

Avoiding Traps In Your Transition

Negotiating Your Bonus Arrangement and Employment Terms When Moving to a New Brokerage Firm

PRESENTED BY:



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Online Seminar

March 13, 2007

Welcome to our web presentation.

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Thank you for taking time out of your busy day to attend.

ABOUT SNSFE

- Established in 1960
- Full service business law firm
- Representing closely-held businesses, entrepreneurs and individuals
- From start-up to succession planning
- “AV” Peer Review Rated

Broad Coverage

- **Preparing to compete**
- **Trade secret issues (e.g. customer lists?)**
- **Proprietary information issues**
 - **copies, “computerized” records?**
 - **exceptions for clients related by blood or marriage?**

Broad Coverage

- **Non-competition agreements?**
- **Non-rendering of services agreements?**
- **Non-solicitation agreements?**
 - (a) “solicit” (directly or indirectly)
 - (b) “service”
 - (c) “names became known”
 - (d) can’t encourage to transfer, open new account or even just terminate old firm relationship
- **Non-contact agreements?**

Broad Coverage

- **TRO or member of protocol?**
- **Benefits**
 - deferred compensation plans?
 - forfeiture agreements?
- **Severance arrangements?**

Broad Coverage

- **Rights at termination**
 - **commissions owed?**
 - **referral compensation owed?**
 - **expense reimbursements owed?**
 - **bonus owed?**
 - **management compensation owed?**

Broad Coverage

- **U-5 issues:**
 - (a) **language negotiation?**
 - (b) **placing employee comment?**
 - (c) **arbitration to expunge defamatory language?**
- **Merger and acquisition consulting**
- **Investment advisor compliance and regulatory matters**
- **Forgivable loans**
- **Employment agreements**

Forgivable Loan

Read the fine print – twice!

- 1. Term**
 - fewer years the better
- 2. Forgiveness schedule**
 - monthly, not annually
- 3. Governing law**
 - home state

Forgivable Loan

4. Venue for disputes

- home state

5. Current firm strategies

- conditional non-solicitation agreement (effective for one year if forgivable loan not repaid)
- demand letters request rep to provide firm with written representation and assurance

Forgivable Loan

5. Current firm strategies contd.

- Demand letters request rep to list all clients who have received oral or written solicitations by you or new employer**
- Records returned / destroyed**

Forgivable Loan

- 6. Note balance due upon voluntary or involuntary termination, but not with disability or death**
 - except if could have fired for cause**
 - disability normally defined as total and permanent, as defined in firm's disability plan**

Forgivable Loan

7. Note balance also due upon:

- a) failure to obtain / maintain securities licenses and registrations**
- b) impaired financial responsibility**
 - bankruptcy
 - judgment or lien entered
 - commencement of proceeding to enforce money judgment
- c) default**

Forgivable Loan

- 8. Consequential damages for fees paid to professional recruiter**
- 9. Default – collection costs and attorney’s fees**
- 10. Rep waives any right to assert a defense, set-off or counterclaims of any nature or description**

Forgivable Loan

11. The “new note” trick

- lower payments but longer term for reps not earning enough net pay for firm to deduct anticipated income tax withholding obligation
- If not enough net pay from which to deduct, firm can pay withholding on rep’s behalf and then will ask rep to reimburse the firm.

Forgivable Loan

- Or, rep can give firm a check, month to month, to pay withholding.
- If during forgiveness term the firm deducted too much from rep's paycheck to pay withholding, the firm must reimburse rep for that excess.

Forgivable Loan

12. Forgivable loan arbitration

- Normally, counterclaim and seek damages
- Normally, settle
 1. rep's financial ability to repay
 2. term of repayment
 3. strength of the counterclaim

Employment Agreement

- 1. “Claw Back” provisions**
 - reductions in amount of loan forgiven
- 2. Production bonuses**
 - apply only to “qualifying assets” (exclude acquisition, reassignment and establishment of a sunset or partnership arrangement)

Employment Agreement

- 3. Document pre-existing relationships (ACAT) from prior firm**
 - even if not required this is prudent
- 4. Strategy:**
 - weave pre-existing relationship exclusion into agreements
 - accelerate bonus payments if rep dies, becomes disabled or is terminated not for cause

Employment Agreement

**(5) If firm agrees to for-cause termination
reps must beware of the definition**

Employment Agreement

‘For Cause’ definition:

- (i) Any act or omission that constitutes a breach of the employee’s obligation to the firm or any of its subsidiaries or affiliates, including a breach or violation of any policy, procedure, rule or guideline of such entities;**

Employment Agreement

- (ii) The commission of any fraud, misappropriation, embezzlement, other similar dishonest act that may have injurious or adverse affect on the firm or its affiliates, including its financial interest or business reputation;**
- (iii) Any statutory disqualification, criminal charges or conviction of a crime other than minor traffic offense(s);**

Employment Agreement

- (iv) Violation of any securities or commodities laws, any rules or regulations pursuant to such laws, or the rules and regulations of any securities or commodities exchange or association of which the firm is a member, or violation of any similar federal, state or local law, regulation, ordinance or licensing requirement applicable to employees of financial institutions;**

Employment Agreement

- (v) You become the subject of any sanction imposed by any regulatory or self-regulatory organization or you are the subject of client complaints or other inquiries that would result in your being placed under heightened supervision under any guideline of the firm or any regulatory or self-regulatory organization;**
- (vi) Failure to pay any amount due under the note or pay any other obligation to the firm for a period of more than 30 days;**

Employment Agreement

- (vii) Inability to manage your own personal financial affairs;**
- (viii) Violation of any terms of this Agreement;**
- (ix) Low production
which for purposes of this clause only does not
equal or exceed \$_____**
for any twelve month period.

Employment Agreement

- 6. Reimbursement for any and all fees, including ACAT fees and account termination transferring fees**

Questions?

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