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SEPTEMBER 11, 2023
INVESTMENTNEWS.COM
$15 PER ISSUE / $139 PER YEAR

HOW MORGAN STANLEY CEO BET BIG ON WEALTH MANAGEMENT — AND WON.

JAMES GORMAN

ICONS & INNOVATORS

MAGAZINE | VOL. 27, NO. 17 |

TopNews

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Vol. 27, No. 17, September 11, 2023. InvestmentNews (ISSN 1098-1837) is published bi-weekly except the last week of May, first week of July and the first week of September by InvestmentNews LLC., 575 Fifth Avenue, 14th Floor, New York, NY 10017 U.S.

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Goldman sells RIA business to Creative Planning

BY BRUCE KELLY

AFTER A WEEK of speculation, Goldman Sachs Group Inc. said Aug. 28 that it was selling its registered investment advisor business, Personal Financial Management, to Creative Planning, a leading RIA with $245 billion in client assets.

The bank had said that it was considering selling the unit, formerly known as United Capital Financial Partners, in a bid to shift its focus back to the ultra-rich.

Terms of the transaction were not released. The sale is expected to close in the fourth quarter and result in a gain, according to a statement from Goldman Sachs.

Goldman acquired United Capital for $750 million in 2019 and then renamed it Personal Financial Management. The RIA unit targets high-net-worth clients, but not the ultra-wealthy, who have accounts with $20 million to $50 million and are the typical target client for the giant investment bank.

Goldman's RIA unit has about $29 billion in client assets. Goldman CEO David Solomon has recently spearheaded a comprehensive reorganization, dividing the institution into three distinct units, while simultaneously scaling down the bank's objectives for its consumer-oriented operations.

$750M
AMOUNT GOLDMAN PAID FOR THE UNIT IN 2019

Creative Planning said this summer it would use Goldman Sachs Advisor Solutions as a custodian, marking perhaps the largest victory yet for the investment bank's growing custody business.

"Building on our existing custody

CONTINUED ON PAGE 22

Creative Planning provides options for former United Capital advisors

BY BRUCE KELLY

CREATIVE PLANNING CEO and president Peter Mallouk said the giant registered investment advisor with $245 billion in client assets is building three lanes for the several hundred financial advisors and staff at the newly acquired RIA Personal Financial Management to allow them to move comfortably to Creative Planning in the next few months.

The first lane is simply to stay put at Personal Financial Management, which has about 70 offices and financial advisors who work with $29 billion in client assets, Mallouk said, describing that option as "United Capital 2.0."

The next is to work under the roof of Creative Planning, which has a deliberate, one-firm process for its advisors. Third, financial advisors may set up their own RIA, if they are so inclined.

"We'll wind up with two completely separate RIAs," Mallouk said in an interview on Tuesday. "I'm not interested in having the biggest RIA in the United States. I'm interested in running the best RIA in the United States."

Last week, Goldman Sachs Group Inc. said it was selling Personal Financial Management to Creative Planning. Terms of the deal were not disclosed. Goldman had purchased the RIA, formerly United Capital Financial Partners, in 2019 for $750 million in cash.

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Schwab declares TD transition a success

BY RYAN W. NEAL

LABOR DAY WEEKEND this year marked more than the unofficial end of the summer. It also marked the end of TD Ameritrade's custodial platform for independent financial advisors.

Over the weekend, 3.6 million accounts held across 7,000 registered investment advisors finally moved from TD to Schwab Advisor Services, the most significant step toward completing the integration of Charles Schwab Corp's $22 billion acquisition. It's one of the largest data migrations attempted in any industry, let alone in financial services, and countless hours from both Schwab and RIAs went into making the transition come off smoothly.

Throughout the first day, few advisors appear to be experiencing significant problems.

"TODAY WE CAN ABSOLUTELY DECLARE VICTORY. WE'RE NOT SEEING ANY ISSUES OF ANY SIGNIFICANCE."

TOM BRADLEY, MANAGING DIRECTOR, SCHWAB ADVISOR SERVICES

"So far, so good (for my firm)," Jack O'Connor, an advisor with O'Connor Financial Group, said on X (formerly known as Twitter). "Still plenty of time for issues, but I'm pleased so far."

Some advisors complained on social media about long hold times for service, something that Schwab executives warned could happen despite efforts to staff up call centers. Most calls have been around "basic stuff" such as login information, password resets, questions about functionality and validating things like bank transfers, said Tom Bradley, managing director of Schwab Advisor Services.

"Mostly a lot of check-ins. That's about it, really," Bradley said Tuesday during a call with reporters.

'KIND OF BORING'

In all, Day One has been "kind of boring," which is enough for Schwab execs like Bradley to declare the transition a success.

"We've been predicting victory, and today we can absolutely declare victory," Bradley said. "We're not seeing any issues of any significance."

There were some minor issues, such as positions that didn't transfer exactly as expected or pricing issues, said Jessica Heffron, managing director of Advisor Services integration.

But given the thousands of advisors and millions of client accounts involved in the transition, these errors were marginal and "very minor in the big picture," Heffron said.

The firm isn't out of the woods yet, as it still needs to prove that it can handle trades and reconciliation placed by former TD advisors. Things aren't quite back to "business as usual," Heffron added.

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Finra fines, censures New Jersey broker-dealer for violating Reg BI

BY RYAN W. NEAL

THE FINANCIAL INDUSTRY Regulatory Authority Inc. censured and fined a New Jersey-based broker-dealer and its chief compliance officer for allegedly violating the compliance and care obligations of Regulation Best Interest.

From January 2016 to March 2022, Network 1 Financial Securities, a firm with 14 branch offices and approximately 100 registered representatives, did not establish and maintain a reasonably designed supervisory system and did not identify and respond to red flags of excessive trading, according to a letter of acceptance, waiver and consent issued by Finra. As a result, clients received recommendations to place frequent trades that resulted in a cost-to-equity ratio as high as 50% and more than $533,500 in commissions and trading costs, Finra said.

The lack of a written supervisory procedure regarding excessive trading violated Regulation Best Interest, the regulator said. Finra also found Michael Molinaro, who took on the title of chief compliance officer at Network 1 in July 2017, to be in violation of Reg BI.

Without admitting or denying the findings, Network 1 agreed to a censure, restitution of the $533,500 plus interest and an additional $200,000 fine. Molinaro also agreed to a three-month suspension and a $5,000 fine.

Network 1 did not respond to a request for comment.

Reg BI requires that broker-dealers and their reps act in the best interests of a customer when a recommendation is made and not place the firm's or a rep's interests ahead of the customer's interests. The rule has been in force since June 2020.

Finra is still in the early stages of enforcing Reg BI, and the action against Network 1 is notable for focusing on the compliance and care obligations of the rule, said Fred Reish, a partner at the law firm Faegre Drinker Biddle & Reath.

"Reg BI's Compliance Obligation requires that broker-dealers have and enforce written supervisory procedures for compliance with the Care Obligation," Reish said in an email. "If the facts of the AWC [Acceptance, Waiver, and Consent] are accepted, it appears that the broker-dealer failed to do that."

However, any time a chief compliance officer is the subject of an enforcement action, attorneys and compliance professionals wonder whether the regulator has overstepped

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Ex-Wells chief Kowach's new firm buys Tennessee broker-dealer

BY BRUCE KELLY

DAVID KOWACH, former head of Wells Fargo Advisors, and his new firm, &Partners, took another step closer to coming to market when &Partners acquired a broker-dealer and registered investment advisor with $663.8 million in assets, according to filings with regulators.

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YEAR THAT WILEY BROS.-AINTREE WAS FOUNDED

The firm, Wiley Bros.-Aintree Capital, is based in Nashville, Tennessee, and &Partners is the new owner, according to the firm's BrokerCheck report. Kowach is listed as CEO on the BrokerCheck profile and another former Wells Fargo executive, John Alexander, is co-president.

Alexander did not return a phone call last Tuesday to comment. The details of the transaction are not known at this time.

CONTINUED ON PAGE 22

IRS postpones mandatory Roth catch-up provision until 2026

The IRS released Notice 2023-62 on Aug. 25 giving employer retirement plans two additional years to comply with the controversial rule requiring that catch-up contributions for employees aged 50 or older whose wages for the prior year exceeded $145,000 be made on a Roth basis.

IRAALERT
ED SLOTT

The IRS has proactively responded to requests for relief made by some of the country's largest plan record keepers and retirement plan lobbying organizations.

This rule under Section 603 of the SECURE 2.0 Act was supposed to be effective beginning next year, but now the IRS says it will provide a two-year "administrative transition period" — until Jan. 1, 2026 — before plans must comply with the new law.

The effect of this delay is that, until 2026, no employees will be required to make catch-up contributions on a Roth basis, and plans that don't already offer Roth contributions will not need to begin offering them.

This could be an opportunity for affected employees — those with wages in excess of $145,000 — to make their 401(k) catch-up contributions to pretax 401(k)s, gaining the exclusion from income, rather than being forced to have those catch-up contributions go to the Roth 401(k).

ALL EMPLOYEES WILL HAVE A CHOICE ON THIS NOW UNTIL 2026.

Long term, though, some of these employees might still fare better having these contributions go to the Roth 401(k), allowing the tax-free buildup for life, and for 10 years beyond to beneficiaries.

But the good news here is that all employees will have a choice on this now until 2026 and can make their catch-up contributions where they see fit.

IRS FIXES GLITCH

In this same notice, the IRS also stepped in to fix a glitch in the SECURE 2.0 law that inadvertently eliminated the ability for any employees to make catch-up contributions beginning in 2024. When Congress drafted the mandatory catch-up provision, it mistakenly deleted a part of the tax code, leaving the law to read that no employees (high-paid or not) would be able to make any catch-up contributions (pretax or Roth) starting in 2024. This was an obvious mistake, and the IRS says it will allow these catch-up contributions to be made, even though Congress did not fix this error in the law.

Notice 2023-62 also says that the IRS is expected to provide future guidance saying that high-paid self-employed persons who have self-employment income instead of "wages" are not covered by the mandatory Roth 401(k) catch-up provision.

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

Crypto gets a little closer to retirement plans

BY MARK SCHOEFF JR.

IT WAS ONE STEP forward, one step back late last month toward a world in which cryptocurrency investments start popping up widely in retirement accounts.

ForUsAll, a firm that helps retirement plans offer cryptocurrency investments to their participants, suffered a setback Aug. 29 when the U.S. Court of Appeals for the District of Columbia dismissed the firm's lawsuit against the Department of Labor over its March 2022 crypto guidance.

The agency warned plan fiduciaries to use "extreme care" before giving workers the option of investing their retirement savings in crypto. ForUsAll alleged that the guidance crimped its business and that the DOL overstepped its authority in issuing it. The court ruled in favor of DOL, saying in part that the guidance was not a final agency action and not subject to judicial review.

But another decision on Aug. 29 by the D.C. appeals court was better news for the prospects for crypto investments. The court overturned the Securities and Exchange Commission's rejection of Grayscale's spot bitcoin ETF application, calling it "arbitrary and capricious" because the agency has approved exchange-traded funds based on bitcoin futures. The SEC is again mulling over the Grayscale bitcoin ETF as well as similar products from other financial firms.

After the back-and-forth in the D.C. court, crypto has advanced, experts say.

"We're not one day away from it being in retirement portfolios broadly, but we're making progress," said Matt Hougan, chief investment officer at Bitwise Asset Management. "Crypto is on a journey from a niche asset class to a mainstream asset class."

Theresa Morrison, a partner at the investment advisory firm Beckett Collective, sees steady gains for wider use of digital assets.

"We're not running toward it," Morrison said. "We're moving toward it."

If the SEC approves bitcoin ETFs, it could pave the way for the use of crypto for retirement savings despite the DOL's stern admonition, which remains standing.

"One agency allowing it takes a great deal away from the risk," said Adam Blumberg, co-founder of Interaxis, a firm that educates financial professionals about cryptocurrency. "It's more likely there will be exposure to crypto in retirement accounts."

Whenever it is that a bitcoin ETF is approved, it may take a while for its popularity to ramp up because the financial industry faces a learning curve, Morrison said. Advisors will have to "upskill" to be able to evaluate the underpinnings of bitcoin ETFs before recommending them.

"You need to have an understanding of the technology in order to make that determination," she said. "This is new knowledge. That's why regulators are going slowly."

A bitcoin ETF would provide price exposure to bitcoin without requiring investors to own it. That could be the breakthrough that makes bitcoin more of a household investment, Hougan said. He likened it to the advent of gold ETFs, which gave everyday investors exposure to the commodity.

"It was only after it got an ETF that it entered polite conversation," Hougan said. "Crypto is going through the same maturation."

Given the price fluctuations for crypto, there's still a fair amount of wariness about it in the financial marketplace, including from retirement investors.

