MARCH 7, 2022

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TopNews

ACCURACY / EXCELLENCE / FAIRNESS / [...]TY / INDEPENDENCE

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'Vindictive' Wells unit to pay adviser $1.4 million

BY BRUCE KELLY

CITING WELLS FARGO Advisors' "vindictive" actions against a former adviser, a Finra arbitration panel last Monday awarded the adviser, Aaron Olson, $1.43 million in a dispute that centered on Olson's employment at Wells and termination from the firm.

KEY POINTS

- A lawsuit brought against Wells Fargo Advisors alleged defamation.
- A Finra panel awarded the adviser $1.43 million.

A 16-year veteran of the financial advice industry, Olson worked from March 2019 to August 2020 at Wells Fargo Advisors, according to his BrokerCheck profile. He is now managing principal at Purpose Comprehensive Wealth Management, a registered investment adviser in suburban Charlotte, North Carolina, that opened last year.

Finra arbitration panels seem to be focused on claims involving firms making defamatory statements about former advisers. Just last month, a panel ordered J.P. Morgan Securities to pay $1.4 million in damages to a former financial adviser who sued the firm claiming it had dirtied up his employment history when he was "discharged," meaning fired, almost five years ago.

The majority of decisions and awards made by Financial Industry Regulatory Authority Inc. arbitration panels don't give any reasoning or details about a decision. But in this case, the three arbitrators took Wells Fargo Advisors to task for what the firm said about Olson on his Form U5, a standard form firms must submit to Finra to detail an adviser's work history when he or she leaves the firm.

ALLEGED DEFAMATION

Part of Olson's lawsuit against Wells Fargo Advisors alleged defamation, according to the award. The panel concluded "the actions of at least one management level employee" resulted in the filing of an amended Form U5 that was "vindictively motivated," according to the award.

"The panel concludes that, under all of the evidence and reasonable inferences therefrom, the filing of and the information in the amended U5 was both vindictive and defamatory in nature causing material and continuing harm to [Olson's] reputation and career as a financial advisor," according to the award, which did not cite the specific language at question.

Olson declined to comment last

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Tyrone Ross exits as CEO of Onramp Invest

BY JEFF BENJAMIN

TYRONE ROSS JR. resigned as chief executive of Onramp Invest, effective immediately, and co-founder Eric Ervin took over as CEO, according to an email sent to investors late last Monday night.

At least two Onramp board members are severing ties with Onramp, which had recently laid off an internal marketing person and fired its outside public relations firm.

When reached for comment early last Tuesday morning, Ross said he was in the process of posting a statement on LinkedIn. The statement doesn't explain why he's suddenly leaving the 19-month-old fintech platform that provides financial advisers with education and access to cryptocurrency investments.

Nor did Ross, who co-founded Onramp, explain in his statement what he plans to do next.

"The last 19 months were a trial by fire that has pressured and molded me into a better man and leader," the statement reads in part. "You all made it possible and for that I am eternally grateful."

Ross wrapped up his post by saying he "will be taking time to decompress and assess new opportunities. I look forward to the next chapter in my journey of building a legacy for my family."

TRIP TO OMAHA

By midweek, Ross was tweeting during a trip to Omaha, Nebraska, which included images of him with representatives from Orion Advisor

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SEC not seeking to punish cyberattack victims: Crenshaw

BY MARK SCHOEFF JR.

SEC COMMISSIONER Caroline Crenshaw tried to reassure investment advisers last Thursday that the agency wants to work with them to strengthen cybersecurity protections rather than pile on with enforcement after an cyberattack.

Last month, the Securities and Exchange Commission proposed the first cybersecurity rule for registered investment advisers and investment companies. Under the 243-page proposal, advisers would have to develop written policies and procedures that address cyber risks, report attacks to the agency and disclose major cyberbreaches on their Form ADVs as well as keep related books and records.

But at an Investment Adviser Association compliance conference, concern was raised about enforcement actions after hacks in which advisers are punished for cybersecurity lapses.

In a Q&A with Crenshaw, IAA Chief Executive Karen Barr said advisers see themselves as victims of hacks. She asked how the agency will strike a balance between collaborating with the adviser community and being adversarial.

"Our goal certainly is not to be adversarial with any registrant, plain and simple," said Crenshaw, who spoke via a video connection to the conference, which was held in-person at a hotel in Washington.

TIMELY DISCLOSURES

Advisory firms that follow best practices, provide timely disclosure and cooperate with law enforcement are unlikely to draw an enforcement action just because they were a victim of a cyber-

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CAROLINE CRENSHAW

Cambridge Investment Research's RIA unit faces SEC charges

BY BRUCE KELLY

THE REGISTERED INVESTMENT adviser arm of Cambridge Investment Research Inc. drew fire from the Securities and Exchange Commission in a complaint filed last Tuesday that alleges the RIA breached its fiduciary duty and repeatedly put its own financial interests ahead of its clients', ultimately benefiting the Cambridge firms by millions of dollars.

Since at least 2014, the RIA, Cambridge Investment Research Advisors Inc., failed to disclose material conflicts of interest, breaching its fiduciary duty, according to a statement from the SEC last Wednesday about its lawsuit, which was filed in U.S. District Court for the Southern District of Iowa.

The Cambridge RIA, with $68.5 billion in client assets, "invested client assets in certain mutual funds and money market sweep funds that generated millions of dollars in revenue sharing payments to an affiliated broker-dealer, Cambridge Investment Research Inc., instead of lower-cost share classes and investment options that would have yielded less or no revenue sharing," according to the SEC.

REVENUE-SHARING PRACTICES

The issue is disclosure of either payments or avoiding costs. Cambridge Investment Research disclosed last month in the annual audited financial statement it filed with the SEC that the agency is reviewing the revenue-sharing practices of Cambridge Investment Research and its affiliated RIA to determine whether the RIA sufficiently disclosed the compensation it may have received or the trading costs it may have avoided when investments were made in certain funds on clearing firm platforms.

Cambridge Investment Research is one of the largest independent broker-dealers. At the end of 2020, it reported more than 3,600 producing reps and financial advisers and close to $1.1 billion in annual revenue, making it the seventh largest broker-dealer in the industry.

CAMBRIDGE

The complaint says the SEC is looking for penalties and disgorgement by Cambridge but doesn't say how much.

"Cambridge denies the allegations of the complaint and has engaged outside counsel to vigorously defend itself," a company spokesperson wrote in an email.

"Given that this matter is currently pending, Cambridge is not able to provide any further comment at this time," the spokesperson wrote, adding that the SEC's lawsuit against Cambridge is similar to pending complaints filed by the SEC against other firms.

Cambridge Investment Research Advisors "converted hundreds of accounts to its more expensive wrap account program without adequate disclosure and without analyzing whether doing so was in its clients' best interests," the SEC complaint alleges.

The Cambridge RIA also "failed to disclose that its investment adviser representatives received compensation in the form of forgivable loans in exchange for meeting certain criteria such as maintaining certain asset levels and tenure with" the firm, according to the complaint.

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IRS proposal aligns RMD rules with SECURE Act

BY MARK SCHOEFF JR.

A WIDE-RANGING INTERNAL Revenue Service proposal overhauls rules for required minimum distributions from retirement plans to align with a landmark bill Congress passed more than two years ago.

The 275-page IRS proposal brings RMD regulations into agreement with the SECURE Act, which raised from 70½ to 72 the age at which retirees must start to withdraw money from individual retirement accounts and other plans. The measure also ended so-called "stretch" IRAs, limiting to 10 years the amount of time a non-spouse beneficiary has to take distributions.

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Wealth managers face potential Russian hacks

BY SEAN ALLOCCA

THE FALLOUT FROM RUSSIA'S invasion of Ukraine is hitting the advice industry as government agencies warned wealth managers late last month to protect themselves and their clients against increased attacks.

U.S. officials have already blamed Russia for at least two rounds of attacks on Ukrainian websites in February — the largest in the country's history — and have alerted American financial institutions to be on the lookout for increased cyber activity.

The Department of Homeland Security has set up a page specifically warning of cyberattacks emanating from Russia, and both the Securities and Exchange Commission and the Financial Industry Regulatory Authority Inc. echoed those concerns in notices to the public.

"While there are not currently any specific credible threats to the U.S. homeland, we are mindful of the potential for the Russian government to consider escalating its destabilizing actions in ways that may impact others outside of Ukraine," DHS' Cybersecurity and Infrastructure Security Agency said in a letter.

The notice "recommends all organizations — regardless of size — adopt a heightened posture when it comes to cybersecurity and protecting their most critical assets," and cited specific actions that can reduce vulnerabilities and heighten readiness.

In addition to ensuring cybersecurity obligations are met, Finra also reminded advisers to be vigilant about the new sanctions the U.S. government has imposed on Russia, which could complicate compliance issues. The notice highlighted five major Russian financial institutions, as well as named "Russian elites close to Russian President Vladimir Putin," that are now targets of the Treasury's Office of Foreign Assets Control following an executive order from the White House.

"The U.S. government has imposed sanctions in response to Russia's actions in Ukraine," the agency said in the alert. "Finra encourages member firms to continue to monitor the Department of Treasury's Office of Foreign Asset Control website for relevant information."

