APRIL 18, 2022

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INSIDE

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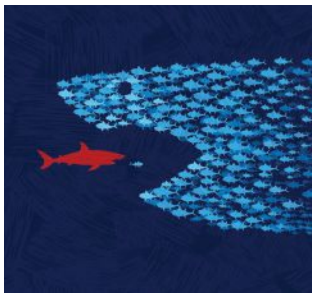
Justin Green has learned that building a niche is an evolutionary process.



Bruce Kelly wonders when one of the large strategic buyers of RIAs swallows another.

PODCASTS

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Wells Fargo Advisors fires back at Georgia arb ruling

BY BRUCE KELLY

WELLS FARGO ADVISORS earlier this month took aim at a Georgia Superior Court judge's order dismissing an arbitration claim that Wells Fargo had won 2½ years ago involving a client who sued the firm for mismanaging his account.

In the Wells Fargo Advisors appeal, which was filed on April 4 in Georgia's Court of Appeals, the firm argued that the judge, Fulton County Superior Court Judge Belinda E. Edwards, was wrong and that the arbitration decision it had won initially should stand and not be overturned.

In 2017, Wells Fargo Advisors client Brian Leggett filed a complaint in Atlanta with Finra arbitration, suing the firm and his broker for $1.5 million and alleging that Wells Fargo failed to adequately train, monitor and supervise two registered reps who mismanaged his account. In 2019, Leggett lost that claim, with the three Finra arbitrators denying the allegations, according to the decision at the time.

Either the claimant or the defendant can go to court to overturn an arbitration panel's decision, but they're highly unlikely to get a favorable ruling. But on Jan. 25, Edwards ordered the dismissal of Wells Fargo's legal victory over its client, Leggett.

KEY POINTS

- A judge tossed an arbitration claim that Wells Fargo won 2½ years ago.
- The firm argues that the judge was wrong and the decision should stand.

"The trial court vacated the [arbitration] award notwithstanding that the factual findings in its order are false and wholly unsupported by the record," according to the Wells Fargo Advisors appeal. "If this court does not reverse, the trial court will have effectively deprived [Wells Fargo Advisors] of the benefit of the written contractual bargain that it had struck with Leggett."

ALLEGED MANIPULATION

At the center of the judge's order to undo Wells Fargo's July 2019 victory was her condemnation of alleged manipulation in the way arbitration panelists, who ultimately approve or deny damages in such claims, are selected under the aegis

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Advisers cheer SECURE 2.0 and its focus on retirement savings

BY MARK SCHOEFF JR.

INVESTMENT ADVISERS are enthusiastic about SECURE 2.0, the retirement savings legislation making its way through Congress, because they say it will help clients and create financial planning opportunities.

Last month, the House approved the Securing a Strong Retirement Act in an overwhelming bipartisan vote, 414-5. The measure is known as SECURE 2.0 because it's the sequel to a major retirement policy bill, the SECURE Act, that became law in 2019.

"It's quite a big step forward in many ways," said Aaron Schumm, CEO of Vestwell. "This is about helping people save, and it doesn't create a burden for employers. There's more attention on retirement savings than I've ever seen."

Like its predecessor, the 139-page SECURE 2.0 takes a comprehensive approach to expanding access to workplace retirement plans and increasing retirement savings.

CONTINUED ON PAGE 22

Wells Fargo head count slips in Q1

BY BRUCE KELLY

WELLS FARGO & CO.'S wealth and investment management group reported last Thursday that its financial adviser head count continued to decline during the first three months of 2022, albeit at slower rate than previously, while its annualized revenue per adviser was up in a quarter when the broad stock market declined, with the S&P 500 dropping 4.9%.

Annualized revenue per adviser, a key industry metric, was $1.22 million at the end of March, up 4.3% from the end of last year and up 15% when compared to the same time last year, according to the company.

Wells Fargo has been trying to focus on recruiting larger advisers at a time when its wirehouse competitors have been shying away from bringing on experienced advisers, which is expensive.

$1.22M

ANNUALIZED REVENUE PER REP IN Q1

Wells Fargo Advisors reported that it had 12,250 financial advisers at the end of last month, a drop of 117 or almost 1% from the prior quarter, when it had 12,367. The total at the end of March was down 1,027, or 7.7%, from the same time in 2021, when its head count was 13,277.

"Attrition is at the lowest in two years and our hiring momentum remains strong moving into the second quarter," a Wells Fargo spokesperson wrote in an email. "Our multi-channel model continues to be a differentiator as advisers have more choice in managing their careers at Wells Fargo Advisors than any other firm."

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Burt White joins Carson Group from LPL

BY JEFF BENJAMIN

LESS THAN NINE months after announcing his plans to retire from his position as chief investment officer at LPL, Burt White is moving to Carson Group, where he will take on the newly created role of chief strategy officer.

White, 52, who spent 14 years at LPL, officially wrapped up his employment with the broker-dealer on April 1 and started work at Carson Group on April 4.

White joins Carson's executive board and will report directly to company founder Ron Carson.

"Burt and I will have a lot of fun together traveling the country, augmenting and elevating our value proposition," said Carson, who severed his broker-dealer relationship with LPL in late 2016, moving $2.6 billion worth of brokerage and advisory assets to Cetera Financial Group.

Carson said he met White on the day he originally joined LPL, and describes him as "culturally, a perfect fit."

"One of my secrets as I've gone through life is writing down the names of people I would have on my team if I could," Carson said, adding that White was on that list.

"I've known Burt for 14 years; he not only understands where the profession is but where it needs to go," Carson said. "We're extremely intentional about the people we add to our leadership team, and I am incredibly excited about what Burt brings to the table as a human, friend and visionary of our profession."

White, who lives in Charlotte, North Carolina, will be a frequent visitor to Carson Group's Omaha, Nebraska, headquarters, but has no plans to relocate there.

He describes his new role as "making [Carson Group] a really exciting magnet for advisers to join."

"I'm trying to make sure advisers have the very best wealth management experience and platform in the industry," White added. "I've realized that investments are an important part of the platform, but not the only part. I'm going to try and elevate the overall wealth management platform."

AUGUST ANNOUNCEMENT

Regarding the August announcement that he would be "retiring," White admitted that he didn't know how else to describe his departure from LPL.

"I didn't know what I was going to do, and I didn't know the impact I was going to make," he said. "I spent a lot of time talking to mentors, my friends and family, and one of the mentors I talked with was Ron Carson."

White, who didn't elaborate publicly following his initial announcement to leave LPL, described his time there as "blessed," and said the months since the announcement were "a time for me to pause; it was almost like a sabbatical."

"I've had the opportunity to work in different parts of the wealth management ecosystem; I was a money manager, a trader, consultant, I worked at a wirehouse bank," he said. "The last thing I haven't done, outside of fintech, is worked intimately supporting RIAs, and I'm fortunate I get to do it last. I wanted the last stop on my career journey to round out the experience."

Founded in 1983, Carson Group serves financial advisers and investors through three businesses: Carson Wealth, Carson Coaching and Carson Partners. The company manages $20 billion in assets and serves more than 40,000 families among its adviser network of 120 partner offices, including 35 Carson Wealth locations.

jbenjamin@investmentnews.com

BURT WHITE

Morgan Stanley looks at retirement, overseas opportunities

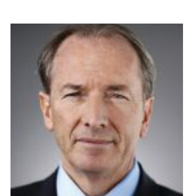
BY BRUCE KELLY

FRESH OFF ITS ACQUISITION this winter of $75 billion in retirement assets with its purchase of Cook Street Consulting, Morgan Stanley will continue to focus on its retirement platform and also widen its gaze to the overseas wealth management market, which historically has proven elusive ground for U.S.-based firms.

While it's still focusing on wealth management, trading and investment banking, Morgan Stanley has opportunities to pursue, James Gorman, chairman and CEO, said last Thursday in a conference call to investors and analysts to discuss first-quarter earnings. And the firm has deal-making savvy, with two recent mega-deals for ETrade and Eaton Vance under its belt.

There will be "a lot of investment around the retirement workplace platform, which I think is sort of the next frontier," Gorman said. "And we are just in baby steps, we are very early days of that, but I think that's a huge opportunity."

"I do think that there are opportunities outside of the U.S.," he said. "But I think in the wealth and asset management spaces internationally, we punch below our weight. I think there's clearly more we can do internationally, so



"I DO THINK THAT THERE ARE OPPORTUNITIES OUTSIDE OF THE U.S."

JAMES GORMAN, CHAIRMAN AND CEO, MORGAN STANLEY

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SEC's limit on term 'fiduciary' raises alarm

BY MARK SCHOEFF JR.

FIDUCIARY ADVOCATES are raising an alarm about what they say is the SEC's effort to limit the use of the term "fiduciary" in a client disclosure document being used by investment advisers and brokers.

What caught the attention of the Institute for the Fiduciary Standard was an answer that was recently added to a list of frequently asked questions about Form CRS, the client relationship summary that was part of the rulemaking package that included Regulation Best Interest, the broker standard of conduct.

The FAQ says that prescribed language prohibits investment advisers from using the term "fiduciary" in certain parts of Form CRS. It goes on to say that even outside of those areas, advisers should be cautious in using "fiduciary" or "fiduciary duty."

Brokers are governed by the Reg BI best interest standard while advisers are overseen separately under the Investment Advisers Act. Although the adviser law doesn't mention fiduciary duty, legal precedent has established that advisers are fiduciaries to their clients.

'SLAMMED THE DOOR SHUT'

But Knut Rostad, president of the Institute for the Fiduciary Standard, said that based on the wording of the FAQ, the Securities and Exchange Commission is trying to scrub the term from Form CRS.

"It has essentially slammed the door shut," Rostad told reporters on last Wednesday. "Its language is clear. We believe that it leaves no plausible and meaningful way for an investment adviser to tell investors the truth about their fiduciary status."

