FEBRUARY 21, 2022

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CRYPTO INFERNO

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SEC fines 12 firms in Form CRS enforcement

BY MARK SCHOEFF JR.

THE SEC LAST TUESDAY fined 12 financial firms a total of $292,523 for compliance failures related to the client relationship summary known as Form CRS, marking the agency's second round of enforcement actions on this topic.

> **KEY POINTS**
> - The action is the SEC's second round of Form CRS enforcement.
> - The regulator is encouraging firms to self-report delinquencies.

The Securities and Exchange Commission charged six investment advisory firms and six broker-dealers with failing to file and deliver Form CRS on time.

The agency also found that some of the firms didn't include information and language that's required for the document, which outlines a firm's services, fees, conflicts of interest, disciplinary history and other information.

The SEC promulgated the relationship summary as part of the rulemaking package for Regulation Best Interest, the broker-dealer standard of conduct. Both Reg BI and Form CRS went into force in June 2020. Advisers and brokers were supposed to start delivering Form CRS to new and prospective clients by July 30, 2020, as well as posting the document on their websites and filing it with the SEC.

The fines the SEC announced last Tuesday ranged from a low of $10,000 for four of the firms to a high of $97,523 for the broker-dealer Wall Street Access. The penalties were the second tranche levied by the agency, which fined 27 firms for Form CRS violations last July.

"With today's actions, the SEC has now charged forty-two financial firms for failing to meet the obligations that are required to ensure retail investors understand their relationships with their securities industry professionals," Sanjay Wadhwa, deputy director of the SEC's Enforcement Division, said in a statement. "We urge firms that continue to be delinquent in fulfilling their Form CRS obligations to come into compliance with the law and to self-report to the SEC."

ENCOURAGED TO SELF-REPORT

Investment advisers and brokers who are delinquent with their Form CRS should take seriously the encouragement to turn themselves in, said Jim Lundy, a partner at Faegre Drinker Biddle & Reath.

"For firms who remain in violation and do not self-report, the message is they will be pursued aggressively, and the SEC will attempt to obtain larger fines," said Lundy, a former SEC senior trial counsel.

In this round of enforcement cases, the SEC went beyond punishing firms for missing Form CRS deadlines to

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Focus Financial looks to double revenue by 2025

BY BRUCE KELLY

FOCUS FINANCIAL PARTNERS Inc. hit a new high in registered investment adviser transactions — 38 — last year and it expects that momentum to continue in the next few years, with a target of more than doubling its annual revenues by 2025 to reach $4 billion.

Last year's pace of mergers and acquisitions, which Focus Financial Partners breaks into two categories of "partner firms" and "mergers," bested the firm's previous high of 34 deals in 2019. In 2017, 2018 and 2020, Focus Financial completed 25 such deals.

> **$4B**
> REVENUES THAT FOCUS FINANCIAL AIMS TO ACHIEVE BY 2025

The firm finished the year with a bang, closing 22 deals in the fourth quarter alone, it reported last Thursday in its earnings report for the fourth quarter.

"The reality is yes, last year was simply an extraordinary year

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Hightower's suit against RIA is 'wirehouse 101'

BY JEFF BENJAMIN

AS PRIVATE EQUITY-BACKED RIA aggregators continue to gobble up market share in the wealth management space, the evolution of some firms is starting to resemble the same wirehouse model that advisers have been fleeing.

Exhibit A takes the form of a lawsuit filed by Hightower Advisors last month charging Michael Policar, owner of the $39 million Seattle-based advisory firm NGP, of stealing information and recruiting clients when he left Hightower in January 2021 after about two years with the $104 billion Chicago-based aggregator.

"They're trying to say the agreement said that I couldn't solicit clients and the allegation is that I tried to lure clients when I left," said Policar, who joined Hightower in 2018 from Merrill Lynch.

Policar said he doesn't recall the number of clients or the amount of assets that he brought with him when he joined Hightower from Merrill, but "the majority of the clients named in the [Hightower] complaint were relationships that were with me prior to me joining Hightower."

Bob Oros, Hightower's chairman and chief executive would not comment specifically on the lawsuit, which seeks $500,000 in damages, but said the business model is very clear.

"IF YOU LEAVE, THEY'RE COMING AFTER YOU."

CHARLES FAILLA, PRINCIPAL, SOVEREIGN FINANCIAL GROUP

He explained Hightower's platform with the analogy of being hired to drive a car.

"There's the IBD model where you use your car and when you leave, you take the car with you," he said. "The other way is you drive my car, and when you leave, you don't take that car with you."

In Oros' analogy, the car represents clients and assets that are acquired by Hightower under a model that's been in place since Oros joined the company in 2019.

Oros said Hightower made its first RIA acquisition in 2016, three years before he joined the company, and two years before Policar joined Hightower in 2018.

"Since 2019, we haven't done anything under the old model," said Oros, who would not comment on the model under which Policar joined.

For his part, Policar said he "did not sell anything to Hightower."

PIVOT TOWARD AQUISITIONS

Louis Diamond, president of Diamond Consultants, said the issue is likely tied to the progression of Hightower's business model, which pivoted away from its original focus on recruiting wirehouse reps and toward acquiring registered investment advisers to join the platform once Hightower partnered with private equity investors in 2018.

"Advisers on the Hightower platform

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Debate over Reg BI's effectiveness is intensifying

BY MARK SCHOEFF JR.

WHETHER REGULATION Best Interest is working after 20 months depends in part on how readers interpret a report released earlier this month by Finra.

The Financial Industry Regulatory Authority Inc. included a section about Reg BI compliance in its annual report on its examination program. The broker-dealer self-regulator outlined on pages 26-27 its findings from Reg BI exams, most of which involved shortcomings like brokerages not acting in their customers' best interests and failing to mitigate conflicts of interest.

Finra followed the exam findings with a section on pages 28-29 titled "effective practices," such as identifying and addressing conflicts related to compensation arrangements and limiting the sale of high-risk and complex investments to retail investors.

UNCLEAR LANGUAGE

The language in the report didn't make clear whether the exam findings were separate from the effective practices. But Finra said the sections are related.

"Both 'exam findings' and 'effective practices' reflect things we've seen in exams," Finra spokesperson Ray Pellecchia wrote in an email. 'Exam findings' identify areas where firms have not complied with the relevant rule(s). 'Effective practices' cite practices that go above and beyond rule requirements."

Fiduciary advocates have zeroed in on the exam findings to argue Reg BI isn't living up to its investor protection promises. The standard of conduct, which went into force in June 2020, prohibits registered representatives from putting their financial interests ahead of their customers' interests. Investment advisers continue to adhere to fiduciary duty when working with clients.

"The findings language … clearly cites material deficiencies that result in recommendations that fail to make the best interest standard," Knut Rostad, president of the Institute for the Fiduciary Standard, said during a media briefing last Tuesday. "There should be no mystery why B-Ds flunked. B-Ds were asked to craft and implement practices and policies without knowledge and guidance to describe what the [Reg BI] standard really means."

DIFFERENT CONCLUSION

But an industry representative said the Finra exams produced a different conclusion.

"The report is telling us Reg BI is working," said Kevin Carroll, managing director and associate general counsel at the Securities Industry and Financial Markets Association. "There are things

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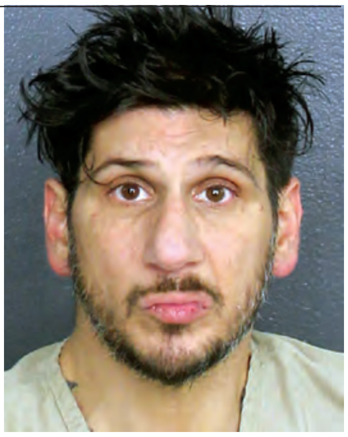

PHOTO COURTESY OF THE PARKLAND TALK

Ex-broker gets 7 years for tech scheme

BY BRUCE KELLY

A FORMER BROKER whose 13-year career was littered with stints at firms that were kicked out of the securities industry was sentenced earlier this month to seven years in prison for a $2.4 million South Florida tech scheme that targeted the elderly.

The ex-broker, Isaac Grossman, 47, was sentenced on Feb. 10 by a federal district judge in Fort Lauderdale for directing a fraud in which he sold stock in his South Florida-based technology

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TopNews

Investment firms watching 401(k) market for ESG growth

BY EMILE HALLEZ

EMPLOYER-SPONSORED retirement plans are beginning to consider ESG — and some investment firms are preparing themselves for considerable growth in the space.

Nearly one in five defined-contribution plans in Fidelity's business in 2020 included at least one ESG investment option, and the company expects that proportion to increase amid greater awareness by young workers.

"Human resource departments are hearing directly from their employees about wanting to have better options that align with their values," said Keri Dogan, senior vice president of retirement income and workplace investment innovation at Fidelity.

"A lot of this is generational," Dogan said. "There's clearly growing demand for climate-specific [investments]."

The company recently issued a small report on near-term trends in the retirement plan business, based on feedback from clients. More interest in ESG, generally, was among the findings.

The most recent figure for its total assets in ESG funds within DC plans, $7.4 billion, is also expected to rise. To prepare for that, the company has hired a chief sustainability officer and is building out its roster of products.

Last year, Fidelity launched seven sustainable funds, second in such launches behind BlackRock, according to data from Morningstar.

POOLED EMPLOYER PLANS

And Morningstar itself is interested in the growth of sustainable investing. Last year, the Chicago-based firm announced it was preparing the first ESG-specific pooled employer plan for the 401(k) market, in conjunction with PAi Retirement Services. A pooled employer plan, or PEP, is a structure that first became available last year, as a result of the 2019 SECURE Act. PEPs allow unrelated businesses to participate in the same plan, often with the benefits of lower costs than they would have on their own and the ability to offload most of the fiduciary responsibilities of overseeing a plan.

Morningstar's PEP will include a custom target-date fund, which — if it is a sustainably minded investment — could address one of the major impediments to ESG in 401(k)s. That is because, in most cases, workers are defaulted in plans by their employers and tend to stick with whatever investment option they are placed into, often a target-date fund.

And there are very few target-date products on the market that are built specifically with ESG in mind.

"People are much less active in their 401(k) plans about making trading decisions or changing out of the default. Nobody that I know is offering a default ESG fund at this point," Dogan said.

That is a product category Fidelity is considering, even if a launch would be a long way out.

A survey that firm conducted among plan participants found that 26% said they are interested in ESG investments, including 40% of millennials. By comparison, just 10% of all participants expressed interest in cryptocurrency investment options.

