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FINANCIAL ADVISERS

Adviser Alert

The Latest News From the World of Investment Planning

Stay Mum When Switching Firms

Secrecy is crucial for financial advisers planning to leave their employers.

Brokers may be contemplating such a move for a variety of reasons, including a desire for more independence or a large signing bonus from another firm, or because they aren't prospering under their current employer's compensation system. Options include joining another brokerage or investment-advisory firm or creating a new company.

The key rule: "Tell nobody anything until you resign, particularly clients," says Brian Carlis, an attorney at law firm Stark & Stark in Lawrenceville, N.J. A wrong move can lead to legal tangles and expensive settlements. Discussing an impending move with clients before resigning is "probably the most dangerous thing you can do," Mr. Carlis adds.

In recent years, most of the largest brokerage firms and many smaller ones have signed a "Protocol for Broker Recruiting." Brokers moving between firms that have signed the document can take limited client information with them without fear of legal action by their former employer. The protocol allows brokers to take client names, addresses, phone numbers, email addresses and account types -- such as individual retirement accounts -- but no account details. After joining a new firm, brokers can use the information to contact clients about transferring their accounts.

Brokers moving to or from firms that aren't part of the agreement should still follow its guidelines, lawyers say. They also should know the terms of the employment agreement they signed when they joined the firm they are now leaving.

Departing brokers should avoid telling colleagues they are leaving until they resign, attorneys say. Many employment agreements prohibit brokers from soliciting the firm's employees. In addition, alerting team members to departure plans may put those colleagues in a difficult position, particularly if managers ask what they knew when, says Brian Hamburger, founder of the Hamburger Law Firm and MarketCounsel, a consulting firm for investment advisers.

Brokers should be ready to walk out the door and into their new jobs as soon they resign, attorneys say. For those starting their own firms, that means having a new office registered, furnished and ready to go.

"You want to flip the switch -- leave one office and go to another and get to work," Mr. Carlis says.

Planners' Groups Join Forces

With Congress contemplating a possible overhaul of the financial-services industry, the three major financial-planning organizations in the U.S. have banded together in an effort to influence the debate. The Financial Planning Association, Certified Financial Planner Board of Standards Inc. and National Association of Personal Financial Advisors, or Napfa, have formed the Financial Planning Coalition and are looking for other consumer-oriented groups that may want to join.

The group wants financial planning to be a recognized profession with educational, ethical and professional requirements and a duty to put client interests first.

Coalition members say many consumers and lawmakers don't understand the difference between investment advisers -- who provide comprehensive advice related to securities and are regulated by the Securities and Exchange Commission or state securities regulators -- and brokers, who sell investment products and are regulated by the Financial Industry Regulatory Authority. Having a simpler and more uniform set of regulations for brokers and investment advisers could alleviate consumers' confusion, coalition members say. But they fear that regulation applied to both populations won't require a "fiduciary" standard of care that involves putting client interests first.

Members of the Financial Planning Association include stockbrokers, financial planners and money managers. Napfa represents fee-only financial planners. The Certified Financial Planner Board determines who gets CFP certification in the U.S.

New Arbitration Rules

Securities firms attempting to quash investor complaints during arbitration will soon face stricter rules from the industry's self-regulator, the Financial Industry Regulatory Authority, or Finra.

The rule changes, approved by the Securities and Exchange Commission and set to take effect Feb. 23, will substantially restrict the grounds for granting dispositive motions -- known as motions to dismiss -- before investors have had the opportunity to present their cases, securities attorneys say.

Finra said it had received complaints that parties -- most often securities firms -- were filing dispositive motions routinely and repetitively, causing increased costs for claimants, who are typically retail investors.

Investors, who often must defend against such motions, will benefit from the rule, says Steven Caruso, a lawyer with Maddox Hargett & Caruso in New York. "It's outstanding that the SEC adopted all the provisions proposed by Finra and clarified that customers are entitled to a hearing on the merits to their claims," he says.

Under the new rule, a motion to dismiss brought before an investor presents his or her case can be granted only on three specific grounds: the parties have settled their dispute in writing; there is a "factual impossibility" involved, such as a claim involving auction-rate securities against a firm that doesn't sell any; or a party doesn't file a claim within six years of the events at issue.

Arbitrators also must conduct hearings on motions to dismiss. A unanimous decision from the panel is required in order to grant such motions.

"This is one of the biggest changes to securities arbitration -- ever," says William A. Jacobson, director of the securities law clinic at Cornell Law School.

Finra's board of governors approved the amendments in 2007 before submitting them to the SEC for consideration. The Securities Industry and Financial Markets Association, which represents brokerages and related businesses, opposed aspects of the rule changes in comments to the SEC last year. For instance, it argued that clearing firms, which provide back-office services for other securities firms, often have a legitimate argument to be dropped from claims that are primarily directed at the other securities firms.

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