"There aren't as many people clamoring to put crypto in retirement accounts as there were a couple years ago," Blumberg said.

mschoeff@investmentnews.com

IRS catch-up guidance a relief to 401(k) sponsors, advisors

BY EMILE HALLEZ

THE RETIREMENT PLAN world is breathing a sigh of relief after the IRS on Aug. 25 announced a two-year delay on requiring high-income workers who make 401(k) catch-up contributions to do so in Roth accounts.

For months, plan sponsors had worried about a provision of the SECURE 2.0 Act slated to go into effect on Jan. 1, 2024, that required the use of Roth 401(k) accounts for people who have income of $145,000 or more and are 50 or older, and thus eligible for catch-ups.

The problem: After-tax Roth 401(k) options today are uncommon — and adding that plan feature isn't a matter of flipping a switch.

"The first hurdle was that many plans don't have Roth options," said Hailey Fields, a principal at retirement plan consultant Multnomah Group. "Those high-income earners essentially wouldn't have been able to make catch-up contributions, which was problematic."

Because it's easy for high-income workers to max out their pretax contributions before the end of a year, employers often use catch-ups for "spillover of regular contributions," Fields said.

That system is simple, and adding the need to switch to Roth will complicate things, she said. "When you, on the exact penny, need to move a regular contribution into a catch-up contribution, you [will] need to have regular pretax and Roth in that payroll."

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ADVERTISEMENT

Make sense of the retirement planning puzzle for your clients

Growth and protection needs call for flexibility and options

BY ANDREW FARRELL, MSJ
SVP RETIREMENT SALES,
DISTRIBUTION AND MARKETING

Perhaps inflation is fixed. Perhaps interest rates are stable. Perhaps markets are booming. But none of that matters if a client has concerns about saving enough for their retirement future.

A client's needs and risk tolerance can color their willingness to consider unfamiliar products as you guide them through a sometimes-overwhelming number of investment products. By keeping the focus on their need for building and protecting their retirement savings, you may find they are open to options beyond the ones they already use.

Clients who want growth opportunities with some protection may not even be considering annuities as a potential solution, particularly the style of annuity that may best address their needs: RILAs.

A RILA[1] is designed to participate in market growth while providing features that add some protection against losses. For clients who are concerned about the potential of portfolio losses, RILAs may help provide the protection they want but also allow for the growth they need for retirement.

5 reasons to consider a RILA in the retirement mix

What can a RILA do for your clients?

Opportunity

RILAs can provide opportunities for money to grow based on the available indexes.

Protection

RILAs may offer options to tailor levels of protection against downside risk.

Flexibility

RILAs may allow access to money should a client's current needs change.

Control

RILAs may offer additional features that protect returns and help to balance growth and protection.

Family

With RILAs, clients can have peace of mind by knowing their beneficiaries will never receive less than what they put into the contract.

For informational purposes only.

As clients move closer to retirement, make sure they're aware of all the investment options that are available to them and that could help them achieve their goals.

When introducing new portfolio ideas, consider the ways a RILA could fit into their investment plans, especially if those plans center around a need for growth and protection.

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[1]Registered index linked annuity

Opinion

_IN_ THEIR OWN WORDS ...

from the web and print pages of *InvestmentNews*

"When my clients that are the most scared of the equity markets call me thinking it is time to buy, it is a great indicator that the market is very near a peak."

— Jon Swanburg, president, TSA Wealth Management

"Unfortunately, the allure of the alleged safety of gold is like a siren song to many older investors and many unsophisticated investors."

— Andrew Stoltmann, securities attorney

The Bay State's fiduciary ruling

A recent ruling by the highest court in Massachusetts affirming a state requirement that all financial advisors, including brokers, must act as fiduciaries seems likely to become another issue on which red states and blue states veer off in different directions.

While it's not generating as much attention or heat as abortion or voting rights, the question of whether financial advisors must always put their clients' interests first has been simmering for almost a quarter century. In 1999, as computer technology and the rise of discount brokers eroded the commission-based revenue of traditional brokerage firms, the Securities and Exchange Commission proposed a rule allowing brokers to offer fee-based accounts without being subject to the Investment Advisers Act, exempting them from being required to act as fiduciaries. Proposed after Merrill Lynch started offering fee-based accounts, the rule wasn't formally adopted until 2005, although the SEC said brokers could act as if the rule existed.

In 2007, a federal appeals court overturned the rule, saying brokerage firms that charge fees or provide fee-based accounts are subject to the Investment Advisers Act and have a fiduciary responsibility. Instead of turning their brokerage forces into fiduciaries, the firms created RIA subsidiaries and their registered representatives also became investment adviser representatives of the corporate RIA, a two-hat solution that is where things now stand.

Concurrent with these developments, of course, investors experienced the global financial crisis of 2008-2009, shocks related to the Covid pandemic, and the steady march of baby boomers into retirement — all of which fueled demand for financial planning and investment advice.

For investors, the question of whether advisors put their clients' interests first at all times (even if only a sliver of investors recognizes that duty as the definition of a fiduciary) has become more important, especially as private-sector pensions have largely disappeared and retirement income has become an individual's responsibility.

After a federal appeals court in 2018 vacated a Department of Labor rule that would have required advisors providing advice on qualified retirement accounts to be fiduciaries, the SEC introduced Regulation Best Interest. Is it a fiduciary standard? No. Is it better? Brokerage firms say it is; RIAs say it's worse.

WITH THE MASSACHUSETTS DECISION, THE FIDUCIARY QUESTION NOW MOVES TO STATES.

Such differences of opinion among special interests are the reason lobbying firms grow rich and wrangling over regulation never ends. Most times, the public has neither the time nor interest to care about Washington's favorite sport — or to wade through disclosures that serve the letter of the law but rarely illuminate.

With the Massachusetts decision, the fiduciary question now moves to states, where it is likely to become even more political than when lobbyists deal with a Republican- or Democratic-controlled SEC. In blue states, the argument will be that a fiduciary standard would protect investors. In red states, it will be about protecting an individual's freedom to choose the kind of advice they want. The fighting isn't over.

Comments? Questions? Send your thoughts to james.burton@keymedia.com.

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ICONS & INNOVATORS

Changing an industry takes visionary thinking and the mettle to see it through. It's a rare breed that possesses both traits, but the financial advisor industry was built on such innovative spirit.

Once again, *InvestmentNews* salutes remarkable individuals in our sixth Icons & Innovators issue. This year, we highlight one Icon and one Innovator, selected from suggestions *InvestmentNews* received from staff members.

Be inspired by the determination, creativity and dedication depicted in these profiles.

STRATEGIC VISIONARY WHO STICKS TO HIS GUNS

MORGAN STANLEY'S CEO HAS UPSET ADVISORS AT TIMES WITH HIS POLICIES BUT IS REVERED FOR LEADING SPECTACULAR GROWTH AND HIS SMITH BARNEY 'MASTER STROKE.'

JAMES GORMAN
CHAIR AND CEO
MORGAN STANLEY

BY BRUCE KELLY

When James Gorman arrived at Morgan Stanley in 2006 after running Merrill Lynch's thundering herd of financial advisors, senior management at first thought his plans to kick a dysfunctional wealth management business in the pants and boost profits sounded a bit off-the-wall.

Indeed, his own profitability targets for the sprawling network of thousands of financial advisors were met with disbelief initially, according to Gorman's recent recounting of a meeting at the time to discuss his financial goals for the firm's financial advisor and wealth management business.

"The first presentation I did to our board was a pretty brutal analysis of our then retail business, which was the old Dean Witter business with a little bit of Morgan Stanley private wealth," Gorman, now CEO and chair of Morgan Stanley, said at an industry conference this June.

"I'll give you one fun fact" from that time, said Gorman, who this spring announced that he'll step aside next year as CEO of Morgan Stanley after a run so far of 13 years that has seen the investment bank and trading firm pivot to wealth management in a big way under his watch. "We paid out that year, in Southern Florida, 17% of our revenues in legal expenses."

That set off alarm bells. Legal costs should have been 1% of revenues, he noted. How does the firm boost profitability if it's digging a hole because clients are suing their financial advisors in the wake of the dot.com and telecom crashes of the 2000s and eating up revenue?

"But the other fun fact was our net new money for 2005 for the full year was negative $3 billion for the whole year," Gorman said. (Morgan Stanley now aims to add $300 billion each year in net new client assets.)

Seventeen years ago, Gorman had the temerity to tell the Morgan Stanley board that he had much loftier goals. "I had an aspiration chart, by the way, and the aspiration on pretax margin was to get to 20%, which everybody thought was completely nuts."

After years of effort, which included slashing the bonuses paid to recruit financial advisors from competitors, Morgan Stanley now each quarter routinely reports pretax profit margins in the high twenties.

LEADER IN TECHNOLOGY

Wall Street executives and financial advisors might think a lot of things about James Gorman, including that he can at times be a bit standoffish personally, but no one would say he wildly miscalculated the potential earnings of a well-run, disciplined wealth management franchise that today is widely recognized as a leader in technology for its roughly 16,000 financial advisors.

Accordingly, Gorman, now 65, a native of Australia and a former McKinsey & Co. consultant, is honored as *InvestmentNews'* 2023 Icon.

Through a spokesperson, he declined to be interviewed for this article.

A handful of numbers help depict the changes Gorman has wrought at Morgan Stanley over the past 13 years.

For example, at that industry conference in June, one analyst noted that in 2010, when Gorman was co-president of Morgan Stanley, before taking the reins as CEO from John Mack, the percentage of the bank's pretax profit from its wealth and investment management group was about 26%. Now it's up to 52%.

Then there's the performance of Morgan Stanley stock. The share price has tripled under Gorman's rule, from $29.40 at the end of 2009 to $85.40 at the end of this June, according to data from Wolfe Research.

Over the same period of time, the share price of Goldman Sachs Group Inc. has just about doubled. In aggregate, the return on the shares of the four large U.S. commercial banks — JPMorgan, Bank of America, Wells Fargo and Citigroup, collectively known as the money center banks — has also doubled over that time, according to Wolfe Research.

> "NOBODY IS BETTER THAN JAMES GORMAN ON M&A."
>
> STEVEN CHUBAK, MANAGING DIRECTOR, WOLFE RESEARCH

Morgan Stanley's outperformance occurred during a time when the Federal Reserve has had giant bank holding companies on a short leash; during Covid-19, for example, the Fed put restrictions on banks' dividends and share buybacks.

UNHAPPY ADVISORS

In a way, Morgan Stanley financial advisors have spoken out against Gorman's policies, including a compensation plan that deferred from 6% to 11% of a financial advisor's compensation up to eight years. Many bridled at the changes Gorman made to the wealth management business; from 2010 to the end of last year, the bank saw a net loss of 3,865 financial advisors who left Morgan Stanley for another firm.

The net losses on an annual basis were worst right when Gorman became CEO in 2010 and in the years following; the firm has turned that around recently and has seen net gains of financial advisors in the past two years.

"I've been critical of policies Mr. Gorman has put into place over the years, but I admire him for sticking to his vision of what Morgan Stanley could be, and it's reflected in the numbers," said Danny Sarch, an industry recruiter. "But he put up a fence, and if a financial advisor wants to leave the firm, he or she has to be prepared to climb that fence. And it's a challenge."

Gorman's decision in 2017 to exit an industry agreement known as the broker protocol has rankled financial advisors. The agreement made it easier for financial advisors to move from one firm to another.

His defining moment as head of Morgan Stanley was to buy the Smith Barney brokerage from Citigroup Inc. in two tranches: the first 51% in 2009 and the remainder a few years later. The total cost was $13.5 billion, according to the company.

SUCCESS AT DEALS

The success of that transaction and the focus on wealth management led to acquisitions more than a decade later that only bolstered Morgan Stanley's position as a wealth manager to the mass affluent and wealthy: the 2019 purchase of Solium Capital Inc., a stock plan business that focused on technology startups, for $900 million; the $13 billion acquisition of discount broker ETrade a year later; and the 2021 deal for Eaton Vance, a leading active manager of mutual funds, including the Calvert and Parametric brands.

"When we bought Smith Barney, most of Morgan Stanley was telling me we should be selling retail, not doubling up on it," Gorman said in June. "When we bought Eaton Vance, everybody said you overpaid by $1 billion. I said, 'I know, but we bought it.'"

"When we bought ETrade, a lot of people said,

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ICON

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well, trading has just gone to zero," he said at the industry conference in June. "Payment for order flow is in flux. And I said, 'That's all irrelevant. What we're planning is a 10-year transition of the business model, and for that you've got to make 10-year bets.' I would bet there's very few people in this room who could tell us what we paid for Smith Barney."

"James is held in high regard at Merrill Lynch and McKinsey," said a senior industry executive at a rival brokerage firm. "He's an icon because he truly appears to have the ability to make moves that are two or three in front of the competition. The Smith Barney deal was a master stroke for Morgan Stanley, and it took several years of consolidation."

"He has a long-term vision and follows through on it," the executive said. "Gorman elevated wealth management as the firm de-emphasized investment banking. The wealth management business has a higher, more predictable multiple."

