SEPTEMBER 25, 2023

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HOLD FIRE!

SEC'S MARKETING RULE OFFERS FIRMS GOLDEN REFERRAL OPPORTUNITIES BUT FEW ARE WILLING TO BE COMPLIANCE GUINEA PIGS.

IN DEPTH:
FUTURE PROOF PLANTS ITS FLAG

PLUS
JOE DURAN DETAILS NEW VENTURE

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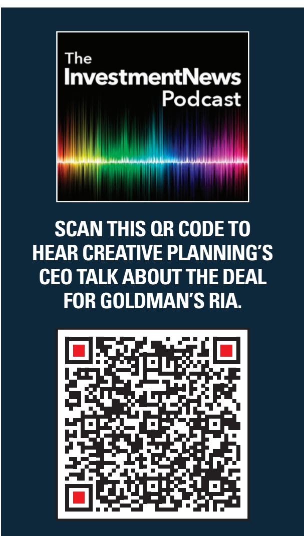

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SEC expands rule to target 'greenwashing'

BY MARK SCHOEFF JR.

THE SEC VOTED last Wednesday to expand the scope of a rule meant to ensure investment funds' portfolios match the strategies suggested by their names, but the changes aren't as restrictive about the use of environmental, social and governance factors as those the agency initially proposed.

The Securities and Exchange Commission approved, 4-1, amendments to the so-called fund names rule that requires funds to invest 80% of their assets in alignment with the fund's focus as conveyed by its label. The current rule covers investment types, industries and geographies.

The changes adopted by the SEC would widen the rule to apply to more funds and encompass names purporting to include investments with certain characteristics, such as "growth," or "value," or certain investment themes, such as ESG, according to an SEC fact sheet.

The final rule in part combats so-called "greenwashing," in which funds hold themselves out as having an ESG focus, but don't invest that way. Under the rule, if a fund name says it's "sustainable," "green" or "socially responsible," its investments should reflect that approach.

"I think of it as truth in advertising," SEC Chair Gary Gensler said at an open meeting. "In essence, if a fund's name suggests an investment focus, the fund in turn needs to invest shareholders' dollars in a manner consistent with that investment focus. Otherwise, a fund's portfolio might be inconsistent with what fund investors desired when selecting a fund based upon its name."

The goal of the rule is to help investors better sort out the thousands of funds on the market.

"It's intended to make it easier for all shareholders easily to understand what they're investing in,"said Abigail Hemnes, partner at the law firm K&L Gates.

Under the final rule approved by the SEC, investment companies would have the latitude to define the terms they use in a fund name and their criteria for selecting investments to align with the terms. Those terms would have to be consistent with their plain-English meaning or industry use.

Funds would have to review their portfolios quarterly to confirm compliance with the 80% rule. They would have 90 days to get back into

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Carlyle takes stake in Captrust

BY EMILE HALLEZ

CARLYLE GROUP IS providing a cash infusion to acquisition-hungry Captrust Financial Advisors, the latest sign that private equity is still very much interested in registered investment advisors and that deals in the space may still be ramping up.

Funds managed by Carlyle are making "a minority growth investment" in the firm, Captrust announced last Tuesday. It marks the second such PE stake in the firm, following GTCR taking a 25% stake in Captrust in 2020, a deal that provided the RIA with a war chest for acquisitions. Since then, Captrust has bought up 29 firms and boosted its valuation from $1.25 billion to $3.7 billion, according to the firm. Currently, it oversees more than $832 billion.

"Captrust is one of the premier brands within the RIA industry, with a deep bench of expertise and resources that support a premium and ever-expanding service model," Jim Burr, head of global financial services at Carlyle, said in the announcement. "The firm is in the unique position of leveraging its size and scale to benefit not only clients, but also the communities it serves. This differentiated position, coupled with Captrust's vibrant culture and strong leadership, makes us incredibly excited to collaborate with our new partners."

Captrust co-founder Fielding Miller remains as CEO and is the largest individual shareholder, the company stated.

'THE BRIDGE'

"GTCR made its investment three years ago, and there has been a three-time increase in value," said Dick Darian, founding partner at Wise Rhino Group. "If you look at Carlyle, for my money, they'd have to believe in investing in the business and providing the growth capital — they have to believe in the bridge, which is putting the retirement business and the wealth business together."

Captrust's presence in the retirement plan business is viewed as giving it significant potential for expanding into wealth management

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State regulators still oppose Finra remote supervision pilot

BY MARK SCHOEFF JR.

STATE SECURITIES REGULATORS continue to resist Finra's efforts to allow brokerages to conduct online supervision of branch offices.

The state regulators' organization, the North American Securities Administrators Association, has been a consistent opponent of the Financial Industry Regulatory Authority's proposal to establish a voluntary three-year pilot program for remote inspections.

The proposal, introduced last year, builds on a temporary remote-inspection rule that has been in place since November 2020, when most brokerages personnel were working from home due to the coronavirus pandemic. The temporary rule expires at the end of the year.

Finra modified the pilot program proposal over the course of several versions to strengthen risk assessment for participating firms in response to criticism from NASAA, the Public Investor Advocate Bar Association and others.

The changes haven't assuaged state regulators.

"We have previously noted in comment letters that we appreciate Finra incorporating some of our suggestions, even as we have encouraged Finra to incorporate still more and the SEC to require them to do still more," NASAA spokesperson Fred Baldassaro said in a statement. "We will continue to work with Finra."

Earlier this month in her inaugural speech, new NASAA President Claire McHenry said it is state regulators' "understanding of the importance of the role of supervision and compliance that has informed our comments to the SEC on Finra's pilot on remote supervision."

Finra filed the latest iteration of the proposal with the Securities and Exchange Commission earlier this year. The SEC, which must approve Finra rules, took public comments on the proposal in August.

'BE MORE PRESCRIPTIVE'

In an Aug. 29 comment letter, former NASAA President Andrew Hartnett said NASAA requested that Finra "be more prescriptive" regarding risk assessment, supervisory procedures and regulatory disclosures for the pilot program.

"We appreciate that Finra incorporated some of these recommendations into the revised proposal," wrote Hartnett, who is deputy Iowa insurance commissioner. "However, we believe the revised proposal still does not go far enough to protect investors."

Hartnett outlined further changes NASAA is seeking, including a tougher standard for regulatory disclosures.

State regulators will keep pushing Finra on the issue, even if the SEC signs off on the pilot program.

"Should the SEC decide to approve the proposals, we look forward to engaging with our friends at Finra as the pilot progresses," said McHenry, deputy director of the Nebraska Bureau of Securities.

"OVER THE COURSE OF NEARLY THREE YEARS OUR BRANCH EXAMINERS HAVE ... BECOME VERY ADEPT AT IDENTIFYING RISK REMOTELY."

TARA GILCHRIST, HEAD OF BRANCH EXAMINATIONS, LPL FINANCIAL

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Cetera to buy Avantax for $1.2 billion

BY BRUCE KELLY

AS THE WEALTH MANAGEMENT acquisition binge rolls on, Cetera Holdings said on Sept. 11 that it was buying Avantax Inc., with close to 3,000 financial advisors who focus on clients' taxes, for $1.2 billion in an all-cash deal.

Cetera Holdings is the parent of Cetera Financial Group, a giant network of broker-dealers with 9,000 financial advisors and $341 billion in client assets. The acquisition price is $26 per share of the stock of Avantax, which has been overhauling its various business lines recently to focus on financial advisors and the wealth management industry.

Avantax's advisors work with $83.8 billion in client assets. The $26 per share includes Avantax's net debt, and the purchase price represents a premium of approximately 30% to the closing price of shares of Avantax common stock on Friday, Sept. 8, according to the companies.

Avantax Inc. was formerly Blucora Inc. 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.

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.

It appears that the focus solely on tax-oriented financial advisors wasn't enough to sustain the firm. Financial advisors who concentrate on taxes are often at the lower end of annual revenues when measured against the rest of industry, since their focus is taxes rather than gathering client assets.

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.

Cetera has also been busy. In May, Cetera Holdings said that Fidelity veteran Mike Durbin had joined the firm as CEO of Cetera Holdings. Last month, Cetera Financial Group said it had completed its deal for the wealth business of insurer Securian Financial Group, bringing on board more than 91% of Securian's advisors and nearly $50 billion in client assets.

$83.8B
ASSETS OVERSEEN BY AVANTAX'S ADVISORS

"As we explored expanding Cetera's capabilities into wealth management and tax expertise as a core component of our growth strategy, it quickly became clear that Avantax was an ideal target and a powerful fit for our business," Durbin said in a statement.

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AssetMark CEO Natalie Wolfsen leaves for top job at Orion

BY RYAN W. NEAL

NATALIE WOLFSEN HAS stepped down as chief executive of AssetMark Financial Holdings to take over as the new CEO of Orion Advisor Solutions, a competing technology and turnkey asset management provider.

AssetMark announced Sept. 8 that Michael Kim, a 13-year veteran of AssetMark, has been named the company's new CEO, effective immediately. Wolfsen will replace founder Eric Clarke as CEO of Orion, who announced his retirement in May, according to a separate statement released by Orion.

Orion did not specify Wolfsen's start date but said Clarke will transition to a supporting leadership role until the end of 2023.

AssetMark said the move is part of an "established succession plan" from AssetMark's board of directors. Kim most recently served as the company's president and chief client officer, and the decision to name him CEO was a unanimous decision by the board, according to a statement.

However, the company had not previously announced the move, nor did it provide a statement from

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Joe Duran outlines next venture at Future Proof

BY RYAN W. NEAL

JOE DURAN has mixed feelings about the current state of the wealth management industry, one that he had a significant hand in shaping.

After helping to pioneer the creation of large, nationwide registered investment advisors with United Capital, which he launched in 2005, he's now concerned about what will happen with others. After Goldman Sachs sold United Capital to Creative Planning just four years after acquiring it for $750 million in cash, Duran wonders how that will affect the expected returns of other firms that have invested in the independent advisory space.

FUTURE PROOF

Mostly, he's worried about whether the industry, despite sustained growth, is maybe getting a bit stale.

"There's so little original thought," Duran said Sept. 11 while speaking at the Future Proof conference in Huntington Beach, California. "When I look at the industry now, everyone is doing the exact same thing, and it's a version of United Capital that is not as good."

That's why, rather than talking about the past or even the present, Duran is more interested in the future. At Future Proof, he shared new details about Rise Growth, a new venture he plans to launch in 2024 with a simple mission: Grow the next generation of national firms.

Rise Growth will provide firms with capital, but it won't look like the traditional venture capital or private equity firms that are already crowding into the independent advisor market, he said.

'NOT JUST MONEY'

"We're going to help build [these firms,]" Duran told *InvestmentNews*. "We're not just money. I wouldn't do this if it was just money."

Instead, Rise will help provide what Duran said all firms need to become nationwide independent advisors: their own technology ecosystem; business management practices that RIAs need to grow beyond a lifestyle practice; and strategies to achieve both organic and inorganic growth that doesn't force advisors to join an aggregator like United Capital.

