

What is the Reasoning Behind the Arbitration Agreement?

It is almost a universal practice to include an arbitration agreement when an investor opens a brokerage account or commodities, mutual fund account. An investor will find that in the process of signing up for a brokerage account there is a standard arbitration agreement contained in the packet of information. This article addresses some of the history of the stock brokerage arbitration agreement and the reasoning behind the agreement. Not all arbitration agreements are alike and therefore if you have any questions about the legality of the agreement you should contact a competent attorney in the field of securities arbitration agreements.

The reasoning behind the accepted practice of arbitrating disputes with your stock broker and mutual fund manager is the notion that arbitration can be handled privately, with a qualified expert arbitrator in a reasonable period of time. While it is not required an investor may file a simple letter complaint. The necessity of hiring an attorney to file the complaint. It may be advisable, but it is not necessary to hire an attorney. The rules and guidelines for arbitration are set forth on the New York Stock Exchange web site or may be requested by mail.

The history of the arbitration agreement in the United States stock exchange has a 200 year history. The Courts and Congress have uniformly favored the arbitration agreement signed when the account is opened. That is not to say that all arbitration agreements are flawless. Some arbitration agreements have been voided for various reasons.

The arbitration provides a forum for disagreements that may occur with the investor and the broker. Disputes may vary in severity, but the key is disclosure of pertinent facts known by the broker that negatively effected the investor. The other reasons are obvious mishandling of a clients funds, failure to act in accordance with the clients orders and fraud like conduct. All of these reasons and variations in between can occur and sometimes do occur in the relationship of client and broker.

There is a Director of Arbitration with the New York Stock Exchange who has the duty to provide the forum and implement rules that govern the arbitration of dispute. The Director has the duty to provide lists of arbitrators who are qualified to hear specific types of disputes. There are securities arbitrators and public interest arbitrators. The Director has the obligation to report to Congress any and all issues regarding the arbitration of disputes. It is designed to be a forum that is friendly to non-broker complainants.

If you base what you do on inaccurate information, you might be unpleasantly surprised by the consequences. Make sure you get the whole Stock Market story from informed sources.

For disputes involving less than \$25,000 there is an expedited form of arbitration. For investor complainants over the age of 70 with health issues an expedited handling of disputes may be requested. According to testimony provided by the Director of Arbitration to Congress in 2005 the complaints from investors have increased since 2002. See: Karen Kupersmith, Director of Arbitration New York Stock Exchange to the Finance Committee of Congress, March 17, 2005.

Adjustments in staff and case management were suggested to keep the intent of the New York Stock Exchange vital and up to date for the protection of investors.

The New York Stock Exchange Arbitration has in the past years of 2003 and 2004 awarded the public over 70 and 80 percent of all claims presented. The rule of thumb that most arbitrators use is when applying whether information by a broker should be disclosed is: " If in doubt, disclose," according to Ms. Kupersmith.

The question of whether to sign an agreement to arbitrate is not germane because you will not get an account without the agreement. The question should be is the agreement to arbitrate you are being asked to sign legal and enforceable. That issue may require you to ask for an attorney consultant to review the arbitration agreement. A majority of well known brokerage houses have standard arbitration agreements.

Horror Stories:

There are some really nasty events that can occur between the holder and advisor of your money and you. In recent years, some down right fraud has occurred. Some of the bad dealings required the FBI to uncover. Some examples would be a broker who is not licensed and sells bogus securities. Other schemes include churning

accounts. The concept of churning means the broker buys and sells stocks on your account to get commission fees not for the benefit of your portfolio. Specious equities and other instruments are offered by a former member of the exchange that turn out to be bogus. All states have an Insurance and Securities Commissioner whose responsibility it is to regulate the activities of brokers and the products that are sold in your state.

If you believe you have a complaint or have concerns about an investment it is advisable to check with your Securities Commissioner or State Attorney General before you invest. It is much easier to avoid a bad investment than to have to undo one.

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