



Financial Services Employment Blog

Are Financial Services Firms Reconsidering the Protocol?

By J. Scott Humphrey and Marcus Mintz

Seyfarth Synopsis: Two prominent financial firms have withdrawn from the Protocol for Broker Recruiting. Will their withdrawal lead to other firms withdrawing from the Protocol as well?

The Protocol for Broker Recruiting (“Protocol”) allows for reciprocal poaching of brokers. More specifically, if a broker leaves one Protocol firm for another Protocol firm, the broker can a) take certain account information (client names, addresses, telephone numbers, e-mail addresses, and account title information) to his/her new firm and b) solicit the clients he/she serviced at his/her former firm. Naturally then, the Protocol’s requirements conflict with confidentiality and restrictive covenant provisions that are commonly found in broker employment agreements and firm policies.

When the Protocol began gaining traction in 2008 and 2009 (the Protocol was started by four firms in 2004), several firms were either unaware of, or unconcerned about, the Protocol’s impact on its restrictive covenant and confidentiality agreements. The need to allow “free broker movement”, argued Protocol loyalists, created a more healthy market place and should trump a firm’s right/ability to protect its legitimate business interests, client relationships and confidential information. Although less mentioned, the Protocol was also clearly designed to reduce the amount of litigation in the financial services industry.

Over the last nine years, the Protocol’s membership has grown to the point that, currently, approximately 1,300 firms are signatories to the Protocol. However, in the last two months, two significant signatories, UBS Financial Services and Morgan Stanley, withdrew from the Protocol and, in doing so, made clear that they now intend to enforce restrictive covenant and confidentiality provisions. In other words, Morgan Stanley and UBS brokers will no longer be allowed to take customer information with them when they leave Morgan Stanley or UBS. Nor will UBS and Morgan Stanley brokers be allowed to ignore any non-compete or non-solicit obligations found in their Morgan Stanley/UBS agreements. Morgan Stanley’s and UBS’s movement away from the Protocol is significant because both firms have championed the Protocol for nearly 12 years, and UBS was one of the four founding members of the Protocol. Obviously, it remains to be seen whether UBS and Morgan Stanley’s departure from the Protocol will lead to additional signatories withdrawing from the Protocol. We will continue to monitor this situation and provide updates on this blog with respect to new developments regarding the Protocol and/or enforcement of restrictive covenants and confidentiality provisions in the financial services industry.

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