"Everything that I've done has led up to this idea," he said. "I want to build the partner that I wish I had in both my previous ventures."

> **"WHEN I LOOK AT THE INDUSTRY NOW, EVERYONE IS DOING THE EXACT SAME THING."**
>
> JOE DURAN, FOUNDER, UNITED CAPITAL

Technology is a core part of the offering, especially building a data infrastructure that can take advantage of rapidly developing artificial intelligence technologies, which Duran says will be ubiquitous in wealth management much sooner than most people think.

Matt Middleton of Advisor Circle and Joe Duran at Future Proof. Photo credit: Advisor Circle

"I don't think anyone really grasps the amount of innovation happening right now in AI," Duran said.

From automatically optimizing a separately managed account for taxes to identifying next best actions to take with clients, AI will help RIAs of all sizes efficiently serve significantly more clients without sacrificing service, he said.

"People pay advisors to be understood, and AI allows us to understand what you're thinking and feeling before you do," he said.

REGULATORY SCRUTINY

While he prefers to think about the future, Duran also answered some questions about his past with Goldman Sachs (Duran stepped down as head of personal financial management in February) and the recent deal to sell its RIA business to Creative Planning.

Duran praised the people he worked with at Goldman but said the regulatory scrutiny a global bank faces is completely different from what he's used to in the RIA world.

"I was spending 70% of my life on compliance and regulation and risk management, which is just no fun at all for someone like me," he told *InvestmentNews*. "I like to make a big impact, and it just felt like no matter what you do, you're just not going to make a big dent at a firm like Goldman Sachs."

As for his former United Capital business, Duran remains confident about his decision to sell to Goldman Sachs but admits to being "a little sad" about the deal with Creative Planning.

"I think the advisors were very excited to be at Goldman Sachs, and we sold it with the view that this was going to be their forever home," he said. "I don't think any of them were planning on making a change."

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New strategy in 401(k) litigation: Ask for settlement before suit is filed

BY EMILE HALLEZ

A NEW ENTRANT to the world of 401(k) lawsuits is trying what appears to be a novel tactic: Contacting plan sponsors out of the blue and implying that they should settle.

That's before the hint of any lawsuit or request for information about the plan that would lead to a lawsuit, said Daniel Aronowitz, managing principal of 401(k) insurer Euclid Fiduciary, who has had at least seven clients contacted by law firm Lieff Cabraser Heimann & Bernstein.

Like other plaintiffs' firms, Lieff Cabraser alleges in the notices that plans have unreasonably high record-keeping fees, Aronowitz said. What's different is that the initial notice amounts to a request to settle potential claims — something that none of the copycat firms that have piled into the lucrative business of ERISA litigation has apparently tried.

"We think defense counsel need to fight back, because this is unfair," Aronowitz said. "The plaintiff law firms are taking advantage of the fact that there is no business judgment rule under ERISA."

That means that in excessive fee cases, defendants often have to disprove a negative — they have to show in court that their plans aren't as bad as plaintiffs might claim, he said.

DATA ON FEES

A commonality among the letters that big companies have received is that the law firm claims that a plan's fees are out of line with plans of a similar size, citing figures from the "401k Averages Book." Each letter that clients have received gives the example that a $200 million plan charges participants $13 annually for record keeping.

"This really offends me, because it's not what the book says," Aronowitz said.

Most 401(k) plans with less than $400 million in assets pay for a portion of record keeping through the use of revenue-sharing fees that are included in the mutual funds within the plan, he noted.

Euclid's data from 2,500 public records in 2022 show a common range of $28 to $60 per participant among plans with $1 billion to $5 billion in assets, which covers the size of the plans that have been contacted for settlements, he said.

"Plans are not paying $13 per participant," he said. "[Only] a few do."

INVESTMENT LINEUPS

The nearly identical letters also allege that the plans in question include investment lineups that underperform, Aronowitz said. "He's basically saying, 'I can sue you. I don't need any proof. There is a very low bar.'"

However, the law firm did file its first case related to a 401(k) plan last year. That suit, which names TTEC

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Where to Find Time to Grow Your Business

The first-ever *Advisor Time Use Study* breaks down financial advisors currently spend their days, how they'd like to—and how they might reach those goals.

Get the specifics about:

- How advisors divide their time among clients, administration, and managing wealth
- The activities that advisors believe they should be spending more time performing
- Solutions for getting to the right time balance

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Opinion

_IN_ THEIR OWN WORDS ...

from the web and print pages of *InvestmentNews*

"AI will never be able to sit across from a client and see how they react to risk or certain options to achieving their goals."

— Michael Whitman, financial planner, Millennium Planning Group

"The U.S. retirement system is built on shaky foundations — retirement accounts are voluntary."

— Teresa Ghilarducci, professor, The New School for Social Research

The puzzle posed by annuities

Here's a quick multiple-choice quiz: Are annuities the functional equivalent of a pension? Can annuities be investments that have nothing to do with retirement? Do clients hate annuities? Do clients love annuities? Do many advisors find annuities so confusing that they prefer to ignore them?

If you answered "Yes" to all the above, you're right.

The insurance and securities industries have been so creative in designing annuity products that the category now defies a simple definition. There's so much variety, in fact, that the core value of an annuity — lifetime income through annuitization — is sometimes overlooked entirely as advisors become familiar with some annuity products and pay no attention to others. That's a shame.

Advisors who admit to not knowing much about annuities are less likely to view annuities favorably and less likely to recommend them to a client. That's one of the highlights of recent research on advisors and annuities conducted by the Alliance for Lifetime Income and analyzed by David Blanchett, the head of retirement research at PGIM DC Solutions and formerly head of retirement research at Morningstar. The finding is disturbing.

As longevity and retirement income adequacy become pressing public policy issues, annuities are uniquely able to help provide a more secure future for many Americans. Advisors, who are central to retirement planning for millions of Americans, are in a position to explain how annuities and annuitization can fit an overall retirement income plan. But advisors themselves must first understand the product, and many don't seem to be interested. Blanchett noted that despite decades of research on the many different benefits of annuities, widespread financial advisor interest remains relatively mixed.

Interestingly, advisors who feel they know more about annuities tend to have more positive perceptions of them. When those advisors consider annuities in a retirement or financial plan for clients over age 45, more than half of those (54%) with the highest self-assessed level of annuity knowledge consider an annuity always or often, versus only 11% among those with relatively low knowledge.

Advisors' lack of knowledge also appears to affect client behavior. When advisors were asked about their clients' perceived interest in annuities, the correlation between an advisor's knowledge and perceived client interest was found to be very strong. In other words, Blanchett noted, advisors who don't understand annuities don't perceive any interest from clients. He observed that this could become a self-fulfilling prophecy, in which the advisor doesn't believe the client could benefit from an annuity because the advisor doesn't understand the potential value and therefore never recommends the product.

ANNUITIES ARE UNIQUELY ABLE TO HELP PROVIDE A MORE SECURE FUTURE FOR MANY AMERICANS.

For years, economists and academicians have pondered the so-called annuity puzzle: Why is it that people love guaranteed, regular income in retirement (i.e., annuitization) but steer clear of annuities? Perhaps one piece of the annuity puzzle is that the lack of product demand among clients is a function of a lack of understanding of annuities among advisors.

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

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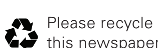

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For more than 7 years, the **Women Advisor Summit New York** has been shining a spotlight on our industry's progress and uniting thought leaders to create change.

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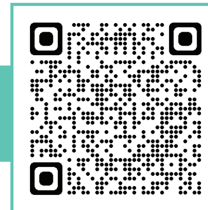

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HANDCUFFED BY MARKETING INERTIA?

AS THE SEC MARKETING RULE NEARS ITS FIRST ANNIVERSARY, MOST FIRMS HAVE YET TO TAKE ADVANTAGE OF THE TESTIMONIALS AND ENDORSEMENTS IT ALLOWS.

BY MARK SCHOEFF JR.

BARTLETT WEALTH MANAGEMENT celebrated its 125th anniversary this year. One of the firm's core beliefs is caring for clients and developing deep, meaningful relationships with them.

New advisor advertising rules that went into force last November create an avenue for Bartlett to tell its story through the investors it serves. For the first time, the Securities and Exchange Commission's marketing rule allows advisors to use client testimonials and endorsements.

"For clients to speak … on our behalf is invaluable," said Maggie Spataro, Bartlett's marketing manager. "That opens up a whole new world for us to demonstrate the depth at which we do our job. There's nothing like hearing it from the source."

But prospective clients for the firm's 33 advisors won't hear from its current clients for now because Spataro is hesitant to use testimonials. The new marketing opportunities in the 430-page SEC rule also come with many disclosure obligations and restrictions that give advisors compliance worries.

"We are still getting the lay of the land," Spataro said. "We're not looking to be the bleeding edge. We want to implement things at a pace that we feel comfortable with and that we can understand."

CAUTIOUS ATTITUDE

That kind of cautious attitude is one that many advisors are adopting.

"You still don't see the vast majority of advisors leveraging the opportunities for testimonials and endorsements in the new marketing rule fully yet," said Robert Sofia, CEO of Snappy Kraken, a marketing consulting firm.

A testimonial involves a client touting a firm. An endorsement is from a non-client. Either form of advertising must come with three prominent disclosures visible within the ad: The advisor must indicate whether the promoter is a current client or investor, whether the promoter is compensated for the ad and whether there are any material conflicts of interest.

The marketing rule requires that advisors substantiate the claims made in their ads. They must keep copies of their ads and backup materials the SEC can examine. Performance advertising is permitted under the rule and comes with its own requirements.

There's also a set of general prohibitions. For instance, advisors cannot make untrue or misleading statements of fact in their marketing. Their ads also must be "fair and balanced," addressing the potential limitations or risks of the services and advice they're touting.

QUESTIONS REMAIN

It's a lot to unpack. The SEC issued guidance last September and again in June. But advisors still have questions.

"Firms are doing the best they can given the lack of guidance and clarity from the SEC on certain issues," said Sanjay Lamba, associate general counsel at the Investment Adviser Association.

A marketing consultant gets the same vibe from many of his advisor clients.

"A lot of them are still hesitant because of how gray and murky [the marketing rule] remains," said Brian Hart, founder and president of Flackable and author of the forthcoming book *Credibility Marketing*.

Advisors can't rely on best practices for activities allowed under the marketing rule — such as testimonials, endorsements, third-party reviews and using performance results — because they haven't been developed, said Michael Kitces, chief financial planning nerd at Kitces.com, an advisor education and research platform.

"I'm hearing, 'We're going to wait another year or two to let compliance experts figure out the 100% way to do this that can't possibly get me in compliance trouble," Kitces said. "Very few firms want to be on the bleeding edge of [the marketing rule] unless they're really growth-oriented."

ENFORCEMENT ACTIONS

The SEC is establishing more expectations for marketing rule compliance through enforcement actions, which have focused on performance advertising so far.