'LIGHT ON CAPITAL'

"Gorman appreciated the fact that wealth management is a business that compounds over time, is light on capital and can have relatively high margins," said Steven Chubak, managing director at Wolfe Research. "And adding best-in-class technology, along with scale from the acquisitions, was a difference-maker."

"Even as some of the other wirehouses have relinquished market share to independent registered investment advisors or broker-dealers, Morgan Stanley has built a platform where nobody is better than James Gorman on M&A," Chubak said. "Start with Smith Barney in 2009, then he acquires a top corporate stock plan firm In Solium more than a decade later, followed by ETrade and Eaton Vance."

"He's managed to deliver best-in-class growth with regulatory shackles in place after the credit crisis," Chubak added. "People know he's a great CEO, but he's underappreciated."

According to a 2014 profile in The New York Times, Gorman was raised in a family of 10 siblings in Melbourne, Australia. He studied law and practiced briefly in Australia before coming to New York to attend Columbia Business School.

ADVISOR ARRIVALS AND DEPARTURES AT MORGAN STANLEY

	JOINING	LEAVING	NET CHANGE
2010	971	1,679	-708
2011	1,004	1,690	-686
2012	773	1,496	-723
2013	739	1,144	-405
2014	579	938	-359
2015	574	935	-361
2016	682	950	-268
2017	578	776	-198
2018	395	543	-148
2019	506	784	-278
2020	521	554	-33
2021	664	496	168
2022	592	458	134
TOTAL	8,578	12,443	-3,865

Source: InvestmentNews Advisors on the Move database

NUMBER CRUNCHERS

He joined McKinsey, which is known for churning out brainy number crunchers, but not necessarily charismatic or bold corporate leaders, according to the Times. In 1999, after more than a decade in consulting, he went to Merrill Lynch, a McKinsey client, as chief marketing officer.

Tall and well-tailored, Gorman still bristled in 2014 at being described as a consultant. When asked about the perception that he was a bit distant or cold in personality, he told the Times, "I think anybody who says they don't care about being liked is lying. I care if my dog wags its tail when I come home. But you're not going to make everybody happy."

Gorman can still take issue with how he or Morgan Stanley is being perceived. Despite the firm's success in wealth and asset management, he wants the marketplace to remember that Morgan Stanley was, is and always will be a leading institution on Wall Street.

"The mistaken perception about our strategy was we've become a wealth and asset management business," he said at the conference in June. "It's totally false. What we did was attach a viable wealth and asset management business to a world-class institutional business. And we've still got the world-class institutional business."

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INNOVATOR

HOW A FORMER TEACHER IS EDUCATING THE WORLD ABOUT 403(B)S

AUTHORITATIVE AND PERSONABLE, WITH AN UNDERDOG SPIRIT, *INVESTMENTNEWS* INNOVATOR DAN OTTER IS ON A MISSION TO ROOT OUT BAD RETIREMENT PLANS AND INVESTMENTS FOR TEACHERS.

BY EMILE HALLEZ

Dan Otter has heard the story too many times: An insurance company rep walks into a classroom and pitches a teacher on a high-fee annuity in the school district's 403(b) plan.

Early in his teaching days, it happened to him.

"I was in my classroom, desperately trying to get ready for the next day's instruction. Any teacher, especially any new teacher, will relate to the panic you feel trying to get ready," Otter said. "There was a knock on my classroom door. A woman poked her head in and said, 'Do you care about your financial future?'"

He didn't take the bait, disregarding the 403(b) altogether and eventually looking the program up and selecting Vanguard as his provider.

"I politely listened, and I said, 'I'll get back in touch if I'm interested,'" he said.

But that incident, along with similar stories from peers, helped drive Otter to become an authority on defined-contribution plans for teachers, culminating in a website dedicated to the subject.

Today, it is probably the most-used independent source of information on K-12 403(b) plans. The site, 403bwise.org, has an abundance of educational posts, a related podcast and, most recently, a growing database of school districts' plans. Each plan gets a grade, and the investment providers in the plan also have traffic-light-style ratings.

Of the roughly 13,500 school districts in the U.S., 403bwise has ratings for more than a third, with data covering over half of the country's teachers, Otter said.

LIGHTLY REGULATED

When he started the site in 2001, there was little information about 403(b) plans for teachers — unless they were willing to read through a lot of fine print.

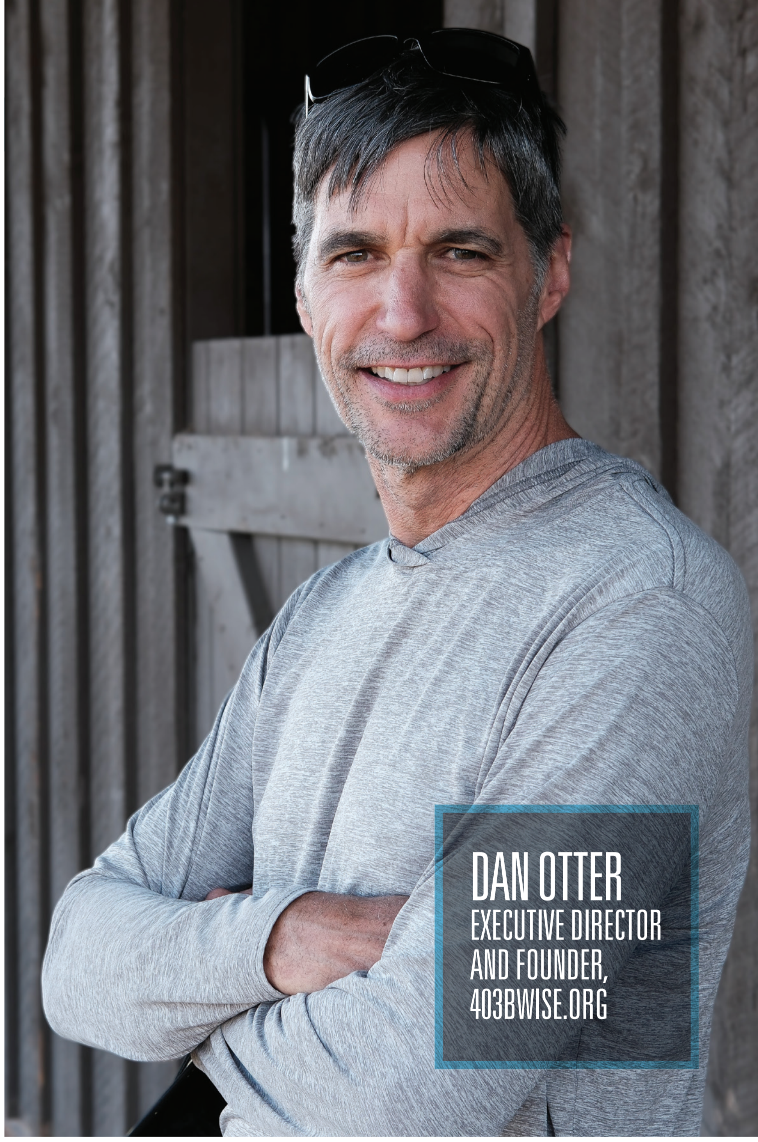
Unlike 401(k) plans, the 403(b)s available to public school teachers aren't covered by the Employee Retirement Income Security Act, meaning the plan sponsors are not acting as fiduciaries. As a consequence, the plans are often bloated with numerous vendors, and the list of investment options available through each plan can be exhausting. The plans are usually built with group variable annuity contracts, sometimes with high fees and surrender charges.

Advocating for better 403(b) options only recently became Otter's full-time job. Although he launched 403bwise more than 20 years ago, Otter, 58, taught grade school in Southern California and later college courses in New Mexico, where he earned a Ph.D. in education.

He's also a former journalist — a background that was crucial to his development of 403bwise.

As interest in the site grew, companies began to notice. Otter and his 403bwise partner Scott Dauenhauer, principal at Meridian Wealth Management, got deals with 403(b) providers such as Fidelity, T. Rowe Price and TIAA to advertise on the site.

That changed in 2019, when Next Gen Personal Finance founder Tim Ranzetta helped make the site a nonprofit, and Otter made it his full-time job.



DAN OTTER
EXECUTIVE DIRECTOR AND FOUNDER, 403BWISE.ORG

NICE GUY

Talking with Otter, it's hard not to like him. He's present in the way a good teacher should be, and despite his categorical knowledge about retirement plans, he seems humble about it and gives much credit to the people around him — Dauenhauer, Ranzetta and the "community of educators" that passes along information about their plans and shares knowledge with their peers. It's also notable that his wife, Amanda Otter, handles the art direction, site design and development for 403bwise.

It's easy to forget that in building an incredibly useful financial literacy resource for public school teachers, he's ruffled some feathers along the way — mostly insurance companies and brokers who aren't keen on seeing their bread and butter criticized.

But Otter is respectful of different points of view, a trait that helps make him highly persuasive, Dauenhauer said.

"In the 403(b) world, where we stand, we are looked at as enemies of these people," Dauenhauer said. They are approached by people in the industry frequently, and they often agree to hear them out, meeting on Zoom in most cases.

"It's really hard for them to hate him," Dauenhauer said. "He's a personable guy."

Still, Otter might be more likely to get those folks to go vegetarian (he is, mostly) than disavow lucrative products they sell.

"The more you hang out with him, the more you're going to see his viewpoints, and probably, at some point, find yourself coming around," said Dauenhauer, noting that Otter has been an influential force in his life.

However, that has not extended to his friend's affinity for '80s punk rock, he said. "We have very different musical tastes."

PIVOTAL MOMENT

A big change for 403bwise occurred in 2016, when The New York Times ran a series of articles highlighting the problems with teachers' plans and posing suggestions on how to fix them. The pieces cited Otter, Dauenhauer and 403bwise. Suddenly, there was a lot more interest in 403(b)s and the site.

The articles also attracted the attention of Ranzetta, co-founder of Next Gen Personal Finance, a nonprofit that aims to get all high schools to include a semester of personal finance in their curricula by 2030. Ranzetta has provided the financial backing necessary for 403bwise to operate as a nonprofit for at least the next few years — but the organization's mission essentially is to make its existence unnecessary.

"We joke that our goal is to put ourselves out of business — 403bwise should not exist. We exist because of this gap in [regulatory] oversight," Otter said. "We think a viable solution is to forget the 403(b) and go with the 457 — if it's a good plan."

The latter, a defined-contribution plan frequently used by groups of public workers with unions, often has better investment options and lower fees, he noted. One state, Illinois, recently added a 457(b) plan that could eventually apply to all public-school teachers; the plan has funds with low fees and "is really going to be good," Otter said.

ONE TEACHER'S PLAN

Teacher Sue Eastman got involved about 10 years ago with an after-school financial education program that included a stock market game for elementary students.

> **"IN THE 403(B) WORLD … WE ARE LOOKED AT AS ENEMIES."**
>
> SCOTT DAUENHAUER, DIRECTOR OF RESEARCH, 403BWISE, AND PRINCIPAL, MERIDIAN WEALTH MANAGEMENT

"We bought Tesla. We bought index funds when we could — the stock market game limits you to what you can buy. We couldn't buy ETFs," Eastman said.

She had an interest in finance and a curiosity about investing. But it wasn't until The New York Times series in 2016 that she learned how bad some 403(b) options are.

"It was the first time I heard about hidden fees," she said. "The District of Columbia allows vendors, unvetted, to go into schools and sell these 403(b) plans…. [Teachers] get sucked into very expensive products."

Although Eastman asked a plan rep about hidden fees, her concerns were dismissed, and he told her that any such charges were minimal, she said. "Being a busy teacher … not being terribly financially literate at that point, [I] went along with that."

Eastman, now retired, reached out to Otter during the pandemic.

"He was so responsive and so educational," she said.

She reviewed all her plan statements going back 20 years, finding that she had been paying about eight times what someone in a competitive 401(k) plan would expect to pay. She estimates that the high fees ended up costing her between $40,000 and $50,000.

As quickly as she could, she changed her investments, opting for index funds.

WEALTHY CUSTODIAN

One longtime 403bwise user, Jeff York, is totally unlike most retirement investors.

York is a case study in frugal living and financial discipline — he values time more than money, he said. He doesn't own a cell phone, and he lives to spend long days fishing on a boat near his home in Redding, California.

York was a school custodian for decades, before he stopped working for the district in 2021 at 56 years old, then financially independent, with a net worth of about $1 million. That earned him a nickname from Otter: The Wealthy Custodian.

He's been gleaning knowledge from the site since 2001.

The following year, he convinced the Redding School District to add Vanguard, as the plan lacked a low-cost provider with index-fund options.

"Without Dan and Scott, there would have been no Vanguard account. I would have been stuck in the annuities I was in," York said.

Otter "has a servant's heart," he said. "He could have easily gone to the dark side — the financial services industry … and been much wealthier than he is today."

York listens regularly to Otter and Dauenhauer's "Teach and Retire Rich" podcast, which shares its name with the 2005 book Otter published on the topic. But York has also been a guest on a couple of episodes.

