

Thinking of Leaving Your Brokerage Firm and Going Solo? Make Sure You Know Your Rights

One of the first questions a captive advisor will ask about going independent—in fact, the question that should be addressed before any others—is the legal consequence of leaving your current firm. The rewards of owning and running your own practice can be considerable. But along with the benefits, you’ll need to know the initial costs of going solo, and understand the legal steps involved.

Stark & Stark LLC has launched a program that will help captive advisors deal with the contractual issues in going on your own. Tom Giachetti, head of the Securities Practice Group, will be available to provide free initial counsel for qualified brokers and Registered Representatives who make inquiries through TD AMERITRADE Institutional’s Advisors in Transition program.

“The most important thing for a captive advisor to understand is the written contract with the employer,” said Giachetti, a prominent attorney who has written and lectured widely on employment and compliance issues for financial advisors. “We’ll review the contract, and make sure the broker understands what he can or cannot do.”

Standard wirehouse contracts usually contain two key elements: non-solicitation and non-compete clauses. Captive advisors need to look closely at these restrictions, and assess the likelihood they’ll be enforced. In these instances, guidance from experienced legal counsel will be essential to making the right decisions.

Consider the issue of non-solicitation of clients (and other employees at the firm). A broker who plans to go on his own will, of course, want to be able to have existing clients follow him to his new firm. The typical non-solicitation clause says that a broker can’t solicit or serve clients of the firm for 12 months after the broker leaves.

When Can Clients Follow You?

In reality, clients are free to decide which advisor they want to have manage their accounts. But the captive advisor needs to be careful about how he notifies clients of his departure from his firm. If a brokerage firm decides to enforce its contractual right to non-solicitation, the issue of taking clients can lead to court action. According to Giachetti, this generally means a broker should *not* tell clients of his plans to leave before he does so. “It would be absolutely imprudent,” he said. “You have a duty of loyalty to your current firm.”

Once a broker leaves, he can usually inform clients of his departure. What specifically can be said, and how to say it, will depend on the contract language. The good news is that the majority of clients end up following a breakaway advisor to a new firm, according to studies by Moss Adams LLP and other consultants. But brokers should be prepared for the cost associated with gaining those clients.

In many cases, the wirehouse will demand compensation for the

loss of clients during the non-solicitation period. The amount can depend on the broker’s production, as well as on more subjective factors like his relationship with management and what types of action the wirehouse has taken in the past. “There’s no typical amount,” said Giachetti, but he noted that a settlement can take the form of a percentage of a broker’s trailing 12 months’ compensation. A range of 10% to 20% can be common, he said.

Similarly, an advisor has to consider the fate of any deferred compensation he may have arranged with the firm, or the cost of a promissory note he may have signed if he had been given a signing bonus when he originally joined the firm. Generally, any upfront money received that hasn’t been “earned out” will have to be repaid. And deferred compensation, which is usually part of a separate agreement, may have to be left behind. “The broker should be prepared to walk away if he isn’t fully vested and entitled to take that compensation with him,” said Giachetti.

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Assessing the Financial Costs

While those financial costs should be calculated, Giachetti pointed out that they need to be weighed against a key reason the captive advisor is thinking of going independent—the chance to increase your income and build value in your own firm. “This is a long-term decision,” said Giachetti. “You have to look at the long-term perspective.”

All of this may seem a bit daunting to brokers just starting to explore independence. But Giachetti, who has handled hundreds of such cases, noted that sound legal counsel can help ward off potential headaches. In addition, his firm is available to handle the other legal and compliance issues involved in going independent: licensing, corporate structure, compliance, and employee agreements.

“The greatest benefit we can provide captive advisors is to help take them through the transition period from their broker-dealer to their own firm,” said Giachetti. “We can explain all the parameters, from a review of their contract and the obligations they owe their employer, to registration and compliance. It’s a comprehensive process.”

The bottom line: You don’t have to do it alone. That’s especially the case in handling the legal aspects of your potential move. If you’d like to know more, please contact a TD AMERITRADE Institutional representative to learn more about how we can help.



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