The first, on Aug. 21, was a penalty of more than $1 million imposed on robo-advisor Titan Global Capital Management USA for misleading portrayals of hypothetical performance. The second, on Sept. 11, was against a group of nine firms for advertising hypothetical performance to the general public on their websites without having policies and procedures in place to ensure the ads targeted an audience with the appropriate financial situation and investment objectives. Each firm paid a penalty ranging between $50,000 and $175,000.

"Of all the provisions of the marketing rule, the performance provisions have been the most challenging to implement," said the IAA's Lamba. "Some firms are opting not to give that information, which is unfortunate."

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Despite the potential risks of using testimonials, marketing professionals tout the advantages for advisors. The "consumer buying journey" has changed, said Meg Carpenter, CEO of Ficomm Partners, a marketing consulting firm.

A couple of decades ago, a prospective client might have visited an advisor's office immediately after getting a referral. Now, there's a crucial step before that point. The prospect will look at the advisor's website and do other online research to validate the advisor. That's where client testimonials can have a strong impact.

"We really believe in using the client voice," Carpenter said. "Everyone looks at reviews. There's a huge opportunity for advisors to be the first movers in integrating client voice into their brand and marketing strategies. Many financial advisors have inertia around marketing, and they don't pass go."

'SOCIAL PROOF'

Testimonials provide "social proof" for an advisor, Sofia said. They make it more likely that someone visiting an advisor's website will subscribe to a newsletter, download a report or take another action that requires their contact information.

> **"THE MAJORITY OF ADVISORS DON'T USE THE MARKETING CHANNELS THAT THE MARKETING RULE BENEFITS."**
>
> MICHAEL KITCES, CHIEF FINANCIAL PLANNING NERD, KITCES.COM

"It drives at least a 20% increase in conversion rates on websites and landing pages when you have a testimonial from a client," Sofia said, citing a statistic from a study he will publish later this year.

Some advisors may be reticent to ask clients to speak on their behalf. But if they do, they're likely to get a good reception, said Brian Thorp, founder and CEO of Wealthtender, a digital marketing platform.

About 50 of the 320 advisors on the site use client reviews. Thorp helps ensure advisors gather and post the reviews in a way that is compliant with the SEC marketing rule.

"There's a real willingness and enthusiasm by clients to put together a thoughtful review," he said. "It's terrific to see all the positive comments."

FOCUS ON THE RELATIONSHIP

Clients don't usually mention investment returns. Instead, they concentrate on the relationship they have with the advisor.

"What they're really talking about is how their advisor makes them feel," Thorp said.

Sara Stanich, founder of Cultivating Wealth, was a marketing professional before she became an investment advisor. She said she always thought it was strange that advisors couldn't use testimonials.

She didn't waste any time incorporating them in her own marketing efforts. She started posting client comments on her website in December.

"It increases credibility with prospective new clients," Stanich said. "I see only benefits to be gained from [using] client testimonials. Everybody I asked was happy to help."

She is confident the firm is meeting the SEC's expectations when it comes to testimonials because she has outside help in that area.

"We ran it by our compliance consultant," Stanich said. "Keeping on top of compliance regulations and details is not the best use of my time. I always confirm things with my consultant."

'OLD-SCHOOL' APPROACH

But more advisors are like Geeta Brana, owner of Geeta Brana Wealth. Her firm specializes in helping women who are going through difficult life transitions. She builds her brand in Monmouth County, New Jersey, and the surrounding area through charitable organizations that help women in crisis. She's the founder of one of them, Women Helping to Educate and Enhance Life.

"I'm old-school," Brana said. "I'm reluctant to use testimonials. I prefer to use what I give back to the community as my marketing base."

Her "old-school" approach to marketing is reflected across the sector. A study last year on advisor marketing by Kitces Research shows the top four marketing strategies are client referrals, centers of influence, social media and general networking. Almost every advisor uses client referrals — about 93% — but only 41% use social media.

"The majority of advisors don't use the marketing channels that the marketing rule benefits," Kitces said. "The overwhelming majority of advisory firms aren't likely to use testimonials and may never use testimonials."

The SEC marketing rule applies to advisors who are registered with the agency and have $100 million or more in assets under management. Advisors with less than $100 million are registered at the state level and would only be able to use testimonials if there's a state regulation similar to the SEC rule.

"Smaller advisors will struggle with this because they may be in a state that hasn't adopted the SEC marketing rule," Kitces said.

Trying to nudge advisors to jump into the testimonial waters will continue to be a challenge for advocates.

"It's taken some convincing for the few firms that have done it," said Jonny Swift, vice president of Impact Communications.

He understands the compliance and other concerns that make most advisors reluctant to use testimonials. But he stresses there's also a great opportunity for them.

"There's a fine line there," Swift said. "It's a fresh and fertile territory. Firms that aren't taking advantage of this are missing an opportunity to stand out from competitors."

ORGANIC GROWTH

That could lead to something all advisors want — organic growth.

"The industry is recognizing that organic growth is critical for building a sustainable business," Carpenter said.

The SEC marketing rule will have been in force for a year in November. Not long after that — perhaps in the fourth quarter of this year or the first quarter of 2024 — Bartlett may unveil its first testimonial, Spataro said.

"It's a wonderful opportunity," she said. "We want to make sure we feel positive and confident going into it."

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SEC EXAM SWEEP SHORT BUT NOT SWEET

THE SEC MARKETING RULE, which runs for 430 pages, can be complicated. But the agency's exam sweep on compliance with the rule is straightforward.

The Securities and Exchange Commission is assessing how investment advisors are adhering to the regulation when advertising their firms. The measure, which allows advisors to use client testimonials and endorsements for the first time, went into force last November.

Exam sweeps tend to generate anxiety among advisors, especially when they zero in on a rule with which many of them are wrestling. But advisors who are targeted in the review don't need to worry that the SEC will engage in a particularly complex probe.

Agency examiners will review an advisory firm's inventory of ads, according to a document request list obtained by *InvestmentNews*. It also asks for the following items, if they're not included in the ad inventory: sponsored events, attended events, public audio and video programs, client/investor presentations, newsletters and other client/investor communications and testimonials and endorsements.

"Nothing is a surprise," said Bernadette Murphy, managing director at Vigilant, a compliance consulting firm. "It's not that big a list, as long as the advisor is doing what they're supposed to do under the new rule."

Keeping examples of advertising and the background material related to the ads is crucial to doing well on an exam.

"Save any supporting documents for claims you make," Murphy said. "Books and records are the cornerstone of what you're putting in your advertising."

In guidance about the rule, the SEC has emphasized that advisors must substantiate the claims they make when touting their business.

"That has been at the heart of the sweep," said Amy Lynch, president of FrontLine Compliance.

PERFORMANCE MARKETING

SEC enforcement actions that have resulted from the sweep so far have focused on an aspect of the rule that is causing some confusion — performance marketing. The rule allows it but also puts some restrictions around it.

Over the past five weeks, the SEC has imposed a penalty of more than $1 million on robo-advisor Titan Global Capital Management USA and total penalties of $850,000 on nine other advisory firms for violations involving portrayals of hypothetical performance.

The use of testimonials and endorsements likely will draw the SEC's attention.

"I think testimonials are low-hanging fruit," Murphy said. "Does the testimonial add so much value that it's worth risking the SEC's scrutiny?"

That's the attitude many advisory firms are adopting for now, according to observers. Not many have begun posting testimonials and endorsements.

But more firms could embrace testimonials as they see their peers get through the exam sweep unscathed, said Brian Thorp, founder and CEO of Wealthtender, a digital marketing platform.

"As more of these stories get out, that will provide a greater level of comfort for compliance departments and firm leadership," Thorp said. "The majority of firms are in a great position to come through squeaky-clean."

— Mark Schoeff Jr.

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INDepth

FUTURE PROOF PLANTS ITS FLAG IN THE ADVISOR INDUSTRY EVENT CIRCUIT

IN ITS SECOND YEAR, THE BEACHSIDE CONFERENCE ATTRACTED ALMOST 3,000 ATTENDEES, NEARLY DOUBLE LAST YEAR'S ATTENDANCE.

BY RYAN W. NEAL

After beating the skeptics in its first iteration, Future Proof cemented its place in the wealth management industry's annual event lineup when it returned to Huntington Beach, California, earlier this month.

The event, developed as a collaboration between production studio Advisor Circle and Ritholtz Wealth Management, successfully evolved from the "world's first wealth festival" into "the world's largest wealth festival." Future Proof attracted almost 3,000 attendees this year, including more than 1,300 financial advisors and wealth management executives, nearly double last year's attendance. Sponsor companies increased from 79 to 186, and more than 100 members of the media covered the event, including *InvestmentNews*.

The growth was noticeable to return attendees like Matt Carvalho, chief investment officer of Cardinal Point Capital Management, a Toronto-based RIA with $1.5 billion in AUM. While many stayed away in 2022, fearing Future Proof would turn out to be a Fyre Festival-esque disaster, the event's success clearly made a mark on those trying to sell to advisors.

"It seemed everyone we work with on the asset management side was hosting lunches, dinners or happy hours throughout the conferences, whereas I think last year was a bit of a wait and see, which was understandable given the very different setup of the conference and a younger demographic," Carvalho said in an email.

Future Proof kicked off Sunday, Sept. 10, with a panel on what advisors need to do to attract and retain young clients with Sarah Levy, CEO of Betterment; Bill Capuzzi, CEO of Apex Clearing; and Kunal Kapoor, CEO of Morningstar. Joe Duran followed on Monday by sharing the first details about Rise, his new venture to invest in the next generation of large registered investment advisors.

"There's so little original thought," Duran said from the conference stage. "When I look at the industry now, everyone is doing the exact same thing."

> "LOTS OF POSITIVE ENERGY, COLLABORATION, BRINGING NEW PEOPLE INTO THE SPACE, AND FUN."
>
> SHIRL PENNEY, CEO, DYNASTY FINANCIAL PARTNERS

The same could be said of the traditional industry events that Future Proof was launched to disrupt. While the event was much larger in 2023 and attracted the most

From left to right: Josh Brown and Barry Ritholtz of Ritholtz Wealth Management, Cliff Asness of AQR Capital Management and Matt Middleton of Advisor Circle. Photo credit: Advisor Circle

prominent firms in the industry — including Vanguard, which got its own mini-protest in the form of a billboard on a truck parked on Highway 1, just outside the event's gates, pushing the fund manager to improve its climate practices — the setting, dress code, musical guests and overall experience are still completely unlike anything else available to advisors.

FOOD TRUCK LUNCH

"There is a very positive vibe around the event. People were excited to be there and to meet other new people – it didn't feel like a mandated drag," Carvalho said. "As last year, the food truck lunch option is simply the best. I never want to go back to long buffet lines."

While some first-time attendees like Danika Waddell, founder of Xena Financial Planning, a flat-fee RIA based in Seattle, arrived in Southern California with some doubts about the beachside event, they left ready to return again.

"I came in relatively skeptical, but was incredibly impressed," Waddell said. "The quality and the execution were top-notch. Really, I was blown away by the attention to detail. Everything just worked."