The SEC did not respond to a request for comment.

Form CRS, which went into force in June 2020 along with Reg BI, is a two-page document that outlines an advisory or brokerage firm's services, fees, conflicts of interest, disciplinary history and other information. The form, which is four pages for dually registered advisers, must be filed with the SEC and made available to retail investors on a firm's website.

Since its implementation, the SEC has released guidance and conducted enforcement related to Form CRS.

In the FAQ, the SEC cautions investment advisers against using the terms "fiduciary" or "fiduciary duty" in Form CRS if doing so would be "extraneous" or "unresponsive" to a certain item or would exaggerate an adviser's description of the firm.

"For example, in the staff's view,

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GWG Holdings prepping for bankruptcy: Sources

BY BRUCE KELLY

GWG HOLDINGS INC. which sold \$1.6 billion in bonds backed by life settlements through a network of independent broker-dealers, is getting ready to file for Chapter 11 bankruptcy protection, according to sources.

GWG, an alternative asset manager that issued the series of high-yield bonds known as L Bonds, has struggled as of late and repeatedly missed the deadline to file audited financial statements in the past couple years. In January, it failed to make \$13.6 million in combined interest and principal payments for its L Bonds series, ultimately defaulting on those bonds.

An industry source who asked not to be named confirmed the company's preparation for bankruptcy, which was first reported on April 4 by the Wall Street Journal.

At the end of the previous week, GWG Holdings had signaled that the next potential step for the company was to file for bankruptcy protection. In a filing with the Securities and Exchange Commission April 1, GWG said it was unable to file its 2021 annual report and additional financial statements because it hadn't yet hired an auditor to replace Grant Thornton, which resigned at the end of last year.

MORE BAD NEWS

Not having an auditor on board after three months indicates that a likely next step for the company would be to file for bankruptcy. A GWG spokesperson declined to comment about the company's preparation to file for Chapter 11 bankruptcy protection.

GWG got more bad news on April 6 when the Nasdaq Stock Market Inc. informed the company that its failure to file its annual report, or Form 10-K, had started the clock on the company's losing its stock listing.

According to a statement from GWG Holdings after the market closed on April 6, the Nasdaq notice says the company is required to submit a plan within 60 days on how it will get back into compliance with the exchange's listing rules. If the plan is accepted, Nasdaq can grant the company up to 180 days from the due date of the Form 10-K to regain compliance and continue trading.

A company spokesperson de-

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Worst-performing equity funds in Q1

The financial markets experienced considerable volatility during the first three months of 2022. Here is Morningstar Inc.'s ranking of the 10 stock funds that suffered the most in the first quarter.

10. Simplify Volt Pop Culture Disruption
Ticker: **VPOP**
Type: **ETF**
Index fund: **No**
Category: **Communications**
Three-month return: **-30.29%**

9. Morgan Stanley Global Endurance
Ticker: **MSJSX**
Type: **Open-end fund**
Index fund: **No**
Category: **World small/mid stock**
Three-month return: **-31.75%**

8. AdvisorShares Psychedelics
Ticker: **PSIL**
Type: **ETF**
Index fund: **No**
Category: **Miscellaneous sector**
Three-month return: **-32.34%**

7. Clough China
Ticker: **CHNIX**
Type: **Open-end fund**
Index fund: **No**
Category: **China region**
Three-month return: **-33.0%**

6. US Global Investors Emerging Europe
Ticker: **EUROX**
Type: **Open-end fund**
Index fund: **No**
Category: **Miscellaneous region**
Three-month return: **-37.72%**

5. T. Rowe Price Emerging Europe
Ticker: **TREMX**
Type: **Open-end fund**
Index fund: **No**
Category: **Miscellaneous region**
Three-month return: **-83.21%**

4. Voya Russia
Ticker: **LETRX**
Type: **Open-end fund**
Index fund: **No**
Category: **Miscellaneous region**
Three-month return: **-90.88%**

3. VanEck Russia Small-Cap
Ticker: **RSXJ**
Type: **ETF**
Index fund: **Yes**
Category: **Miscellaneous region**
Three-month return: **-97.73%**

2. VanEck Russia
Ticker: **RSX**
Type: **ETF**
Index fund: **Yes**
Category: **Miscellaneous region**
Three-month return: **-98.73%**

1. iShares MSCI Russia
Ticker: **ERUS**
Type: **ETF**
Index fund: **Yes**
Category: **Miscellaneous region**
Three-month return: **-99.83%**


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Opinion

_IN_ THEIR OWN WORDS ...

from the web and print pages of *InvestmentNews*

"I don't think there's any question that securities regulation reflects the context of a highly politicized partisan environment we live in now."

Knut Rostad, president, Institute for the Fiduciary Standard

"One of my secrets as I've gone through life is writing down the names of people I would have on my team if I could."

Ron Carson, founder and CEO, Carson Group

The persistence of remote work

The labor market turmoil that began with the start of the pandemic recovery has come to be known as the Great Resignation. Record numbers of people have quit their jobs over the past year, millions more are employed but looking, and countless others are exerting their leverage in a variety of ways amid acute labor shortages in many industries and geographic regions.

Since results over the past year have demonstrated that employees can be just as productive working from home as in a company office, and often more so, employers are acceding to worker demands.

'FEEDBACK LOOP'

In the financial sector, Envestnet announced last week that it will be leaving its Chicago headquarters after 23 years and moving to Berwyn, Pennsylvania, outside Philadelphia, largely because its headquarters location has become less important in an age of remote work. (See the story on page 22.)

"We have a continuous feedback loop to hear from our employees about what is important to them in the workplace," a spokesperson for the 2,000-employee fintech company said in announcing the move. "We've heard they value a remote work environment and appreciate the flexibility that our hub and remote model provides."

Envestnet's new hub, however, will be near the headquarters of Brinker Capital, SEI and Vanguard, perhaps making CEO-level schmoozing easier.

In more traditional corners of the wealth and advisory market, a Great Resignation of a different sort has taken place over the past several months: Employers who were cajoling or hinting at ordering employees to come back to the office have thrown in the towel and are now resigned to the working-from-home model in the face of pressure from workers — even if they don't particularly like the idea and are not fully embracing it.

UBS, for example, will allow 10% of its workers in the U.S. to work remotely soon. As Bloomberg recently reported, the giant Swiss-based bank expects 10% to 15% of its U.S. workforce will be in the office full time and more than 70% working in a mix of locations. UBS said the move is in response to the 86% of its employees who said they seek more flexibility, including remote work. The company also noted that the new flexible policy supports its diversity and inclusion efforts.

Morgan Stanley loosened the reins somewhat differently. It announced last month that it will allow up to 90 days of remote work a year for advisers starting in July.

On the independent side of the advisory workforce, greater flexibility is a drawing card. One recent piece of marketing content on the LPL Financial website, in fact, essentially made the point that if an adviser wants the freedom to work from home, independence through LPL is a way to do it. Undoubtedly, other independent firms also are citing the appeal of workplace flexibility in their recruitment efforts.

ONE WAY IN WHICH WORKERS ARE FLEXING THEIR MUSCLE IS BY REFUSING TO COME BACK TO THE OFFICE FULL-TIME.

Last December, we pointed to the coming permanence of remote work in the advisory business and noted the challenges that it poses in the areas of cybersecurity, compliance, training and firm culture. Those challenges continue, but in the short space of four months, remote work seems to have become an even more permanent part of our everyday lives.

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Executive Chairman
John French, jfrench@investmentnews.com

Chief Revenue Officer
Mike Schott, mschott@investmentnews.com

CONTENT
Editor-in-Chief: Paul Curcio
pcurcio@investmentnews.com
Director of Content: Gretchen Lembach
glembach@investmentnews.com
Managing Editor: Susan Kelly
skelly@investmentnews.com
Contributing Editor: Mary Beth Franklin
mbfranklin@investmentnews.com
Senior Columnist: Jeff Benjamin
jbenjamin@investmentnews.com
Senior Columnist: Bruce Kelly
bkelly@investmentnews.com
Senior Reporter: Mark Schoeff Jr.
mschoeff@investmentnews.com
DEI Editor: Joanne Cleaver
jcleaver@investmentnews.com
U.S. News Editor, ESG Clarity: Emile Hallez
ehallez@investmentnews.com
Editorial Special Projects Manager: Brittney Grimes
bgrimes@investmentnews.com
Copy Editor: Daniel Martinez
dmartinez@investmentnews.com

CREATIVE DEPARTMENT
Executive Art Director: Scott Valenzano
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TECHNOLOGY
Chief Technology Officer: Simon Collin
simon.collin@bonhillplc.com
Digital Operations Manager: Christian Eddleston
ceddleston@investmentnews.com

ADVERTISING SALES
Business Solutions Manager, West Coast:
John Shaughnessy, jshaughnessy@investmentnews.com
Client Services Manager:
Mike Charest, mcharest@investmentnews.com
Head of Digital Advertising Operations:
Berta Franco, Berta.franco@bonhillplc.com
Senior Manager of Digital Advertising Operations:
Kimberly Hall, khall@investmentnews.com
Senior Ad Operations and Programmatic Specialist
Mirsad Brkic, mbrkic@investmentnews.com
Business Solutions Manager & U.S. Events:
Sabrina Straub, sstraub@investmentnews.com
Director of Event Operations: Brie Johnson
bjohnson@investmentnews.com
Director of Customer Service, Events:
Natalie Taylor, ntaylor@investmentnews.com
Conference Content Producer:
Lucas Gochanour, lgochanour@investmentnews.com
Events Coordinator:
Zoe A. Szmulewicz, zszmulewicz@investmentnews.com