"CLIENTS ARE NOW ASKING ADVISERS, 'HOW ARE YOU PROTECTING MY MONEY?'"

MICHAEL HALLETT, CEO, CLEVERDOME

Wealth managers make attractive targets for foreign hackers because of the publicly available records of assets under management, which hackers could potentially interpret as an ability to pay a hefty ransom.

Wealth managers also hold some of the most sensitive client data directly connected to financial information — a potential gold mine for cybercriminals.

RANSOMWARE ATTACKS UP

"Most hackers are highly skilled computer scientists and not well versed in economic or financial systems," said John O'Connell, CEO and founder of cybersecurity consulting firm The Oasis Group. "When a hacker looks at even a moderate-sized firm with billions in assets, they're going to think that firm is making a ton of money."

Ransomware attacks — a type of attack in which cybercriminals gain access to files and hold them until a ransom is paid — are on the rise. Attacks in the U.S. quadrupled in 2020, with three-quarters of the victims being

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Broker-dealers sell record $10.5 billion in alts in January

BY BRUCE KELLY

AS THE BROAD stock market stumbled in January, investors ran to alternative investments, buying a record amount — $10.5 billion — of nontraded real estate investment trusts, business development companies and other illiquid assets, according to investment bank Robert A. Stanger & Co. Inc.

Broker-dealers' sales of such alternative investments to kick off 2022 is a harbinger for the remainder of the year, according to Stanger, which is projecting $120 billion in sales of alternative investments this year, with broker-dealer sales of nontraded REITs and BDCs hitting $45 billion and $40 billion, respectively.

Sales of such products in January, a month in which the S&P500 posted a decline of more than 5%, were up 175% from the $3.7 billion sold in January 2021, according to Stanger.

Sales of alternative investments, which in the past have entailed high commissions, have seen boom and bust cycles over the past 20 years, often linked to investors' concerns about the gyrating stock market. Over the past five years, a growing number of prominent Wall Street firms have begun selling products via independent broker-dealers, adding to sales.

$4.2B
ALTS FUNDING BLACKSTONE RAISED IN JANUARY

"The space is now characterized by institutional quality asset managers including Blackstone, Starwood, Nuveen, KKR, Ares, Brookfield, JLL, Hines, Cantor, and Invesco, with a few more world class names coming, including Prudential," Stanger CEO Kevin Gannon wrote in an email. "The product is more transparent, with a regular appraisal process, liquidity of up to 20% of outstanding shares per annum, and less volatility than the public markets for real estate investments."

According to Stanger, during January, Blackstone raised $4.2 billion in the alternative investment space, including its Blackstone Real Estate Income Trust with $2.4 billion and its BDC, Blackstone Private Credit Fund, with $1.7 billion. Apollo Asset Management followed with $1.1 billion in its BDC, Apollo Debt Solutions, which recently broke escrow.

ALTS IGNORED

Stanger's survey of top managers tracks fundraising for all alternative investments offered via retail firms, including publicly registered nontraded REITs and BDCs, interval funds, nontraded preferred stock of traded REITs, Delaware Statutory Trusts, Opportunity Zone investments and other private placement offerings.

For years, large Wall Street firms ignored the nontraded alternative asset industry, but that's no longer true.

At the end of last year, Apollo Global Management Inc. said it was buying the distribution channel — think an army of wholesalers — and the $5 billion in assets under management of Griffin Capital Co.

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SEC probes Citigroup over messages

BLOOMBERG NEWS

CITIGROUP INC. joined the list of banks being investigated over employee communications using unauthorized messaging services.

The Securities and Exchange

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Advisor Services

Andrea Broughton
SBK Financial
Independent since 2013

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Opinion

As Ukraine fights for its freedom, US firms should watch for Russian hacks

Russia is waging a two-pronged war on the West and Western values. The first, in Ukraine, is a conventional war. More than 2,000 innocent civilians have been killed, according to estimates, and one million Ukrainians have fled to safety in neighboring countries. Our hearts go out to the besieged Ukrainians, and we stand in support of them in their fight for freedom and the sovereignty of their country.

Russia's other war with the West is taking place in cyberspace. Its long-running efforts to spreading misinformation and foment strife are well documented, but as Western sanctions against Russia start to bite, there are fears its cyber aggression could escalate. Chief among the possible targets in the U.S. are the institutions that serve savers and investors.

As technology editor Sean Allocca recently reported, the Securities and Exchange Commission and the Financial Industry Regulatory Authority Inc. have published notices echoing the content of the Department of Homeland Security's new webpage that specifically warns of cyberattacks emanating from Russia.

'HEIGHTENED POSTURE'

While it's not detecting any imminent threats, the department's Cybersecurity and Infrastructure Security Agency recommends that all organizations, regardless of size, "adopt a heightened posture when it comes to cybersecurity and protecting their most critical assets."

To be sure, much of the work needed to provide critical security for investor accounts is done on an enterprise level by broker-dealers and custodians. And the nation's financial institutions, aware of the potential for harm, for years have worked in conjunction with federal officials to put in place sophisticated cybersecurity systems designed to prevent damage from attacks on our financial infrastructure.

But the increase in remote work as a result of the pandemic, conducted over networks that may not be secure, as well as the widespread use of mobile apps that are almost always connected to the internet, have added a new level of risk in recent years. Destructive attacks like those seen in Ukraine can enter a computer and randomly delete information or rewrite hard drives to effectively shut down the system, one cybersecurity expert told Allocca. The attacks have the potential to wipe out all of a client's information and account documentation.

ADVISERS ARE THE FRONTLINE FORCE DEFENDING INVESTORS' WEALTH FROM CYBERATTACK.

While advisers typically don't store client financial data themselves, they play an important role in securing it. In fact, it's not an overstatement to say that as the gateway to client data, advisers are the frontline force defending investors' wealth from cyberattack.

To help in that role, the CISA recommends several actions, including ensuring that software is up to date, that tools are protected by antivirus/anti-malware software and that signatures in those tools are updated. Data backups should be performed frequently and kept isolated from network connections, and advisers should be able to contact a known cybersecurity expert or team in the event of a suspected emergency and have a secure way to reach them.

THE PRICE OF FREEDOM

If this vigilance is the price we must pay as Americans to protect our good fortune, we should consider ourselves blessed. Yes, fuel prices may rise and we may face other short-term difficulties, but we mustn't forget how fortunate we are to be able to work, save, plan and see our children grow in freedom. Ukrainians share our dreams, and until a few weeks ago could hope to achieve them.

Now, their greatest dream is survival.

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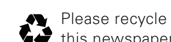

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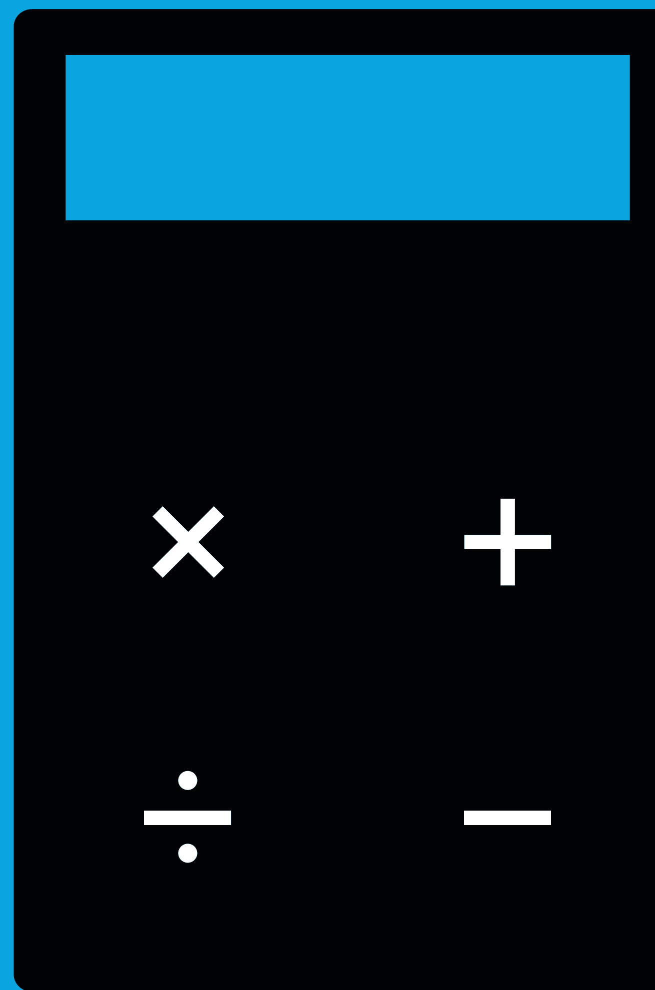

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3 Married filing sepa[illegible] and full name here.

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6a Yourself. If some[illegible]
b Spouse
c Dependents:
(1) First name Last
If more than four dependents, see page 18.
d Total number of exemptions c[illegible]

Income
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If you did not get a W-2, see page 19.
Enclose, but do not attach, any payment. Also, please use Form 1040-V.

