From: Charles C Mihalek [cmihalek@mis.net]
Sent: Monday, June 29, 2009 4:54 PM
To: Comments, Public
Subject: Know Your Customer Rule 2111

Dear Ladies and Gentlemen: I have been practicing in the securities law area for many years. In my opinion there is a "failure to communicate" between client and stockbroker. The industry and the regulators make assumptions about basic components on the financial regulatory system that are unfounded. First of all, retail investors can not understand or comphrehend their monthly statement. If that is true, and it is, then how can they complain or know when or how to complain? Secondly, the vocabulary of Wall Street is cleverly intertwined around everyday words, like "moderate" "risk" or "moderate" " growth". The emphasis has been on qualitative risk disclosure when it can and should be on quantitative risk disclosure. None of the words used in the Investment Objectives Section of the New Account Form which the Customer does not see or sign mean something different than their plain meaning or are ambiguous. Instead of saying "Are you a Moderate Risk investor ?" you should be asking "Are you willing to risk up to 20% of your entire portfolio in any given year?"

Our clients are mostly retired blue collar high school educated couples in their late 50's or early 60's. Except for employee stock plans they have no experience in the market. Why do the regulators permit Stock Brokers to list time spent in employee stock plans as stock market experience on the New Account Form? It is unfounded, baseless and a perversion of the duties of a stock broker to classify knowledge and experience improperly.

The securities suitability "problem" should not be solvable by selling all your clients the same 5 or 10 mutual funds with a 4 or 5 percent commission. If stock brokers who recommend the purchase of mutual fund A shares to their client have a fiduciary duty [to put the interests of their client ahead of their own or their firm's] then why is the stock broker not REQUIRED to tell the client about the existence of low cost no lode funds with the identical makeup or low cost EFT's? There is a contradiction in the law of fiduciary duty that is not being addressed---- repectfully, it is being ignored or swept under the rug.

In the last 5 or 10 years I have noticed that Bank Trust Depts generally perform their fiduciary duties much better than stock brokers. I suspect this is true because they are NOT incentivized product salesmen, but have a clear sense of duty and truly putting their beneficiaries first in the scheme of things. Any suitability rule that does not require the broker to treat the client as a beneficiary of a fiduciary relationship is in my opinion defective. I do not refer to those trnsactions which are purely mechanical [where the broker makes no recommendation and is truly an order taker].. The Order Tickets are mismarked in most of the cases we handle as "Unsolicited" so as not to trigger whatever supervision there is. If the ticket is mismarked, then this rule is meaningless. There seems to be no penaltities in arbitration or anywhere for mismarked tickets. Customers do not understand the significance of the ticket or the "Solicited" or " "Unsolicited" and the broker keeps that significance hidden from him .

In my opinion the proposed newrule does not go far enough to protect customers especially seniors who are easy targets for unprofessional, poorly trained stock brokers. .

Sincerely,

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