AUDIENCE AND MARKETING
Director of Audience and Analytics:
Bryan Fox, bfox@investmentnews.com
Director of Research: Devin McGinley
dmcginley@investmentnews.com
Email Marketing Specialist: Nicole Chantharaj
nchantharaj@investmentnews.com
Director of Marketing and Custom:
Katie Downey, kdowney@investmentnews.com
Marketing Manager: Morgan Mallon
mmallon@investmentnews.com
Audience Data Specialist: Alex Rubinetti
arubinetti@investmentnews.com
Director, Client Services: Gillian Albert
galbert@investmentnews.com
Client Services Manager: Carla Flores
cflores@investmentnews.com
Sales Marketing Specialist:
Haley Coveny, hcoveny@investmentnews.com

HR/Office Administrator in NY
Cindy Zapata, czapata@investmentnews.com

INVESTMENTNEWS OFFICES
Headquarters: 685 Third Avenue
New York, NY 10017-4024
Bureau office: Washington: 601 13th Street, N.W. Suite 900 South, Washington, DC 20005

BONHILL GROUP, PLC
Chief Executive Officer (Interim): Patrick Ponsford
Chief Financial Officer: Sarah Thompson
Head Office: Bonhill Group, 29 Clerkenwell Road, London, EC1M 5LA

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INTO THE METAVERSE

FINANCIAL SERVICES FIRMS ARE HANGING OUT THEIR SHINGLES IN THE BURGEONING WORLD OF VIRTUAL SOCIETIES, HOPING TO ATTRACT A NEW BREED OF DIGITALLY NATIVE CUSTOMERS.

BY SEAN ALLOCCA

Registered investment adviser Arbor Digital's new storefront will be designed to look like any other wealth management office, with a newly minted sign hanging from an awning on a piece of finely landscaped real estate.

The only difference is this workplace, slated to open in 2023, won't be in a brick-and-mortar building downtown — it's inside the metaverse.

The Anchorage, Alaska-based firm has already set aside roughly $20,000 in cryptocurrency to purchase its virtual plot of land after seeing increased interest from clients in the metaverse, a loosely defined network of online communities where users create small cities and live out virtual lives.

Financial services companies are hanging out their shingles in these burgeoning virtual societies hoping to better understand how users are interacting with each other online and possibly lure in a new breed of digitally native customers. These early adopters are also trying to wrap their heads around the economics of the metaverse — known as metanomics, where consumers buy and sell virtual goods over the blockchain — to find viable ways of bringing in new business.

Arbor Digital said it's initially concentrating on providing financial education and will focus on setting up online webinars on its virtual land and perhaps even charge an entrance fee. The marketing opportunities are equally open-ended.

"We wanted to explore the different financial activities involved," said Marc Nichols, product director at Arbor Digital. "Can we stake the land? Can we earn a revenue base from it? Can we rent out space or utilize our storefront to host events?"

A job fair hosted last month in arguably the most well-known community, called Decentraland, was another practical example of real-life firms using virtual environments. The forum was complete with virtual booths sponsored by employers and well-dressed avatars offering information about the openings to prospective job applicants.

While the metaverse officially hit the mainstream in November after Facebook Inc. announced its official name change to Meta, financial services firms are equally optimistic about its future.

JPMorgan Chase & Co. expects market opportunities in the metaverse to hit $1 trillion annually in coming years and eventually "infiltrate every sector" of the economy, according to a January report. Warner Music, the entertainment behemoth, is currently building a music-driven theme park to host concerts on a competing platform called Sandbox, which already has hundreds of partnerships with famous brands, like the sports outfitter Adidas and the iconic rapper Snoop Dogg.

The Wall Street investment bank is so bullish on the future of digital worlds that it has set up its own storefront in Decentraland's Metajuku Mall. The bank's lounge features a live tiger, a soaring staircase and of course, a portrait of CEO Jamie Dimon.

JPMorgan declined to comment on its future metaverse plans.

VIRTUALLY SETTING UP SHOP

The hype around metanomics may be real. Online avatars will need clothes, proponents say, and fashion designers are already selling limited-edition outfits. There are also galleries featuring virtual rare art collections, many in the form of non-fungible tokens known as NFTs, and avant-garde entrepreneurs are already charging admission.

For Nichols, these digital-native businesses one day could be looking for virtual financial advice.

"If you're starting an RIA today, you need a website with the services

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you're providing," he said. "There's a good chance in the future, there will be niche advisers who are crypto natives and only offer financial services online. When they're building their companies, it's going to be in the metaverse."

Some $54 billion is already being spent on virtual goods each year, almost double the amount spent buying music annually, according to the JPMorgan report.

"It's just like investing in early-stage startups," Nichols said. "Normally, it's only venture capital and private equity that have access, but now we can participate much earlier in the process, basically on the ground floor."

There are a handful of companies that are already offering exposure and helping advisers invest in the metaverse on behalf of their clients.

Gemini Trust Co., the massive cryptocurrency platform run by the Winklevoss brothers, is offering the ability to buy Decentraland coins, called Mana, which fuel this burgeoning online economy. Mana lets users buy and sell real estate, which is also a non-fungible crypto token, called Land, that represents ownership. Each parcel of Land is unique, and owners get to choose how to develop it.

The average price of a parcel of land doubled during a six-month window in 2021, jumping from $6,000 in June to $12,000 by December across the four main metaverses, according to the JPMorgan data.

> "METAVERSE ... HAS POTENTIAL TO BE AN IMPORTANT PART OF INVESTMENT PORTFOLIO CONSTRUCTION."
>
> DAVE GEDEON, HEAD OF MULTI-ASSET INDICES, BLOOMBERG

While custody issues have prevented advisers from directly buying up plots of land in the metaverse on a client's behalf, it hasn't stopped them from buying the underlying cryptocurrencies that run these virtual economies.

For Paul Farella, managing director at Willow Investments, metaverse tokens are a way to diversify digital assets and gain exposure to explosive growth that clients won't likely find in more mature cryptocurrencies, like Bitcoin or Ethereum.

"If you think crypto is going to take off, and the metaverse could flip the current economic models, then here's a way to get exposure very early," Farella said.

In January, Gemini acquired Bitria, a five-year-old startup that provides advisers with tools to access and manage holdings of Bitcoin and other tokens.

The platform offers separately managed account portfolios that can include any of the more than 70 different digital assets, including metaverse tokens.

Advisers now see access to the metaverse as a "critical component" to help diversify digital asset portfolios, said Daniel Eyre, head of Gemini Bitria.

Along with crypto, metaverse exchange-traded funds are another popular way for advisers to get exposure for clients, with global assets now pouring into new ETFs that offer exposure to the companies jockeying to create virtual realities.

"Metaverse, like other thematics, has potential to be an important part of investment portfolio construction," said Dave Gedeon, head of Bloomberg's Multi-Asset Index business. "Thematics, especially in growth areas like technology, have had growing adoption in the construction of portfolios to provide investors with more specialized exposure."

ETF assets focused on the metaverse have exploded to about $2.2 billion, according to Bloomberg, which is due in large part to the Facebook name change last year. While these funds offer exposure, they usually include only equities that are associated with the metaverse, rather than the underlying tokens themselves, Eyre said.

"Currently, there are very few options available to advisers who want to provide crypto access to their clients," he said.

The surge in demand for digital assets is largely driven by advisers, who are looking to find the most attractive investments. These advisers come from all corners of the industry, Farella said, including CFPs and CPAs.

"If you look at what the big money managers are doing right now, they're way beyond just Bitcoin," he said. "The hedge funds and private placements are going much further out on the spectrum. We're actually playing catch-up."

THE 'NEW INVESTOR'

Clients, too, are driving the demand for meta, but perhaps not the demographic of clients one might expect. Since cryptocurrency platforms are so widely available, the younger generation of clients has no problem opening do-it-yourself accounts with their favorite provider. These clients represent the group that the Financial Industry Regulatory Authority Inc. calls the "New Investor," and they are already rewriting the way Americans invest online.

But for clients in their late 40s and 50s, who have seen the headlines and the growth potential, seeking out professional help from a financial adviser is considered the more prudent option.

"Clients come in and say, 'I'm interested in this stuff and see a lot of potential here, but I don't have the time to figure out what's what,'" Farella said. "They have busy lives."

Once clients began to see the price appreciation of some of the smaller coins — like Decentraland's Mana, which traded around 50 cents per coin in July before jumping to more than $5 per coin in November following the Facebook announcement — they started asking questions. "Clients are asking for exposure beyond just Bitcoin, and they want the metaverse," he said.

Most meta crypto portfolios are built around the five or six best-known coins, like Bitcoin and Etherum, but add in much smaller allocations to meta coins. The Arbor Digital Compass Portfolio, for example, has four main buckets, including store-of-value coins like Bitcoin, scaling solutions like Ethereum, decentralized finance assets, and so-called application coins that feature the metaverse. Less than 20% of the portfolio is allocated to those types of cryptocurrencies.

"There are all different types of trust assumptions about tokenomic models," Farella said. Some of the top variables include the issuance rate of the currency, inflation rates, supply dynamics and distribution rates.

While the metanomics of these new communities are still being hashed out, their potential to revolutionize e-commerce is being hotly debated.

Unlike more mainstream digital communities, including traditional social media platforms like Facebook, Twitter or Reddit, the metaverse has the potential to become a new digital city, which could rewrite how consumers spend their time and money online.

Farella equated today's social media platforms to Disney World, where users are simply tourists in a highly curated platform based on advertising dollars. The metaverse business model, however, will look completely different.

"There are all different kinds of sellers and all types of wares in these metaverses, where the users now have the power and ability to customize their own shops and stands and how they choose to develop their space," Farella said. "It's more like an open bazaar in a major metropolitan city, where anything is possible."

