TOP NEWS

COMPLY-Wall Street watch-dogs target bad rollover advice

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By Suzanne Barlyn

Jan 9 (Reuters) - Brokers who give retiring workers bad advice about what to do with their 401(k) plans should expect some headaches: U.S. securities regulators are taking a closer look at what happens when investors roll their workplace balances into private individual retirement accounts.

The Financial Industry Regulatory Authority and the U.S. Securities and Exchange Commission are reviewing firms' practices for advising customers about so-called rollovers. The SEC said on Thursday that the issue is one of its 2014 examination priorities, after FINRA announced its own plans on January 2.

Brokers should recommend a rollover only after thinking about several factors for the investor, such as low-cost funds available through some 401(k) plans and differences in fees between the two types of accounts, FINRA said.

Violations can lead to fines, suspensions or being thrown out of the industry.

FINRA's announcement marked the second time in less than a week that the regulator sounded an alarm bell about retirement plan rollovers. It also published guidance to the industry on December 30.

The regulators' concerns come as retirement plan rollover practices are being subjected to greater public scrutiny. Americans have roughly $21.7 trillion in retirement accounts, according to the Investment Company Institute. That covers all types of retirement accounts, including $5.6 trillion in employer-sponsored retirement plans, assets that could be lucrative for brokers who convince clients to invest them in securities through an IRA.

A report last year by the U.S. Government Accountability Office concluded that the financial industry generally encourages employees to roll over their 401(k) assets into IRAs without determining whether the move is in an investor's best interest.

Brokers are not the only ones facing scrutiny on these issues. Most major financial companies manage 401(k) plans for employers and often offer advice to employees about the particulars of their plans.

The U.S. Department of Labor is also developing a rule that would establish more stringent ethical responsibilities for advisers who counsel workers on rollovers.

"This area is an area where disclosure, the quality of advertising and supervision of the investments that are made, is absolutely critical," Richard Ketchum, FINRA's chairman and chief executive, said in an interview. "We've seen evidence in which they're not always handled well," he said.

Among the problems: promoting so-called "no-fee" IRAs to investors, a practice FINRA warned the securities industry about in July, 2013. The term could mislead investors, who typically pay fees in some way to maintain an account, FINRA said. For example, the costs of a "no-fee" account may be disguised in a higher commission instead of highlighted as a separate charge. Nonetheless, the advertising strategy could lure investors into a rollover that may ultimately be more costly than staying in their employers' plans.

FINRA has not yet pursued any enforcement cases involving retirement plan rollovers, a spokeswoman said.

PENSION WOES

FINRA's interest in rollover practices coincides with efforts by some investors to recoup money they say they're owed because of a broker's rollover advice that was not suitable for them.

One case, on behalf of six retirees of the former Niagara Mohawk Power Corp, now a part of National Grid USA, a subsidiary of National Grid Plc, alleges that an ex-broker for LPL Financial LLC advised them to cash in their pensions when they retired and roll the money over into investments that he would manage, according to Joseph Peiffer, a lawyer in New Orleans who is handling the case.

The retirees, who transferred their funds between 2007 and 2009, collectively lost "millions" of dollars when they might instead have locked in monthly pension payments for life, Peiffer said. LPL settled a similar previous case for $390,000, according to a regulatory filing. An LPL spokeswoman declined to comment. A National Grid spokesperson was not immediately available to comment.

The former broker, Jeffrey Cashmore, now runs an investment advisory firm in Williamsville, New York. He said he was unaware of the present case but that he counseled Niagara Mohawk retirees about staying in their plan.

FINRA suspended Cashmore for 30 days in 2012 and fined him $5,000 for allegedly providing misleading materials to customers. Cashmore denied misleading clients and settled with FINRA because he thought the terms would be confidential, he said, adding that he still advises many Niagara Mohawk retirees.

AVOIDING ANGST

The vast majority of workers are allowed to leave their money in a 401(k) even when they leave a company. It's often a cheaper alternative, but one that many workers don't know is available to them.

It is one point that FINRA wants brokers and their firms to get across. Brokers can stay out of trouble by making sure that investors are well-educated about their choices before they roll over their retirement plan money, as well as additional fees a rollover may cost, say lawyers and compliance professionals.

Some of the largest brokerages automate disclosures about those choices in the online system investors use to set up a rollover. At Bank of America's Merrill Lynch unit, for example, one disclosure advises investors who are leaving one company for another to consider the new company's plan.

Many smaller firms, however, will have to beef up their disclosure practices, said John Gentile, president of Ascendant Compliance Management in Salisbury, Connecticut. All firms will have to train advisers to ensure the conversations they have with clients are consistent with the firm's disclosures and FINRA's expectations, Gentile said.

FINRA can easily check up on brokers who promise clients more fund choices than their company plans, or funds with lower fees, Gentile said. "They will get out the prospectus for each and compare," Gentile said. "Brokers have to be totally up front."