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30 DAYS 30 WAYS

What to Know About Compliance Before Going Independent

Before going independent, financial advisors should make sure make that they know the fine points of the compliance rules and regulations that they will encounter.

"When I get calls from people contemplating leaving their current firm the issue of greatest concern is always compliance," says Scott Gottlieb, president and chief executive of U.S. Compliance Consultants of Greenwich, Conn. "People fear what they don't know."

First things first. Advisors who are leaving an existing registered investment advisor or a broker-dealer should make sure that their timing is precise.

"The assumption is that your old firm does not know you will be starting a new firm, and you want to be in control when you give notice," says Nancy Lininger, founder of and consultant at the Consortium, a compliance consulting firm in Camarillo, Calif., and author of "Go To CEO!—How to Start Your Independent Investment Advisory Firm."

Keep in mind, however, that advisors who start soliciting business and engaging in outside activity while still employed risk running afoul of their firm's policies and securities laws, which could lead to disciplinary action and legal fines.

More specifically, on the broker-dealer side, advisors need pre-approval from their broker-dealer firm before conducting any outside business activity, especially if it is industry-related, according to FINRA regulations.

"The trick is, if you start a new firm, get all your paperwork done without telling your employer," Lininger says. "Otherwise, you'll probably get fired."

The whole process of planning to getting registered could take up to three months or longer.

Advisors need to fill out a Form ADV, which is the registration document and also the full disclosure brochure required by law to present to clients. Paying heed to proper time lines before leaving is especially important.

"Timing will depend on whether you're registering with the [Securities and Exchange and Commission] or one or more states," Gottlieb says. "While it's counterintuitive, it's a whole lot quicker and easier to register with the SEC."

The SEC has to provide a response within 45 days, and usually it is much quicker than that, while a typical state registration takes between six and eight weeks and sometimes longer, Gottlieb says.

"Once you get approval from regulators, you'll be free to tell your employer goodbye and open your new doors the next day," Lininger says.

"What you cannot do before you leave is solicit your clients; you cannot tell them you're planning a new business," she says. "You cannot start advertising; you cannot open a website."

There are other compliance rules that need to be observed during the start-up period.

"If for example, you're already self-employed or between careers, the tendency is to find a client or two first and then get into the business and get registered," Lininger says.

Securities laws, however, require advisors to register before they solicit clients or otherwise conduct business, with some states requiring that advisors submit an affidavit of no prior activity when submitting the application, she says.

Bruce W. Fraser, a New York financial writer, contributes to Financial Planning and On Wall Street.

This story is part of a 30-day series on going independent.

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