Something he's noticed: Otter, who sometimes shares a fantasy of working in a brewpub, can be self-deprecating, and earlier in the 403bwise days, he was open about feeling imposter syndrome. That, York said, would now be unjustified.

UNDERDOGS

Aside from Otter's niche career focus and a love of classic punk, a few other interests shed some light on him. He loves the subject of history — which he taught — and isn't shy about sharing accounts of it that aren't exactly popular in many classrooms (think Howard Zinn's "A People's History of the United States"). He has played hockey for years, and continues to do so. He's also an avid cyclist, with a keen interest in overhauling infrastructure in favor of bikes and public transit.

There's some overlap there with his work in the 403(b) world.

When asked about it, Otter took a while to think, replying in an email after the interview.

"My mom reminded me that as a kid I wasn't a big fan of Superman, Spiderman or Batman," he said. "I liked Underdog! I even dressed as him for Halloween one year."

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DRAINING THE POOL OF CONFUSION SURROUNDING LONG-TERM CARE INSURANCE

THROWING OUT LIFE RAFTS: ADVISORS EXPLAIN HOW THEY'RE ADDRESSING THE KNOWLEDGE GAP AND HELPING PEOPLE FACE UP TO THEIR OWN MORTALITY

BY GREGG GREENBERG

It's not just a ball of confusion when it comes to long-term care insurance. It's one massive ball pit — and Americans are drowning in it.

It's time for the financial advisor community to play lifeguard.

According to the annual Nationwide Retirement Institute long-term care survey conducted in partnership with Limra in May, 18% of adults say they currently own LTC insurance, including 27% of millennials. That's not a bad ratio on the face of it — about one in five.

Unfortunately, industry data show that's not really the case. Only 3.1% of Americans have purchased LTC coverage, and most of those are older consumers, according to Limra estimates.

Hold on. Don't shake your head in disbelief yet. It gets worse. Much worse.

The Nationwide study also revealed that more than half (51%) of respondents who mistakenly thought they owned LTC insurance confused it with long-term disability insurance, and almost a third (30%) confused it with health insurance.

Not only do a worrying number of Americans think they currently have LTC coverage when they do not, but the ones who think they bought it have no idea what they actually bought.

And here's the kicker: The longer they live, the higher the likelihood they will need it.

According to the Department of Health and Human Services, about 70% of people turning 65 can expect to use some form of long-term care during their lives. Without insurance, the costs of this type of health care can be devastating.

3.1%

PORTION OF AMERICANS WHO HAVE PURCHASED LTC COVERAGE

"A deeper dive into the data reveals a looming care crisis in America that could threaten millions of people's retirements. Financial professionals, therefore, have a responsibility to prepare clients for the risk of major expenses related to long-term care that they may face in their later years, and educate them on their available solutions," said Jeff Beligotti, New York Life's head of long-term care solutions.

LONG (TERM) COVID SHIFT

The Covid-19 pandemic undeniably left a deep imprint on the long-term care insurance industry, most notably the dramatic shift it triggered from facility-based to home-based care. As people required care, but were unable to access services as a result of quarantine and lockdown, more family members decided to provide it because they were working from home and unable to travel, given the lockdowns.

"Although home care was not initially the preferred plan of care, it quickly became one," said Prudential Financial advisor Anthony Laino. "Then, as people realized they could care for their family members and not have to visit them through a closed window, they just adapted and supported the care needs of their elderly relatives."

The question now is whether this far more cost-effective trend will endure. But that's not the industry's only uncertainty in the wake of the pandemic. "How high will rates rise, and for how long?" are also questions dogging LTC providers and buyers.

Annual increases of more than 3% in LTC costs are making the coverage a risky proposition for many Americans, leading to a higher utilization of the maximum daily benefit than initially expected. And home care costs have surged notably over the past five to six years.

"The pandemic initially resulted in lower incidence and shorter claims for LTC. However, this was a temporary phenomenon. There has been a rebound in incidence and claim rates, indicating that the pandemic's impact on these aspects was short-term," Laino said.

The Covid era has also seen a trend toward dual-purpose policies that combine life insurance with LTC coverage. This combination offers clients a way to pay for care if needed or provide the remainder of life insurance proceeds to their estate if they do not use it for LTC.

The two-in-one solution also need not be a budget-buster. It simply needs to be the right fit.

"Solving the long-term care challenge does not necessarily require a million-dollar policy," Beligotti said. "Financial professionals can help clients determine the right amount and type of coverage to include as part of a broader retirement strategy.

KNOW YOUR CUSTOMER

As to why so many Americans don't own LTC insurance, well, first of all, it's not the most pleasant of topics for an advisor to raise with a client. It's an especially unappetizing subject for younger advisors who have never personally experienced the challenges and costs of taking care of an aging relative.

On the other side of the table, a large number of clients are simply unwilling to discuss aging, and the prospect of losing their health and mental cognition as they age, with anybody, including trusted financial advisors.

"It is much like many not having a will or owning life insurance because people don't want to discuss their mortality," said Peter Kaplan, senior vice president of the insurance solutions division at Integrated Partners.

Andrew Crowell, vice chairman of wealth management at D.A. Davidson, conjectures that clients often compartmentalize the various aspects of their financial lives, letting LTC or other areas fall through the cracks. For example, they may only discuss their investments with their financial advisors, not their insurance policies, liabilities, company stock options and tax issues.

"They may have different individuals helping them with each of these aspects of their overall financial situation, and may only think to discuss their insurance coverage with their insurance broker, for example," Crowell said.

Meanwhile, some advisors simply don't "do insurance" or don't have the appropriate qualifications or knowledge. As opposed to simple portfolio allocation, LTC policies are often complex products with many choices — and potentially pricey ones as well.

> **"IT IS MUCH LIKE MANY NOT HAVING A WILL OR OWNING LIFE INSURANCE BECAUSE PEOPLE DON'T WANT TO DISCUSS THEIR MORTALITY."**
>
> PETER KAPLAN,
> SENIOR VICE PRESIDENT,
> INTEGRATED PARTNERS

"The negatives, like out-of-control pricing increases, regarding LTC insurance make advisors and clients avoid LTC insurance because of the well-known mistakes LTC carriers made in pricing early LTC insurance plans," Kaplan said. "This has created a continued mistaken belief that their clients are going to be subject to large future rate increases, and advisors never want a disgruntled client who could leave them."

All that said, most advisors say pricing on LTC insurance is much more stable now that the cost of the previous mistakes is known and included in the current pricing. The challenge is convincing clients.

Addressing the question of why clients don't understand what they already have, Kaplan said the faith and trust that clients place in their financial advisors may lull them into complacency. It doesn't help that LTC insurance is often purchased years before it is needed.

"Sometimes the details may have been glossed over, but I believe that many advisors will discuss the details and options," he said. "During the planning discussions, multiple options may have been discussed, and once the final design and plan are implemented, it is not revisited and discussed, so people simply forget."

To address this specific challenge, advisors need to review clients' policies regularly, seek clarity from their insurance provider and stay informed about any changes in their coverage.

"Proactively educating and discussing one's long-term care insurance can help ensure clients are aware of the type of coverage they own," said Jared P. Remesz, wealth advisor at SageView Advisory Group.

THE PROVIDER (AND THE PRICE) IS RIGHT

More and more baby boomers are seeing the impact that an extended-care event can have on their parents and siblings. Still, advisors say that's not translating into a rush into LTC products.

Once the topic is broached, however, advisors say it should be part of a total financial plan. To get this right, they suggest bringing in an independent, experienced LTC specialist who is well-versed in products from different companies. Price shopping is also encouraged.

"Since long-term care insurance premiums can vary significantly, I use reputable partners to obtain quotes from multiple insurance providers. This allows us to compare policy features and premiums to make an informed decision that fits into a client's budget," Remesz said, adding that it's also critical to verify the financial strength and stability of the insurance company behind the policy to "ensure that the insurer can meet its obligations in the future."

Medical underwriting plays a crucial role in implementing the solution, and based on the underwriting decisions, the provider or the product may need to be switched or redesigned.

"The cost of the product most certainly does come into play, but often that is the final step in the process once underwriting product availability is determined. The larger providers all have teams and technology solutions to support clients at the claims stage, and these are also looked at," Kaplan said.

Once the delicate topic of aging and mortality is on the table, advisors can expand the conversation to include different types of protection as well.

"Clients who may not qualify for long-term care insurance can sometimes still qualify for life insurance, and cash-value life insurance can help offset long-term care costs," Kaplan said. "Clients who may not qualify for insurance at all can get long-term care annuity contracts where they are able to leverage the single deposit two or three times, providing additional cash flow for a long-term care event."

Eric Mangold, founder of Argosy Wealth Management, a Summit Financial firm, has a number of medical professional clients who rely on their hands to make a living, so he frequently recommends long-term disability insurance as well.

"One's biggest asset is their ability to earn an income, and it needs to be protected. If they can't work because they are hurt or sick, they still need to provide an income for their families, and long-term disability insurance can help," Mangold said.

HOPE SPRINGS ARTIFICIAL

Despite all the misconceptions plaguing the LTC arena, there is hope, and it comes — like everything else nowadays — in the form of artificial intelligence.

According to Nationwide's LTC survey, one-third of Americans and more than half (58%) of millennials believe AI and robotics will provide their future in-home long-term care. As a result of this increasing acceptance of AI, Nationwide is testing elder-care robots in the homes of select policyholders with mobility issues. The company says the goal of this trial is to assess whether the robots increase the potential for policyholders to age in their homes and remain independent.

Or, in other words, continue with the stay-at-home trajectory set in motion by the pandemic.

"It is difficult for many families to find quality care for their loved ones. We are considering AI and robotics as potential solutions for this, and are identifying whether elder-care robots could become credible, compelling examples of extraordinary care for our members," said Holly Snyder, president of Nationwide's life insurance business.

Until that day comes, however, it will be up to flesh-and-blood financial advisors to start the conversations, answer their clients' questions, and drain the very deep pool of LTC confusion.

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Analysis&Commentary

ROTH IRAs

Converting IRA to Roth is financial gift

The Roth IRA is the ultimate financial gift for retirees and their beneficiaries.

IRAALERT
ED SLOTT

Roth individual retirement accounts have no lifetime required minimum distributions, so you'll never have to worry about paying higher future tax rates on those funds. In retirement, you can withdraw whatever you wish tax-free. That will keep Medicare IRMAA charges in check, as well as reducing exposure to the 3.8% net investment income tax. It can also qualify you for deductions, credits and other tax benefits that are based on adjusted gross income.

CONTROLLING TAX RATES

One big key to effective tax planning is to control tax rates, and that can be done with Roth conversions. You can control each year's tax liability by converting any amount you choose, keeping conversion income in low tax brackets.

If an IRA isn't converted, it will continue to grow and eventually be subject to RMDs, currently at age 73. Once RMDs begin, it's much harder to control your tax rates and keep AGI low.

WHAT DO YOU GET?

When you convert your IRA to Roth, you pay income tax on that conversion at today's historically low rates. But what you're really doing is buying yourself a gift that will pay off for the rest of your life and for 10 years after for your beneficiaries. Under the 10-year rule for inheritors like children or grandchildren, there are no RMDs for years one through nine of the 10-year term, so they can hold on for the full 10 years as their inheritance compounds tax-free.

HAPPINESS!

People with tax-free income are just happier. They don't have to worry about taxes. It's hard not to be happy about locking in a 0% tax rate for life, and beyond.

In addition, I've found that Roth converters love not having to worry about RMDs and love knowing their beneficiaries will also enjoy tax-free benefits for 10 years after death.

But the best part is that they can enjoy the accumulation of their Roth accounts, realizing they can retain all those gains tax-free. In a world where we're bombarded with taxes on all types of income and gains, there's something special about knowing that Roth IRA earnings are never taxed.

ESTATE TAX SAVINGS

In essence, when you convert your IRA to a Roth IRA, you're paying a tax that your beneficiaries would otherwise have to pay. When you pay a bill for someone else, that's a gift, but a conversion doesn't count as a gift for estate or gift tax purposes.

While Roth IRAs are income tax-free, they are still subject to federal estate taxes. Yes, the federal estate tax exclusion is currently $12.92 million per person ($25.84 million for a married couple), so most IRAs will not trigger a federal estate tax. But that's not true for state estate taxes. While the majority of states have no estate tax, some not only have an estate tax but have much lower

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MERGERS & ACQUISITIONS

What kind of relationship do you and your acquirer have?

When one firm buys another, it's often a testy situation.

For old-timers like yours truly, wealth management mergers and acquisitions can often result in a relationship like Liz Taylor and Richard Burton's: volatile and unworkable. For the youngsters, or those around 40 or below, deals in the end may wind up being like Angelina Jolie and Billy Bob Thornton: just plain weird.

BRUCE KELLY

ONADVICE

There's been a steadily increasing pace of wealth management deals for a decade or more. With all this buying, what's become evident is how tricky it is for firms to make the right match.

