

Broker Protocol FAQ: Who's out, who's next and what advisors may lose

By Andrew Welsch

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With Morgan Stanley and UBS out of the Broker Protocol, questions are swirling around the future of the accord and its impact on recruiting. Are advisor moves finished? Will breakaways be snuffed out? Should FINRA get involved? *On Wall Street* reached out to top industry insiders and experts to find out what's at stake for advisors.

WHAT IS THE BROKER PROTOCOL?

It's an industry trade agreement created in 2004 by Merrill Lynch, Smith Barney and UBS, that permits brokers from taking basic client contact information with them when they switch firms. The protocol reduced unnecessary litigation between firms, which used to sue each other to block brokers from taking clients (and their assets) when switching employers.

Approximately 1,700 firms have become signatories. SIFMA, the industry trade group, used to maintain a list of protocol firms, but it transferred

responsibilities for this to law firm Bressler, Amery & Ross in 2015. Bressler sends out a weekly update on who has joined and exited the accord.

[Morgan Stanley announced](#) its intention to leave the protocol in late October, and [UBS followed](#) three weeks later. Both firms have drastically cut recruiting efforts recently.

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IS THE PROTOCOL KAPUT?

This question leaves industry observers divided. One camp says it can't survive without the support of the big four wirehouses, which collectively have more than 50,000 advisors (UBS and Morgan Stanley represent about 22,000 brokers). Stifel CEO Ron Kruszewski [predicted that the accord](#) would "unravel" in the wake of Morgan Stanley's exit.

But a second school of thought suggests some firms, particularly [the growing regional brokerages](#), will stick with it in order to differentiate themselves from their wirehouse competitors.

"I think that as far as rival firms are concerned, they're pretty excited to use this as a recruiting opportunity," says Mark Elzweig, a headhunter and *On Wall Street* contributing writer.

Protocol firms could tout their culture and respect for advisor choice when attempting to lure away talent from rival non-protocol firms, he says.

Raymond James, for instance, [came out in support of the accord](#) citing advisor and client choice.

Plus, firms that stay in the protocol will not have to worry about non-protocol firms poaching their talent because advisors will be reluctant to join a firm that won't let them amicably leave at a later date, insiders say.

"I think advisors want to know that if they move to a firm that they are not chained to it for life. They want to know that should they later choose to leave a firm that they can do so amicably," says attorney Nancy Hendrickson, a securities litigation partner at law firm Kaufman Dolowich & Voluck.

COULD THE BREAKAWAY MOVEMENT SUFFER?

For years, there's been a steady movement of top wirehouse advisors leaving to start their own RIAs, often with the help of firms such as Dynasty Financial and HighTower Advisors, which assist breakaways.

"When advisors circulated primarily among the wirehouses, it was easier to be part of the protocol because what you lost you also got back," says Rob Mooney, a former Merrill Lynch executive who is now CEO of Snowden Lane Partners.

The fact that wirehouses are leaving the protocol is primarily due to growth of the breakaway movement, Mooney says. "It's a validation of the fact that the best advisors are seeking independence."

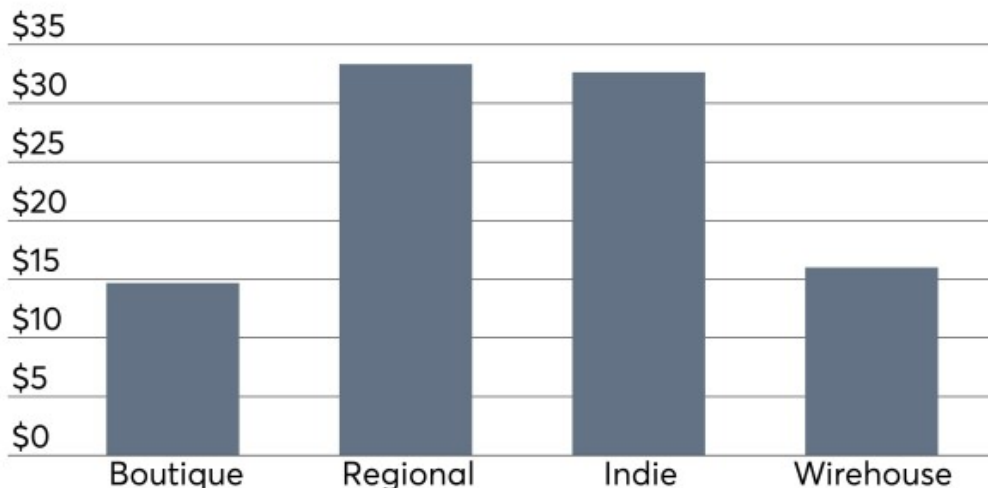
Leaving the protocol may help firms discourage brokers from going independent. But being a non-protocol firm doesn't change the reasons why breakaway brokers want to leave in the first place. In other words, it's all stick and no carrot.

