A GUIDE TO SECURITIES & STOCK FRAUD LAWSUITS

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This stock fraud document outlines some of the concerns about stock fraud, what you can expect, how and why you can seek help, and the cost of a stock fraud lawsuit or arbitration. For questions, please contact Anapol Schwartz Law Firm or call us toll-free at 866-761-1385. Thank you.

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STOCK FRAUD / SECURITIES FRAUD

Stock Fraud / Securities Fraud

Stock fraud or securities fraud (investments fraud) is about stealing. (The words stock fraud, securities fraud, and investment fraud can be used interchangeably.) Stock fraud is an illegal practice. When trusting investors are enticed, coerced or straight-out lied to and part with their money under false or negligent promises or conditions – this is stock fraud. People mistakenly think that only the rich can fall prey to stock fraud. Not true! People from all walks of life are frequent targets of unethical stockbrokers. At risk are hard-earned life savings and sums of money, great and small. Retirees, baby-boomers and single parents can easily lose the money they need most for the necessities of life, their retirements or children's education costs.

Stock fraud has devastated thousands of people and yes, it can also happen to you.

10 QUESTIONS TO ASK ABOUT ANY INVESTMENT OPPORTUNITY

Hear are some questions to ask your brokerage firm or sales agent.

1. Is the investment registered with the SEC and the state securities agency in the state where I live or is it subject to an exemption?
2. Is the person recommending this investment registered with my state securities agency? Is there a record of any complaints about this person?
3. How does this investment match my investment objectives?
4. Where is the company incorporated? Will you send me the latest reports that have been filed on this company?
5. What are the costs associated with this investment? How easily can I sell?
6. Who is managing the investment? How much experience do they have?
7. How risky is this investment? Can I lose the money on this investment?
8. What return can I expect on my money? How long do I have to wait for the return?
9. How long has the company been in business? How do they make money? What is their product or service?
10. How can I get more information about this investment such as audited financial statements?

Investments should not be decided upon quickly. If you're being pressured to make a quick decision, the investment is probably not a good idea. With any investment, whether promoted in person, by mail, telephone, or on the Internet, a prudent investor (you) should always weigh the options, ask questions, and get written information. It's a good idea to take notes so you have a record of what you were told, in case there's a dispute later.

INVESTMENT FRAUD AND RETIREES

Suppose you're 77 years old and through a broker invested $50,000 in an IRA. In nine months, the value dropped to $30,000. Did the broker have an obligation to manage these funds conservatively? If this IRA was a large portion of a retiree's savings and the retiree made it clear that they couldn't afford to lose principal, then the broker violated their obligation to manage the retiree's funds conservatively.

Has this happened to you or your parent, uncle, or godmother?

NASD rules prohibit brokers from recommending investments that are unsuitable considering the customer's age, financial situation, investment objective, and experience. When the market dropped, plenty of people started complaining. Unsuitable recommendations were and are common complaints to the SEC.

Retirees have some of the strongest suitability cases because they usually have an irreplaceable pool of money and can't afford to wait for the market to bounce back. Since the broker controlled the investment decisions, retirees would have a strong fraud case. Even if you chose the funds yourself, brokers have an obligation to turn away business if the customer wants to do something inappropriate.

Many of these stock fraud cases have been filed against large brokerage firms, including Smith Barney-CitiBank, Merrill Lynch, Morgan Stanley Dean Whittier, UBS Paine Webber, Prudential, Legg Mason, PNC Bank, Edward Jones, and American Express Financial Services. Don't assume that a recognizable brand name can automatically be trusted. Ask the right questions and research all investments.

WHAT ARE THE DIFFERENT KINDS OF STOCK FRAUD?

Annuities - What are annuities?

Variable annuities are normally purchased with a large lump-sum payment and are combinations of insurance policy and mutual funds. As opposed to being a fixed or constant rate of return, there are options for several variables which are similar to mutual funds.

What is the problem with annuities?

The sale of variable annuities usually yields one of the highest commissions a broker or insurance salesperson can earn. Dishonest salespeople misrepresent the facts to make the sale, regardless of your investment needs while they keep making a commission that doesn't just stop with the sale.