7 Wages, salaries, tips, etc. Attach
8a Taxable interest. Attach Schedul[illegible]
b Tax-exempt interest. Do not incl[illegible]
9a Ordinary dividends. Attach Schedule
b Qualified dividends (see page 20)
10 Taxable refunds, credits, or offsets of st[illegible]
11 Alimony received
12 Business income or (loss). Attach Schedule C
13 Capital gain or (loss). Attach Schedule D if requ[illegible]
14 Other gains or (losses). Attach Form 4797
15a IRA distributions 15a b Ta[illegible]
16a Pensions and annuities 16a b Taxable amount (see page 2[illegible])
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc.
18 Farm income or (loss). Attach Schedule F
19 Unemployment compensation
20a Social security benefits 20a
21 Other income. List type and amount (see page 24)
22 Add the amounts in the far right column for lines 7 through 21. This is your total income ▸ 22

Adjusted Gross Income
23 Educator expenses (see page 26) 23
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ 24
25 IRA deduction (see page 26) 25
26 Student loan interest deduction (see page 28) 26
27 Tuition and fees deduction (see page 29) 27
28 Health savings account deduction. Attach Form 8889 28
29 Moving expenses. Attach Form 3903 29
30 One-half of self-employment tax. Attach Schedule SE 30
31 Self-employed health insurance deduction (see page 30) 31
32 Self-employed SEP, SIMPLE, and qualified plans 32
33 Penalty on early withdrawal of savings 33
34a Alimony paid b Recipient's SSN ▸ 34a
35 Add lines 23 through 34a 35
36 Subtract line 35 from line 22. This is your adjusted gross income 36

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 75. Cat. No. 11320B Form 1040

A TAXING SITUATION

LAST YEAR'S ATTEMPT TO RAISE TAXES ON THE WEALTHY HAS CATALYZED CONVERSATIONS BETWEEN ADVISERS AND CLIENTS ABOUT TAX STRATEGIES THIS SEASON

BY MARK SCHOEFF JR.

For almost all of last year — from the inauguration of President Joe Biden in January to the collapse of his signature economic legislation in December — financial advisers and their clients were bracing for tax increases.

Some investors got so amped up about potential tax reform that they made changes in their portfolios and estate plans anticipating what Congress might do. Then Congress did nothing, leaving them regretting their haste.

A few weeks before this year's tax filing deadline, the tax code is essentially status quo. But that doesn't mean tax planning is stagnant despite the demise in the Senate of the nearly $2 trillion Build Back Better bill that incorporated the Biden administration's spending and tax agenda.

Although it doesn't look as if Democrats will be able to revive the whole package, parts of it could pass. The spending initiatives that reemerge likely will be paid for by increasing taxes on the wealthy. In addition, if any part of Build Back Better starts moving again, it could include a provision to raise the deduction cap on state and local taxes.

Even if the stake in the heart of Build Back Better remains in place, major tax changes are looming in a couple of years thanks to the sunsetting of provisions in the 2017 Tax Cuts and Jobs Act. For instance, the estate tax exemption for individuals of approximately $12 million will fall to about $6 million, and individual tax rates will return to their higher previous levels in 2026.

On top of last year's commotion over tax policy, the uncertainty about whether higher taxes will gain traction in Congress this year and the phasing out of the 2017 tax cuts, there's also the current economic environment. Market volatility, inflation and pending interest-rate increases are affecting potential tax burdens.

These elements have combined to make taxes integral to financial planning and investment management, and given advisers an opportunity to deepen client relationships.

"Talking about tax planning doesn't need Build Back Better," said Leslie Geller, wealth strategist at Capital Group. "We've had this shift to making it part of the day-to-day planning conversation between advisers and investors."

Every tax planning discussion is different for each client and could open new vistas. For instance, it can encompass a client's small business, estate planning, gifting strategy and an assessment of the tax policies in the states where they live.

"It's these situation-specific, client-specific conversations that we're encouraging advisers to use to [start] tax planning conversations," Geller said. "Tax planning becomes a way to enrich the client-adviser relationship. It naturally brings you into the areas of the client's life beyond investments."

BREATHING ROOM

The fact that substantial tax increases on the wealthy didn't come to fruition in 2021 gave advisers and clients some breathing room without diminishing the importance of talking taxes.

"We dodged the bullet last year, but that doesn't mean the tax rates became zero," said Rob Kuharic, director of tax managed solutions at Russell Investments. "This is the opportunity to use that wake-up call. The time to do tax planning is now. It's pretty easy to start the conversation. The tax subject is alive and well. People's minds are open and they're listening."

Financial advisers often need to work with other professionals, such as CPAs and estate attorneys, to customize tax planning advice.

"We spend a lot of time [forming] their strategy alongside their tax adviser," said Sylvia Guinan, a financial adviser at Wells Fargo Advisors.

In her role, Guinan brings to the group an understanding of the client's "heart and mind goals." She works with the other members of the tax planning team to incorporate them in the overall strategy.

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"We want to make sure we're first and foremost taking care of our clients," Guinan said. "We try to create a good rapport and keep open lines of communication. If we're working as a team, we can bring value to our clients and the next generation."

The adviser has to be the catalyst for the tax discussion, said Tim Speiss, a partner and personal wealth adviser at EisnerAmper.

"You cannot wait for the client to initiate the discussion or schedule the meeting," he said.

The tax planning team can decide who's the quarterback.

"You've got to go with a common voice," Speiss said. "There's no ego here. If they're all working together, that's a powerful advocacy team for the client."

Those discussions could start with the current economic environment. For instance, market volatility is creating opportunities for tax-loss harvesting, several advisers said.

Or the talks might start with a look back to last year, said Garrett Reeg, a senior adviser at Moneta. The worst didn't happen in terms of tax increases and other reforms targeting the wealthy. They're gone but not forgotten.

"How can you start planning proactively?" Reeg said.

Some people are taking stock of what Build Back Better shot at and missed. For instance, the House version of the bill placed limitations on conversions of traditional individual retirement accounts to Roth IRAs for high-earners. It would have prohibited so-called back-door Roth conversions for all income levels.

With a green light for moving funds from traditional IRAs, where contributions are tax-deferred, to Roth IRAs, where contributions are made with after-tax money but earnings grow tax-free, Joanne Burke's clients are hitting the gas.

"The sentiment is go for it and get those Roth conversions … until legislation dictates otherwise," said Burke, owner of Birch Street Financial Advisors. "Take advantage of this opportunity before they close the door on a back-door Roth."

Reeg has noticed increased interest in Roths that began at the end of last year and has continued into this year.

"People have been accelerating these Roth conversions or rollovers if they think they could be prohibited in the future," he said.

The House version of the Build Back Better bill also would have reduced the estate tax exemption by half for individuals as of this year, moving up the timeline from the 2026 reset under the 2017 law.

CLOSE CALL

The close call "got people's attention," said Tim Steffen, director of tax planning at Robert W. Baird & Co. "There's a big opportunity on the estate tax planning side that might not be there in a few years. [Clients] may be willing to jump on this right away."

The renewed interest in estate planning is coming with a focus on the basics, Geller said. The idea is to make gifts as soon as possible and do so in a way that is tax smart and doesn't affect the estate exemption.

For instance, she recommends that grandparents help grandchildren with educational expenses by writing tuition checks directly to colleges.

"There's a return to recognition of simple gifting techniques," Geller said.

Doing gifting early in the year also could take advantage of market volatility that has knocked down the price of many stocks.

"You could consider accelerating gifts at lower valuations with the hope of getting future growth of these assets out of the estate," Reeg said.

Some estate planning strategies are in vogue because of the low interest rates that exist for now.

Speiss recommends to many clients that they sell assets to a trust for the benefit of a family member rather than making a gift. The funds that are transferred to the trust must be paid back at applicable federal rates that are currently about 60 basis points.

"TAX PLANNING IS ONE OF THE FEW THINGS … YOU HAVE CONTROL OVER."

LESLIE GELLER, WEALTH STRATEGIST, CAPITAL GROUP

The growth on the assets, however, accrues to the trust beneficiaries. That growth could easily eclipse 60 basis points as the Fed raises interest rates.

"The urgency to do this is because we're in a rising interest-rate environment," Speiss said.

The prospect of higher interest rates also is causing advisers to recommend grantor retained annuity trusts. Under a GRAT, assets are placed in a trust, and an annuity is paid out annually. At the end of the GRAT's life, the beneficiary receives the assets tax-free.

"GRATs are still in play with the anticipation of higher interest rates," Burke said.

With the estate tax exemption set to fall precipitously sooner or later, another strategy for high-net-worth clients to use is a spousal lifetime access trust. Under a SLAT, one spouse transfers assets to a trust that is controlled by the other spouse. That removes the funds from the joint estate but still allows the gifting spouse to have access to the funds, assuming the couple doesn't get divorced.

Over the last few years, estate planning has drifted away from tax planning because the exemption was so large under the 2017 bill, Steffen said. But with that bill sunsetting, a much smaller exemption creates planning challenges and opportunities.

"Advisers need to be prepared to have that conversation with their clients," he said.

At a time when volatility pervades financial markets, it's impossible to predict how investments will perform. By comparison, tax strategies can be a haven of certainty.