Discussion of artificial intelligence and how advisors can incorporate it into their technology was prevalent throughout the three-day event. Morningstar used Future Proof to launch its Intelligence Engine API, which financial services firms can use to build their own generative AI products powered by Mo, the AI service Morningstar launched in May.

"Mo has answered tens of thousands of investment research questions in a few short months, demonstrating the impact generative AI can have on this space," Lee Davidson, chief analytics officer at Morningstar, said in a statement. "Resources are tight, and firms are looking for ways to streamline processes with AI."

ORION PREVIEWS NEW TOOL

Orion Advisor Solutions executives, including departing founder and CEO Eric Clarke (who will hand the role to former AssetMark CEO Natalie Wolfson in 2024), took the stage to give a first look at a new Portfolio Comparisons tool that combines AI and behavioral finance, or BeFi, to give advisors a new way to show clients the impact portfolio decisions have on risk, allocation and taxes.

"This is a true alignment of an advisor's workflow with all of the technology in Orion's wheelhouse," Clarke said. "From BeFi and Orion Risk Intelligence to Orion Planning, Orion Trading and AI, our team has built an exhilarating next generation of Orion — threading everything together to create an end-to-end improved experience for both the advisor and their client."

But for many advisors, including Waddell and Carvalho, the best value to be found at Future Proof was in the "Breakthru" meetings, a series of short meetings scheduled using a digital interface. Both parties have to opt in, like a dating app requiring both people to "match" before they can talk, to disrupt the traditional cold calling that still dominates many industry events.

More than 1,803 attendees participated in Breakthrus, and 16,684 meetings were scheduled, according to event organizers.

"The Breakthru meetings were a great idea that created networking opportunities far beyond most conferences," said Tom Rieman, founding partner and CEO of Practice Intelligence. "Speed dating, yes. But really 15 focused minutes with people I was interested in connecting with: advisors, enterprise and thought leaders."

BRIGHT FUTURE

The success of Future Proof has caught the attention of the industry's biggest names, including Dynasty Financial Partners CEO Shirl Penney, who said the event showed a bright future for the industry. What started as an idea to bring a fresh perspective on industry gatherings has evolved into something that is "fantastic for the industry," Penney said.

"Lots of positive energy, collaboration, bringing new people into the space, and fun," Penney added. "The flywheel is spinning now, and each year will build on the last – and I'm excited to see where they take it."

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RETIREMENT PLANNING

Social Security rules on kids' benefits

MARY BETH FRANKLIN
ONRETIREMENT

While Social Security is the bedrock of retirement income for many Americans, it can also serve as a lifeline for children when one or both parents retire, become disabled or die.

Financial advisors and their clients often have questions about how and when children become eligible for benefits. In 2021, 4 million children received a total of $2.8 billion in Social Security benefits.

Generally, children may receive Social Security dependent benefits if they are younger than 18 and their parent is receiving retirement or disability benefits or dies. Benefits normally stop when children reach age 18 unless they are disabled. However, if the child is still a full-time high school student at age 18, benefits will continue until the child graduates or until two months after the child turns 19, whichever is first. Disabled adult children who were disabled before age 22 can receive dependent benefits for the rest of their lives.

The child's benefit is worth up to half of the parent's full retirement or disability benefit amount or 75% of their late parent's basic Social Security benefit when a parent dies. An eligible child can be your biological child, adopted child, stepchild or, in some cases, a dependent grandchild if the child's parent is deceased or otherwise not able to care for them.

EARNINGS CAP

Benefits paid for your child will not decrease your retirement benefit. In fact, the value of the benefits they may receive, added to your own, may help you decide if taking your benefits sooner may be more advantageous. However, anyone who claims Social Security benefits before their full retirement age and who continues to work is subject to an earnings cap that can temporarily reduce or even eliminate their benefits and those of their dependents.

An advisor from North Carolina wondered if his client, a small business owner with a $300,000 annual income, should claim Social Security now at age 63 to trigger a dependent benefit for his 14-year-old daughter. The client hoped to use the dependent benefits to help fund her future college education.

A PARENT OF ANY AGE MAY BE ELIGIBLE FOR BENEFITS IF THEY ARE CARING FOR A CHILD UNDER AGE 16 OR A DISABLED CHILD OF ANY AGE.

I told the advisor that his client makes too much money to claim Social Security benefits before his full retirement age of 67. His current earnings would wipe out all his retirement benefits as well as any dependent benefits for his daughter.

In 2023, anyone who claims Social Security before their full retirement age is subject to an annual earnings cap of $21,240. Benefits are reduced by $1 for every $2 earned above that limit. The limit is based on gross wages or net self-employment income.

The earnings cap disappears at full retirement age, and any benefits lost due to excess earnings are restored in the form of higher monthly benefits. But by the time the client reaches his full retirement age of 67 in four years, his daughter will be 18 and too old to qualify for dependent benefits.

Another advisor shared a tragic story about his own family. He said his daughter was married for two years before divorcing and has a four-year-old son. Her ex-husband died unexpectedly. The advisor wondered whether the child was eligible for survivor benefits. The answer is yes. The child is eligible for survivor benefits worth 75% of his father's basic benefit every month until he turns 18.

CAREGIVING PARENT

And I was able to offer some other good news. Although the young mother was not married for the minimum 10 years required to be considered an eligible divorced spouse, which would allow her to claim future retirement benefits on her former spouse's earnings record if larger than her own, she is entitled to benefits as a caregiving parent until her son turns 16. But she is also subject to earnings restrictions if she works.

Although most widows, widowers and surviving ex-spouses must wait until at least age 60 to claim survivor benefits, a parent of any age may be eligible for benefits if they are caring for a child under age 16 or a disabled child of any age.

There's a limit to how much any one family can receive in Social Security benefits. The family maximum payments range from 150% to 180% of the parent's full benefit amount. If the total amount payable to all family members exceeds this limit, the Social Security Administration reduces each dependent's benefit proportionally. The worker's retirement or disability benefit is not reduced.

(Questions about new Social Security rules? Find the answers in Mary Beth Franklin's 2023 e-book at MaximizingSocialSecurityBenefits.com)

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ESG

Love it or hate it, climate reporting may be inevitable

EMILE HALLEZ
INSIDE-IN

It would be hard to overstate how consequential a pair of bills in California will be in shaping the future of greenhouse gas emissions reporting in the U.S.

On Sept. 12, the state legislature passed a bill, SB-253, that will require businesses with more than $1 billion in annual revenues to report emissions beginning in 2026. But that applies only to the greenhouse gases those businesses emit and those that come from the energy they use — known as Scope 1 and 2 emissions. By 2027 those businesses will also have to report the more encompassing Scope 3 emissions, which apply to materials in their supply chains and the greenhouse gases that their products emit after being sold to customers.

The other bill, SB-261, will require companies with at least $500 million in revenue that do business in the state to report climate-related risks and opportunities.

The development is significant for two major reasons: California's law, assuming Democrat Gov. Gavin Newsom signs the bill, will be the de facto law of the land nationally; and the state law goes far beyond what the Securities and Exchange Commission has proposed.

Unlike the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors,

a final version of which has yet to be published, California would not only require a heightened level of disclosure — it would require it of companies both public and private.

'DE FACTO NATIONAL STANDARD'

"It could become a de facto national standard until the SEC acts. It does in fact go further than the SEC's proposal," said Bryan McGannon, managing director at US SIF: Sustainable Investment Forum.

For example, the SEC's proposed rule, which was issued last year, would only require Scope 1 and 2 emissions reporting for many companies. Big public companies for which Scope 3 emissions are considered material, or that have Scope 3 emission-reduction targets, would have to report those.

That gives companies some wiggle room — but not if they plan on doing business in California, which is considered the fourth-largest economy in the world.

This also wouldn't be the first time the California effect has pushed major companies to make changes on a national basis. Because the state has the distinction of being the only one in the U.S. to set its own automotive emissions standards — an exemption from federal law it has had since the '70s — it has continually pushed carmakers to produce lower-emitting, more fuel-efficient vehicles.

"Automakers are not trying to build a California car and then a rest-of-the-country car," McGannon said, noting that a handful of other big states have followed — although they can't draft their own standards, they can adopt California's.

The emissions reporting issue "quickly becomes a very similar circumstance, where businesses are eager to be in the fourth largest economy in the world," McGannon said. "And this is a part of doing business in that economy."

OBJECTIONS TO STANDARDS

Of course, many businesses don't want higher standards forced on them — and there has been no shortage of comments, both to the state and to the SEC, about that. The majority of comments to the SEC have favored higher disclosure standards, but lobbying groups and trade associations in many cases have argued against them. Objections range from difficulty in collecting and reporting Scope 3 data to added costs and concerns that the SEC is trying to do too much at once and that several climate-related proposals it has made are connected and commenters haven't had enough time to review everything.

But it's also worth noting that the SEC and California are not alone in moving to make companies report their climate and emissions data. The EU, for example, will ask businesses in many cases to report Scope 3 emissions.

And then there are shareholders, who have pushed many companies in the U.S. and abroad to at least start collecting such data, if not go beyond and set targets to reduce their carbon footprints. While there is obviously an imperative among companies and shareholders to work toward sustainability for the good of the planet, many also see climate-related risks and opportunities as financially material. There are existential and economic incentives at play.

All that is to say that it seems very likely that in the near future, companies will have to provide climate and emissions data. Even if the SEC waters down the final version of its rule, or if California is challenged in court, it's hard to imagine that a more stringent reporting system won't eventually be put in place. And of course, major U.S. companies that do business in Europe will still have to report emissions data.

Today, investors and asset managers don't all agree on whether public companies should focus on improving their environmental and social practices, at least as those relate to financial returns. That's why products from firms like Strive Asset Management, which focuses on voting against ESG-related shareholder resolutions in proxies, have been popping up and gathering money.

THE SEC AND CALIFORNIA ARE NOT ALONE IN MOVING TO MAKE COMPANIES REPORT THEIR CLIMATE AND EMISSIONS DATA.

ENSURING CONSISTENT DATA

But importantly, many public companies are voluntarily reporting emissions data — even Scope 3. To the extent that investors value that information, it would seem important to ensure that companies collect and report it in consistent ways.

For Scope 1 and 2 data, the SEC and California would require that companies use third parties to assure the information is properly gathered. And California will likely require Scope 3 emissions to have third-party assurance starting in 2030.

Consulting firms and the big four accountants see the writing on the wall — Deloitte, Ernst & Young, PwC and KPMG have rolled emissions reporting into their services, McGannon noted. While that's a business opportunity for the firms, the costs of engaging them will be less for many clients than trying to do climate reporting in-house, he said.

"There's been a huge increase in the number of firms that are providing those services to companies," he said. "You'll continue to see that grow dramatically when there's a law in place."