WHAT ARE THE DOS AND DON'TS WHEN CONSIDERING ANNUITIES?

Don't buy an annuity that will be held in an IRA or 401(k). An annuity's main benefit is tax deferral. If you already have an IRA or 401(k), you don't need an annuity. If you want death benefits, buy life insurance instead to ensure your family will have enough money if you die.

Don't buy an annuity until you've exhausted other retirement savings vehicles. Contribute the maximum to your 401(k) and fully fund your traditional or Roth IRA for the year before even considering annuities.

Do make sure this isn't money that will be inherited. Annuities, unlike most other investments, don't get a special tax treatment when you die. Heirs will owe income taxes if they inherit an annuity from you.

Don't buy annuities if you're worried about lawsuits. There are better and cheaper ways to protect your assets, such as buying an umbrella liability insurance policy.

Do be aware that you're in annuities for the long haul. You need to own a low cost annuity for at least 10 years for the higher expenses to be outweighed by the tax benefits. The higher the annuity's cost, the longer you need to own it.

Do shop around for companies that offer lower cost annuities.

Don't be forced or threatened into buying annuities.

Don't buy an annuity until you are aware of the pros and cons and dos and don'ts.

Many annuity fraud lawsuits allege that companies used deceptive methods to market and sell tax-deferred annuities to fund retirement plans, when in fact any qualified retirement plan is tax-deferred. A qualified plan allows you to pay taxes on the amounts you receive at retirement rather than during the accumulation period. Thus, a tax-deferred variable annuity may not be an appropriate choice for these and other retirement accounts because policy holders are charged sky high deferred annuity insurance fees for a double deferral they cannot use.

Complaints say the purchase rates offered are usually not favorable to current market rates when they decide to retire and companies failed to disclose that proceeds of an annuity are subject to federal and state income taxes, unlike life insurance proceeds that are income-tax free.

There are potentially hundreds of thousands of people who could be affected by annuity fraud.

EQUITY INDEXED ANNUITIES (EIA)

What are equity indexed annuities?

An EIA is a type of fixed annuity, a contract, between the investor and Insurance Company. During the accumulation period, investors make a lump sum payment or a series of payments and the insurance company credits you with a return based on changes in an equity index, such as the S&P 500 Composite Stock Price Index. The insurance company typically guarantees a minimum return. Guaranteed minimum return rates vary. After the accumulation period, the insurance company will make periodic payments to you under the terms of your contract, unless you choose to receive your contract value in a lump sum.

What is the problem with EIA?

Variable annuity products must be registered with the SEC; must issue prospectuses; and can only be sold by professionals with securities licenses. The problem with EIAs is they are not federally regulated and brokers don't need a securities license to sell them. Equity indexed annuity investing is incredibly complex and has many pros and cons. People often feel stupid, fail to ask any questions, and put all their trust their insurance agent or broker. It will take several years for an equity indexed annuity's minimum guarantee to break even which is why the equity indexed annuity is not a good investment vehicle for baby boomers or retirees. You can lose money buying an equity-indexed annuity, especially if you need to cancel your annuity early. Even with a guarantee, you can still lose money if your guarantee is based on an amount that's less than the full amount of your purchase payments. The equity indexed annuity is neither a simple or friendly investment tool because you may have significant surrender charge and tax penalties if you cancel early.

MUTUAL FUNDS

What is the problem with mutual funds?

Many large brokerage firms had secret agreements with different mutual fund families. The brokerage firms would advertise and promote limited mutual fund families calling them either the "preferred families" or the "recommended families". There's nothing wrong with that if the brokerage firm tells the vendor that this practice exists. The problem arises when brokerage firms misrepresent investors by promoting these mutual fund families even if they are not performing well and/or not beneficial to the investor's needs.

If the brokerage firm is promoting these mutual fund families because of extra incentives paid to the brokerage firms – this is a red light for investors.

STOCK CHURNING

What is stock churning? What is the problem with stock churning?

The term refers to excessive buying and selling in your account by your broker. For stock churning to occur, your broker must exercise control over the investment decisions in your account, either through a formal written discretionary agreement or otherwise, and must engage in excessive trading in light of the financial resources and character of the account for the purpose of generating commissions.

How do you know if your account has experienced stock churning?