GREEN OPTIONS

That isn't dramatically different from a survey report last year from Schroders, which found 37% of people said their retirement plans include an ESG option, and 90% of those who have the options available invest in them. For those whose plans lacked such options, or if they were unaware, 69% said they would likely increase their total contribution rate to the plan if ESG funds were available, according to Schroders.

However, only about 5% of 401(k)s include ESG options, compared with 38% of 403(b)s, according to reports last year from the Plan Sponsor Council of America.

Among Fidelity's plan clients that offer ESG funds, 5.4% of participants

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Betterment a potential target following Wealthfront deal

BY SEAN ALLOCCA

SOME OF WALL STREET'S most well-known brands are snapping up digital startups that cater to younger and more tech-savvy investors, and are ponying up billions of dollars to bring them on board.

The UBS Group's recent $1.4 billion acquisition of Wealthfront Inc. highlights large incumbents' need to attract the next generation of clients, a group of first-time investors born amid the pandemic and recently labeled the "New Investor" in a report by the Financial Industry Regulatory Authority Inc.

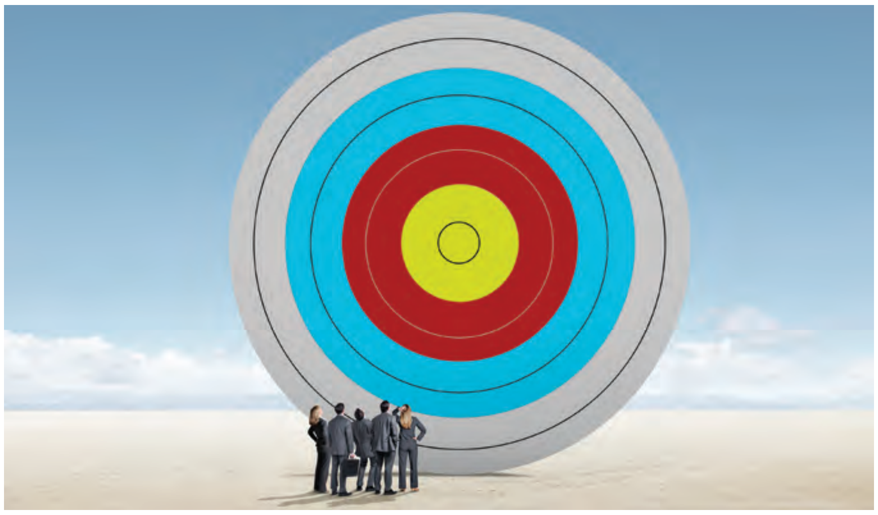
The mega UBS acquisition, combined with the $1 billion deal for Personal Capital in 2020, leaves Wealthfront's East Coast rival Betterment as the so-called last man standing in the independent robo-advice segment.

The New York-based startup, which landed its largest capital funding round to date in September, for a valuation of $1.3 billion, could now have a significant bull's-eye on its back for potential buyers.

'CRAZY TIME'

A recent study from S&P Global pegged a potential price for Betterment at $1.7 billion.

"Banks want to show off that they're staying on top of the latest digital innovations, and they're not going to get disrupted," said Thomas Mason, senior research analyst for S&P Global Market Intelligence and author of the study.



"Two of the three biggest names have already sold, it's a crazy time in the market right now."

While Betterment has long said its intention is to file for an initial public offering, current market conditions and growing time horizons are real challenges.

An alternative exit for its venture capital investors could be an acquisition, especially given the poor stock market showing of many financial technology companies in recent months.

"We need to assume that anyone in this space with venture-capital backing is open for sale," said Scott Smith, director of advice relationships at Cerulli.

The breadth of Betterment's business, with options for serving both advisers and retirement plans, could make a combination more complicated, however. In addition to the company's retail offering, much of the robo-adviser's recent growth has been attributed to its multiple business lines, including its 401(k) arm, Betterment for Business, and its adviser services platform, Betterment for Advisors.

"It also presents the opportunity for a potential acquirer to immediately become competitive across several key business lines," Smith said.

Robo-advice has certainly become an attractive business model for potential suitors because of the stable fees charged on assets under management or through subscription models. Like many traditional advisory firms, digital upstarts can also generate reliable and recurring revenue, and that can be eye catching to buyers, who can then value the company on concrete metrics.

"Everyone thought the valuations were too high, and that firms wouldn't be willing to pay up for a robo-adviser," said Alois Pirker, director of Aite-Novarica's wealth management practice. "Wealthfront proved everybody wrong. Of course, other investors are chomping at the bit, but the challenge will be finding someone who's willing to pony up."

MULTIPLE BUSINESS LINES

Digital investment firms like Betterment and Wealthfront are opening the door to younger, mass-affluent investors, who have the potential to inherit a whopping $84.4 trillion worth of assets in the coming decades. According to a recent survey by Penny Hoarder, two-thirds of today's app users started investing during the pandemic, and more than half plan to invest more money online this year than they did in 2021.

"A sale actually makes sense," Mason said, adding that the price tag could be as large as $2 billion. "The big banks are lowering fees and investment minimums, and Betterment would be an easy way to jump-start those operations."

In recent months, Bank of America-owned Merrill Edge, Citigroup Inc.

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Opinion

To honor Black adviser pioneers, keep growing their ranks

February being Black History Month, this is an appropriate time to acknowledge notable African American financial advisers of the past. Before the late 1960s, when hiring discrimination on Wall Street was an open secret, the fact there were any African Americans who succeeded in running the gauntlet is amazing. But there were several pioneers who made their mark in the years after World War II, as Gregory S. Bell notes in his book "In the Black: A History of African Americans on Wall Street."

In 1949, Thorvald McGregor and Lawrence Lewis became the nation's first African American registered representatives. Three years later, in Cleveland, Norman McGhee formed McGhee & Co., the first African American securities firm to be licensed by the National Association of Securities Dealers. In 1953, Lilla St. John of Wisconsin became the first African American woman to be licensed by the New York Stock Exchange, which at the time regulated the employees of its member firms.

Eleven years later, Bell writes, June Middleton became the only African American woman working as a stockbroker at an NYSE member firm, and in 1965, Harvey Thomas, Forrest Tomlinson and George King became the first African American brokers hired by Merrill Lynch — out of a salesforce of 2,550. Some years later, in 1978, LeCount Davis — who received the *InvestmentNews* inaugural Lifetime Achievement Award for Diversity and Inclusion in 2018 — became the first African American to become a certified financial planner.

GREATER INCLUSION

In many ways, the industry has traveled a great distance since the 1960s and 1970s in its commitment to fairer hiring and greater inclusion. The number of Black certified financial planners, for instance, is now 1,652 — up 13.8% over 2020. And this year, for the first time, the CFP Board is being led by Kamila Elliott, the first Black person to serve as the group's chair.

Firms also are working to attract more Black talent to the business. Morgan Stanley, along with about two dozen wealth and asset management firms including Goldman Sachs, Bank of New York Mellon, Pimco and Prudential, has formed the Equity Collective. The group focuses on increasing the pool of interested and qualified people who are considering a career in financial services. It's working with Boys & Girls Clubs of America with the aim of reaching teens, as well as joining Team IMPACT to reach college athletes and supporting the virtual recruiting platform HIVE Diversity through internships and entry-level placement opportunities.

MUCH REMAINS TO BE DONE TO BUILD ON THE PIONEERING EFFORTS OF THOSE EARLY BLACK ADVISERS.

WORK IN PROGRESS

But there's no getting around the fact that much remains to be done to build on the pioneering efforts of those early Black advisers. For starters, *IN* senior columnist Bruce Kelly noted in a column last year, the financial services industry needs hard numbers that reveal just where we are. As he succinctly put it, without data on the industry's composition, "there is no clear, standard picture showing whether [it] is succeeding in its much-ballyhooed effort to hire more women and minorities over the past five, 10 or 20 years."

The CFP Board, which is working diligently on diversity and inclusion efforts and makes its numbers available, reports that despite recent gains, those 1,652 Black CFPs make up just 1.8% of the nation's 92,055 certified financial planners.

Let's honor Thorvald McGregor, Lilla St. John and other Black pioneers by encouraging and supporting their contemporary counterparts.

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CRYPTO

CLIENTS ARE DEMANDING ACCESS TO DIGITAL ASSETS. BUT HOW — AND WHEN — WILL BROKERS BE ABLE TO SELL THEM?

BY BRUCE KELLY

CONFUSION

Financial advisers' clients are clamoring for crypto assets, while brokers and advisers are trying to figure out how this nascent asset class fits, if at all, into their investment and retirement portfolios.

That hurried, confused ardor for cryptocurrencies and digital assets is occurring even amid incredible drops in the market value of such assets: The price of Bitcoin, the granddaddy of digital currencies, fell nearly 20% in January from its November high of $67,582. Last Wednesday, Bitcoin was trading at $44,259.07.

Demand for digital assets has gotten so strong that even Hollywood is getting into the act — always a troubling sign for investment professionals, who abhor high-priced celebrity pitchmen who hype market highs rather than the cold, hard data of investment management.

Many financial advisers undoubtedly enjoy the oeuvre of Matt Damon — Jason Bourne is a clear favorite. But Damon's recent commercial for Crypto.com, an app for trading Bitcoin and digital currencies that uses the tagline "Fortune favours the brave," will create confusion for clients, who want to start trading and demand that their advisers start trading now!

Fortunately for clients and their financial advisers, despite the interest and demand, buying digital assets and currencies still isn't easy. But the wealth management industry, with roughly 300,000 retail-focused registered reps, or brokers, and investment advisers, is slowly turning its focus to crypto assets.

"Crypto is hard to ignore," Walt Bettinger, CEO of Charles Schwab Corp., said last month in an interview with Bloomberg. "It's fairly significant today. We have a lot of ways that clients today can invest in crypto. What we don't offer is direct trading. We would welcome the chance if the opportunity presents itself, from a regulatory standpoint."

Indeed, for the most part, broker-dealers are currently avoiding direct trading and custody of digital assets, leaving that to startups and specialty shops. Instead, they're opting to give advisers access to a limited number of digital and crypto-linked funds while waiting for the Securities and Exchange Commission to give the OK on exchange-traded funds that invest directly in digital currencies like Bitcoin.

Much of the brokerage industry's ability to sell the asset class depends on what securities regulators do in the next few months. (See sidebar on page 10.) The big question is, when will mutual funds and exchange-traded funds be able to buy and hold digital currencies like Bitcoin and Ethereum, the two largest coins in terms of market capitalization? Many in the industry are hoping that happens this year, giving financial advisers much easier access to the asset class.

