

PIABA: FEDERAL ACTION NEEDED TO STOP U.S. BROKERAGE FIRMS MISLEADING INVESTORS ABOUT ROLE AS FIDUCIARIES, WHICH FIRMS DENY TO BLOCK ARBITRATION CLAIMS

Advertising Like Doctors, Arbitrating Like Used Car Salesmen: “Huge Disconnect” Seen Between Brokerage Ad Claims and Tactics Used to Fight Aggrieved Investors; SEC and DOL Action Seen as Vital.

WASHINGTON, D.C.//March 25, 2015//A warning to consumers and a call for action from the federal government were sounded today: Nine top U.S. brokerage firms – including Merrill Lynch, Fidelity Investments, Ameriprise, Morgan Stanley, Allstate Financial, and Charles Schwab – advertise in public as though they are trusted fiduciaries acting in the best interest of investors and then deny in non-public arbitration cases that they have any such duty to avoid conflicted advice, according to a new report from the Public Investors Arbitration Bar Association (PIABA).

Available online at www.piaba.org, the PIABA report concludes that conflicted advice costs U.S. investors \$17 billion a year – a total of nearly \$80 billion since the Dodd-Frank act directed the Securities and Exchange Commission (SEC) to study imposing a fiduciary standard rule on brokers to ban conflicted advice. The PIABA report comes as both the SEC and U.S. Department of Labor (DOL) are considering taking action on such a rule to protect investors.

Contrasting brokerage firm advertising claims with the lesser-known arguments the firms make in arbitration proceedings outside of the public eye, the PIABA report shows how the ad pitches of nine leading brokerage firms -- Merrill Lynch, Fidelity Investments, Ameriprise, Wells Fargo, Morgan Stanley, Allstate Financial, UBS, Berthel Fisher, and Charles Schwab – are directly at odds with the strikingly different message the firms send to aggrieved investors who file arbitration cases after suffering losses from conflicted advice.

For example, Merrill Lynch advertises as follows: “It’s time for a financial strategy that puts your needs and priorities front and center.” Fidelity Investments appeals to investors with these words: “Acting in good faith and taking pride in getting things just right. The personal commitment each of us makes to go the extra mile for our customers and put their interests before our own is a big part of what has always made Fidelity a special place to work and do business.” Nonetheless, Merrill Lynch, Fidelity, and all seven of the other brokerage firms using the fiduciary-like appeals in their advertisements eschew any such responsibility when it comes to rebuffing investor claims in arbitration.

The PIABA report concludes that **“there is a compelling case to be made for a ban on conflicted advice in order to protect investors. In the absence of such a standard, brokerage firms now engage in advertising that is clearly calculated to leave the false impression with investors that stockbrokers take the same fiduciary care as a doctor or a lawyer. But, while brokerage firms advertise as though they are trusted guardians of their clients’ best interests, they arbitrate any resulting disputes as though they are used car salesmen.”**

Adding to the confusion is the fact that five of the nine brokerage firms – Ameriprise, Merrill Lynch, Fidelity, Wells Fargo, and Charles Schwab – have publicly stated that they support a fiduciary standard. But these firms are every bit as vociferous as the other four brokerages in denying that they have any fiduciary obligation when push comes to shove in arbitration cases filed by investors who have lost some or all of their nest egg due to conflicted advice.

Report co-author Joseph C. Peiffer, a New Orleans-based arbitration attorney and president of the Public Investors Arbitration Bar Association, said: **“In this atmosphere of misleading advertising and a complete disavowal by brokerage firms of the same ad claims in arbitration, investor losses will continue to mount at the rate of nearly \$20 billion per year until the SEC and DOL prescribe the long-overdue remedy: a ‘fiduciary duty’ standard banning conflicted advice.**

Until then consumer confusion and losses will reign as the result of a striking difference between the positions brokerage firms take when soliciting customers and those they take when those customers arbitrate claims against the same firms. This is a huge disconnect that simply cannot be allowed to go on.”

Also speaking during a PIABA news event today was Ethel Sprouse, an elderly woman from Cedar Bluff, AL. Along with her husband suffering from Alzheimer’s, Mrs. Sprouse, who also is responsible for the care of a mentally challenged daughter, lost \$400,000 and is now in a pending arbitration case against Allstate Financial, which is disclaiming a fiduciary obligation to this couple that depended on unbiased advice.