Does the size of the return justify the amount of trading that occurs?

Are stocks sold and bought with seemingly no advantage from the investor's perspective?

There's a lot of gray area as to whether or not stock churning has occurred in an account. Have you experienced a greater number of trades over a very short period of time?

Are you investment goals being met?

Has the stock broker willfully tried to defraud you?

In order to determine if an account has been churned a stock fraud attorney must review the trading record. The case will only have a chance if the attorney can show that the trading activity was excessive.

PENSION FUNDS

What bad things can happen to pension funds and 401(k) s?

This scenario is very sad because employees automatically trust their employers to do the right thing with their future nest eggs. Unfortunately this has not always been the status quo. Here are some problems that have arisen with pension funds and 401(k) s:

- √ Unethical CEOs and CFOs squander and drain employees' 401(k)s
- √ Embezzlement and creative book-keeping
- √ No checks and balances
- √ Poor planning and investing
- √ Mismanagement
- √ High risk investments
- √ Kickbacks for investing when it doesn't benefit the employees
- √ Misrepresentation when a city, county, or state government under funds the pension to keep the tax payers happy
- √ Conflicts of interest
- √ Hedge fund non-disclosures

BOGUS OFFERINGS

What are bogus offerings?

A bogus offering is an investment opportunity in which the product being touted does not exist. The offering is nothing more than a vehicle to steal money from investors. Think of a bogus offering as a stickup where the weapon is a promise of a high investment return rather than a gun or a knife.

How can you determine what is bogus?

Stocks, limited partnership interests, debt instruments, and participation certificates are just a few of the ways in which a bogus offering can be marketed. These are examples, not a total list. Bogus offerings can be present in any type of investment opportunity.

A red warning light should go on in your brain when someone promises unusually high returns that are guaranteed. Wake up: If it sounds to good to be true, it probably is. If the investment is based on facts that you cannot verify or even investigate, think twice about investing. A secret stock screams of SCAM. Consider how you have to pay and where you have to send money. If the promoter requests that you provide your bank account number and other personal information so he can facilitate the transaction – there goes all your money! Or if they ask you to send money to a post office box (especially if it's not in the United State), just say no. This is not the investment opportunity for you. Stop being so trusting and you have a much better chance of not being scammed.

Never buy prime bank securities. Why? They don’t exist. The same goes for high yield investment programs, standby letters of credit, or revolving credit guarantees. The (false) promise of 640 percent return in 40 weeks will cause many a normally smart person to part with large sums of money… forever.

What are the warning signs for bogus offerings?

- √ Promise of high returns
- √ Terms such as high-yield investment programs, standby letters of credit, revolving credit guarantees, and prime bank securities
- √ Promoters who ask for personal information
- √ Promoters who want you to send money to a P.O. box, especially an offshore one

INTERNET STOCK FRAUD

While the Internet is a wonderful resource for research and communication, it has also provided the platform for thousands of investment scams. Anyone can be a stock fraud scammer as long as they have a computer or access to one and Internet access.

HOW INTERNET STOCK FRAUD WORKS

Online newsletters

Some companies pay people to write online newsletters to recommend their stocks. While this isn't illegal, the federal securities laws require that newsletters disclose who paid them, the amount they received, and the type of payment. But many Internet investment fraud scammers fail to do so. Instead, they lie or omit the payments received and their so-called research. While looking legitimate both print and online newsletters masquerade as sources of unbiased information, when in fact they stand to profit handsomely by convincing investors to buy or sell particular stocks.

Newsletter can also spread false information or promote worthless stocks. The most notorious scalp the stocks they hype, driving up the price of the stock with their false recommendations, then selling their own holdings at high prices and high profits.

Bulletin boards

Online bulletin boards have become an increasingly popular forum for investors to share information. Bulletin boards typically feature threads made from numerous messages on various investment opportunities. While some messages may be true, many turn out to be bogus offerings. Fraudsters often pump up a company or pretend to reveal inside information about upcoming announcements, new products, or lucrative contracts.