But client demand is real and it's happening right now. That means the longer it takes the SEC and the Financial Industry Regulatory Authority Inc. to figure out the intricacies of the trading and custody of Bitcoin exchange-traded funds, the greater the potential confusion for investors and their financial advisers.

ACROSS THE SPECTRUM

Regardless, interest is real. In a survey of more than 600 financial advisers from across the spectrum of the financial advice industry, from financial planners to wirehouse advisers, 94% said they had received questions from clients about crypto in 2021, up from 81% the year before, according to a January survey from Bitwise Asset Management and ETF Trends.

The percentage of advisers allocating to crypto in client

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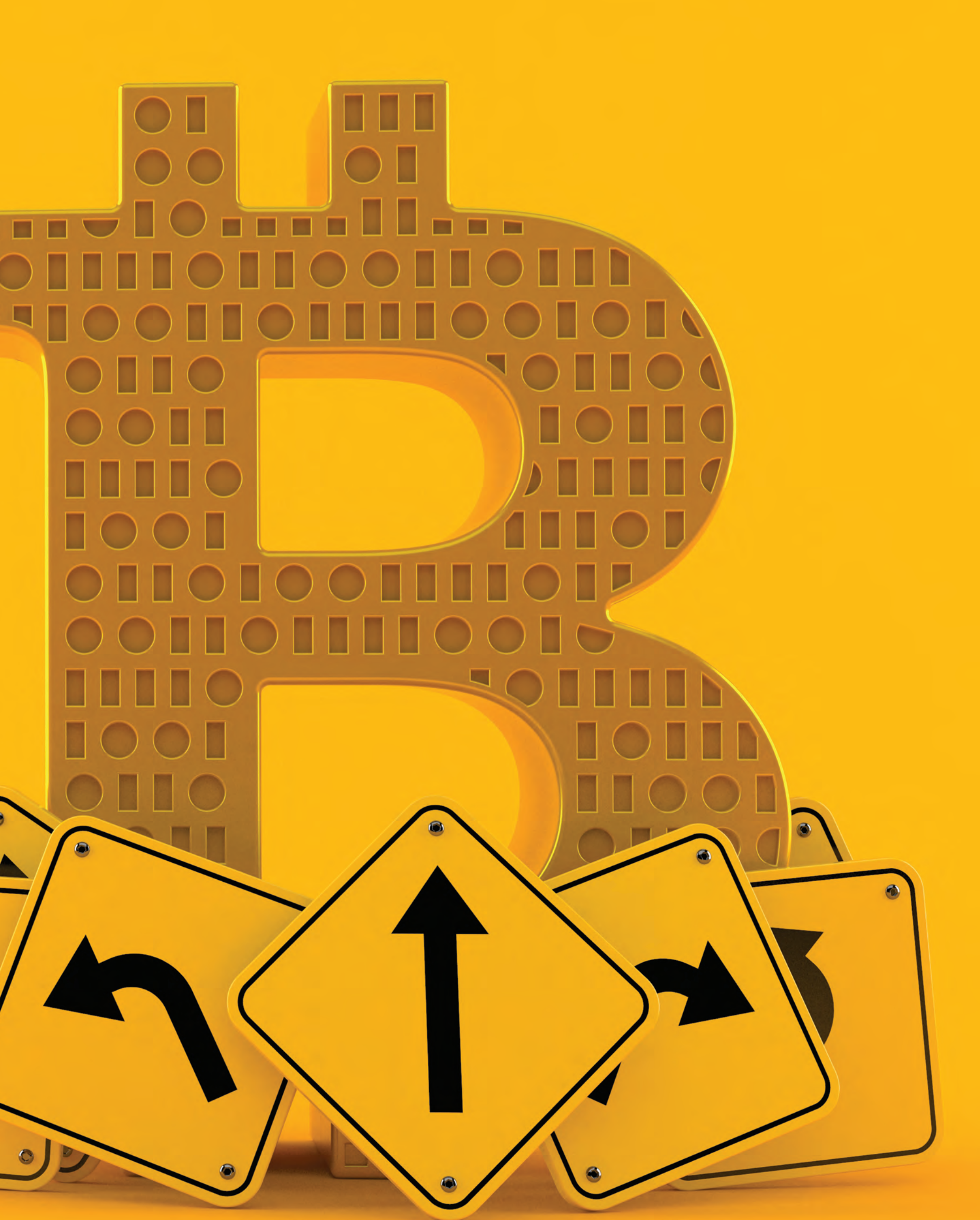

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accounts grew sharply, from 9% last year to 15% this year, according to the survey. An additional 14% of financial advisers said they will "probably" or "definitely" allocate in 2022.

It's getting easier for advisers to invest their clients in crypto assets or give them exposure to the asset class, although the issue of how much risk such an investment involves is still the key question for advisers.

"When Bitcoin was first created back in 2009, you had to have a wallet and it was really do-it-yourself," said Matthew Hougan, chief investment officer at Bitwise Asset Management, a cryptocurrency index fund manager with $1.7 billion in assets. "That process has become more institutionalized and regulated. For example, we custody one fund with Fidelity Digital Assets."

"FINANCIAL ADVISERS ARE THE NEXT MAJOR AUDIENCE TO MOVE INTO THE CRYPTO MARKET."

MATTHEW HOUGAN, CIO, BITWISE ASSET MANAGEMENT

"Financial advisers are the next major audience to move into the crypto market," he said. "But despite improvements, it's still not push-button easy to get diversified exposure to crypto-assets."

Hougan added that Bitwise Asset Management has 20 wholesalers knocking each day on the doors of RIAs and broker-dealers, a sizable commitment in staff to sell a product.

According to a report this month by the Wells Fargo Investment Institute, there are currently three ways for investors and financial advisers to gain exposure to cryptocurrencies.

First is buying directly from an exchange, which means dealing with complex technology and high speculative investment risk, according to the report.

Next come mutual funds, ETFs and grantor trusts: Mutual funds and ETFs are currently backed by futures and not the digital assets themselves, while the trusts are dogged by high fees and volatile asset values, according to Wells Fargo.

Wells Fargo advises against those first two methods. Until mutual funds and ETFs are backed by digital assets themselves, a development awaiting the approval of securities regulators, Wells Fargo prefers providing exposure to cryptocurrencies via professional management through a private placement, according to the report.

A key takeaway of the Wells Fargo report is that the embrace of cryptocurrencies is inevitable; indeed, they look to be nearing "a hyper-adoption phase, similar to that of the Internet during the mid-to-late 1990s," according to the report.

In conversations with numerous industry executives over the past few months, that notion that cryptocurrencies' path resembles that of the worldwide web 25 years ago, is currently part of the prevailing thinking on the asset class.

A VARIED APPROACH

Meanwhile, the financial advice industry's largest firms are taking a varied approach to digital assets and cryptocurrencies. The big firms are worth watching closely when a new group of investment products is introduced because their smaller competitors often follow.

But a wide range of responses from advisers and their firms is an indication of how far the market has to go to develop.

About a year ago, Morgan Stanley started offering wealthy clients access to three funds that enable ownership of Bitcoin. Only wealthy clients with an aggressive risk tolerance — and at least $2 million held by the firm — will have access to the funds, two of which are managed by Galaxy Digital and the third by FS Investments and NYDIG.

UBS, on the other hand, is bearish on the asset class and has an extremely limited offering of crypto-related funds, said an industry source, who asked not to be named. Merrill Lynch declined to answer questions about whether the Thundering Herd was able to sell crypto-related products.

LPL Financial currently has about half-a-dozen crypto-related funds, including the Grayscale Bitcoin Trust, on its platform for its brokers and financial advisers, the overwhelming majority of whom are independent contractors and not employees, like those working at the wirehouses.

"We have crypto training and concentration limits, the kind of risk structure you would have with traditional complex products," said Rob Pettman, executive vice president of wealth management solutions at LPL. "But there is not an additional demand for advisers to get access to crypto assets right now."

"Some of the sales of securities — about one-third — is from advisers to themselves," Pettman said. "They want to learn about it. A lot of folks are just curious about how these things operate."

Broker-dealer interest in digital assets is clearly picking up. Because of custody, technology and reporting, trading such assets clearly remains a distant goal, but applications to Finra from broker-dealers to work in the crypto industry have soared of late, said Mitch Avnet, CEO of Compliance Risk Experts, a consulting firm.

MORE THAN A DOZEN

A couple of years ago, his firm was working with two or three broker-dealers on applications to work as a placement agent of crypto funds, sales and training, and other aspects of the business, Avnet said. Now his firm is working with more than a dozen broker-dealers on such applications.

And Finra is taking its sweet time to approve those broker-dealers as it waits for the SEC, along with the rest of the brokerage industry.

"Anytime you have an unregulated part of the industry that's new and evolving, it's an opportunity to attract people who are questionable in background," Avnet said. "And Finra want to make sure that broker-dealers have robust processes to vet them before transactions."

As the crypto market takes shape for financial advisers, RIAs initially have an advantage over broker-dealers, Avnet added. RIAs are regulated by the SEC and depend on disclosure rather than receiving regulatory approval in such matters, he said.

An example of RIAs taking the lead in crypto came in December, Avnet and others said, when Ritholtz Wealth Management and WisdomTree said they were collaborating to offer access to a diversified cryptocurrency index in the form of a separately managed account on the Onramp Invest platform.

"I don't think anyone is rushing to [cryptocurrency], but it is divided between RIAs and everyone else, broker-dealers, wirehouses, hybrid firms," said Tyrone Ross, CEO and co-founder of Onramp Invest. "RIAs like Ritholtz have the most latitude. The SEC has given [RIAs] guidance on Bitcoin, custody, billing policies and procedures. So, it's starting to bubble in that segment of the industry."

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SEC unlikely to approve Bitcoin ETF

The Securities and Exchange Commission is seeking public input on whether to approve an exchange-traded fund based on the spot price of the digital token Bitcoin, but the comments aren't likely to persuade the regulator to approve the product.

On Feb. 4, the SEC released a request for comment regarding Grayscale Investments' application to list and trade shares of its Grayscale Bitcoin Trust. The value of the ETF shares would reflect the value of Bitcoins held by the trust. On Feb. 1, the agency had released a similar request for comment on a proposal for Bitcoin exchange-traded product from Bitwise.

The SEC is seeking written public feedback on whether the Bitcoin ETF would be susceptible to manipulation and on the liquidity and transparency of the Bitcoin markets, among other questions. The deadline will be 21 days from the publication of the comment request in the Federal Register.

But the agency's outreach doesn't make it any more likely a Bitcoin ETF will be approved, said Timothy Massad, former chairman of the Commodity Futures Trading Commission.

