

St. John's University School of Law  
Securities Arbitration Clinic

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VIA Electronic Submission

Elizabeth M. Murphy  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

*Re: File No. 265-25, Investor Advisory Committee*

Dear Ms. Murphy,

The Securities Arbitration Clinic at St. John's University School of Law is very pleased to accept this opportunity to submit a statement to the Investor Advisory Committee for the upcoming meeting on July 27, 2009. The Securities Arbitration Clinic represents investors, most of whom are of modest means, in the arbitration process against brokers and brokerage firms. In addition to representing aggrieved investors, the Clinic is committed to investor education and protection. The Clinic presents Investor Education seminars at libraries and senior centers in the New York City community. Each year, the Clinic also presents a forum entitled "Consumer Day: Protecting Your Financial Future", which covers various investor protection and education topics.

The agenda for the upcoming meeting includes a discussion of investor views of possible refinements to the disclosure regime. As investor advocates, the Clinic would like to offer its views on this topic. Specifically, the Clinic supports refinements that would make existing disclosures more accessible to the average investor.

One of the issues that the Clinic deals with on a regular basis is mutual fund disclosure. Several of our clients have had issues with mutual funds which were sold to them by broker-dealers. Often, the information provided by the broker is inadequate, and sometimes contradicts the information available in the mutual fund prospectus. Often, the client is not given options, but rather is told that the fund recommended is appropriate for their needs. The prospectus usually arrives with the confirmation statement, and is so thick and intimidating that, even if the investor attempts to read it, he does not get very

far. It is not until the investor loses money that he realizes he was subject to substantially greater risk than was initially disclosed to him.

Earlier this year, the Commission approved amendments to the form used by mutual funds to register under the Investment Company Act of 1940 and to offer their securities under the Securities Act of 1933 in order to enhance the disclosures that are provided to mutual fund investors. According to the Commission, the amendments require key information to appear in plain English in a standardized format at the front of the mutual fund statutory prospectus. These amendments are intended to improve mutual fund disclosure by providing investors with key information in plain English in a clear and concise format, while enhancing the means of delivering more detailed information to investors.

It is important that investors get information that is in a format that is comprehensible. The current statutory prospectus format is wholly inadequate in terms of investor protection. In an attempt to include every disclosure that may be relevant to the investor, the resultant prospectus is overwhelming. As such, the prospectus is often disregarded by the investor as incomprehensible, especially in light of the fact that the investor is also paying a broker for advice. Knowing that investors often will not read the prospectus, or will simply glance through the beginning, brokers simplify the information about the funds, and often minimize the risks associated with the funds. Whether or not an investor is justified in relying on the statements of a broker when they are contradicted by the information in a prospectus varies by state. However, it is simply unacceptable that a broker may not be legally responsible to an investor when the information given to the investor by the broker contradicts the written information in a prospectus.

The summary prospectus does simplify the information available to an investor. It makes it easy for an investor to compare similar funds, and to understand the type of fund the broker is recommending. The amendments are not clear about the presumptions regarding what information the investor is now considering when deciding whether or not to invest. It should be clear that there is no requirement that the investor read the entire statutory prospectus, and there should be no presumption that the investor has read anything more than the summary prospectus.

Moreover, it is important that the broker have clear disclosure obligations as well. The broker should be required to ensure that the investor receives the summary prospectus at the time of recommendation, not at the time of confirmation of the purchase of the mutual fund when it is too late to change their mind and possibly be subject to a substantial sales charge if they decide to sell at that point. The broker should be liable if information he provides to the investor contradicts the written materials in any material way. The broker should disclose clearly any incentives to sell any particular mutual fund, including whether the broker receives a higher commission from certain fund companies, or other incentives such as a trip. The broker should also disclose the fact that the brokerage firm may offer funds of affiliated companies and not offer the funds of certain other fund companies, and that there may be other options available that he is unable to offer the investor.

Another topic of disclosure that should be addressed by the Committee involves the use of broker and advisor titles. Brokers, or registered associated persons, and investment advisors have very different obligations to investors. However, because of the variety of titles used by financial professionals, and the fact that financial professionals often have overlapping registrations, it is often unclear what an individual's obligations are to an investor. An investor may be told that their financial professional, who is a registered investment advisor and a registered associated person, only has a fiduciary obligation to the investor when the professional is acting in the investment advisor capacity. It is unlikely the common investor will understand the difference. The financial professional is not prefacing every conversation with the investor with, "right now I am an investment advisor," or "right now I am an associated person."

To complicate matters further, brokers often use titles which include the word advisor, such as "financial advisor". This is of particular concern to the senior community where financial professionals use misleading titles which imply the professional has some special expertise when in fact they have none. FINRA has set up a comprehensive database which details the criteria for each title. However, the onus is on the investor to look the title up in the database, it is not on the financial professional to explain their title. In the case of senior designations, NASAA has adopted a Model Rule which prohibits the use of misleading senior designations. Several states have enacted a version of the rule; however, the federal government has not.

It is important that brokers be required to disclose to investors what their titles mean, both in terms of qualifications and obligations to the investor. Financial professionals should disclose to an investor, at the beginning of their dealings, in clear and concise language, what their qualifications are. While it is true that a broker's employment history and licenses are available on FINRA's BrokerCheck, this is not sufficient information for an investor, and again, the onus is put on the investor to seek out the information. All financial professionals should be required to disclose any educational information relevant to their employment. Additionally, financial professionals should be prohibited from using designations or titles which are misleading or imply a training or specialization which the broker does not have. It would also be helpful for investors if all financial professionals had uniform obligations regardless of the capacity in which they are acting.

Overall, the Clinic is in favor of streamlining the disclosures to be made by both mutual fund companies and brokers about mutual funds. The Clinic supports the adoption of the summary prospectus and encourages the Commission to clarify the expectations of investors in light of the new rules. It should be clear that the average investor is not expected to read and understand the statutory prospectus in addition to the summary prospectus. Any other result would make the accessibility of the summary prospectus less meaningful. Further, the Clinic encourages this Committee to examine the disclosure regime as it relates to the qualifications and obligations of financial professionals, both associated persons and investment advisors. Financial professionals should be required to disclose to investors what qualifies them to offer investment advice.

We also believe that it is important that financial professionals have uniform obligations when working with investors. The Clinic encourages this Committee to consider any other changes to the disclosure regime which would further investor protection.

Respectfully,

/s/ Christine Lazaro, Esq.

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/s/ Lisa Catalano, Esq.

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