STAR POWER IN THE METAVERSE

HERE ARE SOME OF THE BIG BUSINESSES AND CELEBRITIES OPERATING IN THE METAVERSE

Domino's
March 2021
Decentraland

Sotheby's
June 2021
Decentraland

Snoop Dogg
September 2021
The Sandbox

Adidas
December 2021
The Sandbox

Paris Hilton
December 2021
Roblox

PricewaterhouseCoopers
December 2021
The Sandbox

Samsung
January 2022
Decentraland

Gucci
February 2022
The Sandbox

JPMorgan Chase & Co.
February 2022
Decentraland

HSBC Bank
March 2022
The Sandbox

Has the SEC reached peak politicization?

BY MARK SCHOEFF JR.

When SEC Commissioner Hester Peirce turned off her monitor to make a statement during a March 21 open meeting, she said doing so would reduce her carbon footprint.

Peirce was referring to the climate-risk disclosure proposal the commission was considering. It was hard to tell whether she was trying to be funny because after her face disappeared from screen at the online meeting, she went on to deliver a 24-minute takedown of the measure.

The unusually long dissent seemed to be the culmination of Peirce's resistance to the strong push by the SEC's Democratic majority to advance regulation of environmental, social and governance investing. It also was an example of the Securities and Exchange Commission reaching peak politicization.

The SEC once was known for rulemaking that usually advanced with unanimous votes. Over the last decade or so, the political tension at the agency has risen along with the partisan rancor that has engulfed much of Washington, where the SEC is headquartered just a few blocks from the Capitol.

"I don't think there's any question that securities regulation reflects the context of a highly politicized partisan environment we live in now," said Knut Rostad, president of the Institute for the Fiduciary Standard.

Whether a rule is promulgated with a 3-2, 4-1, 3-1 or 5-0 vote, it is a regulation on the books, and financial advisers and other market participants must comply.

But a rule that advances without unanimity — and with the kind of strong dissent displayed by Peirce on climate-risk disclosure and by former Democratic SEC Commissioner Robert Jackson Jr. on Regulation Best Interest — comes out of the commission as a weaker measure that could be challenged in court or earmarked for overturning when the SEC next changes majorities.

"When you have a bipartisan vote, it does suggest greater attention was given to all viewpoints, and that's a hallmark of administrative law," said Scott Kimpel, a partner at Hunton Andrews Kurth. "The bipartisan adoption of a rule is one way to make a rule more durable."

If there's instability in regulation due to shifting political winds, it can raise compliance costs, said Kurt Wolfe, counsel at Quinn Emanuel Urquhart & Sullivan. When new rules are approved, it can become a question of when to change your policies and procedures.

"Do you do that now or do you wait and see what happens?" Wolfe said. "You're constantly doing this calculus to figure out what you're going to do from a compliance perspective. It's expensive and time-consuming."

REPUTATIONAL RISK

Another danger for the SEC of a political split in the business it conducts is reputational risk, Kimpel said. If the SEC's stature diminishes, it could chip away at the faith in its ability to police financial markets and facilitate capital formation, two of its principal duties.

"More and more people are going to begin to question the legitimacy of the agency," said Kimpel, who served as counsel to former Republican SEC Commissioner Troy Paredes.

But the agency also can gain credibility if it is seen as getting things done. SEC Chairman Gary Gensler is an aggressive regulator who has put dozens of items on the SEC's priority list, including ESG oversight.

The commission voted 3-1 to release the climate disclosure proposal for a 60-day comment period. It was another of several split votes during Gensler's first year at the head of the agency.

"Gary Gensler has an ambitious agenda," Wolfe said. "He's going to drive that agenda. He's undeterred by 3-1 votes."

Advancing regulation with as many votes as possible if not all of them is a necessity, said Micah Hauptman, director of investor protection at the Consumer Federation of America.

"In this climate, there's little to no opportunity for common ground on policy," said Hauptman, a former counsel to Democratic SEC Commissioner Caroline Crenshaw. "You have a choice — to get things done on a party-line vote or not to get anything done at all. While a unanimous vote is ideal, when it comes to the really hot-button policy issues, it's unlikely there will be consensus across the commission."

The commission currently consists of four members. Peirce is the lone

Republican. Gensler, Crenshaw and Allison Herren Lee are Democrats.

The fifth member, Republican Elad Roisman, resigned in January. He didn't give a reason, but it appeared that he didn't want to serve in the minority of a commission where he was destined to be on the losing side of votes.

The partisan division is similar to the divided votes that occurred often under Gensler's predecessor, former Chairman Jay Clayton, who led a Republican majority. The majority on the normally five-person panel reflects the party that controls the White House, even if the chairman is a political independent.

DIVERGENT VIEWS

Although some common ground exists between Gensler and Clayton on cryptocurrency oversight, the two chairmen have divergent views on ESG regulation. Clayton illustrated that difference in a high-profile way by co-authoring a Wall Street Journal op-ed with Rep. Patrick McHenry, R-N.C. and ranking member of the House Financial Services Committee.

Clayton and McHenry argued that the SEC was overreaching by setting climate policy, a job that should be handled by Congress. The article was published on the day the SEC voted to put the climate-risk proposal out for public comment.

"In my view, Jay Clayton was the most political chair in history," Hauptman said. "That happens when you golf with the president." He was referring to Clayton's occasionally hitting the links with then-President Donald Trump, who nominated him as SEC chairman.

Perhaps the most prominent rule of the Clayton era was Regulation Best Interest, the broker standard that was promulgated on a 3-1 vote with Republicans in favor and the Democratic commissioner at the time — Jackson — opposed.

The partisan divide on investment advice standards began when then-GOP SEC Commissioners Kathleen Casey and Paredes wrote a dissent to an SEC staff report in 2011 that called for a universal fiduciary standard. They asserted the document did not include a proper cost-benefit analysis, among other criticisms.

"The Republican commissioners consistently argued against a meaningful, authentic fiduciary standard," Rostad said. "The Democratic commissioners were consistently arguing in favor of a meaningful fiduciary standard."

There was a Democratic SEC majority at the time Casey and Paredes wrote their dissent on the staff report. Kimpel said the pushback was another example of the SEC minority trying to get its views across.

"There was a real concern the report did not reflect the feedback of two commissioners," Kimpel said.

Casey was a former Senate Banking Committee staffer who became an SEC commissioner. Several SEC members over the past decade have come from Capitol Hill. The nominees to replace Roisman and Lee, Mark Uyeda and Jaime Lizarraga, respectively, are both working in Congress.

"They bring some of their political experience to the commission and in some ways are continuing to fight the political battles they fought in Congress," Kimpel said.

Although a political SEC is almost inevitable because of its structure, the panel does cast many 5-0 votes, especially on enforcement cases that are deliberated in private.

"A lot of commission votes that aren't political don't get a lot of attention," Hauptman said. "The public doesn't see when the commission is unanimous."

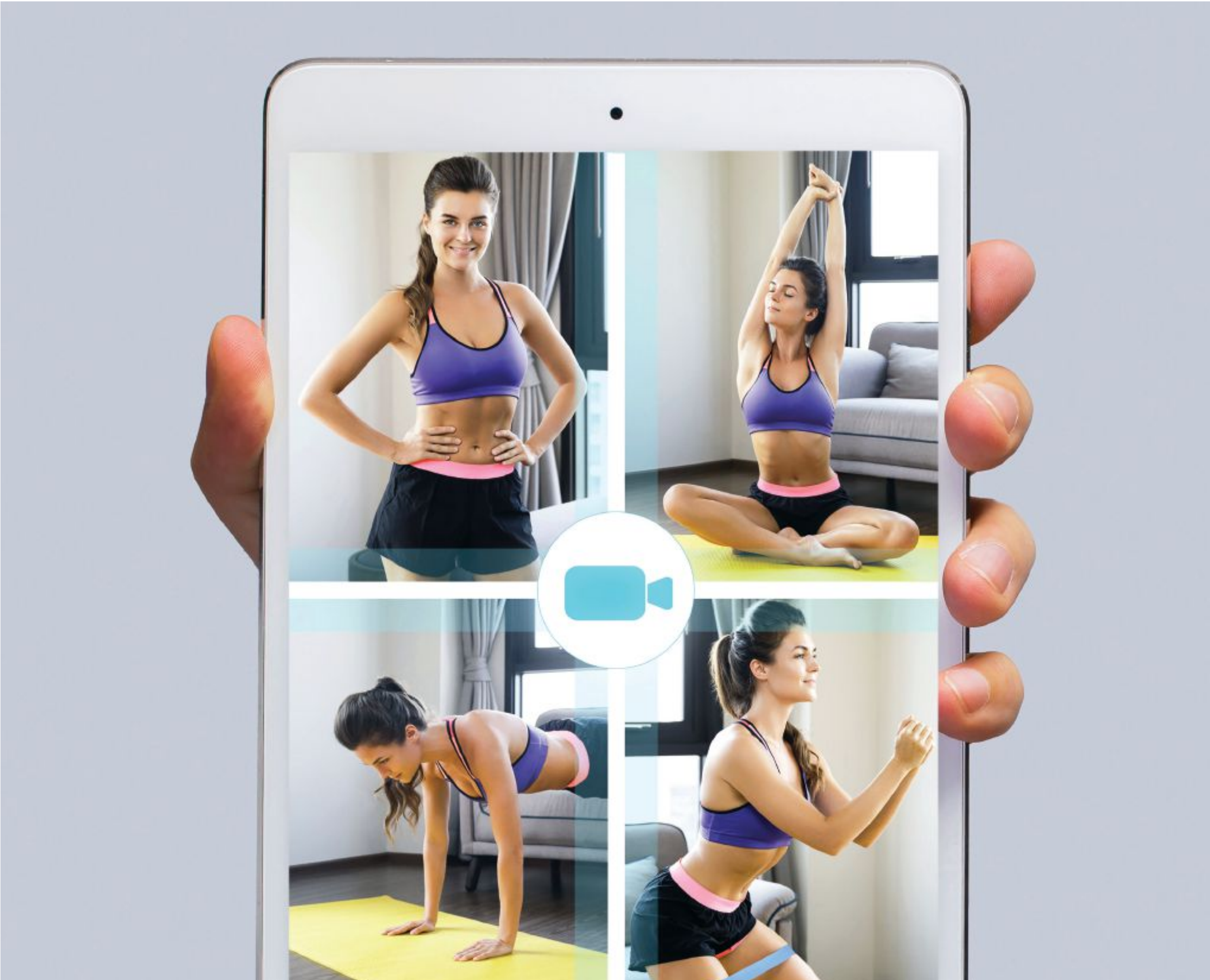
But the SEC is rarely unified on big, controversial policies.