SEC Chairman Gary Gensler "has been very skeptical about what I will call cash ETFs," said Massad, a research fellow at the Harvard Kennedy School of Government. "They may just want to see what people say and get some input. I suspect he's thinking more about how to assert the SEC's jurisdiction over these cash exchanges."

Jaret Seiberg, managing director at Cowen Washington Research Group, said that although the SEC could have simply rejected the Grayscale application, issuing a request for comment doesn't mean it's leaning in the other direction.

"Instead, we see the SEC as using comments to protect itself in case Grayscale challenges a rejection in court," Seiberg wrote in an analysis.

The questions the SEC outlines in the comment request indicate the agency continues to have misgivings about a Bitcoin ETF, said Richard Kerr, partner at the law firm K&L Gates.

"They're trying to make an assessment of whether this specific product would be subject to manipulation in the market," Kerr said.

The SEC has rejected several Bitcoin ETF proposals because of concerns about potential investor harm tied to a crypto market that it doesn't regulate. The agency has approved funds based on Bitcoin futures contracts, which is a market overseen by the Commodity Futures Trading Commission.

— Mark Schoeff Jr.

Rethinking the 60/40 Portfolio

The simplicity and time-tested effectiveness of the 60% equity/40% fixed-income portfolio allocation mix have been key reasons for its endurance. But times change. With market conditions in the foreseeable future unlikely to produce results that made the mix so successful in the past, this may be the right time to consider a modified approach to portfolio allocation. To look at new ways to reach clients' investment goals, InvestmentNews Create recently sat down with Nic Millikan, Managing Director and Head of Investment Strategy at CAIS, the alternative investments platform. The discussion, edited for length and clarity, follows.

NIC MILLIKAN, CFA, CAIA
Managing Director
and Head of Investment
Strategy
CAIS

InvestmentNews Create: Before we discuss why revisiting the traditional 60/40 asset allocation mix may make sense, explain why it has proven popular and useful for so long.

NIC MILLIKAN: The short answer is that, for much of the population it has worked. From March 2009 through the start of the recent stock market volatility, a 60/40 portfolio has returned 11.1% a year, on average, with a standard deviation of 8.4% and a Sharpe ratio of 1.27%. That can be really attractive on a risk adjusted basis, so it's no wonder that the performance and relative simplicity of the 60/40 portfolio has helped endear it to investors. But the recent past has offered an almost perfect set of conditions in that equities were rising at the same time that bond prices were rising. So investors not only benefitted from bonds providing a safety cushion, they also provided a boost to performance. But interest rates now have gone as low as they can hypothetically go and equities appear to be fully priced, so the party that has lasted for 13 years has likely ended. Unfortunately, many investors may not realize that.

InvestmentNews Create: How should investors and their advisors adjust their thinking?

NIC MILLIKAN: First, it's important to recognize that changing one's approach isn't easy, especially since equities loom so large on the minds of investors. They see news and commentary about stocks on TV and talk about stocks with friends. And since we've been in a strong bull market, despite dips, for 13 years, many investors have greater confidence in their own stock-picking ability; others have concluded that professional active management provides little added value. As for bonds, the inverse relationship of yield and price may confuse investors.

Despite the challenge of investors' current mindset, it's important to note that banks and asset managers have lowered their assumptions about future equity returns and foresee slightly higher interest rates as well. That translates into an investment environment that is likely to be different in coming years, meaning this is a good time to reassess the 60/40 portfolio and look into the use of alternative investments, whose performance is not typically dependent on the direction of markets.

InvestmentNews Create: Why should an advisor consider adjusting an asset allocation strategy to include alternative investments?

NIC MILLIKAN: Alternatives provide an opportunity to look at a wider opportunity set. The investments that come under the alternatives umbrella have varied characteristics and are actively managed, which may help overcome headwinds. What's more, some alternative strategies and vehicles — like long-short investing or venture capital, for example — don't need equity markets to go higher in order to be successful. They can often zig when the market zags.

InvestmentNews Create: What are some of the key considerations when investing in alternatives?

NIC MILLIKAN: The biggest issue is suitability; do alternatives fit an investor's profile? The degree to which an investor is willing to forego some liquidity for the potential of higher returns is likely to be a consideration since some alternative investments, such as private equity, have holding periods that may be eight to ten years in length, while others, such as hedge funds, may require only a one- to two-year commitment. In addition, performance dispersion among alternative asset managers is generally several times greater than among managers of traditional mutual funds for example. Manager selection, therefore, can be very important, and since there tends to be some persistence of return among alternatives managers, due diligence to identify the skills that persist is very important.

InvestmentNews Create: How should advisors frame the conversation about alternative investments with their clients?

NIC MILLIKAN: I would start by saying that allocations that worked in past may not work in the future, and ultimately may turn out to have been riskier than adjusting a portfolio to contain assets where performance is not correlated to the movement of markets. Fortunately, because of technological developments, there are now new tools that advisors can use to access a wide range of alternative asset classes and strategies. What's more, these alternative choices have become democratized in recent years as a result of innovation and are more accessible to a wider range of investors than ever before.

InvestmentNews Create: How can advisors find the tools they need to support their clients in exploring an alternatives strategy?

NIC MILLIKAN: Advisors need an easy-to-access resource. At CAIS, we specialize in providing advisors with the resources, tools and education they can use to help their clients maximize the value of alternative investing. Knowing what to say and how to say it, advisors can have the confidence they need to prepare their clients for the different market environment that lies ahead. ■

To find out more visit caisgroup.com

Why Envestnet is enticing advisers to dive into its massive data lake

BY SEAN ALLOCCA

Envestnet Inc., arguably the largest collector of financial information in the country, is betting its vast pool of big data can reshape how advisers serve their future clients.

The largest turnkey asset management platform doubled down on its vision to aggregate the 2 petabytes of consumer spending data it collects — roughly equivalent to 1 trillion pages of printed text or 40 million filing cabinets — to help recommend financial planning products to clients.

Its predictive analytics technology is already scanning and analyzing documents like client tax returns and insurance policies, and through its acquisition of Yodlee Inc. in 2015, Envestnet has assembled financial data from potentially millions of consumers from everyday purchases to paycheck deposits.

Called a data lake, this information ranges from what consumers are spending money on, what they're earning, and how that incorporates into a client's larger financial goals, according to Farouk Ferchichi, global group head of data at Envestnet.

"The seismic shifts taking place in the financial services industry are being driven by financial data and consumers' rights to their financial data," Ferchichi said.

The Chicago-based TAMP may have more data, in fact, than any other financial services firm in the wealth management industry. The data not only helped the company launch new features and products aimed at assisting financial advisers but also attracted the attention of lawmakers in 2020, who expressed concerns that the sale of such information could be infringing on consumers' right to privacy.

"Building financial health is contingent upon having access to your financial data," Ferchichi said. "We are a strong advocate for consumers having the right to choose how to manage their data."

BIG-NAME PARTNERS

Some of the most recognizable names in financial services have already inked data-sharing deals. Recent partnerships with Citigroup Inc., JPMorgan Chase & Co. and Charles Schwab & Co. have further expanded Envestnet's reach into the consumer banking and financial data sectors.

The firm now partners with 16 banks and institutions in North America alone, effectively connecting and sending financial information to the more than 1,400 third-party applications available through Envestnet Yodlee. The TAMP already provides services to more than 100,000 advisers, including over 500 registered investment advisers.

"ENVESTNET IS SITTING ON A GOLD MINE OF DATA."

ALOIS PIRKER, DIRECTOR OF WEALTH MANAGEMENT, AITE-NOVARICA

"Envestnet is sitting on a gold mine of data from financial planning to investment management, which is a huge opportunity to generate insights that no one else in the industry has," said Alois Pirker, director of wealth management at Aite-Novarica. "That's the new game in town."

Yodlee is so precise, for example, it can access the exact water bills of 25,000 citizens in San Francisco down to the day, or how much Americans spent at McDonald's last week, Yodlee's former chief product officer Peter Hazlehurst told the Wall Street Journal around the time of the 2015 acquisition.

While Yodlee's primary business is selling online personal finance tools to banks and other financial institutions, it also sells the data it collects from those apps to third-party data aggregators. Hedge funds and research firms eventually buy the information, according to the 2020 letter from lawmakers.

Investment firms have even used Yodlee's data to make investments in competing companies, like specific theme parks owned by SeaWorld Entertainment Inc., for example, honing in on transactions including tickets sales, merchandise, food purchases and parking sales, according to the reporting.

"It's all about data," Pirker said. "It used to be all about the quality of the adviser on staff to help serve clients, but it's becoming more and more about the quality of the data. It's a major change."

A January partnership with the wealth management fintech FP Alpha made that process even easier. The software reviews documents like tax returns, trusts and insurance policies, and takes only a few minutes to create a report across 16 different areas of an investor's financial plan, including tax returns, wills and insurance policies.

The platform's artificial intelligence does the rest, scanning and analyzing that data to provide the best recommendations for clients.

"Advisers can then include these insights within a client's comprehensive financial plan, allowing the adviser to illustrate the impact of the recommendations on the client's overall objectives and financial picture," said Rose Palazzo, group head of Envestnet MoneyGuide.

Those data sets can also be used to see how advisers stack up with their peers, benchmarking data about the overall health of their advisory businesses, including risk ratings, advisory fees and account performance, Ferchichi said.

RED FLAGS

While the technology is opening up new insights for advisers, it's also raising red flags. One of Envestnet's more notable data-sharing deals was with Wells Fargo & Co. in 2020 amid an inquiry by the Federal Trade Commission. Three members of Congress asked the regulator to investigate Envestnet Yodlee to determine if the way the data aggregation firm sells consumers' personal financial data was breaking the law.

"Consumers generally have no idea of the risks to their privacy that Envestnet is imposing on them," the lawmakers wrote in a 2020 letter to the FTC. "That is not sufficient protection for users."

A proposed class-action lawsuit against Envestnet alleges one consumer synced her PNC Bank account to PayPal Holdings Inc. using a Yodlee-powered portal, but at no time was it disclosed that her account would be continuously assessed by Envestnet to extract and sell data, according to the complaint.

Envestnet has been proactive in the push to develop industrywide data-sharing legislation. The company is a founding member of Consumer Financial Data Rights, an industry group formed to advocate for consumer protections and open access to financial data. Other members include Betterment, Digit, Personal Capital, Ripple and Varo Money.

"Partnerships between data aggregators like Envestnet Yodlee and regulators and financial institutions around the world are critical to accelerating financial data access," Ferchichi said.