There are many reasons for wealth management acquisitions to

CONTINUED ON PAGE 17

LEGISLATION

GOP presidential debate reveals reluctance to deal with federal debt

A discussion of the "elephant not in the room," in the words of one of the moderators of the Republican presidential candidates debate Aug. 23, didn't come until about one hour into the jousting. The elephant, of course, was frequently indicted former President Donald Trump.

MARK SCHOEFF JR.

DCINSIDER

Most of the candidates tiptoed around Trump. They also avoided a substantive exchange about another elephant facing the eventual GOP nominee next year: the yawning federal debt.

Former South Carolina Gov. Nikki Haley was honest enough to say that both parties have contributed to the burgeoning debt. Republican candidates like to blame spending by Democratic administrations, but Haley pointed out the GOP knows how to open the spigot, too.

"The truth is that Biden didn't do this to us; our Republicans did this to us, too," she said.

Haley said plenty of Republicans voted for Covid spending bills. She also noted that three candidates on the stage — former Vice President Mike Pence, Florida Gov. Ron DeSantis and South Carolina Sen. Tim Scott — voted to raise the debt limit. Pence and DeSantis did so when they were in the House.

"And Donald Trump added $8 trillion to our debt," Haley said. "And our kids are never going to forgive us for this."

But when it came to ways to tackle the debt, Haley was less bold than when she was parsing the blame for it. She said it's imperative to "stop the spending … stop the borrowing … [and] eliminate the earmarks."

Those steps are the equivalent of using a chisel to bring down the mountain of debt, which the Committee for a Responsible Federal Budget estimates will rise from $29 trillion to $36 trillion over the first four years of the next presidential administration. That means the debt will grow from 102% of gross domestic product to a record 107%, according to the group.

Pence has been more forthright than the other candidates about reducing entitlement spending, which has lit the fuse on the debt explosion.

"I was the first person in this race to say that we've got to deal with the long-term national debt issues," Pence said. "You got people on this stage who won't even talk about issues like Social Security and Medicare."

That may be true. But Pence also championed a policy move that will add more fuel to the debt fire when he advocated extending the tax cuts ushered in by the 2017 tax reform bill that Trump signed into law. That legislation will add $1 trillion to $2 trillion to the federal debt, according to the Tax Policy Center.

"[A] lot of people don't know that those Trump/Pence tax cuts that we got signed into law go away at the end of 2025," Pence said. "[W]hen I'm president of the United States, we're actually going to … extend those tax cuts."

If Pence is elected and Republicans control the House and Senate in 2025, he will be able to extend the 2017 tax cuts. That will exacerbate the federal debt.

Talking about the federal debt truthfully — tax cuts as well as spending contribute to the problem — and proposing legitimate ways to bring it down (entitlement reform) may be too much to ask of any presidential candidate. Following through is even tougher politically.

"I think everyone understands the value in cutting our debt level," Tim Steffen, director of advanced planning at Robert W. Baird & Co., wrote in an email. "But when push comes to shove, people tend to fight for what's in their own best interest. And in most cases that means tax cuts."

Financial advisors also are wrestling with the tax-cuts-versus-debt-reduction conundrum. I quoted several of them in a recent story cautioning Congress to balance debt reduction with lifting the $10,000 cap on the deduction for state and local taxes. The SALT cap was added to the 2017 bill to help pay for its long roster of tax cuts.

"The tax code is very complex, and there is always a desire for all deductions," Scott Bishop, managing director of Presidio Wealth Partners, wrote in an email. "But if we can't get our spending under control, revenues will continue to be needed. It's an ugly Catch-22."

Joanne Burke, founder of Birch Street Financial Advisors, has mixed feelings about whether it's more important to cut taxes or the federal debt.

"While I am always an advocate for reducing my client's and my own tax burden, I think we need to address the looming debt and quit kicking the can down the road," Burke wrote in an email. "While I am working with clients to be fiscally responsible, I think Congress needs to be as well."

That would be the ideal outcome, but it would take a level of political fortitude we're not seeing so far in the presidential campaign.

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GOVERNANCE

What proxy votes show about how dead ESG is

Looking at some recent headlines about the drops in BlackRock's and Vanguard's support for shareholder resolutions, it would seem as if ESG is all but dead — with politicians winning the odd battle they're waging on the asset managers.

EMILE HALLEZ

INSIDE-IN

After all, BlackRock supported just 7% of environmentally and socially themed shareholder resolutions globally between July 1, 2022, and June 30, 2023, compared with 22% in the prior proxy year, according to the company's recent report on its voting and an analysis by Bloomberg.

Meanwhile, Vanguard voted in favor of just 2% of environmental and social shareholder proposals, down from 12%, the asset manager disclosed in late August. The data are being published as fund sponsors file their annual N-PX forms with the Securities and Exchange Commission, which require that they show how they voted.

There are plenty of stories out there about the low levels of support; they are indeed low. But there are two things to keep in mind: The number of shareholder resolutions has risen dramatically over the past several years (along with the scope of the demands within them), and big asset managers like Vanguard and BlackRock are hardly at the

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ESG

CONTINUED FROM PAGE 15

forefront of sustainable investing.

"It's not the end of ESG. It's probably the end of a phase in ESG, though," said Lindsey Stewart, director of investment stewardship research at Morningstar.

There was a lot of excitement in 2021 when asset managers' support for ESG-themed proposals was higher, he noted. It was also a time when the SEC started making it difficult for public companies to deny shareholder resolutions votes on their proxy ballots.

But the things shareholders were asking for then are significantly different from what they have leaned toward over the past year, Stewart said.

Two years ago, for example, proposals focused on getting companies to start disclosing data. Today, thanks in part to those resolutions and pressure from regulators, disclosure of ESG data is more common. With that being table stakes, shareholders have moved on to ask public companies to change their practices, such as setting carbon-reduction goals — and asset managers have tended to view that kind of request as too prescriptive.

The phase that's coming to an end, Stewart said, is a belief that asset managers will bring about important changes necessary for the world to be more just and sustainable. Essentially, we can't expect funds to stand in for government action. While asset managers can help encourage change at the public companies in their portfolio, they can (or will) only do so much.

BOTTOM LINE

Big companies like BlackRock have gotten so big because they tend to be good at making people money. While CEO Larry Fink has spoken numerous times about goals around stakeholder capitalism, the company's motivations related to proxy voting and engaging portfolio companies come down to financially material concerns. The company is far from alone in seeing very real risk and return connected to ESG issues.

34%

RISE IN NUMBER OF ESG-FOCUSED RESOLUTIONS OVER THE PAST YEAR

BlackRock declined to comment on its recent proxy votes, but a spokesperson pointed to statements made in the recently published report.

In the report, Joud Abdel Majeid, BlackRock's global head of investment stewardship, noted that there was a 34% increase in the number of shareholder resolutions over the past year focused on social and environmental issues.

"We observed a greater number of overly prescriptive proposals or ones lacking economic merit," Abdel Majeid stated in the report.

The drop in the percentage of resolutions BlackRock supported has more to do with the quality of the resolutions than a change in the company's stance on ESG issues, which it reiterated is material in nature.

Similarly, a Vanguard spokesperson pointed to that firm's recent report. Although Vanguard's support for environmental and social proposals dropped significantly, that decline was due in part to resolutions asking for things that companies have already started doing (or are doing enough to satisfy Vanguard).

"Despite changes in voting results, which are driven largely by the volume and substance of the proposals presented, our approach to evaluating shareholder proposals — including those on environmental and social matters — has been consistent over time," the Vanguard report stated.

Across the board, support for shareholder resolutions declined from a median of 25% in the U.S. in the 2021-2022 proxy season to 15% in the 2022-2023 season, BlackRock noted, citing data from ISS.

There was also a drop in the portion of shareholder proposals that saw significant support, Stewart said. In several proxy seasons prior to the most recent, about 35% to 40% of environmentally themed resolutions were seen as "key" shareholder proposals, meaning that they saw at least 40% support from independent directors, according to Morningstar. This past year, that appears to have dropped to about 20% or less, Stewart said.

"Whether that's down to the [ESG] backlash, on the voting side I wouldn't draw a straight line," he said. But "it does change the climate and the conversation around what's happening with these shareholder proposals … Asset managers are pushing back on prescriptive resolutions — whether [those resolutions] are pro- or anti-ESG."

Because N-PX data were still being submitted to the SEC as of Aug. 31, a complete picture about how asset managers voted isn't yet available. So it's hard to know whether fund providers known for being sustainable changed much in their voting habits. What is clear, though, is that those fund companies undoubtedly supported environmental and social proposals at a much higher rate.

A separate report issued Aug. 30 by Morningstar listed Vanguard as "low" in its ESG commitment level and rated BlackRock just slightly higher at "basic." Meanwhile, U.S. firms such as Boston Trust Walden, Domini and Parnassus were among the eight companies globally with the highest rating, "leader," which was a category ahead of "advanced," a group that included AllianceBernstein, Amana, Brown Advisory, Federated Hermes, Nuveen and Wellington Management.

There's no shortage of companies that view environmental and social issues as financially material, and that does not appear to have changed amid the political backlash over the past year in the U.S. And it could be that the anti-ESG movement is showing signs of tiring, as the topic didn't come up at all during the first Republican presidential candidates' debate on Aug. 23.

"ASSET MANAGERS ARE PUSHING BACK ON PRESCRIPTIVE RESOLUTIONS — WHETHER [THOSE RESOLUTIONS] ARE PRO- OR ANTI-ESG."

LINDSEY STEWART, DIRECTOR OF INVESTMENT STEWARDSHIP RESEARCH, MORNINGSTAR

It could also be that asset managers change their language to avoid attracting attention.

"They may decide for political convenience to call it something else," Stewart said. "But the idea isn't going anywhere. That's for sure."

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IRA TO ROTH

CONTINUED FROM PAGE 14

exemption amounts that can trigger huge tax bills.

For example, New York currently has an estate exclusion of $6.58 million, but like some other states, once your estate value exceeds that amount (even by one dollar), you don't pay tax just on the amount in excess of that exclusion — you pay tax on a much larger amount. These states have what's commonly known as a "cliff tax," which removes chunks of the exclusion and results in effective tax rates that can easily exceed 200%.

EXAMPLE

If your New York estate is $6.68 million (just $100,000 higher than the state exemption), the state estate tax would be $252,516, an effective rate of 252% on that $100,000 excess. And it's all due to the cliff tax quickly accelerating the tax bill.

New York has no gift tax, so you could give away $100,000 and completely eliminate the estate tax. But the state has a three-year lookback in which, if you die within three years after giving the gifts, they are added back to your estate.

A better solution (with no lookback period) is a Roth conversion. Converting only around $200,000 to a Roth IRA can easily eliminate the entire $252,516 tax bill. Assume, for simplicity, a combined top federal and New York state tax rate of 50%. That would require you to pay a $100,000 tax to convert $200,000. But paying that tax would reduce the estate by that $100,000 and eliminate a potential $252,516 tax bill!

PEOPLE WITH TAX-FREE INCOME ARE JUST HAPPIER. THEY DON'T HAVE TO WORRY ABOUT TAXES.

In essence, the state will be paying the tax cost to convert, with your family ending up with much more. And the beneficiaries will be inheriting a Roth IRA that is both income tax-free and estate tax-free.

That's great for your heirs — but what's in it for you? Well, your lifetime income will be reduced as a result of lower RMDs, since $200,000 of IRA funds were converted to Roths. It's win-win all around — a giant-size tax savings. Imagine saving a quarter million dollars in taxes for the family, and getting a tax-free Roth in the deal.

MASSACHUSETTS

Some states, like Massachusetts with only a $1 million exclusion, can generate a much higher state estate tax. For example, the same size estate as in the example above ($6.68 million) would result in a whopping $597,040 state estate tax in Massachusetts. Oregon, which also has only a $1 million exclusion, would impose an even higher state estate tax of $625,900 on the same size estate. Yikes!

For a complete listing of state estate tax exclusion amounts, go to the American College of Trust and Estate Council's state death tax chart (https://www.actec.org/resources/state-death-tax-chart/), a valuable resource that's continuously updated. Use this chart to calculate how Roth conversions can benefit clients living in states with high estate taxes and low exclusion amounts.

The Roth IRA conversion is a true gift all around, with relatively little cost compared to its significant long-term tax savings. Take advantage of it before the IRS and state tax collectors take advantage of you — and your heirs.

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

ACQUIRER

CONTINUED FROM PAGE 14

fall apart and ultimately not work. Broker-dealers or registered investment advisors often overpay, making the acquisition too expensive. Firms can be a poor business match or a bad cultural fit when acquired by another enterprise.

At times, management also doesn't understand the business it's buying. Tempted by offers from competitors, financial advisors may leave a firm that was just purchased for a different employer, leaving the buyer in the lurch.

