

Can wirehouses deliver on their advertising promises when employee restrictions are the same?

Consult any research house covering the financial services industry and you'll discover that advisors are leaving the regional and national wirehouse channels in favor of independence—either as registered investment advisors (RIAs) or, to an even greater extent, as representatives of independent broker-dealers.

Robert O'Dell, now a fee-only advisor with LVM Capital Management Ltd. in Wheaton, Ill., says, "I left the wirehouse I was working for five-and-a-half years ago and it was the best business decision I've made in recent years. I do not see how wirehouses will keep good advisors, especially in light of the fiduciary push going on in our industry. I still have a number of friends in the wirehouses who fantasize about escaping. How can the big firms give advisors the autonomy to grow without stepping on them to 'make their numbers' so their shareholders will be happy?"

What autonomy is that? It's the autonomy to function in the real world, some would say—a world that includes free expression made freer by the Internet, by e-mail, by any number of technological innovations coming at us at the speed of thought. "One of the many reasons I left Morgan Stanley in August 2006 was the communication control issue," says Tim Wesling, president of Wesling Financial Planning Services Corp. in Alexandria, Va.

Wesling, who worked for Morgan Stanley for four of the 25 years he's been in the business, says the firm stifled his attempt to conduct normal business communications with clients, whether via e-mail, newsletter, seminar or media contact. "I couldn't send e-mails to clients with Hotmail accounts, I couldn't write my own newsletter articles and I was only allowed to give compliance-approved seminars," he explains.

Of course, personal e-mails were discouraged as well, says Wesling, particularly e-mails expressing political views or transmitting opinion-oriented information. "The stuff they would give us for our newsletters was written in New York and didn't pertain to my local clients," he says. And speaking to the media was forbidden. "We were given many reminders through internal e-mail that any such requests were to be sent to compliance in New York," where, he says, the company would disseminate the same, formal communication sent to the rest of the media.

One would think restrictions on seminars would be few, seeing as seminars are the primary marketing tool for many wirehouse reps. But, says Wesling, "the compliance-approved seminars didn't reflect my way of practicing. They were very plain vanilla, containing the same information [a prospect] could get by going to any financial Web site." In fact, he says, there were small-print disclaimers at the bottom of every slide saying, essentially, "Don't believe anything we've just told you."

"It would take away entirely from your credibility," says Wesling.

Let's you think Wesling's experience reflects the restrictive policies of just one wirehouse, other advisors report similar occurrences reminiscent of Soviet Bloc nation's attempts to control information at competing firms. "I left Merrill Lynch about two years ago, where they spent a lot of time and money trying to control communications between employees and the outside world," says J. Patrick Collins Jr., now a principal with Greenspring Wealth Management Inc. in Towson, Md. "For example, all letters had to be photocopied for review before sending, and Merrill blocked Yahoo, Hotmail and similar e-mail accounts so all e-mails being sent or received could be monitored by the firm."

In addition to the kinds of restrictions noted by Wesling and Collins, Paul Hynes of Burns Advisory Group in San Diego, says Smith Barney, where he worked until May 2006, would tap dance around the regulatory constraints now known as the Merrill Lynch Rule. "The wirehouses want the public to feel that it needs the wirehouses' advice, yet they restricted us to communicating at the level of the minimum legal requirement. For example, if my advice to a client involved a mutual fund, the minimum legal requirement was to deliver a prospectus. That's all we could do, was hand over a prospectus. They didn't want us sounding like an analyst [explaining the workings of the fund]." This was difficult for Hynes, who says his training was centered on differentiating himself through his advice, as would be the case with any financial advisor seeking to compete in the free market.

After working with A.G. Edwards for about five years, Matthew Kelley, now with Gold Medal Waters LLC of Boulder, Colo., finally went out on his own. "I didn't know what other options I had when I was with the wirehouse. I finally turned to Fidelity, who helped me understand what the RIA world was all about and, once I put all the pieces together, I realized I didn't need to operate the way I'd been doing it." Kelley had also been plagued by communication constraints.

Why should we be surprised at these advisors' experiences, you ask? Don't NASD regulations require that all broker-dealers review client correspondence, whether by mail or Internet, to make sure it is appropriate? Don't virtually all firms, for example, use e-mail monitoring technology to ensure their reps don't use words like "guarantee" or "sure bet" in communicating to clients the benefits of recommended products?

Yes, but in so doing, there is more latitude than what wirehouse policies would suggest. Says Theresa Ochs, manager of Compliance Communications Review for Securities America Inc. in Omaha, Neb., her independent broker-dealer is currently looking at e-mail hosting services that would allow reps to maintain their own, unique e-mail address specific to their own separate RIAs so they can maintain their independent status and branding while still complying with NASD rules.

"As for newsletters," says Ochs, "reps can choose to use any newsletter they wish. We have a number of pre-approved vendors on whose newsletters they are offered discounts, or the rep can create his own newsletter."

Of course, the newsletter must go through compliance but, says Ochs, "We don't restrict them as to newsletter topics, and compliance gives them a quick turnaround, usually two to three business days or less."

The process for seminars works similarly, although NASD scrutiny is somewhat greater. Says Ochs, "The NASD is taking a particularly great interest in seminars for seniors. We've even seen regulatory bodies actually attending these seminars. We make sure to remind our reps of this."

As for speaking to the media, Ochs says, "We have a number of reps who are interviewed by local or national media. If they choose to be interviewed, they just need to notify the home office after the fact with a synopsis of the interview or, if given a copy of the article in which they were quoted, they would provide it to us either before or after publication."

Why, if wirehouses and independent broker-dealers follow the same rules, are those rules applied so differently? "We understand that when our reps are mentioned in the media," says Ochs, "it benefits both them and Securities America. In fact, we have a number of initiatives through our marketing department to help reps communicate with the media, such as ghost-written articles we make available for them to submit to local newspapers, magazines, industry publications, or to post on their Web

sites. We work with our reps to let them have their own brand identity while remaining in compliance.”

And the wirehouses? “Quite frankly,” says Collins, “I think Merrill [paid attention to our e-mail] because they wanted to control the flow of information, but also because they wanted us focused on selling. When one of our managers was convinced all of the newer advisors were spending too much time doing Internet research and not enough time cold calling, he threatened to take away their computer monitors to prevent them from ‘wasting time.’ I found this to be the mindset across the board at Merrill.”

Adds Hynes, formerly of Smith Barney, “Wirehouses must manage to the lowest common denominator. If there’s an arbitration for one rep’s [misadventures], everyone’s restricted.”

Perhaps this is understandable. As Hynes is quick to point out, “Restrictions will always be there because of these large organizations’ exposure to the actions of many thousands of individuals.” But what does this mean in light of the Internet and other technological advances? The whole thrust of today’s technology is to open up communication and decentralize power, just the opposite paradigm as that on which antiquated wirehouse policies are based. How long can wirehouses continue to restrict their reps as they do today and still function in the real world?

Says Scott Dorer, formerly with Prudential/Wachovia and now with Securities America/Managed Money Concepts of Lansing, Mich., “They can’t hold back the tide much longer. Not only has technology changed, making it harder than ever to control how their reps communicate with clients and the outside world, but also clients and advisors have changed. I left Prudential because I didn’t have the freedom to practice the way I wanted, which was in the best interests of my clients. There were too many conflicts of interest. The costs to my clients were too high. The payouts were too low. And the company wanted too much control.”

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