

**ZIMMERMAN, AXELRAD,
MEYER, STERN & WISE, P.C.**
ATTORNEYS AT LAW

**Brokerage Firm Misconduct
Questions & Answers**

Do the obligations that a brokerage firm owes me vary depending upon the type of brokerage account that I have?

Yes. Brokerage firms employ many fancy names for brokerage accounts that make understanding the duties that they owe you somewhat confusing. But there are principally three types of brokerage accounts that are offered by brokerage firms: (1) discretionary accounts, (2) non-discretionary accounts, and (3) discount brokerage firm accounts. If you hold a discretionary account, your broker has a significant responsibility to insure the proper investment of your account. If you hold a discount brokerage firm account, the brokerage firm has very little, if any, responsibility to insure the proper investment of your account. The responsibility of a brokerage firm to the holder of a non-discretionary account is less than that owed to the holder of a discretionary account but more than that owed to the holder of discount brokerage firm account.

What is a discretionary account?

In a discretionary account, the broker makes the investment decisions and manages the account. In other words, the investor authorizes the broker to make trades in the investor's account without ever consulting the investor first before trades are effected in the account.

What is a non-discretionary account?

In a nondiscretionary account, the broker usually makes recommendations to the investor. But the investor must approve each and every transaction before they are effected.

What is a discount brokerage firm account?

As the name suggests, discount brokerage firms offer these accounts. For these accounts, the brokerage firm has a policy against its brokers even making investment recommendations. Consequently, the investor has the exclusive responsibility for making investment decisions in the account. Nonetheless, the brokerage firm does have a responsibility to properly execute all orders placed by the investor.

What are the responsibilities of a broker to an investor who has a discretionary account?

The broker, among other responsibilities, has an obligation to:

- (1) manage the account in a manner directly comports with the needs and objectives of the investor as stated in the authorization papers or as apparent from the investor's investment and trading history;

- (2) to keep informed regarding the changes in the market which affect his investor's interest and act responsively to protect those interests;
- (3) to keep his investor informed as to each completed transaction; and
- (4) to explain forthrightly the practical impact and potential risks of the course of dealing in which the broker is engaged.

What are the responsibilities of a broker to an investor who has a non-discretionary account?

The broker, among other duties, has:

- (1) the duty to recommend investments only after studying it sufficiently to become informed as to its nature, price and financial prognosis;
- (2) the duty to recommend securities suitable for the investor;
- (3) the duty to provide the investor with all information relevant to the affairs about which the investor instructed the broker;
- (4) the duty to perform the investor's orders promptly in a manner best suited to serve the investor's interests;
- (5) the duty to inform the investor of the risks involved in purchasing or selling a particular security;
- (6) the duty to refrain from self-dealing;
- (7) the duty not to misrepresent any fact material to the transaction; and
- (8) the duty to transact business only after receiving approval from the investor;

How do I know if I have a case against my stockbroker and/or brokerage firm?

The first sign that you may have a claim against your brokerage firm is if your brokerage account incurs a significant decrease in value. The next inquiry is whether the losses were caused by an overall decline in the market, your broker's misconduct, or a combination of the two. Losses due to an overall decline in the market generally cannot be recovered. But your brokerage firm is liable for losses incurred in your account that can be tied to broker misconduct.

Does your firm recommend the retention of an expert witness to determine whether I have a claim against my brokerage firm?

Yes. In fact, the firm generally will not represent an investor unless the investor first retains an expert witness to perform a preliminary analysis of the losses incurred. Such an analysis is generally necessary to properly evaluate the likely success of a claim against the brokerage firm. The firm can refer an expert witness to an investor considering a claim against the

investor's brokerage firm.

If I were to retain the firm to pursue a claim against a brokerage firm, what would the amount of the attorney's fees and expenses of the case generally be?

The amount of attorney's fees and expenses incurred in a case can vary widely. But in cases against brokerage firms, there are trends that can help give an investor an idea of the costs of such a case. Usually the case can be broken down into three parts with each part costing about the same amount in attorney's fees and expenses. Those three parts are: (1) case analysis and preparation of the statement of claim, (2) discovery and mediation, (3) presentation of the case before the arbitration panel.

Does the firm ever represent investors on a contingency fee basis against brokerage firms.?

Occasionally the firm represents investors on a contingent fee basis. The decision to represent an investor on a contingent fee basis depends upon the facts and circumstances of each case.