In a moment, we'll discuss deals made in recent years by Avantax Inc., formerly Blucora Inc., which has 3,100 financial advisors who work with about $84 billion in client assets; many of those advisors have backgrounds working on clients' taxes and are CPAs. The company saw a spike in its share price over the summer after activist investor Engine Capital sent a letter to the Avantax board asking it to consider a strategic review of the firm, including a potential sale.

But first, let's take a look at last month's decision by Goldman Sachs Group Inc. to dump the RIA business for which it paid $750 million back in 2019, United Capital Financial Partners.

Goldman renamed the RIA Personal Financial Management, but the firm didn't turn out to be a good fit. The giant investment bank decided this year to refocus its efforts on working directly with the super-rich, those with tens or hundreds of millions of dollars in assets, as opposed to plain old millionaires — the sweet spot for most RIAs like United Capital.

The Goldman-United Capital deal was an Angelina-Billy Bob-type relationship: a bit strange, with stuff under the surface that most likely will never see the light of day. (For example, how much is the new owner, Creative Planning, actually paying for the RIA?)

Which brings us to Avantax. The firm made two broker-dealer acquisitions, one in 2015 and the other four years later, spending a combined $760 million for the former HD Vest Financial Services Inc. and 1st Global Inc. Financial advisors who focus on taxes often are on the lower end of annual revenues when measured against the rest of industry, since taxes are different from gathering client assets.

WITH ALL THIS BUYING, WHAT'S BECOME EVIDENT IS HOW TRICKY IT IS FOR FIRMS TO MAKE THE RIGHT MATCH.

Avantax has been wheeling and dealing. Last year, it sold TaxAct, its software business, for $720 million, turning the company into a "pure play" independent broker-dealer and RIA wealth management company, it said at the time.

So Avantax has been buying and selling huge chunks of its business for eight years. As of Aug. 30, the company's share price was $20.61, and it had a market capitalization of almost $758 million, or roughly the combined sticker price of the two tax-focused broker-dealers it bought in 2015 and 2019, not taking into account inflation.

Just think: If Avantax had taken the $580 million it spent on HD Vest and instead invested it around that time in the S&P 500 stock index, it would have more than doubled its money over the same period.

"As part of our multi-faceted, tax-focused business model, a number of factors influence our M&A strategy," CEO Chris Walters wrote in an email. "The acquisition of 1st Global in 2019 furthered our position in tax-focused wealth management."

He noted that the company was setting new highs in revenue; adjusted EBITDA, or earnings before interest, taxes, depreciation and amortization; recruiting; the portion of assets in advisory; and net new assets.

"With our strong performance, we believe the outlook for the business is very positive," Walters added.

It would be premature to label Avantax and its deals a Liz and Dick match, or another kind of relationship — say an Oscar and Felix.

But investors have started nipping at its heels, always a sign that a company needs a good counselor to prepare for what's ahead. What kind of relationship will Avantax strike up next?

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REGULATION

Implications of the SEC rulemaking agenda

Outsourcing. Custody. Cybersecurity. Data privacy. Private funds. Predictive data analytics. And much more. The SEC's ambitious and fast-paced rulemaking agenda will have significant consequences — foreseen and unforeseen — for investment advisors, investors, service providers, and markets more broadly.

OUTSIDEIN
KAREN BARR

In just over 18 months, the SEC has proposed or finalized more than a dozen major rules that will affect investment advisors directly. Its aggressive pace will likely require advisors to implement all of these complex rules in a 28-month period. Each of these rules will result in significant changes to common and longstanding business practices and require substantial implementation efforts by advisors. In aggregate, they will completely overhaul the current regulatory regime for advisors, creating significant disruption with substantial long-term implications. The SEC's agenda also reflects a counterproductive move away from the principles-based approach of the Investment Advisers Act, which has worked well enough to evolve with changes in the markets, investment advisors, and their clients for the past 80-plus years.

Critically, the SEC has not adequately considered the interrelatedness of many of these rulemakings. This lack of holistic evaluation will lead to inconsistent and duplicative requirements, create unnecessarily complex implementation and compliance challenges, and raise regulatory risk for advisors.

For example, several of the proposals will require advisors to negotiate specific terms with service providers, including custodians, sub-advisors, cybersecurity providers, portfolio management, pricing, valuation, compliance consultants, and more. Without a cohesive approach by the SEC, advisors could be forced to renegotiate agreements with the same service providers in inconsistent ways several times over the course of a relatively short period. Investment advisors — most small businesses — aren't likely to have the leverage to do so.

Most recently, the SEC has proposed sweeping rules purportedly aimed at advisors' use of predictive analytics. In reality, this breathtakingly broad proposal would reach virtually every advisor, every technology and every tool advisors use to communicate with investors. The proposal doesn't seriously consider operational difficulties or accurately describe the likely costs advisors will bear, particularly for thousands of small businesses. Nor does it acknowledge that these challenges will be layered over the many other new requirements coming down the pike.

Most importantly, this proposal is entirely unnecessary. It is intended to address a concern — management of conflicts of interest — that's covered by existing regulatory obligations. An adviser's fiduciary duty already requires that it act in the client's best interest, including ensuring conflicts are appropriately managed. And the SEC has, and regularly deploys, tools to enforce these obligations.

As fiduciaries, advisors share the SEC's investor protection mission, and the IAA strongly supports effective regulation to further our shared goals. But the SEC appears to be barreling ahead without evidence that the current regulatory framework for advisors isn't working well or that its proposals will meaningfully protect investors. We call on the SEC to conduct a holistic review of the major rule proposals affecting advisors, as well as create a reasonable and workable implementation timeline.

Karen Barr is president and CEO of the Investment Adviser Association.

IN the News

LITIGATION

Massachusetts high court upholds state fiduciary rule covering brokers

BY MARK SCHOEFF JR.

THE HIGHEST COURT in Massachusetts upheld the state's investment advice standard that imposes fiduciary duty on brokers, dealing a setback to online brokerage Robinhood's effort to kill the regulation.

The Massachusetts Supreme Judicial Court ruled Aug. 25 that the state's top securities regulator, Secretary of the Commonwealth William Galvin, acted within his authority in September 2020 when he established the state's investment advice rule imposing fiduciary duty on brokers.

The court also held the measure does not conflict with Regulation Best Interest, the broker-dealer standard promulgated by the Securities and Exchange Commission that went into force in June 2020.

In March 2022, a Massachusetts Superior Court judge struck down the Massachusetts fiduciary rule in a suit brought by Robinhood in April 2021. The online brokerage was responding to a lawsuit Galvin filed against Robinhood in December 2020 for violating the state's fiduciary rule through features of its online trading app that allegedly targeted inexperienced investors.

Galvin appealed the Superior Court decision to the Massachusetts Supreme Judicial Court, which overturned the lower court's ruling. The Massachusetts high court held that Galvin acted appropriately in promulgating a fiduciary rule because it does not violate state law nor is it overridden by Reg BI.

"[W]e conclude that the Regulation Best Interest constitutes a regulatory floor that does not foreclose State regulation to more clearly protect investors," the Massachusetts court wrote in its opinion. The case was remanded to the lower court for further administrative proceedings.

Galvin celebrated his victory.

"This landmark decision affirms the fiduciary duty of brokers to their customers and vindicates the role of my Securities Division to principally, but aggressively, protect investors and police broker-dealer misconduct," he said in a statement. "The rule that has been upheld by the Supreme Judicial Court today will give the highest protections to Massachusetts investors when brokers provide investment advice."

Robinhood may not be done battling the state's investment-advice standard.

"We are disappointed in today's decision and remain committed to providing access to the markets for our Massachusetts customers," Lucas Moskowitz, deputy general counsel and head of government affairs at Robinhood Markets Inc., said in a statement. "We are in the process of reviewing the opinion and assessing next steps in this matter."

GAMIFICATION FEATURES

In his December 2020 suit, Galvin alleged that Robinhood violated the Massachusetts fiduciary rule because gamification features in its online app enticed investors with little experience to make repeated trades. Galvin said Robinhood acted to promote its own business, contravening the state standard that requires brokers to make recommendations without regard to their own financial interests.

In its April 2021 suit to overturn the rule, Robinhood argued Galvin exceeded his authority under the state's securities law by imposing a uniform fiduciary standard in Massachusetts that subjects brokers to the same advice standard as investment advisors. Previously, brokers were governed by a separate suitability standard.

The brokerage also argued that the Massachusetts rule was preempted by the SEC's Reg BI, which prohibits brokers from placing their financial interests ahead of their customers' interests but is not itself a fiduciary standard.

Fiduciary advocates, who assert it is the highest standard for investment advice, hailed the Massachusetts high court ruling.

"This morning the Massachusetts Supreme Judicial Court made regulatory history," Knut Rostad, president of the Institute for the Fiduciary Standard, said in a statement. "The decision is an overwhelming victory for investors. It is a Fenway Park Red Sox grand-slam home run that will be reviewed by many other state securities administrators in the months and years ahead."

> **"THE DECISION IS AN OVERWHELMING VICTORY FOR INVESTORS. IT IS A FENWAY PARK RED SOX GRAND-SLAM HOME RUN."**
>
> KNUT ROSTAD, PRESIDENT, INSTITUTE FOR THE FIDUCIARY STANDARD

STRONGER THAN REG BI

Galvin has asserted that the state's fiduciary rule is stronger than Reg BI in protecting the state's investors, who are confused by the differing standards for brokers and advisors. The state's high court said he has the leeway to set a higher standard.

"To be sure, the rule imposes an obligation on broker-dealers beyond that attendant to the prior suitability standard … and is clearer than the standard under Regulation Best Interest, which does not define 'best interest,'" the court wrote in its opinion. "But the rule is driven by changes in the prior 'norm' of the marketplace that have caused investor harm, the Secretary found."

The court was not convinced by Robinhood's argument that Reg BI preempted the Massachusetts fiduciary rule. Robinhood asserted that the SEC through Reg BI was trying to preserve lower-cost investment advice from brokers that would become too expensive if brokers had to adhere to fiduciary duty.

"We disagree that this aspiration to preserve investor access to an array of investor services 'to the extent possible' hurdles the high bar required to find conflict preemption," the Massachusetts court wrote.

The court also said the SEC declined explicitly to preempt state investment advice laws within the language of the final Reg BI rule.

"Here, Robinhood's preemption argument is particularly weak because Congress and the SEC were aware of state laws imposing fiduciary obligations on broker-dealers and declined to express an intent to preempt those laws," the court wrote. The court said the SEC in the Reg BI adopting release concluded "a preemption analysis would be too speculative."

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REGULATION

NASAA program lets advisors maintain licenses longer

BY MARK SCHOEFF JR.

SUE GARDINER QUIT her position as a financial advisor about a year ago to tend to some family matters. She was only gone a couple of months, but she could hear the clock ticking on her industry licenses.

Advisors used to be able to retain their qualifications from passing broker and investment advisor exams for only two years if they left the financial industry. But under new rules promulgated by Finra and state securities regulators last year, that grace period has been pushed out to five years.

On Aug. 30, the North American Securities Administrators Association announced the launch of its Exam Validity Extension Program, the technology component that will help advisors enroll in extended leave.

Gardiner, owner of South County Wealth Planning, welcomes the additional leeway.

"As a mother of three young kids — ages 2 to 7 — I am so pleased to see NASAA recognizing the need for some flexibility for the unpredictable circumstances life presents," Gardiner said. "The current two-year standard can be limiting. If you step away from registration with a jurisdiction for a year, that only leaves you another year to begin a job search and land a job in time to keep your licensing."

Eligible state-registered advisors can sign up for NASAA's EVEP through their Financial Professional Gateway, or Finpro, account and extend their Series 63 exam qualification for up to five years, according to the NASAA announcement. Advisors must pay a $35 annual fee and meet continuing education requirements.

The Series 63 is a state registration requirement for broker-dealers. Later this year, NASAA will roll out a similar program for the Series 65 exam for investment advisor representatives. The extended validity is recognized when an advisor reenters the industry and registers in states that have adopted the

TAXES

Diddy's transfer of song rights raises tax, financial planning questions

SEAN "DIDDY" COMBS

BY EMILE HALLEZ

SEAN "DIDDY" COMBS surprised the music industry and its observers recently when he decided to transfer rights from his Bad Boy Records catalog to some of the artists and songwriters who long ago helped make him a billionaire.

Although there has been no shortage of news coverage, there aren't many specifics about the arrangements that Combs and the record label have with the artists: Ma$e, Faith Evans, The Lox, 112 and the estate of the Notorious B.I.G., according to various reports. The transfers come amid Bad Boy Records' 30th anniversary and follow offers to the tune of hundreds of millions of dollars that the label has reportedly received for its catalog.

But advisors say the news raises issues around taxes and financial planning — and there are even some parallels when it comes to business ownership between the music and the financial advice industries.

Usually, songwriters own copyrights but have agreements with publishers to collect royalties for a certain amount of time that are split with the artists, said Craig Manzino, partner in charge for business management and family office services at Armanino, who works with clients in sports, arts, entertainment and media.