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If You Owned a U.S. Dollar LIBOR-Based Instrument Between August 2007 and May 2010

A Settlement Totaling $101 Million Could Affect You

There are lawsuits impacting individuals and institutions that entered into over-the-counter financial derivative and non-derivative instruments directly with 17 banks and that received payments tied to U.S. Dollar LIBOR. A Settlement totaling $101 million has been reached with Coöperatieve Rabobank U.A. ("Rabobank"), Lloyds Banking Group plc, Lloyds Bank plc, HBOS plc, and Ban of Scotland plc (together, "Lloyds"), Royal Bank of Canada ("RBC"), and Portigon AG and Westdeutsche Immobilien Servicing AG (together "Portigon"). Earlier settlements totaling $680 million were reached with Barclays, Citibank, Deutsche Bank, HSBC, MUFG, Norinchukin, and SocGen bringing the total settlement amount to $781 million. The remaining Non-Settling Defendants include Bank of America, Credit Suisse, JPMorgan Chase, Royal Bank of Scotland, and UBS.

What are the lawsuits about?

The litigation claims that the banks manipulated the U.S. Dollar LIBOR rate during the financial crisis, artificially lowering the rate for their own profit, which resulted in class members receiving lower interest payments for their U.S. Dollar LIBOR-Based Instruments from the banks than they should have. Plaintiffs assert antitrust, breach of contract, and unjust enrichment claims. Rabobank, Lloyds, RBC, and Portigon deny all claims of wrongdoing.

Who is included in the Settlement?

You are included if you (individual or entity) directly purchased certain U.S. Dollar LIBOR-based instruments from Bank of America, MUFG, Barclays, Citibank, Credit Suisse, Deutsche Bank, HSBC, JPMorgan Chase, Lloyds, Norinchukin, Rabobank, Royal Bank of Canada, Royal Bank of Scotland, Société Générale, UBS, or Portigon (or their subsidiarie or affiliates) in the United States; and owned the instruments at any time between August 2007 and May 2010. The instruments in the Settlement Class include certain interest rate swaps, forward rate agreements, asset swaps collateralized debt obligations, credit default swaps, inflation swaps, total return swaps, options, and bonds/ floating rate notes.

What does the Settlement provide?

The Settlement will create a Settlement Fund totaling $101 million that will be used to pay eligible Class Members who submit valid claims, as well as attorneys' fees not to exceed one third of the gross settlement, expenses not to exceed $5,500,000, and service awards to the Class Representatives not to exceed $100,000 per Representative. Additionally, Rabobank, Lloyds, RBC, and Portigon will provide certain cooperation to the Plaintiffs in their ongoing litigation against the Non-Settling Defendants.

How can I get a payment?

You can submit a Proof of Claim online or by mail. The deadline to submit a Proof of Claim is **February 10, 2024.** You do not need to submit a Proof of Claim to share in the Settlement if you previously submitted a valid Proof of Claim in the prior settlements and do not seek to modify or supplement your Proof of Claim. You are entitled to receive a payment if you have a qualifying transaction with any of the following banks: Bank of America, MUFG, Barclays, Citibank, Credit Suisse, Deutsche Bank, HSBC, JPMorgan Chase, Lloyds, Norinchukin, Rabobank, Royal Bank of Canada, Royal Bank of Scotland, Société Générale, UBS, or Portigon (or their subsidiaries or affiliates). You do not need to have transacted with Rabobank, Lloyds, RBC, and Portigon specifically. At this time, it is unknown how much each Class Member who submits a valid claim will receive. Visit www.USDollarLiborSettlement.com for more information on submitting a Proof of Claim.

What are my rights?

If you are a member of the Settlement Class and you do not file a timely claim, you will lose your right to receive money or benefits from the $101 million settlement with Rabobank, Lloyds, RBC, and Portigon unless you submitted a valid claim in a prior settlement in the OTC Action. If you would like to retain your right to file your own lawsuit against Rabobank, Lloyds, RBC, and Portigon, you must opt out of the Settlement Class by **November 17, 2023.** If you stay in the Settlement Class, you may object to the Settlement by **November 17, 2023.**

The Court will hold a hearing on **December 12, 2023** to consider whether to approve the Settlement and approve Class Counsel's request of attorneys' fees of up to one-third of the Settlement Fund, plus reimbursement of costs and expenses and service payments to the Class Representatives. You or your own lawyer may appear and speak at the hearing at your own expense. More information about the Settlement is available on the Settlement website www.USDollarLiborSettlement.com, and in the Long Form Notice accessible on that website, or by calling 1-888-619-8688.

MERGERS & ACQUISITIONS

Avantax deal shows wealth management boom continues

Cetera Holdings earlier this month said it was spending $1.2 billion to acquire the nearly 3,100 tax-focused financial advisors at Avantax Inc., a clear indication that the valuations for broker-dealers and registered investment advisors are still climbing and no one knows how high they will go.

BRUCE KELLY

ONADVICE

To put that $1.2 billion price tag into perspective, Avantax, which was named Blucora Inc. until it changed its name last year, in 2015 and 2019 spent $760 million to acquire two broker-dealers, the former H.D. Vest Financial Services Inc. and 1st Global Inc. Both focused on financial advisors who are tax specialists.

That translates into a 57% increase over the purchase price for the two firms in a period of eight years. Avantax financial advisors work with about $84 billion in client assets, or roughly $27.1 million per advisor. That's at the very low end of the industry; wirehouse financial advisors on average have clients with more than $1 million each, while the average client at LPL Financial is likely to have a few hundred thousand dollars.

It's the simplest rule of thumb in the wealth management industry: The more assets per client, the greater the profit to the broker-dealer of the RIA.

Regardless, the industry's reaction was that the deal's price made sense, particularly in a market where private equity-backed broker-dealers and RIAs are making hard charges at wealth management assets.

A spokesperson for Cetera declined to comment for this article.

'JUST ABOUT RIGHT'

"The deal is not overpriced. It's just about right, really," said an executive at a competitor of Cetera. The executive, who asked not to be named, noted that Cetera, a giant network of 9,000 financial advisors, is owned by Genstar Capital, a private equity shop.

"And private equity sometimes values the sheer amount of assets over their worth or performance," the executive said. "Cetera is not growing organically. It has to buy firms to demonstrate growth. So, management cares more about assets."

"The price seems high, for sure, but overpaying for it now has the benefit of adding to Cetera's size and scale in the future," said Jeremy Belfiore, a former senior executive at 1st Global who's now CEO of Trusted Visions Placement & Consulting, a recruiting firm.

Cetera's future could include an initial public offering, Belfiore noted. Adding the heft of Avantax to a Cetera IPO could work to the firm's advantage if it went public.

FOCUS ON CPAS

"Cetera also bought Avantax to eliminate competition," he said, noting that one of its broker-dealers, Cetera Financial Specialists, also focused on certified public accountants.

To be fair to Avantax and Cetera, the former is a specialty broker-dealer for CPAs, and the financial advice industry has long highly valued such financial advisors. They have unique relationships with their clients, who may be underinvested in the market.

> **"OVERPAYING FOR [AVANTAX] NOW HAS THE BENEFIT OF ADDING TO CETERA'S SIZE AND SCALE IN THE FUTURE."**
>
> JEREMY BELFIORE, CEO, TRUSTED VISIONS PLACEMENT & CONSULTING

But the boom in pricing for broker-dealers and RIAs is undeniable. Before 2015, buyers of broker-dealers typically used a valuation model based on 20% or 25% to 60% or 70% of a firm's trailing 12-months revenue.

That changed eight years ago, when former nontraded real estate investment trust czar Nicholas Schorsch bought Cetera from Lightyear Capital, paying $1.15 billion or just about 100% of Cetera's revenue from the prior year. This month, Cetera said it was paying more than what it was worth eight years ago for Avantax, which posted $666.5 million in revenue last year, according to its 2022 annual report.

The price tag Cetera paid for Avantax was 180% of its revenues last year, an unthinkable sum for a broker-dealer just a few years ago.

Cetera Holdings is the parent of Cetera Financial Group, a giant network of broker-dealers with 9,000 financial advisors and $341 billion in client assets. The acquisition price is $26 per share of stock of Avantax, which has been overhauling its various business lines recently to focus on financial advisors and the wealth management industry.

The $26 per share includes Avantax's net debt and the purchase price represents a premium of approximately 30% to the closing price of shares of Avantax common stock at the end of last week.

WHEELING AND DEALING

Avantax had been wheeling and dealing before its sale to Cetera. 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.

Financial advisors don't want to have their firms bought and sold; it can create headaches such as redoing paperwork for clients. But the Cetera and Avantax deal, regardless of the pricing, should work smoothly for the 3,100 Avantax advisors, one recruiter noted.

"Does a financial advisor want to be sold? Not necessarily," said Jodie Papike, CEO and managing principal of Cross Search. "But if they are to be sold, the best-case scenario is not having to deal with any changes."

Avantax Investment Services Inc., the broker-dealer, uses Fidelity's National Financial Services as its clearing firm, while Cetera mainly uses Pershing to clear trades for its financial advisors, she noted.

"That keeps the Avantax advisors unique [with] no way to be rolled up into another entity," Papike said. "That's a positive."

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PRACTICE MANAGEMENT

The money value of spending time with clients

Most advisors in our profession genuinely enjoy helping clients succeed. They understand the importance of adding value to the client relationship so that it's beneficial for everyone. For some advisors, financial planning is the key differentiator. For others, it's building personal relationships. Some advisors focus on client service; for others, it's investments that drive their value proposition. All these factors are important to your clients' success, but they're not equally weighted in terms of opportunity — and opportunity costs. What we're talking about is a distinctly scarce commodity: your time.

OUTSIDEIN
KRISTINE MCMANUS

Across the industry, scale is becoming more and more important. Advisors have reluctantly realized that no matter how hard they try, they can't add more time to their days. While they use tools like Zoom, Calendly and digital onboarding, they still can't fix the problem. Advisors may choose to work more to squeeze in more tasks, but most are unwilling to tilt the work-life balance too far toward business. They're already working long hours!

Given the many competing demands for their time, where do advisors spend the bulk of their days? Research from State Street Global Advisors indicates the biggest portion of their time, 37%, is devoted to investment-related tasks. Financial planning comes in next at 16%, client-facing activities at 15%, and compliance, prospecting and other categories take up the remainder of their time.

It's surprising to learn advisors spend twice as much time on investment activities as on anything else. They could be missing out on important opportunities.

New assets and referrals. Research shows that the most successful advisors spend more time with clients than on any other task. According to John Bowen, CEO of CEG Worldwide, 84% of clients say it's essential that their advisor emotionally connect with them and "get" them. It's cause and effect — advisors who build strong client relationships can better acquire new assets and gain high-quality prospects and referrals.

Some advisors still think their value to clients is their investment prowess, including portfolio construction, custom solutions and, yes, stock picking. But how many advisors could honestly answer that the investment and portfolio choices they make contribute greatly to the portfolio's returns?