"Tax planning is one of the few things in this realm you have control over," Geller said.

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IRS backlog frustrates advisers, clients

A massive backlog of tax returns and taxpayer correspondence at the Internal Revenue Service is frustrating financial advisers and their clients.

"It's been such a nightmare," said Dan Herron, owners of Elemental Wealth Advisors.

The IRS has been bogged down dealing with paper returns, Erin Collins, the national taxpayer advocate, testified before the Senate Finance Committee on Feb. 17.

The IRS received about 169 million tax returns in 2021, 90% of which were electronically filed. Most were processed without delay, Collins said. But at the end of the 2020 filing season last May, the agency was holding 35.3 million tax returns for manual review.

In February, the IRS continued to retain 17.6 million tax returns and about 5.9 million pieces of taxpayer correspondence that required manual processing, Collins said in prepared testimony.

"In releasing my annual report to Congress, I said that paper is the IRS's kryptonite and that the IRS is still buried in it," Collins told lawmakers.

Herron, who's also a CPA, said the 2020 tax season hasn't ended even as a new one is underway. He has clients whose 2020 returns haven't been processed, yet those returns affect their 2021 filing.

Calling the IRS doesn't do much good because the agency essentially is not answering the phone. The IRS received 282 million calls during fiscal 2021 and answered 11% of them.

"It's been really difficult to interface with the IRS," said Joanne Burke, owner of Birch Street Financial Advisors. "I don't even want to call. The call wait times have been ridiculous. In 30 years of practice, I've never experienced it like this."

The IRS is backed up for a variety of reasons, including the heavy workload it took on during the pandemic to send relief checks to millions of Americans. IRS officials also have said that the agency is short-staffed and needs to upgrade its technology.

Both parties are upset with the processing delays. Sen. Ron Wyden, D-Ore. and chairman of the Senate Finance Committee, blamed Republicans for IRS budget cuts that have undermined customer service and enforcement.

Sen. Mike Crapo, R-Idaho, and ranking member of the committee, said IRS funding has kept up with inflation over the years. He asserted that Democrats are trying to use the backlog to justify their goal of doubling the IRS budget to hire auditors to go after wealthy individuals who they think are tax cheats.

Despite the finger-pointing, Wyden said during the hearing that lawmakers will "do everything we can to [take] a bipartisan approach here."

In the meantime, advisers and clients will have to bide their time waiting for returns to be processed.

"It's going to take longer this year," Herron said. "Just be patient."

— Mark Schoeff Jr.

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INDepth

The future of the 401(k) lies with small businesses

BY EMILE HALLEZ

Small businesses represent most U.S. companies, and they employ about half of the country's workforce — yet half or more do not offer retirement plans.

It's an opportunity the financial services industry has long snubbed, as cost-competitive 401(k) services for small plans have lacked the profit potential of much larger ones. But that is changing quickly, and retirement plan coverage could increase dramatically.

Behind that are the rise of state-sponsored auto IRA programs, the development of pooled employer plans and improvements in technology that have made small 401(k)s easier to provide. It's also worth mentioning that workplace benefits are increasingly necessary to attract the best job candidates in a competitive market for talent.

"Many small business owners and their workers have historically been disadvantaged in saving for retirement," said Kirsten Hunter Peterson, Fidelity Investments' director of workplace thought leadership.

Less than a year ago, the company launched a pooled employer plan, or PEP, which it calls Fidelity Advantage 401(k). That product, which is aimed at businesses with five to 50 workers, has more than 100 employer clients, with an average of about 20 employees at each, Hunter Peterson said. Fidelity is not yet disclosing the assets in that plan.

Among small businesses, "there is demand there, and there has been demand there for a long time, but it was something we couldn't support [previously] for a variety of reasons," Hunter Peterson said.

For many companies, that changed with PEPs. Under the 2019 SECURE Act, employers at unrelated businesses can participate in the same plan structure, meaning that providers can aggregate more assets in single plans. That creates economies of scale and in many cases gets participating businesses less expensive plans than they would qualify for on their own. It also hands off most of the fiduciary oversight to plan providers — something that small businesses, and even some larger ones, are more than happy to do.

"We've focused on these startup plans," Hunter Peterson said. "These are first-time retirement savers."

Clients have come from numerous industries, including retailers, auto body shops, landscaping companies and animal hospitals, she said.

Over the next year, Fidelity plans to continue growing the product among similarly sized businesses. In the future, it could add features such as Roth options, plan conversions or employer matching contributions, Hunter Peterson said. Currently, the PEP does not allow advisers to act in a 3(21) or 3(38) capacity, which pertain to investment selection — but it could in the future, she said.

AUTO IRAS

Three states — Oregon, Illinois and California — have had automatic IRA programs up and running for several years, and Connecticut recently launched its own. Meanwhile, numerous others are in the development phase, showing that it is a trend that has already caught on.

These programs are boosting retirement plan coverage in two ways, with the obvious one being that they require businesses of certain sizes to enroll their workers in the state-sponsored IRA. But that doesn't apply to businesses that offer retirement plans, and many are opting to sign up for PEPs or start their own 401(k) instead of going with the state option. It's a marketing opportunity that the retirement plan business has seized on — just try Googling "CalSavers" and see the search results that come from providers marketing alternatives to it.

"The private providers in the market now see [the demand] and have become much more innovative in developing products and platforms — 401(k) and IRA — to market to those workers in those states," said Angela Antonelli, executive director of Georgetown University's Center for Retirement Initiatives, which tracks and studies state-run retirement programs designed for the private sector. "Originally, where it was seen as a competitive threat, they now see it as a very beneficial business opportunity."

"TO MAKE A PEP WORK, IT'S GOT TO HAVE SCALE. IF IT DOESN'T HAVE SCALE, YOU'RE DEAD."

LOUIS DAY, FOUNDER, NS CAPITAL

ONE EXAMPLE

Louis Day, founder of NS Capital, said the firm launched its PEP, Unity401k, as soon as possible — in January 2021, with 25 plan clients eager to switch over the structure.

With total fees of about 50 basis points, it's about half the cost of a state auto IRA and much less than most 401(k)s aimed at small businesses, Day said.

"We've done our homework on the state-run IRAs," Day said. "I could easily say that a very good PEP in the long run is going to be something better than a plan that is currently charging 95 bps."

That, coincidentally, is the upper range for CalSavers, which has total fees ranging from 82.5 bps to 95 bps, depending on the investments a person uses.

Being one of the first to market with a PEP was not easy, Day said. The 25 existing clients were slated to switch over to it beginning in the first quarter, but moving them was slower than expected.

"It was a disaster — nobody knew what they were doing. It took us the whole year of 2021 to get things straightened out," Day said. "We were lucky that we didn't have a lot of [existing] plans with different features,"

he added, which made it easier to work with vendors during the change.

The company's PEP now includes about 30 clients, the latest three of which did not previously have a 401(k). To get the existing plan clients over to the PEP, NS Capital adjusted advisory fees and paid termination fees to the old plan providers.

"In order to make a PEP work, it's got to have scale," Day said. "If it doesn't have scale, you're dead."

The company differentiates itself by being the 3(38) fiduciary, meaning that it chooses the investment lineup. Some PEPs on the market use third-party fiduciary services, such as from Morningstar, Mesirow and Mercer, Day noted.

"I call that 'outsourcing the fiduciary handoff,'" NS Capital investment adviser Joe Hart said. "If they're dictating what you as an adviser can pick … it's a false fiduciary role."

The firm has also created a partnership model with its PEP, allowing other RIAs to add a 401(k) option for their clients, Day said.

"We've already got two people who have expressed an interest," he said. "Putting in a 401(k) practice, for an RIA, is difficult."

MORE TO COME

The three auto IRA programs in California, Oregon and Illinois now represent more than $407 million in assets among 46,000 employers and 430,000 workers, according to the Center for Retirement Initiatives.

"The success of the state auto IRA programs [and] state leadership driving to close the access gap … has really focused the entire industry on addressing a problem that for decades has been ignored," Antonelli said.

"The growth and innovation in the private market is a positive thing, but it does not take away from the value and demand for state-facilitated programs," she said. "They will fulfill the different needs of different employers."

Self-employed people and gig workers, for example, can sign up for CalSavers.

That nontraditional section of the workforce — which also includes temps, freelancers, consultants, day laborers, seasonal workers and others — has notoriously low access to retirement saving options. Less than a quarter of nontraditional workers save for retirement in employer-sponsored plans, according to a report last year from The Pew Charitable Trusts.

Early opponents of state-run programs had expressed concern that those structures would lead employers to end their 401(k)s, Antonelli said. So far, that has not been the case.

"What we've seen is an actual increase in private plan formation in Oregon," she said. "The data to date is showing that the existence of a state auto IRA program is contributing to the creation of private plans by employers."

OPPORTUNITIES ON BOTH SIDES

One company that is benefitting enormously from startup 401(k) plans and the state auto IRA market is Vestwell.

That firm, which has a 401(k) business and is a service provider for the Oregon, Connecticut and Maryland auto IRAs, counts about 25,000 business and 165,000 workers covered by its services.