"It's common that these rights do revert back to the artists at a given point — what we don't know is why they are reverting," Manzino said. "These deals could be complicated, and it depends on how they're worded."

In cases where rights are transferred, both sides in such deals need to be protected, he noted. And in some cases, publishers might want tax write-offs.

Any time that rights are transferred, "it's having the right people involved from the beginning of the transaction that's important," he said. That means working with CPAs and lawyers whose advice "could change the taxability of the transaction tremendously."

In recent years, many big-name artists or their estates have sold publishing rights or recordings of songs or entire catalogs, including Bob Dylan, Whitney Houston, Bruce Springsteen, Neil Young, David Bowie and Justin Timberlake. Some of those deals reportedly amounted to hundreds of millions.

"Sometimes creative individuals retain the rights and think of it as legacy planning. It goes to the trust, it goes to the family, [or] however they set it up," said Tiffany Soricelli, principal of Virtuoso Advising for Artists.

"If you sign away your rights … [songs] can be utilized in ways you never intended," Soricelli said. "I would be asking [clients] what their goals are. Some people don't want to micromanage their own catalogs."

While income from artists has shifted to streaming services, the publishing side includes licenses for use in movie clips, TV shows and commercials, said Justin Sroka, partner at Mann Gelon Glodney Gumerove Yee.

"That's a really large source of revenue," Sroka said, adding that it's also a matter of regaining authority over how and where their songs are used. "That's a big piece of what they're getting back."

CAPITAL GAINS VS. ORDINARY INCOME

Decisions to sell or retain catalogs involve big tax questions for songwriters or artists, said Adam Scott, principal at WellAcre Global Wealth Advisors.

"If you're Bob Dylan, you're going to get hit with capital gains, which right now is relatively low compared to paying income tax at the current rate," Scott said.

That is, of course, if the owner is in the top tax bracket. And not selling has benefits, as appreciation isn't taxed annually, and assets of less than about $26 million for a married couple can be passed tax-free to heirs under the estate tax exemption, Scott noted.

In theory, it's not any different from the considerations for someone who owns a plumbing company that keeps going up in value, Scott said — or, for that matter, the owner of a financial advice business. It's often useful to limit income and put money back into the business, he said.

"If you don't need the income from your business, you're better off investing in your advisory business and growing it," he said. "That's something I do myself. Rather than taking a lot of money out of the company, I'm investing in it."

In Diddy's case, it's hard to say what any tax implications are, given the lack of details on the rights transfers.

But "it seems that this deal is probably less about a tax benefit for Diddy and more about the goodwill and being able to return those copyrights and publishing rights to the artists, which is kind of a nice thing," Sroka said. "Clearly, he's profited well over the years, so it was a nice thing for him to be able to provide."

The decision to sell or hold onto song rights comes up frequently, Sroka said.

"We've had many clients who have contemplated catalog sales," he said. "The few things that move the needle are the cash flow impact upfront versus collecting [royalties] annually."

For someone who's in the top tax bracket in California, the 37% federal rate and 13% state income tax can make the 20% capital gains tax very attractive, Sroka noted.

However, with the cost of capital rising along with interest rates, the appetite for buying up whole catalogs appears to be diminishing, at least for now, he said.

When contemplating whether to retain or transfer rights, working with someone who is experienced with royalties is helpful, Manzino said.

"Certain songs have cycles. It's not just the straight revenue trail. You might have an artist who has a Christmas song, and you can't just look at the past four quarters, because you know it's going to pop in the fourth quarter," he said.

"However this is going, there is going to be the need for a business valuation," Manzino said. "The tax treatment is going to be critical, because it could mean a difference in millions of dollars to each side."

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"AS A MOTHER OF THREE YOUNG KIDS … I AM SO PLEASED TO SEE NASAA RECOGNIZING THE NEED FOR SOME FLEXIBILITY."

SUE GARDINER, OWNER, SOUTH COUNTY WEALTH PLANNING

program, NASAA said.

The NASAA initiative ensures state regulations for the licensing grace period align with those that have been put in place for broker-dealers by their self-regulatory organization, the Financial Industry Regulatory Authority Inc.

"There are definitely going to be people who take advantage of this flexibility," said NASAA President Andrew Hartnett, who is the Iowa deputy insurance commissioner.

Ryan Galiotto, founder of Etch Financial, wishes the program had been in place a couple of years ago, when he took a leave to tend to an ailing parent.

"It was tough taking care of a father and maintaining a practice at the same time," Galiotto said.

The looming threat of losing a securities license adds to the pressure.

"It's like starting over again," he said. "It's a bear. It's a hard test."

The extended time to maintain a license also benefits advisors who want to give an alternative career path a try but also maintain a foothold in the industry, said Sean Rawlings, founder of WealthBound Advisors.

"It gives you a longer runway," Rawlings said. "The extension allows advisors to [take a leave] without feeling the stress that a test they worked hard for is just going to be wasted when they lose their licenses."

The key to making the grace period work is the continuing education requirement, Gardiner said.

"Leaving an industry for such a limited time doesn't mean you've lost the foundational knowledge and skill to do work in the profession you've trained and been proven in," she said.

The extended leave accommodations could also attract job candidates to the investment advice sector, Galiotto said.

"It's no secret that recruiting is tough in this industry," he said. "Little things like this are going to help."

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LITIGATION

Finra 'looks forward' to defending enforcement authority in court

BY MARK SCHOEFF JR.

A WASHINGTON, D.C. federal court last month prevented Finra from expelling a brokerage it found to have harmed customers, but the regulator is confident it can defend its enforcement authority in that case and a separate one that was filed earlier this month.

On Aug. 22, the U.S. Court of Appeals for the D.C. Circuit upheld a preliminary injunction against the Financial Industry Regulatory Authority Inc. that allows Alpine Securities Corp. to continue to conduct business while it appeals a March 2022 Finra decision barring the firm from the financial industry.

Finra claimed Alpine misused customer funds and securities, charged unreasonable fees, and engaged in unauthorized trading and capital withdrawal. The broker-dealer self-regulator ordered Alpine to pay $2.3 million in restitution to customers and issued a permanent cease-and-desist order.

A three-judge panel of the D.C. court issued the preliminary injunction against Finra on July 5. Judge Justin Walker, who was in the majority on the 2-1 decision, responded favorably to Alpine's assertion that Finra violated the Constitution because its disciplinary hearing officers weren't properly appointed by the executive branch.

"At this early stage, Alpine has raised a serious argument that Finra impermissibly exercises significant executive power," Walker wrote.

Finra filed a motion to lift the injunction, which the court denied on Aug. 25.

"While disappointed with the decision on this motion, Finra looks forward to the D.C. Circuit's consideration of plaintiffs' appeal, when Finra and the United States Government will present their defenses to plaintiffs' novel and unsupported constitutional arguments," Finra said in a statement through spokesperson Ray Pellecchia.

Another challenge to Finra's enforcement authority comes in a suit filed Aug. 18 in a D.C. federal court by broker Eugene H. Kim. In a July action, Finra alleged Kim misused customer funds in connection with a private placement offering sold by his firm, according to Kim's BrokerCheck profile.

"In practice, Finra is nothing more than the federal government's private, outsourced mall cop that metes out arbitrary 'discipline' to securities professionals while escaping actual supervision and control by the Executive (let alone the Legislative or Judicial) branch," Kim's complaint states.

Finra is confident it will prevail over Kim in court.

"Finra believes it has strong defenses to the claims being made," the regulator said in a statement. "Finra's constitutionality has been affirmed by courts time and again in similar challenges."

The Alpine case is similar to one the Supreme Court heard several years ago. In that case, investment advisor Ray Lucia argued that the SEC's in-house administrative law judges (ALJs) were unconstitutional. The high court ruled in Lucia's favor in a 2018 decision, saying ALJs had to be appointed directly by the SEC rather than by the chief ALJ.

"Finra's hearing officers are near-carbon-copies of those ALJs," Judge Walker wrote. He added that they "exercise significant executive power," and "[t]hat may be a constitutional problem."

Hugh Berkson, a partner at McCarthy Lebit Crystal & Liffman, said Alpine's argument is "clever" but added that the firm "is no stranger to regulatory enforcement actions." The brokerage has 48 disclosures on its BrokerCheck profile.

"Rather than reform their business practices to conform with industry rules and regulations, they instead have decided to challenge the constitutionality of the regulator itself," said Berkson, who also is president of the Public Investors Advocate Bar Association.

But Alpine did get the attention of Judge Walker, which might bode well for its argument that there's a problem with how Finra disciplinary officers are appointed.

"Those issues are going to get a hard look from the court," said Kurt Wolfe, counsel at Quinn Emanuel.

Someone else who took notice of the Alpine case is SEC Commissioner Mark Uyeda. Last month, he voted against a new rule that will require more brokerages to register with Finra.

"As the Commission weighs the costs and benefits of these rule amendments, the adopting release is dismissive of any impact a near-universal mandate to join Finra might have on the question as to whether Finra should be considered a state actor, and fails to consider the concerns of at least one judge on the D.C. Circuit in Alpine Securities Corporation v. Finra, which was issued last month," Uyeda said at an Aug. 23 SEC open meeting.

Despite the court challenges, there's not a real threat that Finra will be abolished, Wolfe said.

"I don't think Finra should be concerned about its existence," Wolfe said. "Should it be concerned that some of its power could be stripped away? You can imagine a world in which that could happen."

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CYBERSECURITY

Schwab, TD sued for failing to protect customer data from MOVEit hack

BY RYAN W. NEAL

A CLASS-ACTION LAWSUIT filed in Nebraska federal court accuses TD Ameritrade and parent company Charles Schwab of neglecting their responsibilities to protect customer data.

In July, hackers exploited a vulnerability in MOVEit, a file-transfer system, to access sensitive information — including Social Security numbers, financial account information, dates of birth and other government identification numbers — of 61,000 TD Ameritrade customers, according to court documents. Both companies are accused of negligence, unjust enrichment and breach of implied contract, according to Bloomberg Law, which first reported the lawsuit.

MOVEit was widely used by businesses and government agencies. Since the attack began in June, more than 600 organizations around the world have been breached, exposing the data of nearly 40 million people, according to Reuters. More than a dozen companies have been hit with class actions in response, Bloomberg reported, including Schwab rival Fidelity.

DATA BREACH

Schwab disclosed in July that it had detected a data breach and that client data was involved. However, the company said less than 0.5% of its clients have been affected.

"Generic and conclusory allegations are often devoid of accuracy and context," a spokesperson for Schwab said in an email. "Our focus is protecting our clients. We do that by not only standing by them in such matters but by thoroughly investigating any incident that may affect them. Our notification practices are consistent with our mission to see the world through our clients' eyes and are in keeping with our regulatory obligations."

The lawsuit, which was filed by plaintiff Keren Jeanfort on behalf of all affected individuals, claims Schwab and TD knowingly failed to implement and maintain reasonable measures to safeguard the data and prevent unauthorized access. As a result, Jeanfort has an increased risk of suffering from financial fraud or identify theft.

"By obtaining, collecting, using and directing a benefit from the PII of Plaintiff and Class Members, Defendants assumed legal and equitable duties to those individuals to protect and safeguard that information from unauthorized access and intrusion," the complaint states. "Defendants conduct in breaching these duties amounts to negligence and/or recklessness and violates federal and state statutes."

Jeanfort is being represented by law firm Wagstaff & Cartmell.

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LAWSUIT

Altruist vs. Altruist: RIA claims digital custodian violates his trademark

BY RYAN W. NEAL

THROUGH SUCCESSFUL fundraising, acquisitions and a marketing campaign to lure financial advisors put off by the pending Charles Schwab-TD Ameritrade mega-merger, Altruist has established itself as a significant player in the asset custody market with ambitions to grow even larger.

But it may have to do so under a new name.

Eric Haas, owner of Altruist Financial Advisors — a Holland, Michigan-based registered investment advisor with $250 million in assets under management, according to the firm's most recently filed Form ADV — sued the Los Angeles-based company for infringing on his company's trademarked name.

The case is currently in discovery and moving forward unimpeded after a February decision from U.S. District Judge Jane Beckering in Grand Rapids, Michigan, to deny the defendant's motion to throw out related claims of counterfeiting and cybersquatting. Court-ordered mediation is scheduled for October.

"The use of the mark by defendants is identical to the registered mark 'Altruist' letter for letter," Judge Beckering said, according to Law360.

Haas is seeking an order that prohibits the Los Angeles-based company from using the Altruist name, gives him ownership of the altruist.com domain name, and delivers compensation for profits made from the violated trademark.

"Nobody wants to go to trial, ever. It's just awful for everybody; it's expensive for everybody," Haas told *InvestmentNews*. "I would like to settle this in a mutually beneficial fashion. However, the other side has decided that they don't want to do that."