The benefits of outsourcing. Given the time crunch most advisors face, why spend double the time on something that isn't likely to give you a great ROI? One way to better leverage time and scale services is by outsourcing investments through managed portfolios or similar services. Chances are you use a tax preparer or CPA to complete your tax forms, leverage a service for payroll functions or hire a landscaper to take care of your yard. You could probably do all these tasks on your own, but you'd rather not spend the time or energy. There are experts who can do it better than you.

CLIENT-CENTERED VIEW

Given the widespread adoption of model portfolios in our industry, the fact that advisors still spend more than a third of their day working on investment-related things seems a bit antiquated and inefficient. For those advisors who want to grow their practices, consider the money value of your time and where you can spend it to greater returns — with your clients.

Kristine McManus serves as chief advisor growth officer at Commonwealth Financial Network.

INVESTING

It's time to look at private real estate again

A promising opportunity lies on the horizon: the private real estate sector. Conversations with managers reveal developing potential within this space.

OUTSIDEIN
STEVEN BROD

Private real estate is influenced by various market uncertainties that also affect other sectors, like inflation, rising interest rates and financial challenges. However, the real estate market also faces unique questions, such as the future of vacant office space due to increased remote work resulting from Covid and the growing emphasis on environmental, social and governance trends that direct capital toward sustainable projects, potentially affecting older buildings.

While the current market appears uncertain and complex, the intricacies of real estate investing don't necessarily spell trouble. Complexity often deters less-sophisticated investors, leaving opportunities for skilled managers to achieve attractive returns.

SIMILAR CHALLENGES

Residential and commercial real estate both grapple with the impact of higher rates. Mortgage rates and development borrowing costs have risen in line with the Fed target rate, leading to decreased investment and activity in residential markets. Commercial real estate faces similar challenges, further complicated by stress within regional banks, which play a significant role in financing for commercial real estate developers.

Despite the increase in mortgage rates, price drops haven't been sufficient to offset the higher borrowing costs for individual buyers. In contrast, large private real estate funds with diverse investment strategies can deploy cash offers and remove more supply from an already constrained residential market. The scarcity of available financing may yield opportunities for private funds that possess scale, established presences and a wide range of capital and financing options.

OUTLOOK FROM HERE?

There's general agreement among alternative investment providers that it's wise to refrain from attempting to time the market. Instead, the key is to focus on timing in terms of valuation, margin of safety and potential upside. These factors excite us about current real estate opportunities.

For instance, higher borrowing costs and limited financing suggest higher interest generated and potentially more favorable debt terms and covenants for real estate debt investors. On the other hand, higher borrowing costs negatively affect equity stakes, presenting attractive entry points for real estate equity investors. This dynamic opens various opportunities for opportunistic real estate investors to evaluate distressed equity positions versus the safety and income potential of debt positions in properties.

As the real estate market experiences potential distress, new entrants are expected to emerge. Many real estate managers have already started raising opportunistic funds alongside their core offerings, and non-real estate managers are also venturing into this sector. However, we believe that managers with established sourcing networks will have a competitive advantage, enabling them to access and conduct due diligence on the most attractive deals in a dynamic and fast-moving market.

Stress is likely to linger in the real estate sector. Capitalizing on opportunities that arise is key. Alternative investment providers that are expanding their suite of products provide advisors and their clients with the means to participate in this promising market.

Steven Brod is CEO of Crystal Capital Partners, an integrated alternative investment platform.

INVESTING

Advisors pile into Treasuries, leaving muni bonds behind

Scott Bishop, partner at Presidio Wealth Partners, and Dean Tsantes, certified financial planner at VLP Financial Advisors

BY GREGG GREENBERG

SHORT-TERM TREASURY yields have risen to levels too high for wealth managers to ignore. Maybe that's why they're ignoring municipal bonds instead.

Treasury yields from one month through two years up the curve have eclipsed 5% at last check thanks to the past year's steady diet of Federal Reserve rate hikes. A one-year Treasury bill, for example, is now yielding 5.4%, up more than a percentage point from a year ago and up five full percentage points from two years ago.

With that kind of return so available, liquid and risk-free, it's not hard to understand why financial advisors are funneling excess client money into good old government bonds. The wealth management mantra used to be "TINA," as in "there is no alternative" to stocks. Now it's hard for advisors to take their eyes off Treasuries — at least for the so-called safe part of their client portfolios — and seemingly at the expense of municipal bonds.

"I'm not investing in individual muni bonds. With Treasury bill rates so attractive, and interest being state-tax-free, I'm riding this wave as long as possible," said Catherine Valega, wealth consultant at Green Bee Advisory.

Scott Bishop, partner at Presidio Wealth Partners, is another advisor who's not adding to municipal bond positions at this time.

"While it can make sense for those in the highest tax brackets, I believe rates have not yet topped out, so I am favoring under one-year T-bills at this time. They have no credit or duration risk. And from my perspective, we still may have a recession or a short-term federal government shutdown, and I think it's good to play it very low-risk for our 'safe money' basket — or in other words, bonds," Bishop said.

However, he does plan to look for opportunities to increase duration and credit exposure in client bond portfolios over the next 12 months. But for now, Bishop said he's "just not there yet given that we are getting paid over 5% pretax in risk-free T-bills."

THE REAL BARGAIN

Despite all the market exuberance about Treasuries, Jonathan Mondillo, head of North American fixed income at abrdn, says the real bargain is on the municipal bond side, especially given the huge number of bonds Uncle Sam is expected to sell in coming months to keep the government up and running.

"I think when you look at relative value on a taxable equivalent basis, we like municipalities relative to the U.S. Treasury. I think especially when you look at the amount of issuance that's expected in the next 12 months, with roughly a third of marketable securities coming due, we tend to think that yields in the Treasury market are going to remain elevated and you should continue to see outperformance in the municipal bond market as a result," Mondillo said.

Mondillo maintains that the question of why market participants are ignoring the opportunities in municipal bonds is a "head-scratcher." In his view, municipalities are generally in great fiscal shape should a recession hit later this year or next, and have less — believe it or not — political risk than Treasuries. Fitch Ratings decided to strip the U.S. of its Triple-A credit rating this summer given the repeated threats of government shutdowns.

"I think the benefit of the municipal bond market relative to certainly the equity market, certainly the corporate credit market, is that fundamentals are historically strong. Rainy day balances are at or near record levels across the United States. So entering any recession area environment, any economic slowdown, they should benefit from that," Mondillo said, adding that municipal bonds historically see the downgrades that one would see "almost instantaneously in the corporate credit market."

MUNIS STILL MAGNIFICENT

Suffice to say that while Treasuries have suddenly become the belle of the bond buyers' ball, wealth managers haven't totally turned their backs on municipal bonds. The tax-free darlings remain an important part of any advisor's arsenal, especially for high-net-worth clients in high-tax-rate states.

"We are adding munis to taxable accounts, and we always suggest municipals for higher-income earners because of their tax treatment, exemption from federal taxes — and if the investor lives in the same state where the bond is issued, the muni is often exempt from state taxes, too," said Dean Tsantes, certified financial planner at VLP Financial Advisors.

Tsantes prefers using municipal bond funds for high-earning clients who may need short-term access to their money. So does Steve Stanganelli, financial advisor with Clear View Wealth Advisors, who generally limits individual municipal bond issues to clients who have well over $100,000 to invest in the asset class.

"Right now, I've been holding a fairly steady allocation in munis," said Stanganelli. "For clients who live in high-tax states like California or have taxable income projected to be above $1 million in Massachusetts, I'll advise them to increase their holdings to muni bond funds as a way to be more tax-efficient while also adding to their diversification."

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EXECUTIVE MOVES

Homrich Berg names Carroll CEO

BY JOSH WELSH

ON NEW YEAR'S DAY, there'll be a new CEO at Homrich Berg.

Thomas Carroll, currently the firm's president, will take over as chief executive at the Atlanta-based registered investment advisor, succeeding co-founder Andy Berg. Berg will stay on as chairman of the $14 billion RIA, the firm announced earlier this month.

Carroll told *InvestmentNews* the transition has been years in the making. Berg "hired me four years ago as the presumptive successor and it was my understanding at the time that the transition would be somewhere between three to five years."

Carroll added that it was the right amount of time before becoming Berg's successor. "It allows me time to get to know the firm, meet our clients, make sure they understand the transition is going to be business as usual; it allows me to get to know our teammates, and it's just been perfect timing."

Carroll joined Homrich Berg to fulfill the firm's multiyear transition plan, leveraging his multidecade career in financial services to propel growth across the Southeast. Carroll's career spans decades at SunTrust Bank, where he worked as both an advisor and executive vice president. He was head of division wealth management and also served as CEO of GenSpring Family Offices, the multifamily office subsidiary of SunTrust Bank.

INORGANIC GROWTH

Carroll said he will focus more on inorganic growth and M&A activity.

He also plans to focus on delivering an exceptional client experience while continuing to scale the firm for the benefit of HB clients.

"As we create that scale, one of the things that we need to focus on is continuing to invest in digital and technology," Carroll added. "So HB will probably embrace technology a little bit more rapidly."

Carroll holds a bachelor's degree in business from Wake Forest University.

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RETIREMENT PLANNING

Staying home to raise kids has retirement repercussions

BY EMILE HALLEZ

WOMEN WHO PUT their careers on pause are more than twice as likely than men who do the same to go back to work after retirement.

That's according to data released earlier this month by Charles Schwab, based on a June survey of 1,000 U.S. residents ages 22 to 88 with $50,000 to $5 million in assets.

The data highlight that women may more often face specific hurdles around retirement, despite being more involved with finances and investing now than they have been historically.

While 14% of men who take time away from their careers end up having to go back to work after retiring, that compares to 30% of women, the survey found. Of those who put their careers on pause, 70% of women said it was for parental leave, compared with just 6% for men. Thirty-seven percent of women also indicated it was necessary to provide child care, while only 4% of men said the same. Women were also nearly twice as likely to take time away from work because of health issues, at 23%, compared with 12% of men.

People who took time away from work were more likely to have started saving for retirement in their 30s (39%) than those who didn't (27%).

Having a plan in place well ahead of time can help those who anticipate needing to take extended periods away from jobs, said Susan Hirshman, director of wealth management for Schwab Wealth Advisory and the Schwab Center for Financial Research. And meeting with an advisor is important for a reason people in the business know all too well — that one-size-fits-all planning is far from ideal.

"What we always like to share with people is that what's good for your neighbor is not necessarily right for you," Hirshman said. "People have different goals, lifestyles and savings habits. And those things come into play."

"JUST OVERWHELMINGLY, WOMEN ARE BECOMING MORE INVOLVED IN THEIR FINANCES."

ALEXIS ZUCCARO, WEALTH ADVISOR, SAGEVIEW ADVISORY GROUP

'ACTIVE PARTICIPANT'

For women, especially those who stop working to raise kids, it's critical to become involved in financial planning, she said.

"The No. 1 thing is what I call being an active participant in your wealth," she said. "Really consider that the wealth that's being earned through your spouse is part yours as well. And you have a responsibility to make sure the investments and the savings are aligned with the goals of both of you."

That means being a part of the planning conversation to address life expectancy and risk capacity, among other factors.