"The interest is incredible versus what it was just a few years ago. Everyone is looking at small businesses, individuals under-saved, as a great opportunity to engage," Vestwell CEO Aaron Schumm said.

The Great Resignation has also been good for business.

The number of small businesses in existence is growing, in some part due to unhappy workers leaving jobs to set up shop on their own. That has led to more startup 401(k) plans, Schumm said.

And the trend of workers leaving old jobs for better ones has also made employers that didn't previously offer 401(k)s add them, he said.

At least 60% of the company's 401(k) business comes from new plans, with the rest being plan conversions, Schumm said.

"We're having to rethink how do we get this stuff on-platform faster, because people are anxious to do so," he said.

One thing that could accelerate retirement plan coverage exponentially would be a federal auto IRA or coverage mandate, a concept that was pursued by the Obama administration and has surfaced in recent bills in Congress but has not advanced.

"The devil's in the details with the construct of it. But if they did it at a federal level, I think it would be phenomenal," Schumm said. "Everyone would have to offer a solution."

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Providing financial advice to adult entertainers

BY JEFF BENJAMIN

When Lindsey Swanson came up with the name of her financial advisory firm, she knew there might be some who misinterpreted the message, but her goal was to ensure the target market saw it as a safe and welcoming place.

Thus, Stripper Financial Planning was born.

"I'm not worried about people thinking I'm a stripper," she said. "I could have chosen a name that was more vague, but I don't want people to have to look in the fine print to know if they are welcome. I want to be very in your face."

Swanson, 28, launched her niche advisory practice a little over a year ago from her home base in Humboldt, California, where she's building a diverse and growing clientele made up of the kind of individuals who often feel stigmatized and overlooked by more traditional wealth management firms.

DRIVEN BY FRUSTRATIONS

In her previous job, as a financial adviser at Great Lakes Investment Management, Swanson dabbled in creating a niche among people working in the cannabis industry, which led her in a roundabout way to adult entertainers.

While a lot of financial advisers turn to niche markets to stand out from the crowd of generalists, Swanson was driven by frustrations about the way the wealth management industry uses "gates" to keep out people who don't have a lot of money.

"I've always wanted to work with stigmatized groups that aren't being served by the wealth management industry," she said. "I really wanted to work with a group of individuals that no one wanted to work with."

VARIOUS NUANCES

Swanson's current client base is small and diverse across what she defines as the adult entertainment industry. She describes them as "porn stars" who create content on various online platforms, as well as erotic dancers and escorts.

She said she won't work with clients who are earning money by breaking the law, but she also recognizes the various nuances of her policy.

"The parameters are that they have to be working legally and reporting their income," Swanson said, acknowledging that adult entertainment laws can vary by jurisdiction.

"Being an escort is legal, assuming there is more to the service than just sex," she added.

Like a lot of niche markets, adult entertainers make up their own subculture, which Swanson strives to tap into as she builds her business. But unlike most other niche categories, Swanson said many of her clients keep their work deliberately separate from their personal and family lives, which can impede the traditional referral channels for finding accountants, lawyers and financial advisers.

"A lot of times these people are living double lives, and everything they don't feel comfortable asking their family and friends, they ask Google," she said.

With that in mind, Swanson designed her website for maximum search engine optimization, which she closely monitors and constantly tweaks.

"I'm making myself known out there," she said. "The market exists, so I need to make the market know I exist."

$350
FLAT MONTHLY FEE CHARGED BY LINDSEY SWANSON

True to her mission of not putting up gates that restrict potential clients, Swanson describes herself as an "advice-only adviser" who doesn't manage assets and therefore doesn't charge any asset-based fees. Instead, she charges a flat monthly fee of $350.

'STIGMATIZED GROUP'

"I came up with $350 because I looked at the numbers internally and externally, and it's a competitive rate," she said. "I plan to grow the business, so I looked at what I need to charge based on what I need to earn."

On her website, which is far from garden variety wealth management of old, Swanson states that she plans to increase her rates by 3% annually "to keep up with inflation."

While she isn't building portfolios for clients, Swanson said she will direct clients to such services if needed.

"For the most part, these are business owners that have 1099 income," she said. "They need to pay estimated taxes and keep track of expenses. They need lawyers and CPAs. But being in a stigmatized group, they don't feel comfortable working with other professionals, but they need professionals they can lean on that won't be judgmental. There's an image of a stripper as someone down on their luck, and this was their last choice. But a lot of times these people are very business savvy."

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NICHE ADVISER

LINDSEY SWANSON
Founder

NICHE FIRM
Stripper Financial Planning
Humboldt, California

NICHE
Adult entertainers

PRO TIP
"I made the website myself, making sure all the small print is connecting all the dots, and I'm constantly changing keywords to make sure I'm coming up on searches."
"I'm not worried about people thinking I'm a stripper [based on the company name]. I could have chosen a name that is more vague, but I don't want people to have to look in the fine print to know if they are welcome. I want to be very in your face."

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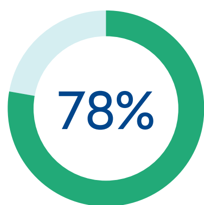

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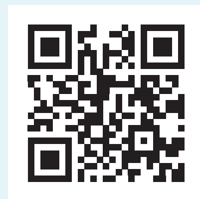

[1] 2021 Allianz 3Q Quarterly Market Perceptions Study

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Analysis&Commentary

RETIREMENT

How divorce complicates Social Security

With more than 2,700 rules, Social Security is certainly a challenging topic for many financial advisers who want to help their clients optimize their benefits. But when it comes to dealing with divorced clients and the various rules and exceptions that apply, some advisers simply raise the white flag of surrender and cry help!

KEY POINTS

- Rules and exceptions around divorce pose a challenge for advisers.
- Marriage length and age that benefits are claimed affect amounts.

No worries. I'm here to translate.

"It always amazes me that I can understand the Social Security claiming strategies you outline in your column and even explain it to clients," one adviser from North Carolina wrote to me via email recently. "But then certain situations trip me up."

Case in point: The adviser's client is a divorced woman who turns 65 in May. Born in 1957, her full retirement age is 66 and 6 months. The client's benefit amount at her full retirement age is a meager $780 per month. Her ex-husband, who's 68, is currently collecting about $3,400 in Social Security retirement benefits.

"My client was told by Social Security that she would be eligible for about $1,700 per month based on half of her ex-husband's full retirement age benefit amount," the adviser wrote in an email. "But my question is, does she have to wait until her full retirement age to collect that amount?"

Yes, I replied. "If your divorced client waits until her full retirement age to claim Social Security, she will collect half of her ex's FRA amount."

In this case, the divorced spouse's benefit of $1,700 per month would actually represent a combination of her own Social Security retirement benefit of $780 per month topped off by the excess spousal amount of $920 per month. The excess spousal amount is the difference between her full retirement age amount ($780) and half of her ex-husband's full retirement age amount ($3,400/2 = $1,700).

SPOUSAL BENEFITS

The maximum spousal amount is worth half of the worker's full retirement age benefit amount if the spouse or ex-spouse claims at her full retirement age or later. Unlike retirement benefits, spousal benefits don't continue to grow by 8% per year up age 70.

"Can my client claim her own reduced retirement benefit now and then upgrade to the amount she is entitled to under her ex's record when she turns 66 and 6 months?" the adviser asked.

MARY BETH FRANKLIN

ONRETIREMENT

No. If the client claims Social Security before her full retirement age, her benefits will be permanently reduced. Because she was born after Jan. 1, 1954, she is "deemed" to file for all available benefits based on her age at the time of claim.

SURVIVOR BENEFITS

However, "deeming" rules don't apply to survivor benefits. Even if the client claims her own reduced Social Security benefits early, it won't have any impact on her survivor benefits if her ex-husband dies first and she's at least full retirement age at the time.

"Does my client automatically step up to a larger survivor benefit if her ex dies?" the adviser asked.

It depends. If any portion of her Social Security benefit is based on her spousal amount, which it would be in this example, then she'll automatically step up to a larger survivor benefit if her ex-husband dies first. But if an individual is collecting retirement benefits solely on his or her own earnings record, then that individual must apply for survivor benefits when a spouse or ex-spouse dies.

If a divorced spouse remarries, she loses the right to collect spousal benefits on a living ex, unless that subsequent marriage ends through death or divorce. But if she is waits until 60 or later to remarry, she can still collect survivor benefits on her ex — even if she's married to someone else at the time.

Another reader contacted me about some misinformation she received from the Social Security Administration about her right to collect survivor benefits on a deceased ex-spouse, to whom she was married for 13 years.

"I am totally confused about Social Security benefits on my ex-husband who just passed away," Judy from South Carolina told me in a telephone conversation. "I am currently drawing Social Security survivor benefits on my second husband, and I've been told that because I remarried before age 60, I am not eligible to collect survivor benefits on my first ex-husband, whose benefits would be much larger.

In this case, the SSA representative got the rules half right and gave the reader the wrong answer. Although Judy remarried before she turned 60, the second marriage ended when her second husband died. Therefore, she's currently single and eligible to collect survivor benefits on her first ex-husband if they are larger than the survivor benefits she's collecting on her second husband. I told her to contact SSA again and ask to speak to a supervisor if necessary.

