What You Should Know About

Investor Fraud

Malecki Law

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Welcome

I began my legal career as a securities attorney litigating against major law firms in class action cases in the news such as *In re Crazy Eddie*. During the 1990s, I represented several broker dealers and brokers in SEC and FINRA (formerly the NASD) regulatory investigations and hearings. In addition to the regulatory issues, I represented broker dealers in litigation and arbitration stemming from the "boiler room" stock frauds of the decade, including the progeny of the "Wolf of Wall Street" and organized crime on Wall Street.

After forming Malecki Law, I have represented a varying array of clients, from blue collar workers who lost all of their retirement assets in a Ponzi scheme to professional athletes, entertainers, and professional actors. I have represented "Dot Com" legends, inventors, a NASDAQ Entrepreneur of the Year to institutional investors and even the son of the founder of an old-line brokerage investment firm. I have also represented cooperators and newsworthy whistleblowers before the SEC and other governmental bodies, in addition to working with high level executives and industry professionals in employment, intra-industry and regulatory/self-regulatory matters.

Clients of Malecki Law include residents from over the globe, including China, Russia, Australia, England, Israel, Ireland, Chile, Spain, Italy, Puerto Rico, Panama, Serbia, Jordan, Iceland, Thailand, Hong Kong, British Columbia, and Canada.

Over the years, I have been awarded with several distinctions, including "AV Preeminent" by Martindale-Hubbell, a "Top Attorney" by Super Lawyers and the National Law Journal. I have appeared in New York Magazine, New York Times Magazine, the Economist and many other publications. I have been in the news, on the news and created some news, taught law school classes, trained lawyers at seminars, written many articles and met with members of both the US Congress and Senate about changes in the law that would increase market transparency and arbitration fairness.

Notwithstanding all of the above, when you hire Malecki Law, you are our top priority.

Clients generally come to us when they have or see a problem and need help dealing with the situation in front of them. We help our clients to set things right, leaving no stone unturned. It's what we do here – it's our passion. Litigation is an art and demands our dedication and prideful work. The best part of our job is helping people recover dignity, money and make sound decisions on how to achieve those ends within the parameters of their life and business goals. Our priority is to help our clients ultimately put their problem behind them through litigation, arbitration, mediation and/or settlement.

The attorneys at Malecki Law are hard-working, trustworthy, aggressive, and very accessible to our clients. Our initial consultation is always free of charge.

We welcome you to learn more about us.

If you are one of the millions of people who trust a professional advisor to manage your money, there are a few things you need to know to help you protect your assets. The average person is busy earning money and leaves the task of investing that money to an expert. Unfortunately, this opens the door for unscrupulous financial advisors to take advantage of the situation and commit fraud.

No matter how much you have invested or what your long-term goals might be, understanding the potential for investor fraud is essential if you want your money managed properly. What are some of the most common types of investor fraud?

A. Common Law Fraud (Scam) and Misrepresentations and Omissions under Federal Securities Laws

Fraud, Misrepresentations and Omissions include violations of the specific rules governing investor protection and the markets in general. These laws were created by state and federal government bodies in an effort to avoid broker dishonesty or omissions during communication with their clients.

Unsuitability

FINRA has created rules and regulations in an effort to discourage brokers from recommending clients invest in a manner that is inappropriate for their objectives, income or age.

Overconcentration

Overconcentration occurs when a broker invests in a manner that is not diversified. For instance, if a client's entire portfolio is focused on mutual funds, or stocks, or bonds, or is invested in only one sector, such as healthcare or consumer goods, the client's portfolio may be over-concentrated.

Churning or Overtrading

Churning occurs when a broker excessively trades in order to increase his or her per-trade profit or commission. Overtrading is similar, but is not done to generate commissions.

Sales Practice Violations

This includes high-pressure sales tactics and misrepresentations regarding the nature of investments. It also applies to brokers that have a relationship with company executives.

Breach of Fiduciary Duty

Brokers are required to use a high degree of care when they have agreed to manage a client's investments. They can be held accountable for making inappropriate recommendations, including recommendations to hold onto a position.