The leading TAMP by assets, managing more than $1.2 trillion, said it employs proprietary and third-party technical controls — such as encryption — to protect data on its systems. Importantly, the data is anonymized so that no personal identifying information is ever sold or made public to third parties, according to the firm.

'UNCHARTED TERRITORY'

"It's uncharted territory," Pirker said. "It's such a complex question, I won't be surprised if we're still talking about it 10 years from now."

While the data privacy debate continues, wealth management firms will have to do more to fully unlock the potential that big data can have on client relationships. As a tech provider, Envestnet is forging a necessary new path forward for wealth management, Pirker said.

The digitization of the industry will require more sophisticated uses of big data to give clients access to real-time services that are appealing and relevant, he said.

"When do you stop the wheels is one question," Pirker said. "But if you ask, is this benefitting clients? No question."

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DATA LAKE EFFECT

TWO PETABYTES OF CONSUMER SPENDING DATA IS ROUGHLY EQUIVALENT TO 1 TRILLION PAGES OF PRINTED TEXT OR 40 MILLION FILING CABINETS.

Adviser's faith-based ESG niche attracts true believers

NICHE ADVISER

ROBERT NETZLY
President, founder

NICHE FIRM
Inspire Investing,
Boise, Idaho

NICHE
Faith-based ESG investing

PRO TIP
"Be authentic with the convictions you have as a person, and run your business that way. Be very clear and bold as you share that with clients. Your passion will come through to those clients, there are plenty of other people who see the world as you do and you will attract those people, particularly when it comes to religious beliefs."

BY JEFF BENJAMIN

Despite all the obvious characteristics of a niche advisory practice, Robert Netzly insists his focus on Christian values and faith-based ESG investing has always been less about appealing to a certain market than it is about staying true to his own beliefs.

"This is not the result of some business strategy; it's a lifestyle," said Netzly, president and founder of Inspire Investing, a Boise, Idaho-based registered investment adviser that has seen its assets double to nearly $2 billion over the past year.

Whether Netzly designed it to be so or not, his business is a classic example of how a niche can develop and prosper by following a playbook of homing in on a specific passion and never wavering. While business is going well these days for the RIA managing eight ETFs and employing two dozen financial advisers, Netzly still recalls leaving Wells Fargo Advisors in 2011 not sure if he would be able to attract a single client to his faith-based focus.

"This happened way faster than I ever thought it would," he said. "When I decided to leave Wells Fargo, my plan was to be the local adviser guy and if I really got successful maybe hire an assistant someday."

Netzly, 41, was in his third year at Wells Fargo when he stumbled upon the concept of Biblically focused investing, which became a kind of life-altering event for the devout Christian.

"It had never crossed my mind," he recalls. "I was the president of a local pro-life pregnancy center, and I was making money off companies that were profiting from abortions, and so were my clients. I couldn't imagine standing before the Lord someday and having to justify that."

As it quickly sunk in, Netzly said, "Two weeks later, I'm dead in the water at Wells, because I can't even do my job with a clean conscience."

$317M
ASSETS IN THE FLAGSHIP INSPIRE 100 ETF (BIBL)

"With two babies and a mortgage, I was this close to getting out of the business and going to the seminary," he said.

Instead, he moved to Next Financial Group and "started over from scratch."

"It was just me and a laptop and I started sharing the story with people," he said. "And people had the same reaction. Their eyes got big. God just blessed us. Business was booming and I had to bring on another adviser."

NEXT LEVEL

The next level came in 2015, when Netzly broke off from Next Financial to launch Inspire Investing, which led to separately managed accounts and a customized impact score for investments and paved the way for a suite of ETFs.

"We were wealth managers, and we still are, but we didn't have tools of the trade, so we needed to create those," he said. "And we could only do that if we had our own RIA."

Netzly sums up the faith-based portfolio construction process as "finding the most biblically aware, positive companies, then we create low-cost indexes with the highest-scoring companies."

The flagship Inspire 100 ETF (BIBL), for example, is an index carved out of the S&P 500 that has kept pace with the popular benchmark despite not owning any of the technology stocks that dominate the S&P's performance.

Over the last three years, the $317 million BIBL produced returns of 27.7%, 22.6%, and 29.7%. That compares to 28.7%, 18.2%, and 31.2% for the S&P over the same periods.

While ESG and faith-based investing are sometimes viewed as opposite ends of the politically inspired investing spectrum, Netzly said there are only a few areas where he separates from traditional ESG screens.

"ESG is a super broad generic term," he said. "Most ESG fund managers are from Manhattan or Boston, and they tend to apply progressive world views. With a faith-based perspective, most of the issues are very similar with the exceptions of some social issues, and abortion."

DIVERSE CLIENT BASE

While some might interpret Netzly's business model as controversial and exclusive, he has attracted a diverse client base, 30% of which is non-Christian. And despite his personal views against gay marriage, Netzly said some of his clients are gay.

Financial advisers working at Inspire are asked to sign off on a statement of Christian beliefs and conduct, "as well as a statement on how we operate biblically responsible investing with our screens," Netzly said.

"But as far as clients walking through the door, it doesn't matter because we're happy to serve everyone," he added. "Wall Street has forgotten that there are millions of investors in this country who do believe the Bible, and if given the opportunity want their money managed that way. We encourage our companies to provide a safe, diverse, tolerant workplace, but we screen out companies that choose to take a social activist approach and take sides in a social debate. That's not always a popular stance."

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InvestmentNews
2022 Events

RIA LABS

RIA Labs
Tech Integration | Feb 23 | Virtual
Fee-based Everything | May 19 | Virtual
M&A + Succession Planning | Sept 15 | Virtual

women adviser summit

Women Adviser Summit
March 23 | Virtual
May 4 | Westin River North, Chicago
July 11 | Hyatt Grand, Denver
Nov 16 | Tribeca 360°, New York

RETIREMENT INCOME SUMMIT

Retirement Income Summit
May 2-3 | Westin River North, Chicago

RIA SUMMIT

RIA Summit
Nov 2-3 | Marriott Long Wharf, Boston

ESG SUMMIT
ESG FILM FESTIVAL

ESG Summit & Film Festival
December | New York City, NY

AWARDS

EXCELLENCE IN diversity, equity & INCLUSION AWARDS

Excellence in Diversity, Equity & Inclusion
May 11 | Pier 60, New York

40 UNDER 40
THE FUTURE OF OUR BUSINESS

40 Under 40
June 17
Convene, New York

WOMEN to WATCH

Women to Watch
November 15
Tribeca 360°, New York

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Analysis&Commentary

Pursuing what matters most when you go independent

For Anthony David, taking his business independent was also deeply personal.

The father of three, a first-generation Filipino American, was approaching 20 years at Morgan Stanley when his second son arrived 14 weeks prematurely in 2019. For the next four months, David continued to serve his clients, much of the time from his son's bedside in the neonatal intensive care unit.

NUMBERSGAME
DEVIN McGINLEY

As an adviser who works closely with small business clients, ownership had always appealed to David, but the experience of balancing business with family through a difficult time hardened his resolve to strike out on his own. The pandemic later provided the final nudge and in August 2021, he launched Washington, D.C.-based Adalan Private Wealth with Raymond James.

"There's not a lot of entrepreneurs with faces like mine," David said. "I said to myself, 'I would be doing my family and, quite frankly, minorities as a whole a tremendous disservice if I didn't do something that I truly believed I could accomplish, and if all that was holding me back was fear.' I wanted my children to know that it's OK not to settle."

FINAL PUSH

David is just one of hundreds of advisers for whom the pandemic provided a final push to go independent. Advisers leaving wirehouses for independent broker-dealers and RIAs is nothing new, and wirehouses by now have largely withdrawn from the recruiting wars in favor of raising their own through the ranks. But the

RECRUITING NET GAINS

	ADVISERS GAINED
LPL FINANCIAL	1,004
FIDELITY BROKERAGE SERVICES	613
AMERIPRISE FINANCIAL SERVICES	154
RAYMOND JAMES FINANCIAL SERVICES	151
RAYMOND JAMES & ASSOCIATES	139
MORGAN STANLEY	113
CHARLES SCHWAB	107
CAMBRIDGE INVESTMENT RESEARCH	105
FISHER INVESTMENTS	94
ROCKEFELLER FINANCIAL	85

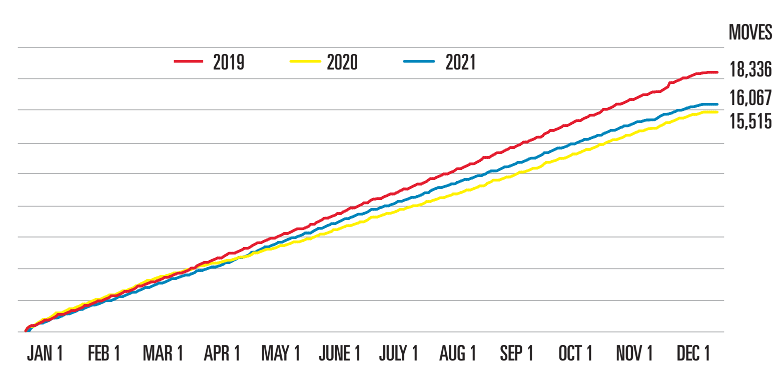
RECRUITING NET LOSSES

	ADVISERS LOST
MERRILL LYNCH PIERCE FENNER & SMITH	1,070
WELLS FARGO CLEARING SERVICES	999
EDWARD JONES	387
EQUITABLE ADVISORS	237
TD AMERITRADE	223
MML INVESTORS SERVICES	167
AVANTAX INVESTMENT SERVICES	167
TIAA-CREF INDIVIDUAL & INSTITUTIONAL SERVICES	143
UBS FINANCIAL SERVICES	109
BBVA SECURITIES	109

RECRUITING NET GAINS

	ADVISERS GAINED
RIA	1,530
INDEPENDENT BROKER-DEALER	1,225
DISCOUNTER	482
REGIONAL BROKER-DEALER	163
INSTITUTIONAL	66
BANK	-479
INSURANCE BROKER-DEALER	-922
WIREHOUSE	-2,065

CUMULATIVE MOVES BY YEAR



DISCLAIMER AND METHODOLOGY: The InvestmentNews Advisers on the Move database is designed to capture all recruiting activity of retail financial advisers/teams of advisers as they move from one firm to another. The activity recorded within the database comes from a number of sources, including *InvestmentNews* and other media reports, press releases, direct submissions that have been reviewed by *InvestmentNews*, and regulatory filings. To qualify as a move, no more than 60 days can have elapsed between the date an adviser/team leaves one firm and the date they join another. Any adviser registration changes that came as a result of merger and acquisition activity are not recorded as moves in the database.

trend seems to have intensified a year after most employee-advisers were suddenly left without the resources or supervision of daily office life.