Work satisfaction is also something to consider. Although the survey found that nearly a third of people who unretire go back to the same jobs or fields, often part-time, some of the top reasons for going back to work are unrelated to income: engagement, purpose and boredom.

"There comes a point where they're playing pickleball five times a week, and it gets old," Hirshman said. "It really depends on what you need to feel fulfilled."

TAKING CHARGE

"What I'm seeing overall, particularly with my female clients, whether they're single or married, is just overwhelmingly, women are becoming more involved in their finances," said Alexis Zuccaro, wealth advisor at SageView Advisory Group.

"When they're career-minded, they're planning for that career and the family they want to have along with that career," she said. "The next logical step has been working with a financial advisor much earlier than they had historically."

For younger workers, one of the best steps is contributing what they can to a 401(k) — at least enough to get the full employer match — along with having emergency savings sufficient to cover six months of living expenses, Zuccaro said. Ratcheting up 401(k) contributions when they get raises is also important.

When returning to work after a period of absence, it may be necessary to dial in their "needs and wants to compensate for lost savings," she said.

It's common for advisors to be willing to have consultations with people well before they have enough assets to become clients, Zuccaro noted.

"Some people think they need to have a whole bunch of money stashed aside to talk with a professional," she said. "Never be afraid to reach out."

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REGULATION

SEC hits YieldStreet with $1.9M penalty

BY BRUCE KELLY

THE SECURITIES AND EXCHANGE COMMISSION said Sept. 12 that it had reached a $1.9 million settlement with digital alternative investments platform YieldStreet, with the company facing SEC allegations of failing to disclose critical information to investors in a $14.5 million asset-backed securities offering involving a ship that was to be taken apart.

The process of disassembling a ship and then selling its parts is known as shipbreaking.

"YieldStreet aims to unlock the complex alternative investments market for retail investors but failed to disclose glaring red flags it had about the security of the collateral backing this offering," Osman Nawaz, chief of the SEC enforcement division's complex financial instruments unit, said in a statement.

Without admitting or denying the SEC's findings, YieldStreet agreed to the SEC's order.

The settlement concludes the SEC's review of the marine borrower fraud YieldStreet brought to the attention of authorities three years ago, the company said in an email. "All settlement funds will be paid to YieldStreet investors," the company added.

According to the Form ADV of YieldStreet's registered investment advisor, the firm manages $1.2 billion in assets for 184 accounts.

In 2020, Yieldstreet brought the marine borrower fraud to the attention of the authorities in Great Britain.

According to the SEC, in September 2019, YieldStreet offered securities to finance a loan a company affiliate made to a group of companies to transport a retired ship and arrange its deconstruction. The collateral for the loan was the ship to be broken apart, and YieldStreet's right to the ship was the most important security for the loan and the securities that it sold to investors, according to the SEC.

YieldStreet failed to disclose to investors a heightened risk that it would be unable to seize the ship in the event of a default, according to the SEC.

Prior to the offering, YieldStreet personnel had information showing that ships securing other loans firm affiliates had made to the same borrowing group were reported as deconstructed without any notice or repayment or could not be located because their tracking systems were off, the SEC alleged.

YieldStreet proceeded with the 2019 offering without disclosing this material information to investors; the firm later concluded that the borrowing group caused the ship securing the September 2019 offering to be broken up, according to the SEC.

The borrowers stole the deconstruction proceeds by not repaying the YieldStreet loan, leaving investors facing millions of dollars of losses, the SEC alleged.

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TAXES

Advisors confident wealthy clients will avoid IRS crackdown

BY MARK SCHOEFF JR.

INVESTMENT ADVISORS expressed confidence their clients won't be among those targeted by the IRS in an initiative that cracks down on wealthy tax cheats.

The IRS announced Sept. 8 that it will use funding from tax and climate legislation approved last year to increase scrutiny of high-income earners, partnerships, large corporations and promoters who abuse tax laws. Audit rates for taxpayers in those segments have fallen sharply over the past decade, the agency said, while audits for those claiming the Earned Income Tax Credit have remained high.

Money allocated to the IRS by the Inflation Reduction Act will finance the effort to ensure the wealthy pay their fair share of taxes, according to the agency. It said audit rates would not increase for people earning less than $400,000 annually.

"This new compliance push makes good on the promise of the Inflation Reduction Act to ensure the IRS holds our wealthiest filers accountable to pay the full amount of what they owe," IRS Commissioner Danny Werfel said in a statement. "The years of underfunding that predated the Inflation Reduction Act led to the lowest audit rate of wealthy filers in our history. I am committed to reversing this trend, making sure that new funding will mean more effective compliance efforts on the wealthy, while middle- and low-income filers will continue to see no change in historically low pre-IRA audit rates for years to come."

The IRS said it will intensify its scrutiny of people who earn more than $1 million annually and have more than $250,000 in recognized tax debt. The agency will build on a previous program that collected $38 million from 175 high earners. In the next fiscal year, it will target 1,600 taxpayers who owe millions in taxes.

> **"I SUSPECT A LOT OF THE HIGH-NET-WORTH INDIVIDUALS ARE COMPLIANT BECAUSE THEY HAVE QUALITY ADVISORS WHO KNOW WHAT THE LAW IS."**
>
> RICHARD PON, INVESTMENT ADVISOR AND CPA

IN THE CLEAR

Most advisors' clients likely will be in the clear, said Richard Pon, an investment advisor and CPA in San Francisco.

"I suspect a lot of the high-net-worth individuals are compliant because they have quality advisors who know what the law is and how to follow it correctly," Pon said.

Malissa Marshall, owner of Soaring Wealth, is confident her clients will avoid the IRS dragnet. In addition to being an advisor, she is designated as an enrolled agent by the IRS and prepares 90 to 110 tax returns for her clients each year.

"I am not worried about my clients becoming targets, since I prepare almost all of their tax returns — or otherwise review them before filing," she said. "It's pretty cut-and-dried, what we do."

IRS TO DEPLOY AI

The IRS said it will use artificial intelligence to delve into tax issues surrounding complex partnership structures. By the end of the month, it will open examinations of the 75 largest U.S. partnerships, including hedge funds, real estate investment partnerships, publicly traded partnerships, large law firms and other industries.

Matt Chancey, a tax specialist at Coastal Investment Advisors, is not concerned about the partnership probe.

"There are completely legal ways to participate in private partnerships with tax benefits and those programs and their use are encouraged by the federal government based on economic expansion for communities as a whole," Chancey wrote in an email. "I do think there are promoters of illegal tax schemes, frauds and Ponzi schemes popping up on a daily basis that are giving the legal and legitimate programs a bad name while also hurting investors who are suckered into them."

The IRS received $80 billion in the Inflation Reduction Act for its efforts to crack down on wealthy tax dodgers. But that funding was trimmed in the bipartisan agreement earlier this year to raise the debt ceiling. It may be reduced again as Congress works on a federal budget for the next fiscal year.

"I can see this being negotiated again," Pon said.

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EXECUTIVE MOVES

Carson Group's Jamie Hopkins joining Bryn Mawr Trust

BY INVESTMENTNEWS

CARSON GROUP'S Jamie Hopkins is joining Bryn Mawr Trust as director of private wealth management, the firm's owner, WSFS Financial Corp., said last Tuesday.

Carson Group had announced earlier in the month that Hopkins, its managing partner of wealth solutions, would be leaving for family reasons at the end of the month.

"We are thrilled to welcome Jamie to lead our Private Wealth Management teams," Arthur J. Bacci, executive vice president, chief wealth officer and interim CFO at Wilmington, Delaware-based WSFS, said in a statement. "His extensive experience, dynamic leadership and dedication to client success align perfectly with our values and mission."

"I am extremely excited to be joining such an amazing team at Bryn Mawr Trust that puts clients first and is a leader in our community. My personal mission is to enhance the financial security of Americans, and I will bring that passion, care and trust to clients and the team," Hopkins said in the statement.

> **"MY PERSONAL MISSION IS TO ENHANCE THE FINANCIAL SECURITY OF AMERICANS."**
>
> JAMIE HOPKINS

Hopkins joined Carson Group in 2019 as director of retirement research. In 2021, he was promoted to managing partner of wealth solutions, with responsibility for overseeing Carson's financial and tax planning strategy as well as its advisor coaching business, Carson Coaching.

Before joining Carson, he was associate professor of taxation in the retirement income program at The American College of Financial Services, where he created the Retirement Income Certified Professional designation. Hopkins also served as director of the New York Life Center for Retirement Income.

In 2015, he was selected by *InvestmentNews* as one of the top 40 financial services professionals under the age of 40.

Hopkins got his law degree from Villanova University School of Law and his Master of Laws degree from Temple University School of Law. He also has a master's in financial planning from the American College and an MBA from Villanova.

WSFS, which had $67.9 billion in assets as of June 30, purchased Bryn Mawr Trust, which is based in the Philadelphia suburbs, in 2021.

NICHE ADVISOR

No office, no asset minimum — no problem

BY EMILE HALLEZ

SARAH PAULSON'S BUSINESS is unlike most financial advisories because of two things it doesn't have: an asset minimum and an office.

Both of those details were a consequence of the pandemic, Paulson said. Early in the days of Covid, she was working as a trust officer at Associated Bank.

"I wasn't really feeling fulfilled helping the ultra-wealthy," Paulson said. She didn't like "the idea that I was holding the hands of those people who already have so much money … while my own friends were getting laid off, and they had student loans, mortgages, taking care of their families, and there were no resources, nowhere for them to go."

She switched gears in 2021 and set up her own financial planning practice, Valkyrie Financial, based in Appleton, Wisconsin.

Paulson has no asset minimum for clients — meaning that most are still working to build an investment base, and some have net negative assets.

"I do a subscription base, so as long as you have an income, you can have access to good financial advice," she said. "There should be financial advice for everybody. You shouldn't have to have hundreds of thousands of dollars saved up to qualify."

While most of her business with the roughly 20 households she works with is subscription-based, she also has a small asset-based component, representing about $6 million under management, she said.

The sweet spot for the business is her generation, millennials, with most clients in their mid-to-late 30s, Paulson said. Helping people in her peer group build wealth is a huge motivator. As a theater major early in her college days, she knows she could have followed a career with thin prospects for financial security.

But a conversation with a 401(k) rep when she was just 18 piqued her interest in economics, and that led to an internship at Merrill Lynch.

Another cause that's important to her is supporting women. "A lot of traits that make financial advisors very good are feminine," Paulson said.

That's also a big part of her nonprofit work — she is on the board of the Women's Fund for the Fox Valley Region, which supports women and girls through numerous initiatives.

Even while women have made strides in the financial services industry, there remains a commission-and-sales mentality that evokes Wolf of Wall Street vibes, which can discourage women from pursuing careers, she said.

"I WASN'T REALLY FEELING FULFILLED HELPING THE ULTRA-WEALTHY."

SARAH PAULSON, OWNER, VALKYRIE FINANCIAL

In her own life, there is something Paulson struggles with that will be familiar to many.