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

Mary Beth Franklin, a certified financial planner, is a contributing editor for InvestmentNews.
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TECHNOLOGY

Are rumors of Envestnet being for sale premature?

Envestnet Inc. has long been the reported target of a potential sale ever since the tragic death of its well-loved co-founder and CEO Jud Bergman more than two years ago.

SEAN ALLOCCA

ONTECH

The wealthtech tea leaves last week had the turnkey asset management platform exploring its strategic options after receiving interest from a potential PE buyer. The Chicago-based company has recently been approached by at least one private-equity firm, according to Bloomberg.

The speculation quickly escalated in a follow-up story with Envestnet actually being shopped around to private-equity firms in an auction-like dog and pony show, according to not one, not two, but five people who spoke with Barron's.

An Envestnet spokesperson declined to comment for this story.

CONTINUED ON PAGE 18

EQUITABLE

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CONTINUED FROM PAGE 16

Investment bankers who advise on these potential sales often leak the details to news outlets to chum the waters and attract attention from as many potential buyers as possible. And, where there's bait, the big fish aren't usually far behind.

JUD BERGMAN

PE has recently been enamored by wealth management assets 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. Research from Echelon Partners counted 307 deals in 2021, an increase of nearly 50% over the prior year.

An Envestnet sale would dwarf most fintech deals to date.

"The organization is at a crossroads," said William Trout, senior analyst at the consulting firm Javelin Strategy & Research. "Perhaps they haven't fully regained the mojo they had when the previous regime was in place. The headwinds have become so significant that they may want to reevaluate their strategic options."

AN INTERESTING WRINKLE

The company's board of directors could also make for an interesting wrinkle to the saga. Chairman James Fox is a former exec with Brinker Capital, which is closely linked to the wealth management sector through prominent investments in Orion Advisor Solutions.

Another member, Gayle Crowell, served as an operational consultant for the private equity firm, Warburg Pincus, which took a majority stake in Kestra in 2019 and more recently invested in the advisory technology platform Facet Wealth Inc.

"It's an interesting cast of characters," Trout said.

Keep in mind, the rumor mills have missed the Envestnet mark before. Around this time last year, numerous reports predicted a potential sale of the company's data analytics arm, Envestnet Yodlee, or a sale of the entire firm itself. The blockbuster, but now-defunct, $5.3 billion merger of Visa Inc. with Plaid Inc., another data aggregator in the financial services sector, stoked the flames last February.

INTEGRATING YODLEE

Fast forward to today and Yodlee sounds like an integral part of Envestnet's future. The company has plans to monetize the data analytics it gathers through Yodlee and said it's projected to become inseparable from Envestnet's core businesses, according to president Stuart DePina. More than a third of the advisers using the platform are also tapping into the data.

Admittedly, integrating Yodlee, Tamarac and numerous other business lines and projects at the expansive TAMP has proved more arduous than executives initially bargained.

"It would be disingenuous of me to say that it's one product today, because it's not," DePina said during the May earnings call. "This is early stages, and we haven't made a lot of progress yet, but we're starting to."

"THE ORGANIZATION IS AT A CROSSROADS."

WILLIAM TROUT, SENIOR ANALYST, JAVELIN STRATEGY & RESEARCH

GOOD FOR BUSINESS

While the rumors are simply hearsay, for now, they're still good for business. Envestnet's stock rose 8.4% to $71.56 on Feb. 22 after the original story was published, giving the company a market value of about $3.9 billion. More than 108,000 advisers, including over 500 of the largest registered investment advisers, use the firm's tech to help them manage investments for clients.

"To what degree Envestnet feels exposed to the competitors and the current market conditions is hard to say," Trout said. "Frankly, going private would allow them to raise more capital and a bit more breathing room."

If an eventual sale actually happens, bringing Envestnet, which has been publicly traded since 2010, back under private ownership, rest assured it's going to be an earth-shaking deal, and one that will need very deep pockets.

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INDIVIDUAL RETIREMENT ACCOUNTS

Clearing up confusion around 2022 required minimum contributions

You don't have to be a Jeopardy champion to know how to calculate required minimum distributions for 2022, but it may be equally challenging due to several recent tax rule changes.

IRAALERT
ED SLOTT

First, the Secure Act raised the age at which individuals must begin to take required minimum distributions from 70½ to 72, effective for those who turned 70½ in 2020 or later. The act also eliminated the stretch IRA for most non-spouse beneficiaries, replacing it with the 10-year payout rule, which requires no annual RMDs until the end of the 10-year term.

Then came the CARES Act, which waived RMDs for 2020 (RMDs returned in 2021). On top of that, the IRS issued new RMD life expectancy tables for 2022 RMDs, but the tables don't apply for all RMDs taken in 2022.

So which tables apply for RMDs taken in 2022? It can either be the old tables, the new tables or no tables.

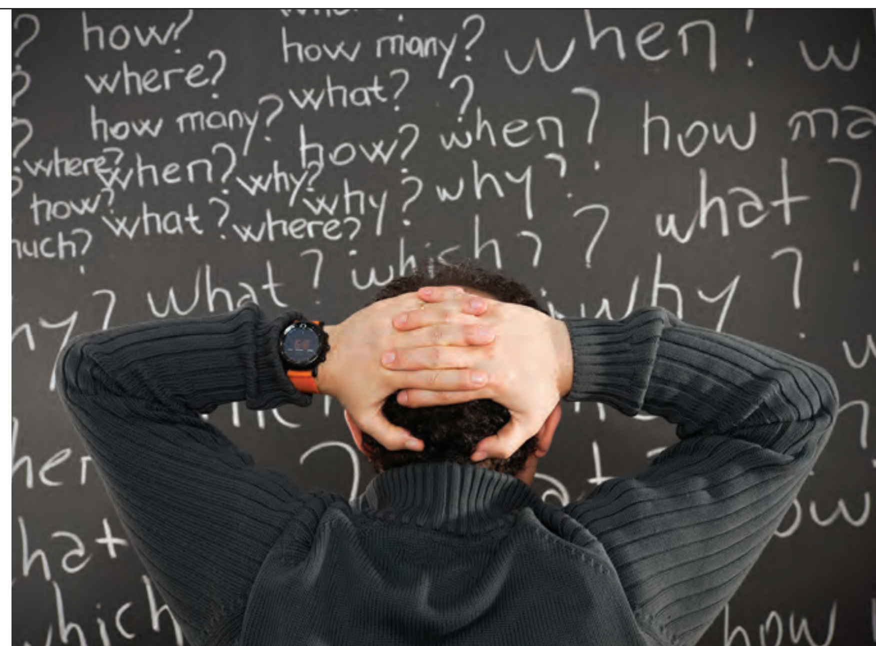
To make it even more confusing, some will use both tables (old and new) for 2022 RMDs.

OLD TABLES AND NEW TABLES

IRA owners (or plan participants subject to RMDs) who turned 72 in 2021, but after June 30, have a required beginning date, or RBQ, of April 1, 2022, and 2021 is their first RMD year.

Some in this group may have already taken their 2021 RMD last year. If not, any part not taken in 2021 must be withdrawn by April 1, 2022. If they delayed their 2021 RMD into 2022, they must take their first two RMDs (for 2021 and 2022) in 2022.

However, for the 2021 RMD due by April 1, 2022, they will still use the old RMD table (generally the Uniform Lifetime Table). Even though these individuals are taking the RMD in 2022, it's still the 2021 RMD, so they must use the old table. Their second RMD (for 2022) is due by Dec. 31, and they must use the new table for that RMD. So, anyone in this situation will use both tables (old and new) for the two RMDs they take in 2022.



NEW TABLES

Any other IRA owner subject to RMDs in 2022 will simply use the new Uniform Lifetime Table for RMDs this year unless the spousal exception applies.

That exception applies when the spouse is the sole beneficiary for the entire year and is more than 10 years younger than the IRA owner. In that case, the 2022 RMD will be calculated using the 2022 Joint Life Expectancy tables.

NO TABLES

This category would only apply to IRA beneficiaries — not owners. Under the SECURE Act, most non-spouse beneficiaries who inherited in 2020 or later will be subject to the 10-year rule. Since there are no annual RMDs, the beneficiaries

don't have to use any table. They can take whatever they want during the 10 years, as long as the entire inherited IRA or Roth IRA balance is withdrawn by the end of the 10-year term (more precisely, by Dec. 31 of that 10th year).

Similarly, some beneficiaries are subject to the five-year rule because they're not considered designated beneficiaries and they inherited before the IRA owner reached his RBD. Those beneficiaries also won't need to use any RMD table. Their inherited account balance must be withdrawn by the end of the five-year term (actually, by Dec. 31 of that fifth year). However, for this group, anyone who inherited between 2015 and 2019 got an extra, sixth year due to the waiver of 2020 RMDs. There was no such extension for those subject to the 10-year rule since that term couldn't have begun until 2021.

Not all beneficiaries are subject to the 10-year rule. Eligible designated beneficiaries can continue to use the stretch IRA. Their RMDs will be based on the new Single Life Table. EDBs are surviving spouses, minor children of the deceased IRA owner (but only up to the age of majority, or age 26 if they're still in school), chronically ill or disabled beneficiaries, and non-spouse beneficiaries who aren't more than 10 years younger than the deceased IRA owner.