Unfortunately, you are clueless about who you're dealing with or whether they're credible because many bulletin boards allow users to hide their identity behind multiple aliases. People claiming to be unbiased observers who've carefully researched the company may actually be company insiders, large shareholders, or paid promoters. A single person can easily create the illusion of widespread interest in a small, thinly-traded stock by posting a series of messages under various aliases.

E-mail and spam

Since spam or junk e-mail is so cheap and easy to do scammers use it to find investors for bogus offering investments or to spread false information about a company. Spam allows the unscrupulous to target many more potential investors than cold calling or mass mailing. Using a bulk e-mail program, spammers can send personalized messages to thousands and even millions of Internet users at a time.

How to use the Internet to invest

In order to invest wisely and not be scammed, you need to get the facts.

Don't make an investment based solely on what you read in an online newsletter or bulletin board posting, especially if the investment involves a small, thinly-traded company that isn't well known. Don't invest on your own in small companies that don't file regular reports with the SEC, unless you are willing to investigate each company thoroughly and to check the truth of every statement about the company by getting financial statements from the company and analyzing them; verify the claims of new product developments and lucrative contracts; and check out the company players and find out if they ever made money for investors before.

TIPS FOR USING A STOCK BROKER

Just like in every occupation, there are good apples and bad apples. Some people are very trustworthy and others are not. Unfortunately, with a stock broker, trusting a bad apple can jeopardize your life's saving.

How to spot stock brokers that don't play by the rules

The first thing that a stock broker should tell you is that s/he gets paid on a commission, based on the stock/mutual funds they sell. A financial planner should also disclose that their income is generated as a direct result of your investment in certain funds that they broker you. Thus your investment options may not be as great and they may not have your best interests in mind. (Most likely they will tell you this part but be sure to ask.)

What to do if you suspect stock fraud

If you suspect that you have been the victim of stock broker misconduct or negligence or any of the above listed stock frauds, you may have a stock fraud arbitration case or lawsuit – class action or individual.

CONTACT A STOCK FRAUD LAWYER OR LAW FIRM

Arbitration claims are complex. Most claimants who file arbitration claims are represented by stock fraud attorneys experienced in the field of securities arbitration who retain the services of expert witnesses to assist in the preparation of damage calculations as well as the proof of the case at the arbitration hearing.

Arbitration process

All brokerage firms incorporate a pre-dispute arbitration clause in the new account documentation. Most customer disputes are arbitrated before the Arbitration Department of the National Association of Securities Dealers, Inc. (NASD) and the New York Stock Exchange (NYSE). Investors are required to file a Statement of Claim with their respective arbitration departments in order to initiate a claim against your broker.

A Statement of Claim should include a biographical sketch, a chronology of the alleged wrong doings committed in your account, and an enumeration of the various causes of action and a precise calculation of the financial damages sustained in the account.

ARBITRATION / DISCOVERY PHASE

Once your arbitration claims have been filed, the case goes through a discovery phase, where investors (you) are usually required to produce all essential documentation relating to your financial history including bank account statements, securities brokerage statements, financial documents, and tax returns.

Likewise, brokerage firms are required to produce all documentation pertaining to your account, including a number of industry-specific documents which the average investor never sees but which contain very pertinent information relative to trading activity which may have occurred in their accounts.

The discovery phase includes discovery conferences and motion practice designed to resolve discovery disputes. During the discovery phase, the arbitrator may also recommend the possibility of mediation in the intervening time to see whether or not the dispute can be resolved without the necessity of full arbitration proceedings.

In discovery, it is essential for your attorney, to obtain all of the financial information he can about the claimant. Many cases have been won because of the pre-hearing work done by an attorney, in an effort to learn all of the essential facts about the customer. The inquiry into the financial information of a customer in a suitability or churning case starts with a document request to the customer, asking for identification of all brokerage accounts, security and commodity, maintained by the customer, or for his benefit, during recent years.