Mrs. Sprouse said: **“My family has suffered a devastating financial loss. I was surprised and disappointed to learn that Allstate denies that it had a duty to put my interests first. Why would anyone invest their life savings with a firm that would not put their client’s interests first? The simple answer is that nobody would invest with them, which is why Wall Street’s marketing is designed to evoke the trust.”**

Report co-author Christine Lazaro, director, Securities Arbitration Clinic, St. John's University School of Law, said: **“Investors believe they are doing business with individuals they can trust, because the brokers use titles which imply trust, their advertisements give the impression they can be trusted, and the brokers say they can be trusted to look out for the best interests of their clients. A survey of the major brokerage firms show consistency in the advertising, in the tone they take on their websites, and the impression that they intend to leave on investors. Yet when that trust is breached, a survey of answers filed in arbitrations demonstrate that these same firms disclaim liability when held to account in arbitration, and rely on case law to say no such duty exists. The public face of the firms is that they hold themselves to the highest standards, while the private face of the firms, in the arbitration forum where everything is non-public, is that they are mere order-takers.”**

Other examples cited by PIABA in the report include:

- **UBS.** One advertisement from UBS reads as follows: “Until my client *knows* she comes first. Until I understand what drives her. And what slows her down. Until I know what makes her leap out of bed in the morning. And what keeps her awake at night. Until she understands that I’m always thinking about her investment. (Even if she isn’t.) Not at the office. But at the opera. At a barbecue. In a traffic jam. Until her ambitions feel like my ambitions. Until then. We will not rest. UBS.” However, UBS, like many other firms, ignores the representations in its advertising when it is forced to defend its actions. As UBS argued in one recent arbitration proceeding: “[A] broker does not owe a fiduciary duty to his customer in a non-discretionary account.”
- **Ameriprise Financial.** This firm advertises with the following words: “Once you’ve identified your dreams and goals, and you and the advisor have decided to work together, you can count on sound recommendations that address your goals. You’ll be able to clearly see and discuss how the actions and decisions you make today will affect your tomorrow. You can expect to hear about the options you have and any underlying factors to consider. Our advisors are ethically obligated to act with your best interests at heart.” Despite its advertising campaign promising to put client interests first, Ameriprise has nevertheless argued in arbitration it honors no such duty. In one recent arbitration proceeding, the firm stated: “Respondent owed no fiduciary duties to Claimants and, even if it did, no such duties were breached.”
- **Wells Fargo.** This brokerage firm uses these words in its ads: “A healthy relationship with your Financial Advisor should make you feel that your best interests are the top priority, no matter what is happening in the market and no matter the size of your portfolio. Furthermore, you should like your advisor, and both you and your advisor should feel that all concerns are heard and addressed.” In private arbitrations, Wells Fargo has refused to acknowledge owing a fiduciary duty. It stated in one

such proceeding: “The law establishes that a broker does not owe a fiduciary duty to a customer with respect to a non-discretionary account.”

- **Berthel Fisher.** This brokerage firm tells clients: “We are committed to maintaining the highest standards of integrity and professionalism in our relationship with you, our client. We endeavor to know and understand your financial situation and provide you with only the highest quality information and services to help you reach your goals.” While “highest standards of integrity” certainly sounds like a representation that a clients’ interests will be put first, Berthel Fisher says it does not owe a fiduciary duty to clients. In the wake of a recent arbitration filing, the company responded: “Respondents deny that they owed fiduciary duties to Claimants.”

ABOUT PIABA

The Public Investors Arbitration Bar Association is an international, not-for-profit, voluntary bar association of lawyers who represent investors in securities and commodities arbitration proceedings and securities litigation. The mission of PIABA is to promote the interests of the public investor in securities and commodities arbitration, by seeking to protect those investors from abuses in the arbitration process, by seeking to make securities arbitration as just and fair as systemically possible and by educating investors concerning their rights. For more information, go to <http://www.piaba.org>.

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EDITOR’S NOTE: A streaming audio recording of the news event will be available on the Web as of 5 p.m. EDT on March 25, 2015 at <http://www.piaba.org>.