"The commissioners would be better served if they got back to the core principle of finding common ground rather than proceeding along party lines," Kimpel said.

mschoeff@investmentnews.com

"IN THIS CLIMATE, THERE'S LITTLE TO NO OPPORTUNITY FOR COMMON GROUND ON POLICY."

MICAH HAUPTMAN, CONSUMER FEDERATION OF AMERICA



Adviser bulks up practice with a focus on fitness

In the truest spirit of a financial planning niche, Justin Green is going with what he loves.

Green, 29, is the founder of AssistFP, a Marlborough, Massachusetts-based financial advisory practice serving fitness training entrepreneurs, many of whom have evolved into online coaches.

Like so many folks working in wealth management, Green's path has not been a direct one.

While he started his financial planning career in 2017 with a registered investment advisory firm on Cape Cod, his undergraduate degree is in sports management.

"I'm very passionate about working out and fitness, and I considered becoming a fitness coach," said Green, who has been working out "five or six days a week for the past

NICHEADVISER
JEFF BENJAMIN

13 or 14 years."

Instead, he went back to school to get a master's degree in financial planning and quickly realized being a generalist adviser wasn't going to cut it.

The launch of AssistFP in March of last year was originally marketed to fitness entrepreneurs and millennials, but even that was too general, he quickly discovered.

"I think it's extremely important to have a niche and when I launched, I thought millennials were a niche, but that's very broad," Green said. "I felt like I was producing good [marketing] content, but it was falling on deaf ears. When you're speaking to everyone, you're speaking to no one."

Turns out, the focus on fitness coaching was a natural move and right in front of him all along.

"Once I started my own firm, I started networking and connecting with online fitness coaches," he said. "They're self-employed, they have all the needs of self-employed people, and I can relate on a personal level as well. They're all primarily driven by taxes and tax management."

CREATIVE MIGRATION

While fitness coaching has been around for decades, the pandemic forced a creative migration to online services, which is where Green sees lots of potential business opportunities.

"When the pandemic hit, most fitness coaches went online, and it seems like a lot of trends that hit because of the pandemic won't go away, and that's why I'm spending a lot of time networking and communicating with fitness coaches on Instagram," he said. "Most of these people got into fitness coaching because they loved teaching and helping people, but they didn't get into it to control taxes and learn about the tax code."

In addition to his marketing efforts on social media, Green has launched a podcast, Dollars & Dumbbells, where he interviews fitness coaches and other business professionals about running businesses and managing finances.

"When I'm connecting with fitness coaches, I'm also connecting with business coaches for fitness coaches, and I've found opportunities to speak to their clients," he said. "I can get about 30 fitness coaches on the call and do an introduction to financial planning."

Green is also hoping to develop an online course that he'll offer in tandem with a business coach.

FEE STRUCTURE

Like a lot of niche advisers, Green is learning that fee structures are often more art than science.

He will do one-time financial plans and manage client portfolios, but his mainstay is a $200 monthly fee with an initial $500 upfront payment. And the fees are likely to go up this year, he said.

"I have the runway to build this out for quite a while," he said. "If you need an immediate income from a new business or new niche, it won't happen immediately. Even early on, it was very clear to me that it was going to take more time to gain traction if I got really focused with my method. When you decide to niche down, you will be turning off a lot of people, because 99% of people will not be attracted to your message, and you have to be OK with that."

jbenjamin@investmentnews.com

NICHE ADVISER

JUSTIN GREEN
Founder

NICHE FIRM
AssistFP
Marlborough, Massachusetts

NICHE
Fitness training entrepreneurs

PRO TIPS
"Let it come to you organically. You need a passion for the niche and there has to be a planning need specific to that niche.
"Don't be afraid to turn people away. When you decide to niche down, you will be turning off a lot of people, because 99% of people will not be attracted to your message, and you have to be OK with that."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Analysis&Commentary

RETIREE HEALTH CARE

Inflation will boost retiree health care costs in the future

MARY BETH FRANKLIN

ONRETIREMENT

With inflation at a 40-year high, current and future retirees should expect health care costs to claim an even bigger part of their budgets, according to new research from HealthView Services, a leading provider of retirement health care cost data.

Retirees and those planning for retirement were initially pleased to see the 5.9% Social Security cost-of-living adjustment for 2022, but then were shocked to see Medicare premiums increase by 15% for the same period. The principal driver of escalating medical expenses is health care inflation, which is expected to increase over the next several years, driven by both the pandemic and historically high inflation rates.

KEY POINTS

- Health care inflation is being driven by the pandemic and higher rates.
- Retirees were shocked by the 15% hike in Medicare premiums for 2022.

"Even when adjusted for higher Social Security COLAs, the portion of retirement budgets required to cover health care will be significantly higher than most expect," Ron Mastrogiovanni, founder and CEO of HealthView Services, said in a statement accompanying the new report, The Long-Term Impact of Short-Term Inflation. "Unlike other consumer goods and services, such as gasoline, health care costs historically do not increase and decrease — they only go up."

The report draws upon 530 million medical cases and government and Medicare data to provide cost projections for retirement health care based on current inflation data. It assumes that health care inflation will continue at its historical average of 1.5-to-two times the consumer price index over a one-to-two-year period before returning to an average normalized inflation rate of around 5.9%.

The report says key drivers of health care inflation include the higher costs for goods and services faced by health care service providers, as well as higher wages for staff and traveling nurses. In addition, the demand for medical treatments and elective surgeries that were postponed during the pandemic is expected to increase significantly, maintaining upward pressure on prices.

If health care inflation is 11.85%, which is 1.5 times the current annual CPI of 7.9%, for two years, total lifetime retirement health care costs for a healthy 65-year-old couple living to their actuarial longevity would increase by $85,917 to $684,406, the report found.

Total lifetime health care spending includes Medicare Part B and D premiums, supplemental insurance and actuarially determined out-of-pocket expenses for hospitalization, visits to doctors, tests and prescriptions. All expenses are shown in future values, which reflects the impact of inflation on the actual dollar amount that retirees can expect to pay out of pocket.

'NEED TO SAVE MORE'

Using the same inflation rate and period, an average 55-year-old couple retiring in 10 years will see costs rise by $160,712 to $1,094,460, the report projects.

"The bottom line for those planning for retirement is that health-related costs will continue to rise across the board, and they will need to save more to address these expenses," Mastrogiovanni said. "For retirees, budgets will continue to be squeezed."

For the average 65-year-old couple, projected total lifetime health care costs will require approximately 71% of future average Social Security benefits, based on two years of health care inflation at 11.85%, the report found. For a 55-year-old couple retiring in 10 years, the percentage of Social Security required to cover health care is 93%. These expenses don't include taxes, Medicare high-income surcharges or long-term care costs.

INDIVIDUAL CIRCUMSTANCES

The report underscores the importance of financial advisers estimating future health care expenses based on individual needs and circumstances, as retirement income, years to retirement, gender, location and health conditions all have a significant impact on actual expenses in retirement.

HealthView Services has developed a simple consumer-facing calculator that enables users to estimate the impact of inflation on their potential health care expenses. The firm also provides an array of planning apps designed to help advisers create funding solutions today to cover future retirement health care expenses.

(Questions about new 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.
mbfranklin@investmentnews.com

FIXED INCOME

Thematic ETF allows investors to tap into rising interest rates

With the Federal Reserve's tightening policy officially underway, it is worth taking a closer look at a new exchange-traded fund touted as a vehicle for riding interest rates as high as they can go.

INSIGHTS
JEFF BENJAMIN

Launched in October, the FolioBeyond Rising Rates ETF (RISR) has been delivering on its performance pitch with a strategy that seems almost too simple to be real.

At around $27 million, the thematic ETF is still too small to hit the radar screens of most financial advisers. But if the quantitative strategy continues to prove effective, the asset flows should follow.

During a choppy start to the year that has left the S&P 500 Index down 4.7%, RISR is up 23%. And Dean Smith, FolioBeyond chief strategist and portfolio manager, said the Fed's plans to hike rates six more times this year make an ideal environment for the strategy.

"The fund is designed to go up in value when rates go up," he said.

Note that Smith didn't say the fund would reduce downside risk or dampen volatility. He explained that the fund will ride rates and do so by a factor of 10.

"If rates go up 1%, the fund is designed to go up 10%," he said.

MORTGAGE-BACKED SECURITIES

Smith said the fund is generating returns by buying the interest-only portion of mortgage-backed securities that primarily hold 30-year fixed-rate mortgages.

In an environment when rates are lower or falling, this kind of strategy wouldn't do so well because borrowers would be constantly refinancing for lower mortgage rates.

But when rates are less attractive, which is where the trend is heading, borrowers tend to refinance less, leaving the mortgage interest payments outstanding for longer periods.

Key to benefitting from these kinds of thematic strategies is sometimes taking a leap of faith, even if the strategy is still new and small.