"I am time-blind. I cannot have a sense of time to save my life," she said. "It's not a fun trait to be known for."

Something that surprises her about the financial advice business, she said, is that there's so much demand for subscriptions, but most other advisors don't appear interested or haven't figured it out yet.

"It still blows my mind when I go to conferences," she said. "What are all these super smart people missing that I'm not? … There are very few advisors that work primarily on subscriptions."

Paulson hasn't met most of her clients face-to-face. They're spread around the country, and they usually find her while searching online for subscription-based advisors, she said.

"If any client really wants to meet with me in person … I would rather meet with them in their home, a coffee shop or a bar — some place that feels comfortable to them," she said.

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BE PART OF THE EVENT OF THE YEAR

Leading women from across the financial advisory profession will gather for the Women to Watch Summit and Awards—an evening of celebration and recognition honoring the industry's finest.

It will be a show to remember as you walk the red carpet, celebrate successes, toast the winners, and become a part of the American financial industry's foremost awards ceremony for women.

Join us for an unmissable gala, taking place at the Tribeca 360 in New York City on November 7th. We look forward to welcoming the who's who of wealth professionals.

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SEC

CONTINUED FROM PAGE 2

compliance if their investment allocations don't hit the 80% threshold required to coincide with their names. The original proposal had a 30-day grace period.

While the rule targets greenwashing, the final rule excised a provision that would have prohibited funds from using ESG in their names if ESG factors are considered along with other investment selection criteria, rather than being the decisive variable. Gensler said the commission would take up that issue separately. It may be included in other pending ESG proposals.

"That did strip out that separate component that would have been more onerous," Hemnes said. "ESG does not have to be a determinative factor. But [funds] do have to define ESG terms and include criteria in their disclosures" about using them.

> **"IF A FUND'S NAME SUGGESTS AN INVESTMENT FOCUS, THE FUND IN TURN NEEDS TO INVEST ... IN A MANNER CONSISTENT WITH THAT INVESTMENT FOCUS."**
>
> GARY GENSLER, CHAIR, SEC

Funds' latitude to choose their names was one reason SEC commissioner Hester Peirce voted in favor of the final rule. Peirce, a Republican appointment to the five-member SEC, has often been on the dissenting side of SEC votes along with her fellow GOP commissioner Mark Uyeda.

The flexibility fund managers have in interpreting terms means investors must look beyond a fund name to assess whether they should buy shares, Peirce said. She drew an analogy to walking into a pizzeria.

"You're not going to get sushi or tacos, you're going to get some sort of pizza," Peirce said during the SEC meeting. "To get precisely what I want, I have to read the menu to figure out if this is the pizza shop for me."

Uyeda was the lone dissenting vote. Funds could turn to generic monikers to avoid running afoul of the rule, and "fund innovation and investor choice will suffer," Uyeda said.

The SEC's action Wednesday was the first reform of the names rule since it was originally adopted in 2001. The primary trade association for mutual funds, the Investment Company Institute, opposed it.

"The rule sweeps more than three-quarters of all the funds in the U.S. into its dragnet, going far beyond ESG funds — the supposed root of the rulemaking — with no justification," ICI CEO Eric Pan said in a statement. "The agency has also failed to take a reasoned and calibrated approach to improving fund disclosure, as they should have before making sweeping changes to rules surrounding fund names."

The amendments to the names rule become effective 60 days after they're published in the Federal Register. Funds with net assets of $1 billion or more have 24 months to comply. Funds with assets of less than $1 billion have 30 months.

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FINRA REMOTE

CONTINUED FROM PAGE 3

Finra's modifications didn't win over PIABA, either.

"The amendments made to this rule proposal do not address the significant harm done to investors by rogue brokers working in the absence of adequate supervision," PIABA president Hugh Berkson wrote in an Aug. 29 comment letter.

LEVERAGING TECHNOLOGY

Brokerages have been deploying technology to improve their supervision of branch offices and other locations, a trend that accelerated during the pandemic, Finra has said during the rulemaking process.

LPL Financial, the country's largest independent broker-dealer, has performed more than 27,300 remote branch inspections since March 2020, said Tara Gilchrist, LPL senior vice president and head of branch examinations.

"Our team has reimagined the branch exam process to leverage publicly available online tools and resources, including secretary of state databases, Google searches and Google Street View, in order to efficiently and effectively examine branches using video calls,' Gilchrist wrote in an Aug. 29 comment letter. "Although the program was built out quickly, over the course of nearly three years our branch examiners have refined their skills and become very adept at identifying risk remotely."

The pilot program is one of two Finra remote-inspection proposals sitting at the SEC. The other would allow supervisors to conduct inspections from their home offices, or remote supervisory locations. It's unclear when the SEC will make a decision on the proposals.

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CAPTRUST

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through its existing relationships with 401(k) participants.

"When an RIA aggregator buys a wealth management firm, they're getting a lot of back-office efficiencies and resources, but they're pretty much on their own for lead generation and prospecting. That's a big issue," said Fred Barstein, CEO of The Retirement Advisor University. "On the retirement plan advisor side, they have access to tens, hundreds of thousands of participants in the plans they manage … When you combine them, it's explosive, and Captrust is right at that intersection."

> **29**
> NUMBER OF FIRMS CAPTRUST HAS BOUGHT SINCE 2020 PE FUNDING

Similarly, in 2021, Aquiline Capital Partners picked up a majority stake in SageView Advisory Group — a sign that private equity firms see retirement plan participants as a mostly untapped market for wealth management, Darian said.

Captrust didn't disclose the size of the stake Carlyle will have, nor did it say how much money will be available to pursue acquisitions. A company spokesperson said in an email that Captrust would not comment further on the terms of the deal.

DC PLAN BUSINESSES

About 13,000 advisors in the U.S. have more than half of their revenue coming from defined-contribution plan businesses, compared with the other 288,000 advisors, Barstein said. Many in the retirement plan business are extremely small, making them poor candidates for acquisition, he noted.

It takes a long time to build a large retirement plan advisory business, unlike in the wealth space, where if "you get three good clients, you've got a firm," he said.

This year through August there were 154 RIA acquisitions in the U.S., in addition to three deals for independent broker-dealers, according to Fidelity.

Most of Captrust's acquisitions are likely to focus on the wealth management business, given its existing footprint in retirement, Darian said.

Even with interest rates rising, "the appetite for [acquiring] RIA firms and retirement plan advisor firms just keeps growing," Barstein said.

"It has not diminished. We're not hearing about prices coming down, valuations going down," he said. "I think there's actually more money coming in."

OPPOSITE APPROACH

Another firm, Creative Planning, started expanding its business from the opposite side, buying up retirement plan advisors to support its wealth management side, he noted.

For now, much of the attention has been on scooping up smaller advisors. But the RIA space could follow trends seen in the retirement plan record-keeping and institutional consulting businesses, where the available small businesses have dried up and only larger competitors remain, Darian and Barstein said.

"The question is when will the RIA aggregators be buying each other?" Barstein said. "I don't think we're there yet."

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WOLFSEN

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Wolfsen. The company did not respond to a request for additional comment.

"Michael is an experienced, highly effective leader who brings a wealth of expertise and perspective to his new role," Xiaoning Jiao, chairperson of the AssetMark board of directors, said in the statement. "During his tenure at AssetMark, he has demonstrated his ability to drive consistently strong results. His knowledge of AssetMark, understanding of the needs of our clients, and uniquely advisor-focused lens will undoubtedly benefit the company as it continues its growth and evolution."

Wolfsen joined AssetMark in 2014 and was named CEO of AssetMark in 2021, succeeding Charles Goldman. Under her leadership, the firm launched AssetMark Institutional to offer tailored services for RIAs, acquired financial planning software Voyant and, in 2022, bought Vestmark's turnkey asset management platform, or TAMP.

Goldman is now executive chair of Orion's board of directors and released a statement welcoming Wolfsen as the company's new CEO.

"Orion is uniquely positioned given its complete suite of technology and services designed to meet the evolving needs of independent fiduciary advisors," Goldman said.

AssetMark reported more than $100 billion in platform assets in its most recent earnings report. The firm added 188 new producing advisors and $1.7 billion of net flows during the second quarter.

"Coming off a record quarter with platform assets at an all-time [high], it is an exciting period in AssetMark's growth trajectory, and I am honored to be the company's next CEO," Kim said in a statement.

Orion, which began as a provider of portfolio management software for independent advisors, has its sights set on becoming a more significant competitor in the TAMP market against traditional players like Envestnet and AssetMark. Orion entered the market in 2018 with the acquisition of FTJ FundChoice, and in 2022 pushed past $60 billion in assets with the acquisition of TownSquare Capital.

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401(K) LITIGATION

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Services Corp., includes claims over allegedly excessive record-keeping and investment management fees, underperforming investment options, and a delay in adding target-date funds to the investment menu.

Additionally, the law firm reportedly has sent Employee Retirement Income Security Act information requests to some retirement plan sponsors, indicating "early preparations" for rapid-fire lawsuits "against many large corporate plans," Aronowitz wrote in a blog post about the issue.

Lawyers at Lieff Cabraser who filed the case against TTEC did not immediately respond to a request for comment.

SETTLING ERISA CLAIMS

It has become common for plan sponsors to settle ERISA claims, often doing so if such cases survive a motion to dismiss and could otherwise drag on for years and be expensive to defend.

"IT REMAINS TO BE SEEN WHETHER ANY SPONSOR WOULD REALLY BE WILLING TO SETTLE AN EXCESSIVE FEE CASE THAT DOESN'T YET EXIST."

ANDREW ORINGER, PARTNER, THE WAGNER LAW GROUP

That has drawn more plaintiffs' firms to branch out into 401(k) litigation.

"There's been a long tradition of advertising for potential class representatives based on a sense that there could be a settleable or even winnable claim," Andrew Oringer, partner at The Wagner Law Group, said in an email. "Going straight to the plan sponsor without there being a lawsuit, or substantial work toward the filing of a lawsuit, would seem to be going aggressively to the next level. It remains to be seen whether any sponsor would really be willing to settle an excessive fee case that doesn't yet exist."

Sean Cooper, founding partner at Endeavor Law, said it's hard to see a plan sponsor paying claims ahead of a lawsuit.

"While settling pre-suit can be beneficial in the individual plaintiff context, class or representative claims are different. Any release the plan sponsor could receive out-of-court would (almost certainly) be confined to the individual participant who retained the plaintiffs' firm," Cooper said in an email. "Due process requires notice and an opportunity to object to a settlement for non-parties, as well as court approval. … So there's nothing prohibiting the same plaintiffs' firm from 'going back to the well,' i.e., finding a different participant to assert the same claim and demand compensation."

The letter strategy shows that more plaintiffs' lawyers will likely continue to pursue ERISA cases, he said. "For plan sponsors, it highlights the importance of following best practices — while you can't prevent a lawsuit, you can always have a good defense prepared, and of course, your first call should be to counsel if you receive such a demand letter."

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