Unauthorized Trading

This is exactly as it sounds: it occurs when a broker trades without permission. Brokers have the ability to sell securities only if the value of the client's margin account falls below a firm's requirements, if the account agreement allows for securities to be sold in order to collect money that has been borrowed, or if the account has a <u>written</u> discretionary trading authorization flagging the account for heightened supervisory review.

Elder Fraud and Affinity Fraud

Investors require different attention throughout their life. Senior investors have needs related to liquidity, safety and income, and should therefore generally take fewer risks than younger investors. When investments have greater risk than appropriate for those in or near retirement, it shows these concerns were not taken into account.

Affinity fraud occurs when fraud is committed against a specific group of people. For example, if a religious institution, ethnic or local community or professional organization is victimized, affinity fraud may have occurred. Ponzi and pyramid schemes are often part of an affinity fraud.

Market Manipulation

Brokers, traders, and analysts are not permitted to create fictitious market environments in an effort to suit their own profit objectives. This is known as "hype and dump manipulation" or "pump and dump schemes," and involves steering investors toward stocks they control the market in by making false or misleading statements.

Margin Violations

Brokers must disclose the many additional and heightened risks of margin trading and the terms of a margin loan, which is not like a bank loan or a mortgage, although it is often sold that way.

Failure to Execute

Brokers are required to follow their client's direct instructions.

Breach of Contract

Brokerage firms are held to the standards set forth in the written and verbal contracts related to their clients' accounts, which incorporate FINRA Rules, SEC Rules, Federal and State Laws, as well as the common law and industry practice.

Conversion and Theft

Brokers are not permitted to take control of a client's money or transfer it to any account outside of the client's control.

Forgery

Brokers are not permitted to sign the name of a client without a power of attorney, or maintain and use photocopies of the client's signature.

Failure to Supervise

Brokerage firms must ensure senior personnel review the work of each broker on their staff.

B. Beware of Risky New, Illiquid, Complex and/or Defective Investments

Some products are defective and should not be sold to any investor. Other investments are sometimes designed for specific types of speculative, wealthy investors. The promotion and sale of these speculative investments does not break any laws, as long as they are sold to the right type of investor. These products are usually complex and feature hidden risks that are not appropriate for the average investor.

"Hedge Funds," Limited Partnership Issues, and Other Non-Conventional Investments

Brokers must disclose the true nature and risks of an investment and not recommend investments unless they have done their due diligence in researching the products and understand them fully. Many of these products are highly illiquid and speculative, with little operating history, making them inappropriate for a significant amount of a client's assets, if any.

Leveraged ETFs

Leveraged ETFs are funds that track an exchange and magnify gains or losses. They are often sold without proper risk disclosure and utilize high leverage (borrowing of money) in order to magnify gains or recoup losses. As a result, they also magnify the risks and often lead to greater loss.

Private Placements

These are often sold as safe, high-income generating investments or as a ground floor opportunity in a company that may later go public and become publicly traded at a much higher price. The former (investments) are appealing to those on a fixed income, such as retirees, the latter to those looking for a "ground floor" opportunity in a company. However, this type of investment generally limits the ability to freely sell and is generally high risk. A broker and brokerage firm need to secure a lot of information about these companies, their plans and management before they are recommended to suitably speculative clients.

Commodity Futures

Buying goods often seems appealing and "safe," but it requires a great deal of speculation around economic, social, political, and climate issues, and therefore, involves a great degree of risk.

Tenant in Common Investments (TIC) and Real Estate Investment Trusts (REIT)
TICs are often sold for tax benefits and involve real estate. REITs also usually sound like good real estate related investments. TICs and REITs are often sold as alternatives to the market, but are frequently illiquid, speculative, and affected by the overall market and economy. All of these types of investments require a lot of due diligence (homework) by the broker of the underlying company's finances and management before recommending it.

If you would like to know more about investor fraud or you believe you might be a victim, we can help. Malecki Law offers local, national and international clients effective and efficient services of the highest quality. Our goal is to find creative and practical solutions to each issue, within agreed budgets, strategies and other parameters. To learn more, contact Jenice Malecki, Esq. at 212.943.1233 ext. 3, or by email at jenice@maleckilaw.com.

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