss the next day and that he planned to let him know about his imminent breakaway. Hamburger admonished his client that this was a move he should not make under any circumstances.

The client explained that he was close with his boss and that he felt obligated to make him aware of his breakaway decision. In the subsequent call from his client, Hamburger heard the outcome. The client told his boss of his imminent breakaway as he was preparing to tee up his first shot.

The boss’ reaction was swift and decisive. “He said: now my job is on the line,” Hamburger said in an earlier interview. “Pack your bags.”

Doug Swope broke away from Smith Barney in May and his firm, The Swope Group, had a very simple strategy for leaving the wirehouse on his own schedule.

***By the book***

“We followed every step [of the protocol] by the book,” says the Wayne, Pa.-based financial advisor who moved his assets to Fidelity Investments.

Lewis, Spitzer and others expect the growth in the number of signatories to continue. As more sign on, there’s even more incentive to join. Eventually, notes Rob Ross, an associate with the Hamburger Law firm, big RIA firms that have signed the protocol may be subject to poaching themselves.

“That’s probably a few years off,” he notes.