"The folks who were going independent have a strong independent streak, a strong entrepreneurial spirit," Mooney says. "[Leaving the protocol] will make moves more difficult, but it won't completely stem it. Water finds its own equilibrium."

Snowden Lane, which has recruited several wirehouse teams, is not leaving the protocol, Mooney adds.

Where the AUM is flowing

Reported size of new hires in 2017 by assets, in billions.



Source: Company announcements

WHAT ARE THE NEGATIVE RAMIFICATIONS FOR ADVISORS?

Legal costs associated with making a career change will likely rise and the size of recruiting bonuses may shrink, experts say.

"When [recruiting firms] think about the type of deal they would need to hire advisor talent, then they need to factor in the legal cost," says Phil Shaffer, founder of Halite Partners and a former managing director at Morgan Stanley. "The acquiring firm will reduce some of the risk by saying 'We'll pay you as you bring those assets over' versus 'We'll pay you X upfront.'"

Even if a recruiting deal offered by a non-protocol firm is enticing, advisors may want to think twice.

"I think fit and money are much bigger issues for the advisor than whether the firm is in the protocol. But if you were comparing two firms that are basically the same and only one was a protocol firm, then I'd recommend going to the

protocol firm because you can take your clients with you should you leave at a later date," says Ross Intelisano, an attorney at Rich, Intelisano & Katz.

"No one knows how these firms will use their newfound firepower," he says.

Advisors may also want to make sure that their exit from a non-protocol firm is conducted in a professional manner. In the past, when firms have sued departing advisors for breaching the Broker Protocol's rules, they've subpoenaed communications. A 2017 legal battle pitting [a breakaway RIA in Connecticut against UBS](#) resulted in dozens of text and email messages between advisors and clients being made public.

HOW ELSE WILL IT CHANGE RECRUITING?

For firms that have left or will leave the protocol, industry insiders predict hiring efforts there will suffer because advisors will not want to join a non-protocol firm for fear they could never leave.

"One of the nuances that people may be missing is that when someone exits the protocol, it does two things. First, it makes it more costly for someone to make a move. But when a firm leaves protocol it makes it harder for them to recruit advisors," says Shirl Penney, CEO of Dynasty Financial Partners.

WHAT WILL REPLACE THE BROKER PROTOCOL?

It's not clear, but everyone interviewed for this article lamented that there might not be a client-friendly system to replace it.

"I scratch my head on why we don't have something more client-centric here," says Shaffer, who adds that Halite Partners will remain in the protocol.

Meanwhile, calls are mounting for regulators to get involved.

"I don't think the protocol was enacted with the clients foremost in mind, but it probably served them more than anyone when compared to the previous regime," says Hendrickson, the attorney.

If the protocol collapses, then it will leave a void and many unanswered questions, she says. "Someone should step in, and the logical actor would be the SEC or FINRA."

In a worst-case scenario, clients could be left in the lurch as advisors and firms file temporary restraining orders against one another in court, arguing over whom the client belongs to.

"We ought not to be encumbering clients in the midst of litigation by determining client names are trade secrets," says Mooney.

But whether regulators would want to get involved is unknown. At the moment, the focus in Washington is on deregulation — not the opposite.

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