“Advisers, without their manager looking over their shoulder, are able to spend as much time as they need to, both in the due diligence process and working on the transition,” said Nate Lenz, co-founder of breakaway partner Concurrent Advisors, which worked with David and 27 other advisers in 2021. “We saw enhanced results in recruiting and no slowdown whatsoever in folks becoming independent.”

The data for the industry say much the same.

Overall, recruiting activity slumped significantly in the spring of 2020 alongside the closure of offices and cancellation of in-person networking events. Although it partly rebounded in 2021, moves of advisers between firms during the year remained 12.4% below their pre-pandemic level, based on transitions tracked by the *InvestmentNews Advisers on the Move* database.

Yet even amid the broad slowdown in networking and recruitment, more advisers went independent than before.

NEWS ON MOVES
FOR ALL ADVISER MOVES AND RECRUITING ACTIVITY, GO TO INVESTMENTNEWS.COM/AOTM.

According to a review of the database, moves to independent channels remained steadier during the worst of the pandemic and were up 2.6% in 2021 compared with 2019. In total, 2,065 advisers on net left wirehouses in 2021, while 1,225 joined independent broker-dealers and 1,530 went to RIAs.

THE ALLURE

The allure of independence is partly financial, letting an adviser retain a higher share of the revenue they generate, even if they must also cover new expenses. But independence also represents more flexibility in how advisers build their practice, serve their clients and manage their staff.

“I think you have to have a certain level of entrepreneurial drive to build a book of business in the wealth management space,” Lenz said. “Their motivations have always been the same, but you’ve introduced additional roadblocks in their ability to do business and new options that are out there that make that leap a little shorter.”

By new options, Lenz refers to Concurrent and others — breakaway services as well as broker-dealer offices of supervisory jurisdiction and RIA aggregators — that have stepped in to soften the landing for advisers transitioning to independence. The business models vary, but all offer a combination of compliance, marketing and technology support to startup independent firms and let their founders focus on the strategic direction of the new business.

“WE SAW … NO SLOWDOWN WHATSOEVER IN FOLKS BECOMING INDEPENDENT.”

NATE LENZ, CO-FOUNDER, CONCURRENT ADVISORS

The momentum appears to be behind them for the year ahead, too. Concurrent has commitments through July representing $30 million in revenue, compared with $24 million in all of 2021, Lenz said.

Wall Street has taken notice of the trend. Dynasty Financial Partners, an early proponent of the breakaway partner model, filed for an IPO in January. The company declined an interview request, but reported 47% year-over-year growth in fee-based revenue through September, according to documents filed with the Securities and Exchange Commission. It’s seeking to raise $100 million.

There’s big money on the table, but that’s not the only thing on the minds of advisers who take the plunge.

“In the environment we’re in, in the pandemic, and as we all as individuals go through tragedies or difficult situations, it’s really nice to know that I get to make the decision as far as what’s the best for my clients, best for my staff, best for my family,” said David of Adalan Private Wealth. “It’s nice having that level of control.”

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MEDICARE

Reassessing the 2022 Medicare premium hike

MARY BETH FRANKLIN

ONRETIREMENT

As many retirees struggle to pay higher monthly Medicare premiums, several leading advocacy groups are urging the federal government to lower those premiums now that use of a new Alzheimer's drug — the primary driver of the record hike in the 2022 premium — is under review.

Back in October, many retirees cheered the announcement that Social Security benefits would increase by 5.9% in 2022, marking the largest cost-of-living adjustment in 40 years. But their enthusiasm was soon tempered by the November announcement that Medicare Part B premiums, which are usually deducted directly from monthly Social Security benefits, would jump 15% to $170.10 per month in 2022. The $21.60 monthly hike was the largest dollar increase in the basic Part B premium since the health insurance program began in 1966.

KEY POINTS

- Many retirees struggle with higher Medicare premiums.
- Advocates seek lower Part B premiums now that a new Alzheimer's drug is half the price.

IRMAA SURCHARGES

Higher-income retirees are subject to additional monthly surcharges, officially known as income-related monthly adjustment amounts or IRMAA, when an individual's total income exceeds $91,000 or a married couple's joint income tops $182,000. IRMAA surcharges range from an extra $68 per month to an extra $578.30 per month per person on top of the standard Part B premium, depending on income.

At the time of the 2022 premium announcement, the Centers for Medicare & Medicaid Services attributed about half of the large monthly increase in Part B costs to "additional contingency reserves due to the uncertainty regarding the potential use of the Alzheimer's drug Aduhelm by people with Medicare." Medicare Part B covers doctors' fees and outpatient services, including drugs, such as Aduhelm, that are administered intravenously in an outpatient setting.

The FDA's approval of the drug last year was controversial; while Aduhelm has been shown to lower levels of a brain protein linked to Alzheimer's, so far it has not been shown to slow cognitive decline. There was also controversy about the price: Initially, the drug's manufacturer, Biogen, had estimated that Aduhelm would cost $56,000 per year per patient. After considerable pushback over the exorbitant price tag, Biogen said it would cut the drug's cost in half, to $28,200 a year, effective Jan. 1.

In an unprecedented move, earlier this month Department of Health and Human Services Secretary Xavier Becerra ordered CMS to reassess the Part B premium increase, which had already taken effect, in light of the Aduhelm price drop.

"Today, I'm instructing the Centers for Medicare and Medicaid Services to reassess the recommendation for the 2022 Medicare Part B premium given the dramatic price change of the Alzheimer's drug Aduhelm," Becerra said in a one-paragraph statement issued Jan. 10. "With the 50% price drop of Aduhelm on January 1, there is a compelling basis for CMS to reexamine the previous recommendation."

The next day, CMS issued a proposal to cover Aduhelm only on a limited basis, for people enrolled in clinical trials, significantly reducing the number of people who may use the drug, and therefore shrinking projected program costs. CMS is expected to make a financial decision in April on rules about who is eligible to use the controversial drug.

But there's no announced deadline for reconsidering the Medicare Part B premium or how any potential refund of premiums might be distributed, through either a reduction in future premiums or a lump-sum rebate.

"CMS is reassessing the recommendation for the 2022 Medicare Part B premium and the effect that the price drop of Aduhelm may have on its amount," a CMS spokesperson said via email on Jan. 26. "We will announce further information when it is available.

ADVOCACY GROUPS APPLAUD

Advocacy groups applauded Becerra's announcement about possibly reducing the Part B premium increases that took effect on Jan. 1 and are already being deducted from monthly Social Security checks.

In a Jan. 25 letter to Becerra, AARP called the historically high increase in the Medicare Part B monthly premium "unsupportable" and said it should be lowered given the dramatic cut in the price of Aduhelm.

"We strongly urge CMS to reassess the 2022 premium calculation and provide immediate relief to seniors who are paying higher premiums," AARP executive Nancy LeaMond wrote.

A few weeks earlier, the Medicare Rights Center issued a statement supporting a revised Part B premium based on the price reduction or coverage decision.

"But doing so would not solve the underlying problem of high and rising drug prices," the nonprofit Medicare Rights Center wrote.

"Without more systemic reforms, future drugs could have similar impacts on Medicare costs and affordability," the advocacy group stated. "Accordingly, we urge policymakers to pursue meaningful solutions, including those in the latest version of the budget reconciliation bill that would allow Medicare to negotiate drug prices, limit annual price hikes and out-of-pocket costs, and realign financial incentives."

(Questions about new Social Security rules? Find the answers in Mary Beth Franklin's 2022 ebook at MaximizingSocialSecurityBenefits.com)

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RETIREMENT

Quitting work is great, but don't stop saving

EMILE HALLEZ

ONPLANNING

If anyone thought the Great Resignation was a blip — one that would be followed by a return to jobs en masse — recent figures on quit rates will surprise them.

Or more likely, they will be tired of hearing about it at this point.

But more importantly, it's workers who are tired. Many are fed up with trading their limited hours of life for inadequate pay and working without a sense of fulfillment amid the pandemic's myriad stressors.

Three percent of the workforce walked away from their jobs in November, according to the most recent figures from the U.S. Bureau of Labor Statistics. That was 4.5 million people, 370,000 more than ever, surpassing records set just months before.

Industries with the highest increases in workers quitting were accommodation and food services; health care and social assistance; and transportation, warehousing, and utilities.

To anyone who's part of the Great Resignation and has sought more meaning in your 9-to-5 life: I applaud you. The same goes for those who left for employers that show them more appreciation, such as through fairer pay, higher benefits and better working conditions.

Even the financial advice business has seen some employees trickle out of firms to set up shop for themselves.

A SMALL FEAR

But there are risks in stepping out of a regular job, not least of which is the loss of health insurance and an employer-sponsored retirement plan. A small fear that I've had while watching the Great Resignation unfold is that saving for retirement will take a hit.

Among those who left work and have yet to return, or find a way to make income, some have likely been tempted to dip into their 401(k)s, assuming they have an account.

That isn't as much of a dilemma for affluent workers who have built up assets. In their next iteration of working life, many will certainly prioritize saving, whether that's within a solo 401(k), an individual retirement account or another option.

But it could be a real problem for lower- and middle-income earners who are striking out on their own or entering the so-called gig economy — a supply of high-turnover labor for which tech-based companies do not have to provide benefits but instead offer the illusion of the freedom to work on one's own terms.

And the urge to leave jobs appears to be particularly strong within the public sector, an understandable but concerning trend, given the likelihood that those workers have pensions in their current roles.

Fifty-two percent of 1,100 state and local workers surveyed recently said they're considering leaving their jobs due to circumstances related to the pandemic. Of those thinking about quitting, 36% would do so to find better jobs, while 33% would retire and 28% would leave the workforce indefinitely, according to the report published by the MissionSquare Research Institute.

In all of those instances, burnout and stress were leading factors. It's also a compounding problem, as 60% of respondents said their organizations are seeing people voluntarily leave jobs more often, and 80% of people said that the trend has put a strain on their workload.

And about a third of people who work remotely said they would rather quit than return to traditional in-person office work, according to a survey from Allspring Global Investments. That alone should give employers much to think about.

REASONS TO BE OPTIMISTIC

But there are reasons to be optimistic about how this unique time in work life will affect saving for retirement.