"While RISR has been an under-the-radar ETF, its time to shine has arrived, with the Federal Reserve beginning what is likely a multiyear rate hiking program," said Todd Rosenbluth, head of research at ETF Trends.

"Advisers need to be focused on the likely negative impact of higher interest rates on their bond allocations and should be incorporating strategies like RISR that can limit the risks," Rosenbluth added.

"WE'RE GOING TO BE IN THIS ENVIRONMENT FOR A LONG TIME."

DEAN SMITH, PORTFOLIO MANAGER, FOLIOBEYOND

The quarter-point rate hike the Fed announced in March is expected to be followed by a half dozen more hikes this year as a means of managing the spiking inflation.

According to BankRate.com, the current national average for a 30-year fixed rate mortgage is 4.88%, which is up from 3.15% at the end of November, and 3.73% at the end of January.

With history as a guide, Smith is bullish.

"The Federal Reserve has launched five rate-hiking episodes since the Paul Volcker days of the late '70s," he said. "During those five periods, each of which lasted about two years, the Fed rate went up about three percentage points. We're going to be in this environment for a long time."

INFLATION MANAGEMENT

There are a few ETFs employing similar tactics designed for rising rates and inflation management, but none have yet proven as effective as RISR.

The $1.8 billion Quadratic Interest Rate Volatility and Inflation Hedge ETF (IVOL)is down 5.7% so far this year. The $1.2 billion Horizon Kinetics Inflation Beneficiaries ETF (INFL) is up 8% over the same period.

1%

EXPENSE RATIO ON FOLIOBEYOND'S RISR

OPTIONS STRATEGIES

Those funds employ strategies that involve purchasing options, which Smith said he can do but isn't doing yet.

"We're just buying the MBS; we don't use leverage and we don't own options, but have the ability to," he said. "If we wanted to protect against a short-term reversal in rates, we could buy Treasury puts."

In addition to being hampered by the low asset base, RISR also carries a hefty 1% expense ratio. That compares to 0.85% for INFL and 1.05% for IVOL.

"This is an expensive fund to manage," said Smith. "These thematic ETFs tend to have higher management fees because it is a different type of exercise. The fees will go down as assets increase, but this will never be a 20-basis-point fund."

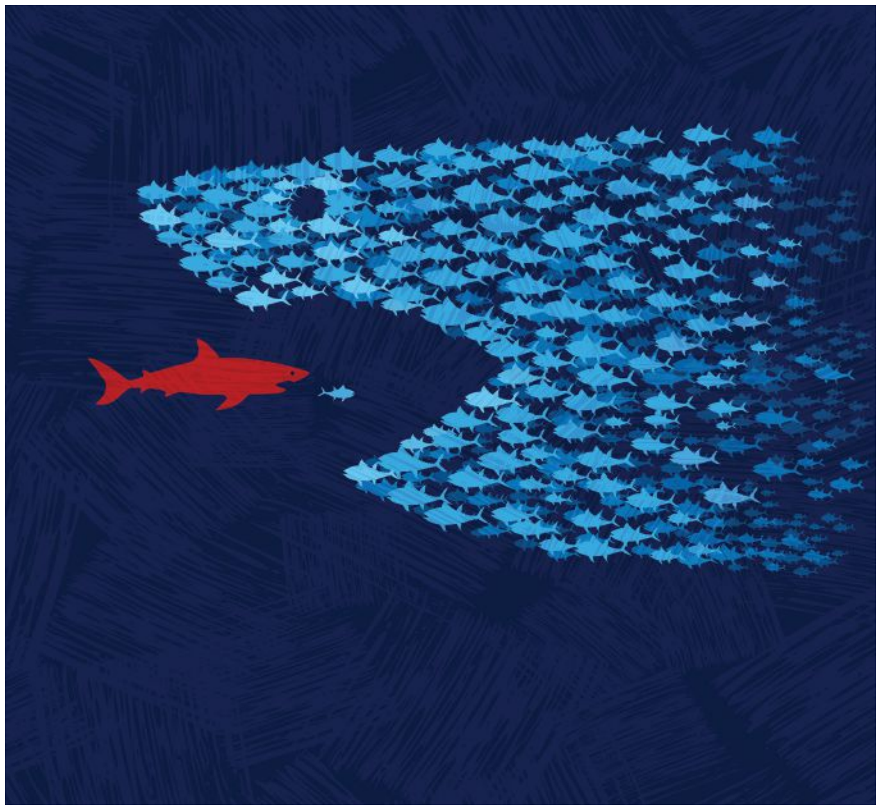
jbenjamin@investmentnews.com

M&A

Is 2022 the year we'll see an RIA mega mega-merger?

The mergers and acquisitions market for registered investment advisers has started the year in a relative burst of calm after ending 2021 at a frantic and record-breaking pace.

Last year was a spectacular year for RIA M&A. But could 2022 be the year when a mega mega-deal between two huge RIA aggregators finally occurs? Plenty of signs point that way.



According to a report by DeVoe & Co., which tracks RIA transactions of firms with $100 million or more in client assets, more than 230 transactions occurred last year — an all-time high.

BRUCE KELLY

ONADVICE

Indeed, 2021 ended with a bang, with plenty of private equity-backed, large RIA aggregators in the market.

"The record-breaking activity over the last two years, which can be attributed to rising interest rates and accelerated 2021 announcements as sellers considered possible tax changes, had many industry M&A observers anticipating a slower pace of activity in 2022," according to a report last month by Fidelity Institutional.

The industry still has plenty of ardor, and cash, for RIA acquisitions. Well-run firms kick off plenty of cash flow, making them highly attractive to buyers. RIAs routinely have profit margins of 25%, and the better-managed ones reach 35%.

VERY GOOD MONTH

February was a very good month for RIA M&A, according to Fidelity Institutional, with 13 RIA transactions totaling $21.9 billion in assets. But while deals during the first two months of this year increased 22% compared to a year earlier, the assets under management involved in those transactions were down 11%.

Translation: This year has seen more RIA deals than last, but the deals involve smaller firms.

That doesn't mean a large strategic buyer, say one with $20 billion to $30 billion or more in assets, can't dream big in 2022. Many in the RIA industry are wondering whether this year is ripe for the long-anticipated mega-deal.

It's been the industry's white whale — when one of the 30 to 40 large strategic buyers will emerge from the depths to team up with another.

Two decades ago, the RIA roll-up or aggregator market started in earnest, with United Capital, Focus Financial Partners Inc. and Hightower Advisors leading the way.

Today, a mega-deal would underscore the purpose and value of the intense RIA acquisition market.

So far, the most important acquisition in the RIA industry was Goldman Sachs' purchase of United Capital in 2019 for $750 million in cash.

That was a clear validation of the RIA industry by Wall Street's largest and most important investment bank. Joe Duran's United Capital was one of the first aggregators of RIAs and showed a host of firms and outside money men how to do a successful deal.

That was Ahab hunting the white whale. Now, the whales are likely to go into business together.

A REAL POSSIBILITY

A mega-deal between two strategic buyers — I don't know enough right now about the potential players to report any concrete deal-making activity — is increasingly regarded as a real possibility.

"I agree with that, and that's the question in the market right now," said Brandon Kawal, principal at Advisor Growth Strategies, an industry consultant. "But I don't think we're that far off. These are the firms that are characterized as large strategic buyers and there are up to 40 of them."

Valuations for firms are climbing, Kawal noted, as a result of the growing number of buyers in the space.

$750M

WHAT GOLDMAN PAID FOR UNITED CAPITAL IN 2019

"And those same buyers are some of the big firms who are commanding the high valuations themselves," he said. "The number of RIA sellers is the highest it's ever been, but there's still more demand and lots of money chasing the same opportunities."

DECELERATING PACE

Not every brick in the street of mergers and acquisitions is made from gold. Valuations of RIAs have steadily risen over the past decade. But the pace of that increase — as measured by a multiple of a firm's EBITDA, or earnings before interest, taxes, depreciation and amortization — appears to be decelerating.

"How much more room is there to go?" Kawal asked, referring to the rising value of RIAs.

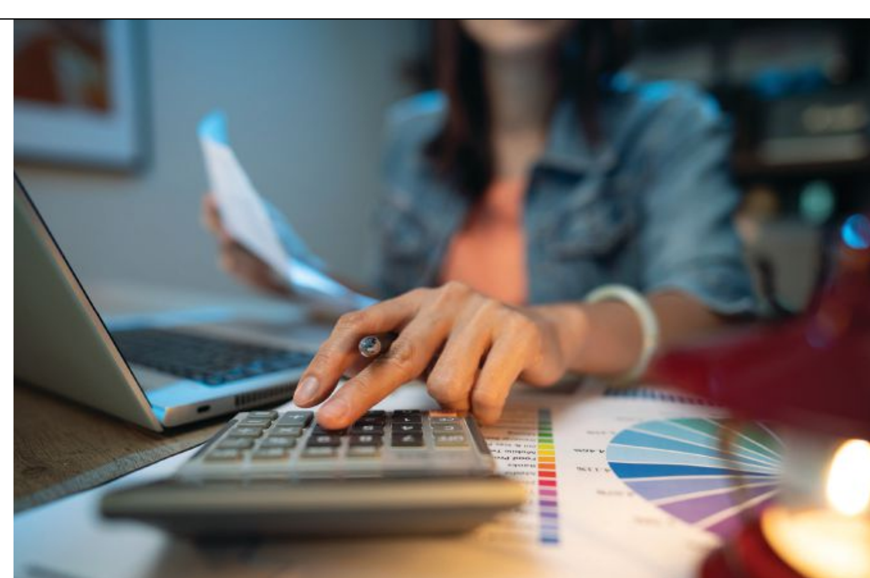
Lots of capital, plus lots of aggregators, plus rising and potentially cresting firm valuations: That equals the opportunity for a mega, mega-deal on the horizon.