In addition to EDBs, non-spouse designated beneficiaries who inherited before 2020 and were using the stretch IRA are grandfathered and can continue using their stretch IRA term for the rest of their life. They would also use the new Single Life Table.

72

AGE AT WHICH INDIVIDUALS MUST BEGIN TO TAKE RMDs

These non-spouse beneficiaries (who still qualify for the stretch IRA), only have to go to the Single Life Table once and look up their life expectancy based on their age in the year after death. Then they simply reduce that term by one year for each future year's RMD. (Surviving spouses can go back to the table each year to look up their life expectancy.)

But even here there's a twist. Starting in 2022, these beneficiaries must "reset" their stretch IRA payout period to the new Single Life Table by looking up their life expectancy factor (payout period) under the new table back in the year after the IRA owner's death. Then they subtract one year for each year since then to produce the new RMD payout term.

EXAMPLE

Pam inherited an IRA from her mother back in 2017, when she was 44. She began taking stretch IRA RMDs beginning in 2018 based on her age of 45 that year. The factor under the old Single Life Table was 38.8 years. Since then, she's been reducing that factor by one year. For 2019, she used 37.8. For 2020, no RMD was required because it was waived by the CARES Act. But in 2021, Pam continued her RMD schedule (with no adjustment required for 2020 when the RMD was waived) using 35.8 years.

But 2022, Pam must reset her RMD schedule by going to the new Single Life Table and looking up what would have been her payout period in 2017 when she was 45. That factor is 41.0 years. She then subtracts one for each year since 2018 to produce a 2022 factor of 37.0 years (41.0 less 4 years since 2018 = 37.0 years).

MODEST TAX SAVINGS

If the balance in Pam's inherited IRA as of Dec. 31, 2021, was $300,000, the change to the new table would save Pam the tax on $513, which at a tax rate of 22% would be $113.

Under the old table, Pam's 2022 RMD would have been $8,621 ($300,000/ 34.8 = $8,621); under the new table, her 2022 RMD is $8,108 ($300,000/ 37.0 = $8,108), $513 less than under the old table. The savings will generally be less for beneficiaries like Pam who still qualify for the stretch IRA, since they're usually much younger and use a longer payout period. But remember that this reset doesn't apply to most beneficiaries, because most don't qualify for the stretch IRA.

Furthermore, beneficiaries who inherited in 2021 and qualify for the stretch IRA (because they are EDBs) don't have to do the reset since their first RMD is for 2022. They'll simply look up their age in 2022 from the new Single Life Table.

Compared with most beneficiaries, IRA owners who begin RMDs at age 72 will generally save more under the new table based on their age (shorter life expectancy). That's especially true for IRA owners with a high account balance.

Explaining all this to clients this year is definitely tougher than correctly answering a Final Jeopardy clue. Good luck!

For more information on Ed Slott and Ed Slott's 2-Day IRA Workshop, please visit www.IRAhelp.com.

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— SECURITIES AND EXCHANGE COMMISSION CHAIR GARY GENSLER

ARBITRATION

Barred broker set to fight pro athletes' allegations of fraud

BY MARK SCHOEFF JR.

A FORMER MORGAN STANLEY broker likely will defend himself against charges by several pro athletes that he ripped them off by citing investment returns.

A current NBA player, his wife and two former NBA players allege that Darryl Matthew Cohen improperly diverted a total of about $10 million from their accounts, according to a recent story in the New York Times. The athletes have filed claims in the Finra arbitration system.

The lawyer representing Cohen said he was not available to comment on pending litigation, but he indicated how Cohen is likely to defend himself.

"The record shows that these complaining clients didn't lose money in the investments managed by Darryl Cohen," said Brandon Reif, managing partner at Reif Law Group.

NOT ABOUT PROFITABILITY

The lawyer for the athletes said their claims don't center on the overall profitability of their accounts.

"That's not what the case is about," said Philip Aidikoff, a partner at Aidikoff Uhl & Bakhtiari. "These cases are quite unusual because millions of dollars have been taken out of these accounts and directed at dubious places by the broker. There was a complete failure of supervision by the branch and the firm."

A spokesperson for Morgan Stanley was not immediately available for comment. Cohen worked at a firm branch in Westlake Village, California.

The athletes who allege Cohen stole from them are Jrue Holiday, who plays in the NBA for the Milwaukee Bucks, his wife Lauren Holiday, a former professional soccer player, and two former NBA players, Chandler Parsons and Courtney Lee. Parsons played most recently for the Atlanta Hawks, while Lee was a member of the Dallas Mavericks before he retired.

"THERE WAS A COMPLETE FAILURE OF SUPERVISION BY THE BRANCH AND THE FIRM."

PHILIP AIDIKOFF, PARTNER, AIDIKOFF UHL & BAKHTIARI

BARRED BY FINRA

Aidikoff said he filed three claims last year in the arbitration forum run by the Financial Industry Regulatory Authority Inc., the brokerage industry self-regulator. Hearings are likely later this year.

Last month, Finra barred Cohen for failing to cooperate in an investigation that appears to be related to the athletes' allegations. The organization conducted an expedited proceeding, according to Cohen's BrokerCheck profile.

"The sanctions were based on findings that Cohen failed to respond fully and completely to FINRA requests seeking documents and information in connection with an investigation into possible conversion and improper use of customer funds," Finra said in a statement on BrokerCheck.

$10M
SUM ALLEGEDLY DIVERTED FROM CLIENTS' ACCOUNTS

Morgan Stanley fired Cohen last March, according to BrokerCheck, for "allegations relating to the representative's facilitation of outside client business and transactions not disclosed to or approved by Morgan Stanley and use of an unapproved platform to engage in inappropriate communications with clients."

'FINANCIAL PIÑATA'

The case highlights the dangers professional athletes face when seeking investment advice, even when they turn to a well-known wirehouse.

"Athletes are the prime target for both scrupulous and unscrupulous advisers and are often a financial piñata for bad financial advisers," said Andrew Stoltmann, a Chicago securities attorney.

Stoltmann represented Horace Grant, a former player for the Chicago Bulls, a decade ago in a case against Morgan Keegan in which Grant won $1.5 million.

Highly paid athletes can be vulnerable wherever they turn for advice, said Ashton Lawrence, a partner at Goldfinch Wealth Management.

"You have bad actors all over the place in every industry," said Lawrence, who's a former basketball player at Coastal Carolina.

Both Stoltmann and Lawrence suggested athletes hire a team of advisers to manage their money.

"If you're working with one adviser, it's prudent to hire another one who is looking over the shoulder of the other adviser," Lawrence said.

Stoltmann suggested bringing an accountant, lawyer or agent into the mix.

"Someone else has to be looking at these statements to make sure there's no chicanery involved," he said.

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LAWSUITS

California prevails in auto-IRA battle

INVESTMENTNEWS

CALIFORNIA PREVAILED in a battle over its auto-IRA, CalSavers, last week when the Supreme Court refused to hear a challenge to the legality of the program.

"The United States Supreme Court's denial of review preserves the ability of millions of hard-working Californians to save for their futures through this portable, simple option," Fiona Ma, the treasurer of California, said in a statement. Ma chairs the CalSavers Retirement Savings Board.

GOOD NEWS

The court decision is good news not only for CalSavers, but for the other states and municipalities that operate similar programs.

In 2018, the Howard Jarvis Taxpayers Association had sued to block the CalSavers program on the grounds that it was illegal because it was preempted by the Employee Retirement Income Security Act.

A California District Court judge dismissed the suit in April 2019 and the 9th Circuit Court of Appeals affirmed that decision in May 2021.

CalSavers has more than $186 million in assets, with about 30,000 employers registered and 233,000 people enrolled, according to the statement.

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SPEAKERS

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Executive Vice President
LPL Financial

Michael Kitces
Chief Financial Planning Nerd
Kitces.com

Jeff Benjamin
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WELLS

CONTINUED FROM PAGE 2

Tuesday morning, and his attorney, Tom Momjian, did not return a call to comment.

A spokesperson for Wells Fargo Advisors said the firm was "disappointed" with the arbitration panel's decision.

"We are disappointed with the decision and believe we followed Finra requirements and guidance in filing an amended U5 for this former employee," the spokesperson wrote in an email.

The Finra panel initially awarded Olson $1.8 million but subtracted $367,000 to satisfy Wells Fargo Advisors' counterclaim against Olson for payback of a promissory note. Such notes are a common way to incentivize brokers and financial advisers to begin working at a new firm and are paid off over time, usually in seven to 10 years.

The panel ordered Wells Fargo Advisors to pay Olson $700,000 for two claims, one for fraud and the other for defamation. It also ordered the firm to pay its former adviser another $400,000 in punitive damages under North Carolina law.

In November 2020, Wells Fargo Advisors lost another arbitration claim to a broker who alleged the firm had made damaging remarks part of her work history; the single arbitrator in that claim awarded that adviser, Amy Webster, $30,000 for attorney's fees.

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TYRONE ROSS

CONTINUED FROM PAGE 2

Solutions and Carson Group.