Amid a shortage of workers, more businesses are planning to increase their contributions to retirement accounts. Data from Callan show that 16% of employers are planning to do so this year, up from 12% last year. Big companies like KPMG and Meta, the Facebook parent, are reportedly doing that.

3%
PORTION OF WORKFORCE THAT QUIT IN NOVEMBER

NPR's Planet Money is calling the present phenomenon the "Great Renegotiation," citing evidence of workers demanding more from their employers or moving on to better jobs, with data from LinkedIn backing that up. Participation in the labor market is still below pre-pandemic levels, and that is because some are waiting for better offers before going back to work, Planet Money's report found.

Whatever the cause for leaving jobs, it's a good time for people to demand more — whether that's meaning, flexibility, compensation or benefits. Much like Covid, the Great Resignation might be around for a while.

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PRACTICE MANAGEMENT

Lost decades: Risk also matters on the way back up

If a client has 15 or 20 years to reach their investment goal, no worries about the market's ups and downs, right? Here's some background to think about.

OUTSIDEIN
RICK BOOKSTABER

Bad things happen from time to time. Over the last 50 years there have been five instances when the market has dropped more than 35% — pretty much one time each decade. That can put a real damper on a client's goals if it happens without leaving time for their portfolio to recover.

Monte Carlo simulations that are used to project where portfolios might end up don't reflect these sorts of moves. They are based on a normal distribution, where the odds of having these drops are less than one in a hundred — that is, they might come around once every 5,000 years. A normal distribution leads to a smooth incremental path without large jumps.

That's bad enough, but there's something a lot worse than being down 35%, and that's being down and then going nowhere for a decade or more. The phrase "Lost Decade" entered the popular lexicon when the Japanese market floundered after a huge drop in the early 1990s. (Actually, it didn't stop after 10 years; better to use "Lost Decades.") The U.S. equity market also has had lost decades — and then some — where the market sold off and then took well over 10 years before recovering to its previous level.

A TALE OF THREE DRAWDOWNS

Three of these periods occurred from 2000 to 2013; 1968 to 1983; and 1937 to 1950. Adding in 1929 almost wouldn't be fair. These weren't one-shot drops. Each reflected the accumulation of a sequence of bad events. For example, in the 2000s, there first was the rapid deflation of the dot-com bubble, then earnings adjustments from levels of "irrational exuberance," then the shock of accounting frauds at Enron, WorldCom and others. Follow that with the trifecta of the subprime mortgage meltdown, Bear Stearns, and Lehman Brothers that propelled the 2008 banking crisis, and the subsequent "PIGS" credit crisis (Portugal, Ireland, Greece, and Spain).

A curious but not reliable factoid is that in each case it was just under 20 years from the end of one of these to the start of the next. That is, the first ended in 1950 and the next started in 1968; then that one ended in 1983 and the next started in 2000. So, no worries, the next round won't be until 2030 or so! (Just kidding.)

WHEN BLACK IS THE NEW RED

The critical point for clients to keep in mind is that things are worse than they may seem if their portfolio's flat for 13 or 14 years. Their investment goals are based on an assumption that the portfolio will grow. If a client is sitting at the start of one of these lost decades with a portfolio of $1 million in equities and is looking 15 years out to tap that portfolio for some major spending, a 7% per annum capital market assumption will project a terminal value for the portfolio of $2.75 million. If the stock market is flat for 13 of those years, the client will end up with something more like $1.15 million. While the client is nominally in the black, they're likely to feel as if they've experienced a '29-style crash because they're down 60% from expectations — keep them away from high windows.

How clients fare can seem like a matter of luck of the draw in terms of timing. And bad timing doesn't have to involve buying at the top. It took more than a decade for the market to head back up for good after February 1961, as well as after September 1996. Both 1961 and 1996 were unremarkable years. Indeed, in both cases the market was on an upward trajectory; it wasn't on the cusp of irrational exuberance or paralyzing recession.

No one wants their clients' goals to be held hostage to luck-of-the-draw timing. So, portfolios have to be constructed and their risk managed with these possibilities in the forefront. But before doing that, advisers must recognize that these are an unavoidable reality of the markets.

The bottom line is that long-term goals don't confer immunity to market risk. On a time horizon of 50 years or more, maybe. But if it's 10 or 20 years? No. Clients' risk is being underestimated if simulations don't reflect the major market events and the flat-markets epochs.

PATH OF THE SCENARIO

This is a major issue for scenarios. If they're not looking at the path of the scenario, they're not treating its risk. A scenario is not simply: If such and such an event occurs, then boom, equities will be down 25%. First of all, there's no magic number. Maybe it will be down 25%, maybe 30%. Second, there's a time dimension: Maybe things drop quickly, maybe gradually. For example, in the current milieu, it's likely that if we have a retrenchment in technology, equities will drop quickly, whereas if inflation is the catalytic event, asset prices could move down more slowly.

BAD TIMING DOESN'T HAVE TO INVOLVE BUYING AT THE TOP.

Most important within this time dimension is the recovery period — the time it takes before the event recedes into history and the market is on its way up again. That can take years, with some false starts on the way.

This happens for two reasons. First, the market is weakened, and events that might not have normally mattered can weigh on returns. Second, as recounted above for the 2000s, subsequent events can come along that create a one-two punch (or sometimes, a one-two-three-four punch). This reality isn't part of standard risk management practice today. Scenarios must be built with the time dimension included, because the issue isn't simply how far down the market might go, but how long it takes to recover.

Rick Bookstaber is co-founder and head of risk at Fabric.

CYBERSECURITY

SEC cybersecurity rule proposal poses challenges for small advisers

BY MARK SCHOEFF JR.

WHEN IT COMES to cybersecurity, the financial advice sector may be a step ahead of the SEC, but a rule proposal raises the compliance stakes and could pose challenges for small advisers.

Earlier this month, the Securities and Exchange Commission voted to release a proposal that would require registered investment advisers and investment companies to develop written policies and procedures to address cybersecurity risks.

Under the proposal, advisers must report cyberattacks to the SEC, disclose them on their Form ADV and maintain books and records related to cybersecurity.

The proposal comes after years of cybersecurity guidance from the SEC, which also has brought an enforcement case based on existing customer protection rules. The agency's push has spurred many advisers to develop cyber policies.

But now firms, even if they have a cyber response program, will have to meet the specifics of a stand-alone SEC rule.

"It codifies what many advisers are already doing as part of their business continuity planning," said Ken Joseph, managing director and head of U.S. financial services compliance and regulation at Kroll, a consulting firm. "If adopted, it increases the possibility of advisers being liable for breaking what would now be a new [cybersecurity] rule."

As is the case with many regulations, it will be easier for large firms to comply. Firms will have to boost their ability to detect, react to and report attacks, which is easier to do if they have an IT department.

"The rule will strike many advisers and funds as adding to what they're already doing," said Michael Birnbaum, a partner at Morrison & Foerster. "If this is implemented in a heavy-handed way, it may present significant challenges, particularly for small advisers."

'TURNAROUND TIME'

One area where small firms may have trouble is in determining whether a cyber-attack merits reporting to the SEC and then telling the agency within 48 hours. The proposal says any incident that poses substantial harm to clients or disruption to the business must be reported.

"It will be difficult to meet that quick turnaround time, especially for small to midsize firms that don't have an in-house IT department," said Craig Moreshead, managing director at Foreside, a compliance consulting firm.

A cybersecurity rule would almost certainly require advisory firms to spend more on compliance. Firms are going to have to have "more cyber experts on hand, either outsourced or in-house," Moreshead said. "I can't see smaller firms going it alone and being able to comply."

But when firms do comply and report incidents to the SEC, it could create another problem, Joseph said. Publicly disclosing cybersecurity risks and incidents "could itself provide a treasure trove of valuable information for bad actors who are on the prowl for information that could inform the tactics and strategies they use [for] cyber-attacks," Joseph said.

The SEC has put the proposal out for public comment for 60 days.

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ARBITRATION

Finra pressed over Wells arb case

BY MARK SCHOEFF JR.

SENATE AND HOUSE lawmakers pressed Finra earlier this month on the fairness of the broker-dealer regulator's arbitration system following a recent court ruling in which a judge asserted the forum was biased against an investor claimant.

Sen. Elizabeth Warren, D-Mass., and Rep. Katie Porter, D-Calif., sent a letter to Finra Chief Executive Robert W. Cook citing the decision by Georgia Superior Court Judge Belinda E. Edwards to vacate an arbitration claim that Wells Fargo won in 2019 against a customer who accused the firm of mismanaging his account.

EXCLUSIONS

In her decision, Judge Edwards said Finra allowed Wells Fargo to strike certain arbitrators from the roster of those available to hear the case, undermining the neutrality of the arbitration forum. Finra said there was no agreement regarding the appointment of arbitrators.

The judge's ruling raised Warren's ire. She had written to Cook last year following the GameStop trading frenzy, and in his response to one of her questions, he assured her of the fairness of the arbitration system administered by the broker-dealer self-regulator.

"These findings by a federal judge in the Wells Fargo case raise serious questions about your assertions that the Finra arbitration process is 'neutral, efficient and fair,' and about whether Wells Fargo has once again sought to undermine consumer protection rules," Warren and Porter wrote.

ROBERT COOK

They posed several questions for Cook to answer, zeroing in on the details about how arbitrators were chosen for the Wells Fargo case and whether the firm talked to Finra officials about their selection.

"Finra takes this issue very seriously," Finra spokesperson Michelle Ong said in a statement. "We are reviewing the letter and look forward to responding appropriately."

The controversy over the arbitration case was a trifecta for Warren. She's been a longtime critic of Wells Fargo and Finra, as well as of Finra's arbitration system.

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FAITH-BASED INVESTING

SEC charges, fines Shariah robo-adviser

BY BRUCE KELLY

A ROBO-ADVISER that operates under Islamic Shariah law was charged by the Securities and Exchange Commission with making misleading statements and breaching its fiduciary duty, as well as for compliance failures related to its Shariah advisory business.

The robo registered investment adviser, Wahed Invest, is based in New York, and has $147 million in assets, according to its Form ADV. When the SEC announced its charges on Feb. 10, it also said that Wahed Invest had reached an agreement to pay a $300,000 penalty over the matter, which centered on nonexistent proprietary investments.

From September 2018 through July 2019, Wahed Invest advertised the existence of its own proprietary funds when no such funds existed, and also promised investors that it would periodically rebalance their advisory accounts, but didn't do so, the SEC said.

SETTLEMENT

The firm agreed to the settlement without admitting or denying the SEC's findings. A message last Monday for Musa Abdul-Basser, the firm's chief compliance officer and chief legal officer, was not returned.