FILED FOR TRADEMARK

Haas launched his Altruist in 2001 and in 2003 received a trademark for the name, covering "financial analysis and consultation; financial management; financial planning; financial portfolio management; investment advice; investment consultation; investment management; investment of funds for others," according to court documents. Haas originally filed for the trademark out of concern that a Hong Kong-based company, Altruist Financial Group, could create trouble for his firm if it ever expanded into the U.S.

The defendant Altruist Corp. was launched in 2018 by CEO Jason Wenk and is the parent company of both Altruist LLC, an RIA, and Altruist Financial LLC, an introducing broker-dealer. The company pitches itself as a digital custodian built specifically for independent financial advisors and has raised a total of $290 million in funding from investors including Venrock, former Vanguard CEO William McNabb (who recently joined Venrock as an advisor), Insight Partners and Adams Street Partners. Adams Street could not be reached for comment; the other investors did not respond to *InvestmentNews'* requests.

> **"IT'S A TRUE DAVID-AND-GOLIATH SITUATION. IT'S NOT GOOD."**
>
> ERIC HAAS, OWNER, ALTRUIST FINANCIAL ADVISORS

In March, Wenk's Altruist severed ties with Apex Fintech Solutions in favor of a self-built custody and clearing platform, and acquired Shareholders Service Group. The deal added 1,600 RIAs to the platform and pushed the total number of firms it serves past 3,000, the third highest total in the industry behind Fidelity Institutional and Schwab Advisor Services.

"Our company respects intellectual property rights and has no desire for marketplace confusion," a spokesperson for the defendant Altruist said in a statement. The company declined multiple requests for additional comment.

EMAIL INTRODUCTION

Haas first heard about the California-based Altruist in 2019, when Wenk sent an email introducing himself and the company with the subject line, "License of your trademark." After Haas responded that he would prefer that Wenk not infringe upon the trademark, Wenk asked for a phone call with legal counsel to discuss the issue, according to emails reviewed by *InvestmentNews*.

"We aren't and would not infringe," Wenk wrote in 2019. "My company is not a financial advisor or investment advisory business. It's a technology company that caters to financial advisors."

Haas declined to take the call — "I didn't see anything to be gained from that," he said — and forgot about the exchange for two years. But after reading about the growing company in wealth management trade publications and fielding calls from people interested in learning more about the wrong Altruist, Haas wrote an email asking Altruist to stop using the name.

While several firms have tried to use the name "Altruist" over the years, all but two agreed to change their names after an email exchange, Haas said. One initially resisted but eventually decided to change its name to AltruVista Wealth Management to avoid a costly court battle.

"Everybody else has done the right thing, which is to not violate the law," Haas said.

Wenk's company has indicated that it intends to fight the case.

"We have reviewed the allegations in the trademark lawsuit filed in Michigan and believe they are without merit," the spokesperson for the defendant Altruist said. "We plan to defend our position vigorously, and we look forward to resolution of the plaintiff's claims."

SIGNIFICANT CONFUSION

The company name has caused significant confusion in the market, according to Haas. He claims he has tracked 37 instances of confusion, including clients who custody money with the defendant Altruist who have called the plaintiff to request an account withdrawal, and another who wanted help making an IRA contribution before the April deadline. Haas has also received calls from other RIAs who are interested in changing custodians or are looking for assistance with the onboarding process, and from mutual fund companies calling about products purchased by the other firm.

Despite the early decision from the judge going in his favor, Haas is worried about his ability to match the competing Altruist when it comes to the resources to afford a lengthy legal battle.

"The first time I hired an attorney to help me defend against [a trademark infringement], the attorney told me that the way these things usually go is the one who is willing to spend the most money usually ends up prevailing," Haas said. "That's not a good thing to hear, especially in this situation where I am. It's a true David-and-Goliath situation. It's not good. Shame on them for behaving so poorly."

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GOLDMAN

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relationship with Goldman Sachs Advisor Solutions, an expanded partnership with Goldman Sachs is a natural, strategic fit," Peter Mallouk, CEO of Creative Planning, said in a statement. "We welcome the talented advisors from PFM as we remain committed to being the leading advisor in the independent space."

Goldman Sachs Group Inc.'s foray into the retail-focused wealth management business was short, lasting only four years before it decided to dump its RIA. The shift in strategy shows how tough change can be for an institution like Goldman, industry sources said.

Goldman's decision was not a surprise to some in the broader financial advice marketplace, though.

"The brand didn't translate as powerfully as [Goldman Sachs management] thought to Main Street from the ivory tower," Ron Carson, founder and CEO of Carson Group, said during an interview for an episode of the *InvestmentNews* Podcast.

Instead of focusing on the day-to-day business of financial advisors, Goldman will continue to work with them through its asset management and fund platform, as well as its nascent RIA custody business. Indeed, the bank is looking to invest in RIA custody to gain scale with a broader group of financial advisors, a spokesperson said.

Goldman has revised its strategy in the past, one consultant noted.

"Goldman's shift echoes its transition during the 2008 crisis when it acquired a banking license, granting it new strategic avenues like broadening its client base and launching consumer lending products," Pierre Buhler, managing director with consulting firm SSA & Co., wrote in a research note. "Schwab and Fidelity have established themselves in the high-net-worth sector, underscoring the challenges of serving this segment, which is perceived as being closer to consumers, necessitating automated and integrated processes.

"The central task for Goldman Sachs lies in divesting assets that slow down its growth trajectory and reorienting toward its primary business," Buhler noted. "Aligning with this shift, streamlining the compliance group to match the scaled-down organization is vital, given the substantial compliance costs that hastened Goldman's exit from consumer business.

"In essence, Goldman Sachs' strategic realignment encompasses a return to its core business and divestment from high-net-worth advisory services, enhancing its ability to navigate potential recession risks," he added.

"THE BRAND DIDN'T TRANSLATE AS POWERFULLY AS [GOLDMAN SACHS] THOUGHT TO MAIN STREET FROM THE IVORY TOWER."

RON CARSON, FOUNDER AND CEO, CARSON GROUP

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SCHWAB

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"For those advisors who previously did not work with us, this is a year of firsts," she said.

EMAIL FLUB

One flub reignited an old concern about how Schwab's retail brokerage business competes with financial advisors. An email welcoming TD Ameritrade Institutional clients to Schwab talks about trading and wealth management services without mention of the RIA that brought those clients.

This contrasts with previous emails sent to clients that emphasized a partnership between RIAs and Schwab, said Rene Bruer, co-CEO of Smith Bruer Advisors.

"The email is Schwab-centric and does not mention partner RIAs (like my firm) and our services to our clients at all," Bruer said in an email. "Schwab has reiterated the fact that we've been working together towards the same end-goal for the past 18 months. This email is a direct affront to RIAs and that partnership. The email specifically highlights competing services (in the link) by Schwab to our clients."

Bruer filed a formal complaint about the email with senior management at Schwab and was told that the email was sent in error to advisors who, like Bruer, had personal TD Ameritrade Institutional accounts that were part of the transition. Bruer confirmed that no clients received the email — just advisors at their personal emails.

However, it illustrates the ongoing tension between the custodian and RIAs as the dust of the transition continues to settle.

"So far, it's been a lot of work on our part and also a lot of communication and guidance with clients. I'm sure that Schwab's team has also been working hard, too," Bruer said. "From our perspective, Schwab was regularly communicating the process for the past 18 months and telling us all of the steps to get to this point.

"Everything seemed to be working okay until this email," he added.

It's not clear how many advisors received this email by mistake.

"A very small number of advisors received welcome emails from Schwab. These emails were not sent in error, but rather because the advisor had a personal retail account," said a spokesperson for Schwab in an email. "We clarified this with advisors who had questions and confirmed that no communications were sent to the advisors' clients."

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KOWACH

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Wiley Bros.-Aintree Capital is an old firm in an industry that has seen decades of consolidation and old firms disappearing. According to its BrokerCheck profile, it has been open since 1945. The broker-dealer clears with Pershing while the RIA uses both Pershing and Fidelity National Financial Services as custodians, according to regulatory filings.

InvestmentNews reported last month that Kowach and &Partners have a goal of hiring 100 "top performing Advisor Partner teams," according to a copy of a marketing presentation about the firm.

The identities of the major investors in the new business remain clouded, with market sources saying Kowach has raised $40 million for the new aggregator.

Kowach, who headed Wells Fargo Advisors until 2019, said last year that he was retiring. At the time, he was head of affluent at Wells Fargo. Alexander was head of the divisional network at Wells Fargo Advisors when he left the firm, and second to James Hays, head of Wells Fargo Advisors, at the time. Hays also left Wells Fargo last year.

The financial advice industry is replete with RIA aggregators and roll-ups like the new &Partners, with aggregators steadily gaining traction by buying so-called breakaway brokers, or financial advisors who leave Wall Street banks to work as part of a smaller firm or an independent RIA. And there are plenty of examples of executives leaving a major firm, sitting on the sidelines to wait out their noncompete agreements, then reentering the financial advice industry.

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CREATIVE PLANNING

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In the interview, Mallouk acknowledged that the financial advisors at Personal Financial Management were "tired" after being involved in multiple deals over the past several years.

"Now that they see the group of options, I sense more relief," he said.

UNUSUAL STRATEGY

One industry executive said Creative Planning's varied strategy for the old United Capital advisors was unusual.

"This is very outside the box," said Jodie Papike, president of Cross-Search, a recruiting firm. "I've never heard of a firm being so flexible. The opportunity for advisors to have their own RIA surprises me the most."

"I have more questions about that," Papike added, including who would be in charge of compliance and what would be the benefit to the advisor of having his or her own firm.

Mallouk said that the deal to acquire the RIA from Goldman Sachs was a fast process, taking just eight days to reach an agreement. He didn't speak to all 70 or so Personal Financial Management offices but did get a chance to discuss the transaction with 40 offices of advisors and about 120 people.

After that process, he realized the acquisition wouldn't work if all the advisors were moved inside Creative Planning and the Personal Financial Management RIA were to be shut down.

"The clients and the advisors need to be happy," Mallouk said.

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FINRA FINES

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its authority, said Max Schatzow, a partner at RIA Lawyers. The enforcement against Network 1 is probably on the edge, he said in an email.

'TAKING AFFIRMATIVE STEPS'

"The AWC shows Molinaro taking affirmative steps to seek to comply with the rules," Schatzow said. "He amended the firm's procedures and provided training on Reg BI. But, due to ignorance, a misunderstanding, or business pressure, he wasn't thinking about managing 'excessive trading' in a generally accepted manner."

Molinaro has consented to two previous Finra orders, which may have factored into Finra's judgment.

"Finra is much more prone to pile on with prior bad actors," Schatzow said.

Finra did not respond to a request for comment.

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IRS CATCH-UP

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Currently, the traditional pretax contribution limit is $22,500 annually, though catch-ups increase that by $7,500.

Another advisor, Kaci Skidgel, president of Summit Financial Group, had been preparing retirement plan clients for the 2024 deadline up until the IRS announcement late last week.

'RACE TO THE FINISH LINE'

"It really was a race to the finish line," Skidgel said. "Many of them were concerned that they couldn't get it done … My clients are going to be very relieved."

Among the topics her firm covers in presentations for clients around SECURE 2.0 provisions, the Roth catch-up mandate is one that gets a lot of questions, she said.

The change outlined in SECURE 2.0 for catch-ups in Roth accounts was necessary to help pay for some of the legislation's tax perks, such as those that encourage startup 401(k)s for smaller employers, Skidgel noted. The tax revenue the federal government will receive from Roth versus traditional catch-ups shifts money into the 10-year window it uses for planning.

Nonetheless, the Roth requirement is challenging for some employers because of payroll system limitations, and it could most heavily affect small businesses — particularly those with single-employee plans, Skidgel said.

One major retirement plan provider, Empower, issued a statement praising the IRS for the delay.

"Their action will help ensure an orderly implementation process and address concerns raised by plan sponsors," chief operating officer Rich Linton said in the statement.

UNHAPPY EXECS

The news will be welcomed by employers, and particularly their HR departments, which had been worried about timely implementation. Some had concerns that if they could not meet the deadline, senior-level employees who make catch-ups would be unhappy, Fields said.

"THE FIRST HURDLE WAS THAT MANY PLANS DON'T HAVE ROTH OPTIONS."

HAILEY FIELDS, PRINCIPAL, MULTNOMAH GROUP

To ensure that doesn't happen, she recommended that plan sponsors not drop the ball.

"Two years is more time to get Roth into the plan and educate employees that this change is happening, but it still is going to be a heavy lift," Fields said. "We can't just forget about this until 2025. We need to continue working on it through the rest of this year and into 2024."

However, plans should not yet make Roth catch-ups mandatory, she said. "They should still allow their employees to make pretax [catch-up] contributions" until 2026.

In the guidance, the IRS also clarified an error in the Secure 2.0 legislation that had been read as potentially preventing any 401(k) participants from making catch-up contributions. Catch-ups are allowed, regardless of the error, the agency noted.

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Wealth Enhancement Advisory Services
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