Who's ready to yell out, "Thar she blows"?

bkelly@investmentnews.com

RETIREMENT

Why many advisers may need to rethink retirement income



Retirement income is an issue that advisers have been grappling with for some time now, but quite often advice given to clients has been based on broad assumptions and generalizations of how individuals spend post-retirement.

OUTSIDEIN
KATHERINE ROY

Only recently have we been able to effectively parse real-life data to fully understand how individuals actually spend. J.P. Morgan's analysis of the actual spending behaviors of more than 62 million U.S. households has revealed a number of surprising insights that can help inform retirement income planning strategies.

While older households tend to spend less in real terms in retirement, we are now able for the first time to view total spending for age 80-plus affluent households. Spending reverses and begins to increase steadily around age 80. We see this primarily in checks written (as is the preference for this generation), but it's most likely attributed to increasing health care, long-term care and housing needs.

For advisers, the focus should be on carefully addressing their clients' long-term care planning needs, considering incorporating gradually higher spending beginning at age 80 or maintaining a reserve of assets to cover these expenses if they are needed.

STABLE VERSUS FLEXIBLE

In speaking with advisers over the years, I've often heard how difficult it is to undertake detailed cash flow planning in support of the "guarantee the floor" approach to retirement income, particularly with couples who can't agree on which of their expenses are "must-haves" versus "nice-to-haves." The reality is that for advisers, trying to divide expenses into discretionary versus nondiscretionary is an uphill battle, with many spending categories hard to define and highly subjective.

TRYING TO DIVIDE EXPENSES INTO DISCRETIONARY VERSUS NONDISCRETIONARY IS AN UPHILL BATTLE.

For example, I defy anyone to try and tell a dog owner that a vet bill is discretionary!

LUMPY COSTS

While this approach is often used to identify the level of post-retirement spending that should be covered by a consistent source of income, this clearly doesn't work when you take into account the lumpy nature of nondiscretionary costs like health care. We think it makes much more sense for advisers to work with their clients to quantify "stable" expenses that they face every month or year, and instead align this to a guaranteed source of income, such as an annuity.

Much of our recent research into the spending of those in retirement has found that many individuals aren't spending enough in retirement, and are effectively sacrificing their quality of lifestyle. Our analysis calculated "total retirement wealth," a combination of the value of investment accounts and the present value of retirement income sources, and found that the higher the percentage of retirement income received, the higher the spending.

PAYCHECK-LIKE EXPERIENCE

The implication for advisers here is clear. As many households appear to find the shift from growing wealth to spending it to support their lifestyles very difficult, creating a paycheck-like experience can help clients carefully consider how much of their portfolio to systematically draw down and operationalize it in a way that they can spend with greater confidence.

This can be achieved through solutions like annuities or monthly account transfers from their near-term "bucket" to a checking account, creating a valuable paycheck-like experience.

A MORE INFORMED STRATEGY

While traditional retirement income advice has often been based on arbitrary processes such as splitting discretionary and nondiscretionary spending, and estimating spending patterns later in life, real-world data can provide us with insights to construct a more informed retirement income strategy.

Our recent research demonstrates that incorporating long-term planning to take into account higher spending after 80, quantifying stable spending patterns and incorporating a paycheck-like experience can help clients retire with the quality of life they deserve while ensuring they don't run out of money.

Katherine Roy is chief retirement strategist at J.P. Morgan Asset Management.

INtheNews

> **"THOSE ADVISORS WHO DO DELIVER IT [COMPREHENSIVE ADVICE] RECEIVE SIGNIFICANTLY MORE REFERRALS AND ARE FAR BETTER POSITIONED TO CONTINUE TO GROW THEIR PRACTICES."**
> — MIKE FOY, SENIOR DIRECTOR OF WEALTH INTELLIGENCE, J.D. POWER

REGULATION

Supreme Court ruling could add uncertainty in Finra arbitrations

BY MARK SCHOEFF JR.

A SUPREME COURT ruling last month that will make it harder for participants in Finra arbitration to turn to a federal court to appeal decisions could create more uncertainty about arbitration awards.

Federal arbitration laws allow federal courts to "look through" the underlying matters of a dispute to determine whether to compel arbitration. In an 8-1 decision on March 31, the Supreme Court ruled that the "look-through" approach does not apply to petitions by arbitration participants to confirm or vacate arbitration awards.

The ruling makes it more likely that arbitration winners and losers will go to state courts in order to secure victories or overturn defeats. It's rare to get an arbitration award vacated in federal court, where many brokerages have failed.

State court judges tend to be more critical and suspicious of arbitration than federal court judges, said Samuel Edwards, a partner at Shepherd Smith Edwards & Kantas. That could put more arbitration decisions in jeopardy.

"It decreases the predictability" of arbitration outcomes, Edwards said. "State court judges tend to be more skeptical of arbitration and are willing to challenge an arbitration award. More state court judges are willing to dig into the facts."

Some states are more anti-arbitration than others, said George Friedman, editor-in-chief of the Securities Arbitration Alert. For instance, an arbitration party attacking an award might get a better reception in a California court, while a winner seeking to uphold an award might not.

"It depends on the state and whether the party is attempting to enforce or attack the award," said Friedman, who recently wrote a blog post about the Supreme Court decision. "Some states are more friendly to arbitration than others. I don't think it's open season on arbitration awards. But this decision creates challenges that didn't exist before last Thursday."

Congress granted federal courts jurisdiction over cases that involve suits between citizens of different states over matters that are valued at more than $75,000 or that arise under federal law.

The "look-through" question in the Supreme Court case centers on a December 2018 decision by Financial Industry Regulatory Authority Inc. arbitrators to dismiss a claim by Denise Badgerow alleging that she was unlawfully terminated by Ameriprise Financial Services Inc.

Badgerow sought to have the decision vacated in a Louisiana state court. The Ameriprise affiliate for which she worked petitioned a federal court to confirm the award.

Badgerow filed to move the petition to state court, arguing that the federal court didn't have jurisdiction. The federal court used the "look through" approach to assert its jurisdiction, a decision that was upheld by the Fifth Circuit Court of Appeals.

REVERSED AND REMANDED

The Supreme Court reversed the lower court's decision and remanded the case.

Writing for the majority, Justice Elena Kagan argued that Congress did not give federal courts jurisdiction over arbitration awards.

"Without that statutory instruction, a court may look only to the application actually submitted to it in assessing its jurisdiction," the majority decision states.

From a practitioner's standpoint, the decision won't make a big impact on the Finra arbitration process, said Michael Edmiston, an attorney at Jonathan Evans & Associates.

"I don't think it changes much because most people are going to state court to either confirm or vacate an arbitration award under a state's arbitration act," said Edmiston, who is president of the Public Investors Advocate Bar Association.

mschoeff@investmentnews.com

M&A

CI Financial files to take its US business public

BY JEFF BENJAMIN

TORONTO-BASED RIA aggregator CI Financial (CIXX) plans to file an initial public stock offering for its fast-growing U.S. wealth management unit.

The filing, which is expected later this year, is aimed at unlocking the valuation potential of CI's 2-year-old wealth management business, according to Chief Executive Kurt MacAlpine.

The subsidiary IPO, which will take 20% of the U.S. business public, gives MacAlpine another tool to achieve his objective of building the "preeminent high-net-worth and ultra-high-net-worth wealth manager in the U.S.," he said.

Since entering the U.S. wealth sector in early 2020, CI has become the country's fastest-growing wealth management platform and the U.S. wealth management business has grown to become CI's largest business unit by assets.

Once all of its outstanding acquisitions are completed, CI's U.S. wealth management assets will reach approximately $133 billion.

To this point, CI has financed its nearly three dozen U.S. acquisitions with cash and partnership agreements. Separating the U.S. business from the Canadian financial conglomerate means company stock will represent another method to pay for the purchase of registered investment advisers, MacAlpine said.

"If anything, this gives us more tools," he said. "Going forward, we'll be able to use cash, partnerships and shares. Right now, CI Financial is a U.S.- and Toronto-based company, so an RIA would get shares of both the Canadian and U.S. business. That's asking a lot of a U.S. RIA."

PUSH INTO US MARKET

Since it purchased its first RIA in early 2020, CI's pedal-to-the-metal push into the U.S. has included a November 2020 listing on the New York Stock Exchange to accompany the company's listing on the Toronto Stock Exchange, and the establishment of a U.S. headquarters in Miami last September.

But despite the overt migration south, CI executives and shareholders have remained frustrated by a stock price that seems anchored to the company's Canadian asset management business.

"When you look at valuation differences between how asset managers trade and how wealth managers trade, asset managers are in the mid-single digits and wealth managers are in the high teens," said MacAlpine, who insists the company's current stock price doesn't reflect the growth potential of the U.S. wealth management business, which now represents the largest piece of the Canadian company.

Investors reacted positively to the IPO news on April 7, driving the share price up about 4.5% in midday trading, which compares to a 60-basis-point decline by the S&P 500 Index over the same period.

But the longer-term track record is what has CI shareholders so motivated to separate the Canadian and U.S. businesses.

Since the start of the year, CI shares are down 28.7%, which compares to a 5.7% decline by the S&P 500.

John Aiken, who covers CI as an analyst with Barclays, has long argued that the market is not adequately valuing the U.S. wealth management segment "in terms of its growth and potential."

jbenjamin@investmentnews

Envestnet embraces remote work, leaves Chicago headquarters

BY JEFF BENJAMIN

CALL IT A SIGN of the times. After more than two years of operating under pandemic conditions that have taught businesses how to maintain and manage a remote workforce, Envestnet is moving its headquarters from Chicago to the Philadelphia area and is offering workers "maximum flexibility."