Shariah is the religious law forming Islamic tradition. There are a number of such "faith-based" exchange-traded funds right now.

According to the SEC, Wahed Invest marketed itself as providing advisory services compliant with Shariah law, including marketing the importance of its income purification process on its website.

Despite these representations, the SEC found that that the firm did not implement written policies and procedures addressing how it would assure Shariah compliance on an ongoing basis.

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BETTERMENT

CONTINUED FROM PAGE 4

and U.S. Bancorp have all lowered the minimum investment required to open an account, according to S&P Global. Both Citigroup and Morgan Stanley, among others, have cut fees.

"Betterment has been the largest independent digital adviser in the space for quite some time," Betterment spokesperson Danielle Shechtman said in an email. "We are in a fantastic position and have more opportunity than ever to help serve our customers on our own path across multiple business lines."

Betterment's revenue reportedly is nearing $100 million, according to some estimates, and the company has brought in strategic hires to accelerate the next chapter of growth. Most notably, it replaced founder and long-time CEO Jon Stein with Sarah Levy, a former executive at Viacom Media Networks with experience building global brands. Levy took the reins at the end of 2020.

The company added 56,000 new clients to the platform in the first quarter of 2021, the first full quarter after Levy took over. In the first three months of last year, client net deposits were over $1.5 billion, up 118% year over year.

"The recent acquisitions in the space encourages us even more about the enduring value we are creating," Shechtman said.

The S&P Global report expects the M&A competition for startups to continue, as incumbents seek to court younger investors who are cost-conscious and don't have as much discretionary income as older generations. The upstarts offer considerable potential to reach new swaths of investors.

Craig Iskowitz, founder and CEO of consulting firm The Ezra Group, said Betterment is in a similar position to Wealthfront and "should sell."

"Another bank or asset manager might be interested in buying it for the same reasons as UBS bought Wealthfront — for distribution and for replacing and expanding their digital footprint," he said.

If Betterment remains a stand-alone company, continuing to expand its offerings to retail investors and advisers will push revenue and differentiation. For example, its acquisition of cryptocurrency manager Makara Inc. marked the company's first major foray into digital assets.

"WE NEED TO ASSUME THAT ANYONE IN THIS SPACE ... IS OPEN FOR SALE."

SCOTT SMITH, DIRECTOR OF ADVICE RELATIONSHIPS, CERULLI

Whether or not Betterment decides to stay the course and raise future funding through an IPO, along the lines of founder Jon Stein's original vision, remains to be seen. Most industry watchers agreed an eventual sale to the highest bidder simply can't be discounted either.

"Wealthfront for years was the 'anti-adviser,' so the UBS deal just shows you that everything is a working assumption," Pirker said. "Once the numbers are on the table and it's lucrative — it's a different story."

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ESG GROWTH

CONTINUED FROM PAGE 4

invest in them, up from 4.8% in 2019, Dogan said.

A turning point for ESG in retirement plans could be the Department of Labor's recently revised stance on them, including the permissive use of ESG target-date funds as default options. The regulator has finalized a rule on that topic and is expected to release it any day.

Until ESG becomes common in default investments, it will take education to get participants more interested in the options their plans currently have, Dogan said, adding some plan sponsors have been asking Fidelity for online sessions dedicated to ESG.

"We as an industry have a way to go before participants understand what their choices are and the impact [of them]," Dogan said. "There is going to be continued focus and pressure from a climate perspective."

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FOCUS FINANCIAL

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from an M&A performance," Rudy Adolf, the firm's CEO and founder, said during a conference call with analysts to discuss the fourth-quarter earnings. "We deployed more capital than ever before."

RIA merger and acquisition activity across the industry soared in 2021, setting a new record for the eighth consecutive year, according to DeVoe & Co. The 242 transactions that occurred last year marked a sharp increase from previous years and a 52% spike from the 159 transactions in 2020.

ACTIVE IN THE MARKETPLACE

Focus Financial Partners was active in that marketplace.

"What made 2021 a standout year was the acceleration of our M&A momentum, as we capitalized on the industry consolidation opportunity in a disciplined way," Adolf said, adding that 14 of the transactions Focus Financial closed last year involved partner firms and 24 were mergers.

On the back of this heated market, Focus Financial Partners is looking to more than double its revenue by 2025, to $4 billion, Adolf noted. The company reported $1.8 billion in revenue last year. Focus Financial currently has 84 partner RIA firms and wants that to reach about 125 firms over the same period.

"To reach these targets in about four years' time requires that we more than double the size of our revenues and adjusted [earnings before interest, taxes, depreciation and amortization], while increasing the number of partner firms we have by about 50%," Adolf said. "We believe that these targets are aggressive, but achievable."

"WE BELIEVE THAT THESE TARGETS ARE AGGRESSIVE, BUT ACHIEVABLE."

RUDY ADOLF, CEO, FOCUS FINANCIAL

Focus Financial Partners was launched in 2004 and has been in the vanguard of the RIA aggregator market ever since.

Over the past 15 years, the RIA aggregator market has exploded, in large part the result of a flood of money from Wall Street, typically via private equity investors.

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EX-BROKER

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company to elderly investors across the country and then misappropriated the investors' funds for his own personal use, according to a statement by the U.S. Attorney's Office for the Southern District of Florida.

He was also ordered to pay close to $3 million in restitution, according to court documents. Grossman could not be reached to comment.

According to his BrokerCheck report, Grossman was registered with 12 firms from 1997 to 2010. Six of those firms were expelled from the industry by the Financial Industry Regulatory Authority Inc. and another, GunnAllen Financial Inc., ran out of cash in 2010, forcing it to shut down and then later file for bankruptcy.

EXPELLED IN 2006

During that time, Grossman was registered on two separate occasions with Salomon Grey Financial Corp., a defunct Dallas firm that Finra's predecessor, the National Association of Securities Dealers, expelled in June 2006 for "widespread violation of industry rules," according to Finra.

When advisers and brokers work at small brokerage firms that are booted from the industry, that's a well-known red flag for investors and regulators; brokers hopping from one firm to another in short periods of time is also widely regarded as a warning sign.

From September 2014 through April 2018, Grossman raised approximately $2.4 million in investor funds for his company, Dragon-Click Corp., by soliciting investments from elderly retirees nationwide, according to the statement.

What he didn't explain to his elderly clients was his history in the securities industry, according to the U.S. Attorney's Office.

He concealed from investors that, prior to raising funds for the purported Internet shopping application, Dragon-Click, he had been permanently barred from acting as a broker by Finra in 2012. He had also been permanently banned from commodities trading by the Commodity Futures Trading Commission.

Instead of using investors' money for any legitimate business purpose, Grossman took it for his own personal use, according to the U.S. Attorney's Office. He spent $1.3 million on gambling, diamond jewelry, luxury cars, home mortgage payments, tuition payments for his children's private school education, and other personal expenditures.

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FORM CRS

CONTINUED FROM PAGE 2

charging them with failing to include language that must appear on the document, said Susan Schroeder, a partner at WilmerHale.

The SEC released guidance in December warning firms it had found problems in the content and format of their Form CRS, which is two pages for stand-alone advisers and brokers and four pages for dual registrants.

"These enforcement matters are consistent with the SEC's stated focus, and the December guidance is a good roadmap for firms assessing their own CRS compliance," Schroeder, former head of Finra enforcement, wrote in an email through her law firm's spokesperson.

In addition to Wall Street Access, the firms charged in last Tuesday's actions were Arthur Zaske & Associates; Banyan Securities; Church Gregory Adams Securities Corp.; Gutt Financial Management; Hinsdale Associates; J.K. Financial Services; N.V.N.G. Investments; Personal Financial Planning; Stone Run Capital; The Winning Edge Financial Group; and Watermark Securities. None of them admitted nor denied the SEC's findings.

The SEC's actions against Form CRS violations is low-hanging fruit when it comes to enforcement related to Reg BI. Any case that centers on the heart of the broker standard of conduct — whether investment recommendations were in a customer's best interests — will take more SEC time and resources, Lundy said.

Nevertheless, he expects the first major Reg BI violation in the next few months.

"In 2022, we may see the first Regulation Best Interest enforcement actions," Lundy said.

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HIGHTOWER

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were granted consideration in the form of cash and equity, and in return they willingly signed more onerous employment agreements than they would have had at a wirehouse," Diamond said. "These advisers that sell to Hightower are getting a ton of money and getting more restrictive employment agreements."

UNFORTUNATE BYPRODUCT

Charles Failla, principal at Sovereign Financial Group, sees the Hightower lawsuit as the unfortunate byproduct of PE-backed RIA aggregators morphing into wirehouse-like behemoths.

"We've been seeing so much of private equity Pac-Manning through the RIA space that what's coming to a head now is what it means to advisers and their clients," he said.

Failla described Hightower going after a $39 million adviser's book of business as "wirehouse 101."

"If you leave, they're coming after you," he added. "That's probably not what they thought they signed up for, but if that's what it's going to be like, these advisers need to know that coming in."

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REG BI

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firms are doing well and there are things firms are not doing as well. Finra is not concluding there are widespread failures. That is not the case."

Former Securities and Exchange Commission Chairman Jay Clayton argued that Reg BI introduced stronger investor protections than the suitability standard that previously governed brokers. A financial executive said that's the way Reg BI is working out in practice.

"There is far more focus right now on making sure recommendations are the best possible recommendation for the client all things considered, including cost," said John Taft, vice chairman of Robert W. Baird & Co. and former chief executive at RBC Wealth Management. "That's a very different approach than mere suitability."

CONFLICTS OF INTEREST

It's not just Finra that says some brokers are failing to meet the Reg BI standard. Last November, the North American Securities Administrators Association released a report finding that the regulation is failing to curb brokers' conflicts of interest.

"Regulation Best Interest is not doing its job," Benjamin Edwards, a professor at the University of Nevada-Las Vegas law school, said last Tuesday during the Institute for the Fiduciary Standard's media briefing. "We've had enough time to see the truth, and the truth is brokerage firms' operations have largely gone unchanged. This is happening because oftentimes the business model smacks of betrayal. Brokers are getting more money for tilting their advice in favor of more expensive products."

The brokerage industry disputed the NASAA report.

The Reg BI debate likely will intensify. SEC Chairman Gary Gensler said the agency will use examinations, enforcement and guidance to ensure that Reg BI protects investors.

Rostad said the SEC should improve Reg BI and a related disclosure document called Form CRS.

"They're not complex," Rostad said. "Fixing them is not like discovering a new cure for cancer. Fixing them is providing additional guidance and, if necessary, enforcement measures."

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