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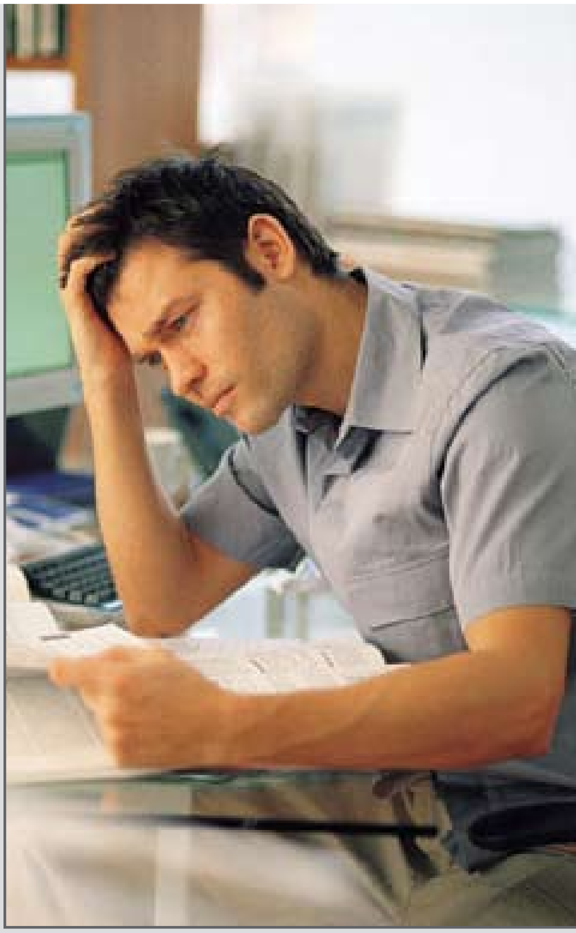

ARBITRATION / HEARING PHASE

After the discovery phase comes the hearing preparation phase which includes the preparation of briefs, subpoenas, expert witnesses, and essential documents required to prove the losses you are requesting from the Arbitration Panel. This will require considerable cooperation of the investor but a carefully prepared case is the best way of assuring a better likelihood of financial recovery.

The hearing stage is when the actual hearings are conducted and when testimony is taken from various parties and proof is given of the alleged damages sustained by the claimant. Hearing usually take two to three days, but could take considerably longer for more complex cases. Simple cases involving single transactions can often take a single day only.

Arbitrations begin by filing a Statement of Claim with the applicable arbitration forum, together with a submission agreement and the required fees, which are based on the amount of money in controversy which cost around $1,500 but can run higher depending on the nature of the case and the particular forum. In most arbitration cases, the filing fees are paid by the law firm, when a case is significant in size and the firm is working on a contingency fee.

Securities arbitrations are conducted in the same manner that a court trial is held. There are opening statements, then the introduction of evidence by the claimant, introduction of evidence by the respondents, rebuttal cases, and closing arguments. Evidence is typically introduced through the testimony of witnesses. In the typical customer-broker case, the customer testifies about his relationship with the broker, and then calls any other witnesses who support his case. Those witnesses may offer documents into evidence, such as correspondence between the parties, account statements, and similar documents.

After each claimant's witness testifies on direct examination by the claimant's attorney the witness is cross-examined by the broker's attorney. If there is more than one respondent, the attorneys typically select one attorney to bear the brunt of the cross-examination, and the rest of the respondents' attorneys examine the witness when he has completed his examination.

After all sides have produced their witnesses, either or both sides may introduce charts or summaries of the evidence produced. Since charts and summaries are not technically evidence, but merely summaries of evidence, they can be introduced by your attorney, although some arbitration panels will require that they be supported by a witness.

CONTACT MONHEIT LAW

Are you the victim of stock fraud? There's no need to be embarrassed or ashamed as stock fraud happens to thousands of innocent people who unfortunately trusted unethical people to manipulate their money.

The best way to start is by answering a few short questions so we may evaluate the facts and provide with some legal options. You are never under an obligation to continue.

How much does a stock fraud arbitration or lawsuit cost?

If Monheit Law decides to be retained and you decide to retain us and we enter into a contract agreement expressing this, we take your case on a contingency fee basis. This means that if you do not win your arbitration, class action lawsuit, or individual lawsuit – we do not get paid.

CONTACT A LAWYER / FREE NO-OBLIGATION CONSULTATION

Please contact us for a free no-obligation consultation. The more information that you can provide, the more helpful it will be. You are under no obligation to continue. Any information you provide will be held in the strictest of confidence.

If you have questions,
please call us toll-free at 1-866-735-2792.

Thank you.

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