"Envestnet has made the decision to relocate our headquarters to Berwyn, PA," an Envestnet spokesperson said in a statement. "We currently provide maximum flexibility to our workforce with a hybrid approach that offers both remote work and hub office locations. We believe this is the best approach for our employees and offers opportunities for in-person collaboration and innovation. As a cloud-first SaaS company, we have the technology and solutions in place to support our teams and clients in the field and on-the-go."

CRAGER'S VISION

The headquarters relocation, which was originally reported by Citywire RIA, is being described by the company as Envestnet Chief Executive Bill Crager's vision "coming to life through modernizing our workforce by employing a hub and remote model, where existing offices can be a foundation of collaboration and community for our team members."

The company spokesperson added, "We have a continuous feedback loop to hear from our employees about what is important to them in the workplace. We've heard they value a remote work environment and appreciate the flexibility that this hub and remote model provides."

Envestnet has nearly 2,000 U.S. employees and six offices, with field employees spread across the country.

jbenjamin@investmentnews.com

MORGAN STANLEY

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sort of watch that space."

The overseas wealth management business is a difficult nut to crack for U.S. firms, given the many regulatory and economic hurdles they face in such endeavors. For example, Wells Fargo Advisors recently said its advisers would no longer be able to work with clients abroad.

'SCALED BACK' IN RUSSIA

Meanwhile, Morgan Stanley dropped its banking license in Russia in 2020, and Gorman said that it has "significantly scaled back" its operations there.

Cook Street is the second retirement planning firm that Morgan Stanley has acquired recently; in September, the company closed its acquisition of Hyas Group, an institutional consulting firm with $43 billion in fee-based assets that manages retirement money for smaller businesses.

For the first quarter, Morgan Stanley's wealth management group reported net new assets, including the Cook Street acquisition, of $142 billion, an increase of 12% from the last three months of 2021 and up 35% from the same time last year.

Net revenues for the first quarter totaled $5.94 billion, flat when compared to 12 months ago.

Morgan Stanley has about 16,000 financial advisers under its roof, but it recently stopped reporting a specific head count of advisers in its financial statements.

bkelly@investmentnews.com

WELLS FARGO

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Wells Fargo hit its recent peak in total financial advisers in September 2016, when it reported employing more than 15,000 across its varied business lines. That was just as the bank's problems started as it was revealed that Wells Fargo bank employees had secretly created millions of unauthorized accounts in the names of customers without their consent.

More recently, when Wells Fargo Advisors rolled out its 2022 compensation plan to financial advisers in December, executives at the firm hoped it would be regarded as simpler and potentially more lucrative than pay plans in the past.

bkelly@investmentnews.com

SECURE 2.0

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Its many provisions include those to raise the required minimum distribution age from 72 to 75; automatically enroll workers in retirement programs and increase their contributions each year; provide more generous tax breaks for small companies that establish retirement plans; improve retirement coverage for part-time workers; increase catch-up contributions from $6,500 annually to $10,000 for people between 62 and 64; and allow employers to make contributions to retirement plans to match employees' student loan payments.

"It benefits the individuals who are at both ends of their career," said Emily Smith, director of financial planning at Williams Jones Wealth Management, referring to the automatic enrollment and escalation features of the bill, as well as the boost in the RMD age.

"I'm a big proponent of starting to save for your retirement as early as you can," Smith said. "We are constantly talking to the next generation about how to set yourself up for financial success."

She said she also has quite a few clients who have decided to work later into life.

"For people delaying retirement, it's great to push out RMDs," Smith said.

GETTING CREATIVE

Giving seniors more time before they have to tap their retirement accounts also allows advisers to be more creative with retirement funds.

"As advisers, that gives us a longer runway to do more Roth conversions in lower amounts," said Jonathan Thomas, an adviser at LVW Advisors.

The catch-up provisions of SECURE 2.0 would be a boon to clients who need to put away more money before concluding their careers, said Nick Covyeau, owner of Swell Financial. Those additional years of compound earnings can make a meaningful difference in retirement security.

"Getting that extra layer of savings really helps," Covyeau said.

The auto enrollment and escalation would help clients in the early stages of their careers boost their retirement savings.

"You'd be shocked at the number of people who think they're maxing out their 401(k) but are just meeting their employer match," Thomas said.

"THIS IS ABOUT HELPING PEOPLE SAVE."

AARON SCHUMM, CEO, VESTWELL

Many employees carry significant student debt to their first jobs and farther into their careers. That's why advisers are hopeful that the provision allowing employers to contribute to a retirement plan to match an employee's loan payment becomes law.

That would relieve the tension many workers face between addressing their debt and building a nest egg.

"That's huge," Covyeau said. "We no longer have this either-or dilemma."

SMALL-COMPANY PLANS

The incentives the bill provides for small-company retirement plans also could benefit advisers who want to accelerate their retirement business, Schumm said. It's projected that the small-plan market will more than double by 2025.

"Now, with SECURE 2.0, advisers have an increased opportunity to attract new small-business clients as well as help their existing clients understand the incentives and expand coverage of previously excluded employees," Schumm said.

The SECURE 2.0 bill is still a ways from enactment. The Senate could take it up or develop its own retirement savings package from several bills that have been introduced in that chamber. The legislative clock is ticking quickly as the midterm elections approach.

Even if SECURE 2.0 makes it to President Biden's desk this year, it shouldn't be the end of the effort to expand retirement security, Covyeau said. "We're moving in the right direction, but we have a long way to go."

mschoeff@investmentnews.com

ARB RULING

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of the Financial Industry Regulatory Authority Inc.

Any mismanagement of the decades-old process, which uses a computer-generated list to select arbitration panelists in an effort to reach neutrality between the two sides, would be a violation of industry rules.

"As we previously stated, Wells Fargo follows all Finra rules and procedures for the arbitrator selection process, as we did in this case," a Wells Fargo spokesperson wrote in an email. "We continue to adamantly deny the allegations cited in this decision and have proceeded with the appeal."

bkelly@investmentnews.com

'FIDUCIARY'

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embellishing factual statements about the capacity or services of an investment professional or firm with phrases such as 'an investment adviser *who is held to the fiduciary standard*,' [italics by SEC] is likely to be inappropriate," the FAQ states.

That doesn't leave any leeway for advisers to tout their standard of care, Rostad said.

"Is there anything that's not inappropriate, frankly?" he said. "I don't know what you can put down there now."

Todd Cipperman, managing director at Foreside, a compliance consulting firm, isn't surprised by the language in the FAQ. He said the point of the Reg BI rulemaking was to bring the standards of conduct for advisers and brokers closer together.

"They don't want [some] advisers giving the impression they're better or different from other advisers," Cipperman said in an interview.

But Rostad and other advocates argue that fiduciary duty offers stronger investor protection than the broker best interest standard. They have been calling for changes to Form CRS that allow advisers to distinguish themselves from brokers.

Jeffrey Lang, a partner at Stark & Stark, encouraged the SEC to make explicit when advisers can describe themselves as fiduciaries on Form CRS.

"It's going to be helpful to everybody if more guidance can be given relative to how the term can be used," Lang said during last Wednesday's media availability.

SEC Chairman Gary Gensler has indicated he will use guidance and enforcement to ensure that Reg BI lives up to its investor protection promises. Recently, the SEC released a staff bulletin about how brokers and advisers should handle account recommendations under the rule.

Rostad said he's seeking meetings with Gensler and SEC commissioners to ask them to address the limitations on "fiduciary" in Form CRS.

Differences between Reg BI and the adviser standard will be determined by how the SEC and courts interpret them.

"I'm not sure how much daylight there is between best interest and fiduciary," Cipperman said. "We won't know until there's litigation."

mschoeff@investmentnews.com

GWG HOLDINGS

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clined to comment.

Investors in the $1.6 billion of bonds will face dire consequence if GWG files for bankruptcy; one GWG investor, who asked not to be named, said he estimated the L Bonds are worth 20 cents to 30 cents on the dollar.

Advisers charged 7% to 8% sales commissions on the GWG bonds. It's not clear what value those bonds have right now.

POTENTIAL LAWSUITS

Broker-dealers who sold the GWG L Bonds will likely be the target of lawsuits from investors who used retirement savings to buy the product.

"We find the potential bankruptcy off GWG Holdings very disappointing for the retail investors who put their life savings in these L Bonds," said Scott Silver, a plaintiff's attorney who is also counsel in a potential class-action lawsuit filed in March against the company in federal court in Texas.

"Those investors now face the risk of substantial losses of their principal and retirement savings," Silver said. "We look forward to continuing to investigate this matter, the individuals at GWG and the small broker-dealers who sold this incredibly risky product to retail investors."

According to GWG's website, Emerson Equity, a San Mateo, California-based broker-dealer that primarily sells private placements, is the managing broker-dealer for the GWG issuer. The managing broker-dealer is akin to a lead underwriter in traditional investment banking terms. Along with Emerson Equity, dozens of other broker-dealers and registered investment advisers could have sold the product.

There's been a growing demand for life settlements as institutional investors search for higher yields in the current low-interest-rate environment and look for diversification. Because of that increased demand, life settlement payouts are generally higher than they have been in the past.

Meanwhile, the price of GWG shares has plummeted. The closing share price of $1.81 at the end of April 14 is down from $9.65 at the end of last year. The most recent share price high was $10.90 in October.

bkelly@investmentnews.com

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SPEAKERS

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Emotomy

Devin McGinley
Director of Research
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Gregg Greenburg
Writer
InvestmentNews

Tech spending is rising at its fastest rate in three years, according to the InvestmentNews 2022 Adviser Technology Study. But are advisers' growing investments in line with consumer expectations? Our latest study focuses on the client experience, with fresh survey findings on what clients want from fintech. This webcast, with Adam Boyer, head of business development at Emotomy, will briefly review the findings of our latest research and provide action steps for advisers to enhance their client experience through technology.

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