

March 2, 2005

Dear Sirs:

I am an attorney in Kansas City, Missouri, and I represent brokerage firm customers in securities arbitration. I am writing to express my concerns regarding the proposed amendment to NASD Rule 2340. My concerns include the following:

1. If the intent of the proposed notice to customers, advising them to report discrepancies, is to address the manner in which SIPC handles claims, then changes should be to SIPC procedure, rather than placing an additional notice burden on investors, which may actually strengthen SIPC's hand in denying claims.

2. I believe that the proposed notice, advising customers to report account discrepancies, while purportedly intended to protect investors, will more likely be used by the brokerage firms to assert that investors, if they have not reported a discrepancy, have failed to take reasonable means to protect themselves. The notice, in essence, gives brokerage firms a built-in defense of estoppel or waiver to customer claims. NASD members should be advised that it is a violation of the rules of fair practice to use the failure to give notice as a basis for estoppel or waiver defenses.

3. The notice is too broad. It should state that it only relates to unauthorized transactions in a customer's account. The notice should say something to the effect of: ""Please check your confirmations and transactions to make certain you have approved all trades. If you have not authorized and approved any trade, you should notify the branch manager of the firm immediately.""

4. The proposed rule requires that the customer notify both the introducing and clearing brokers of discrepancies. Most customers do not even know what a clearing firm is. The notice must provide that the branch manager of the introducing firm be notified, and it should identify the person at the clearing broker who is to be notified.

5. The proposal states that failing to give notice does not limit a customer's "right to raise concerns." This is essentially meaningless and should be revised to provide that failing to give notice "does not in any way limit or affect your right to pursue any claims you may have." Further, the proposal says that as a result of failing to give notice, the customer is not estopped from "reporting." This should be revised to say the customer is not estopped from "pursuing claims."

6. The proposal only requires the notice regarding account discrepancies be included in customers' account statements. The notice should also be included in trade confirmations, and it should be bold-faced.

Thanks for your consideration of these matters.

John Miller
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