

RCA – October 1994 – Members Cautioned About Discount Brokerage Commission Advertising

Frequently, advertisements regarding deep discounts contain generalized or unqualified statements about a competitor's commission rates or services, or compare commission rates without disclosing all the facts necessary for investors to fully and adequately understand the distinctions being drawn. In this regard, advertisements containing incomplete comparisons, questionable claims, and improper unqualified statements do not comply with the NASD Rules of Fair Practice.

In 1985, the SEC approved NASD guidelines that apply the standards in Article III, Section 35 of its Rules of Fair Practice to discount brokerage advertising. Under this provision, discount brokerage communications must provide a sound basis for evaluating the facts regarding the securities or associated securities services offered, requiring that all material facts and qualifications be disclosed to prevent the presentation from being misleading.

Oversimplified Ads

Advertisements that make oversimplified statements of superior commission rates or services based on limited trading circumstances or unique investor services easily mislead investors and may violate the NASD Rules of Fair Practice. Although a general description of the differences in services and costs when comparing a member firm and its competitors is permitted, the advertisement must not imply that one firm offers overall rates superior to those of a competitor based on savings realized by trading a certain volume or type of stock if the competitor offers better value when trading at different volumes or in other types of securities. Similarly, it would be prohibited to imply that one firm is superior to another in overall brokerage services if the comparison is based on a single type of service. It would also be improper to expressly or implicitly state that substantial savings in commissions are available through a comparison of those charged by full-service competitors without clearly disclosing the greater array of brokerage services provided by and available at full-service firm.

Additionally, commission rates may vary markedly for different types of securities—stocks, bonds, and options—offered by the member or its competitors, requiring advertisements to clearly indicate the types of securities to which the quoted discounts apply. If mutual funds or other securities are mentioned that cannot be sold at commission or sales-charge discounts from that stated in the prospectus, advertisements must clearly disclose that the advertised discounts do not apply to these products.

Unqualified Claims

Generalized or unqualified statements about commission rates such as "save up to 70 percent" or "any trade for \$30" are considered misleading if undisclosed factors exist that would cause the quoted rate or discount to be generally unavailable. Such factors include minimum commissions, volume requirements, and separate service charges for postage and handling. If a firm advertises a "flat fee" for all trades, the fee must include all charges that are generally assessed.

The basis for any discount also must be provided, such as the firm's normal commission rates or a recent survey of competitor prices. Where the comparison is based on a survey, its date and nature should be included. Discount brokerage material must offer additional information about the member's rates and services.