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US Trust Asks Employess To Confirm Broker Protocol Doesn't Apply

By David Benoit and Suzanne Barlyn
Of DOW JONES NEWSWIRES

NEW YORK (Dow Jones)--Bank of America Corp. (BAC) sent a memo to its U.S. Trust banking employees this week asking them to acknowledge that they are not subject to an industry-wide agreement on how brokers leave firms for new jobs.

The memo from the human resources department didn't include new policies, a bank spokeswoman said, though it did merge some previous policies into one document and expand the policies to include a small number of more employees. The spokeswoman said U.S. Trust was streamlining its policies and it believed it met industry standards.

However, a lawyer who has represented some former U.S. Trust employees in a recent dispute over their departure said this is the first time the company's so-called "garden leave" policy applied to a wide variety of employees. It's also the first time, he said, that employees are required to acknowledge U.S. Trust isn't a signatory to the Protocol for Broker Recruiting, an agreement that aims to minimize litigation between firms by setting rules about the types of information that brokers can take when leaving a firm to join another.

According to the memo, U.S. Trust employees are to give the company 60-days notice when they intend to leave, what is known in the industry as a "garden leave." During those two months the employees cannot contact their clients and while they will receive base salaries, they lose some benefits and incentive pay. After the employee leaves, there is a subsequent 180 days before they can contact any former clients.

The memo also requests the employees confirm that U.S. Trust isn't a signatory to the Protocol for Broker Recruiting. Bank of America's Merrill Lynch brokerage is subject to the Protocol but U.S. Trust is not, the bank said.

The Protocol allows brokers who are joining a new firm to bring client names and certain contact information, but not account details. Firms who participate agree not to sue one another as long as brokers follow the rules.

Employees who received the memo are asked to acknowledge the rules, though Bank of America said even if they don't acknowledge the rules, they would still apply.

Thomas Lewis, of Stark & Stark in Lawrenceville, N.J., said the memo appears to include new rules and that it is a "questionable" assertion that U.S. Trust isn't a Protocol member. Lewis recently represented Dynasty Financial Partners, a registered investment adviser in New York, and two former U.S. Trust advisers who left the company last year to join Dynasty. A subsequent court dispute over their departure, in which one of the advisers claimed to manage \$5.9 billion of assets, was settled.

The memo was reported previously by Bloomberg News.

-By David Benoit and Suzanne Barlyn, Dow Jones Newswires; 212-416-2458; david.benoit@dowjones.com