In his email to investors last Monday evening, Ervin was similarly cryptic.

After reassuring investors by introducing himself as the new person in charge, Ervin referenced the origins of Onramp and how he and Ross "agreed that in order to build quickly and scale, we should each focus on our strengths. He focused primarily on raising capital, building the brand, and attracting talent, while I focused on the day-to-day operations, product development, and building the business."

"What we achieved in such a short amount of time is remarkable," Ervin added. "However, we are now at a crossroads. The small company we started just 19 months ago has grown significantly and we now realize the stresses that dual leadership places on the company."

By midday last Tuesday, Onramp board member Dani Fava of Envestnet announced on Twitter that she had "made the personal decision to step down from the @OnrampInvest board."

When reached for comment, Fava responded, "My official statement is that I'm not aligned with Onramp's strategy moving forward."

Kyle Van Pelt, executive vice president of sales at Skience, also announced last Tuesday on Twitter that he was leaving the Onramp board.

FACE OF THE BUSINESS

Industry consultant Tim Welsh views Ross' departure as a "big blow to the prospects of Onramp," describing Ross as the face and leader of the business up to this point.

"Tyrone leaving the company brings up so many questions, and even more so because this is a crypto platform and it's not clear what the business model is," Welsh said.

Onramp did not respond to a request for comment, but by last Tuesday morning the Onramp website was already updated to show the management change.

As news of Ross' departure was sinking in, industry consultant Suzanne Siracuse predicted more big things from Ross.

"I cannot wait to see what Tyrone does next," Siracuse said. "He is a true visionary, leader and disrupter. We are lucky to have him and his perspective as a part of our industry."

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SEC

CONTINUED FROM PAGE 3

attack, Crenshaw said. She noted that the investigations that result in enforcement are the ones that have a high profile, while investigations that close without action aren't publicized.

"Our goal is not to punish the victim," said Crenshaw, one of three Democratic commissioners on what is at the moment a four-person panel. "And registrants can certainly help their cause by taking steps really before a problem happens to minimize potential harm, to have a plan for how to respond and really make sure they are abiding by all the regulations."

created a time that is defined by fracture and chaos, Birdthistle said. He sees an important SEC role as protecting investors in financial markets where technology has disrupted the status quo.

In his first six weeks in office, the SEC has proposed rules — such as the cybersecurity proposal and a proposal to curtail certain practices of private fund advisers — that take "steps to ensure coherence and order," Birdthistle said.

"If adopted, I believe that the proposals would close gaps in information and enhance investor protections in light of industry developments," he added.

Birdthistle said he wants to bring order to the "new frontier" of crypto

"OUR GOAL IS NOT TO PUNISH THE VICTIM."

CAROLINE CRENSHAW, COMMISSIONER, SEC

Barr liked Crenshaw's answer. "We appreciate that," she said.

Later in the session, Crenshaw said complex investment products, such as leveraged and inverse exchange traded products, pose one of the biggest investor protection threats.

"Any products that don't have an intuitive payoff structure are something that I'm certainly thinking about," Crenshaw said.

BIRDTHISTLE MAKES DEBUT

The SEC's new director of the Division of Investment Management, William Birdthistle, made his first public appearance to open the IAA conference, which drew about 400 attendees. Birdthistle addressed the audience via video from Chicago, where he was a professor of law at the University of Chicago before joining the SEC.

Technological developments have assets and online investing.

"The expanding opportunities to invest in securities directly using digital platforms, such as robo-advisers, online brokerages, and mobile investment apps and portals, also present challenges," he said. "I look forward to considering recommendations in light of the comments we have received in this area."

His remarks made it clear that Birdthistle is a fervent academician. He made more references to economic historians than to SEC rules, using their theories to put into context the challenges today's markets pose for investor protection.

"My ultimate goal as division director is to work toward a cohesive society with an order in which innovation and investment can flourish," Birdthistle said. "I can't think of a more worthy calling."

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IRS PROPOSAL

CONTINUED FROM PAGE 3

The SECURE Act reforms have been in place since the legislation was approved in late 2019. The hefty IRS proposal provides long-awaited implementation details and also updates RMD policy to reflect other legislative changes.

DIGESTING THE CHANGES

On Feb. 24, the retirement policy community in Washington was trying to digest the proposal, which will be open for public comment for 90 days after being published in the Federal Register.

"They've rewritten everything," said Carol McClarnon, a partner at Eversheds Sutherland. "You have to read through it carefully to see how the rules have changed because it's not just the SECURE Act being addressed."

Staffers at the Insured Retirement Institute are poring over the proposal.

"The proposed regulations are a step forward towards the implementation of the SECURE Act," IRI spokesperson Dan Zielinski wrote in an email. "Increasing the RMD age was among many provisions in the law that IRI advocated so we and our members are keenly interested in how the proposal is structured."

275

NUMBER OF PAGES IN IRS PROPOSAL TO RMD RULES

The proposal clarifies some aspects of the SECURE Act changes. For instance, it lays out the details of how much time a non-spouse IRA beneficiary has to liquidate the vehicle if it's inherited from someone who already started taking distributions.

In general, a beneficiary who is more than 10 years younger than the IRA holder can maintain the investment until the 10th year, with no distributions being required in years one through nine.

"However, the proposed regulations somewhat unexpectedly say that when RMDs have already begun to the participant, after death distributions must continue to be made in years one to nine in that situation, with the remaining account balance distributed no later than year 10," McClarnon said.

CLOCK FOR STRETCH IRA BAN

The proposal also sets a specific time for the stretch IRA ban clock to begin for children who inherit an IRA. Children can take lifetime distributions until they reach the age of 21. At that point, they must liquidate the IRA within 10 years.

There are some exceptions to ending the stretch IRA. In addition to minors, the rule doesn't apply to disabled people. But the proposal specifies that a disability must be documented before the stretch ban is lifted.

Other RMD reforms in the proposal encompass trusts, annuities, 403(b) plans, custodial accounts and deferred compensation plans.

The next iteration of the SECURE Act, or SECURE 2.0, was approved unanimously by the House Ways and Means Committee last year.

"IRI will continue to advocate for additional changes to help retirement savers, including boosting the RMD age to 75, which is currently reflected in SECURE 2.0 legislation in both the House and Senate," Zielinski said.

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RUSSIAN HACKS

CONTINUED FROM PAGE 4

small businesses, according to DHS.

The cybersecurity industry has seen a pickup in investor interest following Russia's invasion of Ukraine, which has organizations preparing for possible cyberattacks. Shares of cybersecurity software companies rose last week, according to Bloomberg, with analysts expecting higher spending on security-related services as businesses and companies brace for war.

"Clients are now asking advisers, 'How are you protecting my money, my information and my wealth?'" said Michael Hallett, CEO of cybersecurity provider CleverDome.

"Wealth management is part of the financial infrastructure of this country and needs to be protected," Hallett said. "It's a critical issue today."

'DIGITAL WAR ZONE'

Work from home orders have also played a role in the increase in ransomware attacks, as employees work off free Wi-Fi from their local coffee shop or from home on a network that isn't entirely secure.

"We're in a digital war zone," Hallett said. "Mobile apps are almost always connected to the internet. That's inherently insecure."

Ransomware attacks, however, can take weeks or months to unfold; potential hackers from foreign countries could likely strike much more quickly.

"The more concerning options are destructive attacks like you're seeing in the Ukraine," O'Connell said.

REPUTATIONAL DAMAGE

Destructive malware, for example, can enter a computer and randomly delete information or rewrite hard drives to effectively shut down the system, and it can do so within hours. These attacks have the potential to wipe out all of a client's information and documentation in an account, like personal financial data, signed approval documents, performance reports and more.

"Imagine they got into your client accounts and just started randomly deleting files," O'Connell said. "The good Lord himself couldn't get that data back."

There's also a massive risk of reputational damage for a firm that gets hacked, especially if personal information is copied by hackers, deleted from the firm's servers and then made public.

"For a wealth management firm, that would be debilitating, and that's probably an understatement," O'Connell said.

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MESSAGES

CONTINUED FROM PAGE 4

Commission is probing Citigroup Global Markets Inc. "and other firms regarding compliance with record-keeping obligations for broker-dealers and investment advisers in connection with business-related communications sent over unapproved electronic messaging channels," the New York-based bank said in a regulatory filing last Monday. "CGMI is cooperating with the investigation."

> **"CGMI IS COOPERATING WITH THE INVESTIGATION."**
> CITIGROUP REGULATORY FILING

Firms including Goldman Sachs Group Inc. and HSBC Holdings are being probed by U.S. regulators over staffers' communications. In December, the SEC and the Commodity Futures Trading Commission imposed $200 million in fines on JPMorgan Chase & Co., saying that even managing directors and other senior supervisors at the bank had skirted regulatory scrutiny by using services such as WhatsApp or personal email addresses for work-related communication.

COMPLICATED TASK

For decades, Wall Street firms have been required to closely monitor and save staffers' business communications, a task that's been complicated in recent years by the proliferation of mobile technology and messaging apps. The system was strained further as banks sent workers home at the onset of the Covid-19 pandemic, making it harder to see who might be using an unmonitored device.

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