

Testing the Protocol, Merrill Sues Team Members Who Left with Client Data

By Mason Braswell | MERRILL LYNCH



In a case that tests the limits of the Protocol for Broker Recruiting, Bank of America Merrill Lynch has asked a federal judge to prevent two former members of a large Miami team from using client contact information they took with them to another broker-dealer, according to a lawsuit filed Tuesday.

In a complaint filed in the Southern District of Florida, Merrill alleges that Juan Doria and Emmanuel Casuscelli took names and other data on 25 clients with them when they moved to UCAP Securities on March 10. Since Doria was a private wealth relationship manager and Casuscelli a financial analyst, neither was protected under terms of the

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protocol that applies to brokers only, Merrill argued.

The Protocol lets brokers moving among its 1,558 signatory firms take limited client contact data with them without fear of litigation.

The 25 client names Dori and Casuscelli allegedly lifted represented \$542 million of the \$815 million in assets that were

managed by their 10 remaining teammates at Merrill's Premia Group, according to the complaint. Premia, which is led by senior vice presidents Steve Prellezo and Alberto Cosio, generated \$5 million in commissions last year, according to the complaint.

Merrill argued that Doria and Casuscelli cannot invoke the Protocol because they were never assigned a "production number" that allows brokers to open and take primary responsibility for client accounts, according to the complaint. The duo, who left on March 10 for UCAP, will challenge Merrill's attempt to curb their client calls.

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This is not the first time Merrill, one of four original members of the Protocol, has tried to constrict the universe of those it covers. It notified other Protocol firms in a 2015 letter that it was unilaterally exempting support staff from its protections and clarifying that it applies only to those with "the title of Merrill Lynch Financial Advisor, Private Wealth Manager or Private Wealth Advisor," each of which

requires an "FA number," according to this week's complaint.

The case is a "trial balloon" testing Merrill's 2015 carve-out and is meant to intimidate others who may think of leaving, Herskovits said.

Doria and Casuscelli, he added, have not solicited any of their former team's clients and no accounts have moved, Herskovits added. Merrill's complaint says they have solicited at least seven clients.

"Juan and Manuel are pawns in a larger game that Merrill is playing," the New York-based lawyer said.

A spokesman for Merrill declined to comment on the lawyer's remarks.

Marc Dobin, a Florida-based lawyer who often represents brokers in employment disputes, said that while client associates may disagree with Merrill's position, the firm has a case to make, at least with the relatively low bar of getting a restraining order.

"If you don't have an FA number, you don't have protocol protections," Dobin said. He added, however, that if the case proceeds to arbitration the UCAP team can try to produce evidence that they were functionally producers, their employment contracts

notwithstanding.

Last year, broker Miguel Sosa left The Premia Group, part of Merrill's Private Banking and Investment Group, to launch his own firm after overseeing \$400 million in assets, mostly for Latin American clients. Merrill did not pursue him or his two associates, but Sosa initiated a class-action lawsuit against the firm for misleading brokers about its commitment to servicing clients outside the U.S. The purported class-action has been withdrawn. ■