

About The Firm

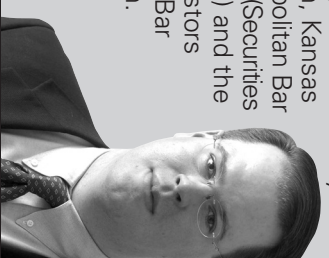
Our sole focus is securities arbitration. We do not seek out personal injury cases, criminal appointments, domestic matters, or corporate defense work. All day, every day, our practice is devoted to representing investors. Because of that focus, we can provide superior advice in this specialized area.

Within the securities industry, we are strongly committed to raising the standard of conduct among financial professionals. We work closely with the Kansas and Missouri Securities Commissioners' Office in local and state government, and local, state, and national bar associations.

Our office, located in metropolitan Kansas City, represents investors ranging from young adults to elderly retirees; and from blue-collar workers to corporate executives. Every public citizen is entitled to the protection of state and federal securities laws, and every investor deserves to be protected from rogue brokers and unethical sales practices employed by brokerage firms across the nation.

Our office is committed to giving clients thoughtful advice about their investment situations. The office often joins forces with locally and nationally-recognized securities experts in order to provide the best representation for each client.

Jeff Kruske is currently a member of the Kansas Bar Association, Kansas Trial Lawyers Association, Johnson County Bar Association, Kansas City Metropolitan Bar Association (Securities Committee) and the Public Investors Arbitration Bar Association.



IN Focus • Variable Annuities & Equity - Indexed Annuities

In prior issues, readers have probably figured out that variable annuities are the source of an increasing number of consumer complaints, and represent a large portion of the cases that my office files on behalf of investor clients. Several years later, variable annuity sales practice issues are still a hot topic for the financial media, and are still a front-and-center topic with state and national securities regulators.

Even annuity proponents themselves question the sales practices used to fuel the yearly increases in annuity sales: "I cannot imagine a personal financial situation where I'd recommend a [variable annuity] as a good idea," says John Biggs, former chair of TIAA-CREF pension funds. Before getting in to this issue's recurring topic, I want to point out again that annuities themselves are not the problem. The problem is not with fixed annuities, or annuities that are part of an employer-sponsored plan. The topic is tax-deferred annuities sold by stockbrokers, insurance agents and banks. The sales practice issues here present legal and regulatory issues abound.

Variable Annuities are investments that are part securities and part insurance. The primary benefit of variable annuities is the deferral of taxes. Variable annuities, however, carry very high expenses, and earn brokers very large commissions. There often are surrender charges if you wish to cash in the investment. Variable annuities are not suitable for all investors, however, since other investments (such as mutual funds) often can provide most of the benefits without the high cost and surrender charges. Variable annuities are particularly unsuitable in IRA accounts where the customer is entitled to tax deferral without the high cost of an annuity.

By the very nature of variable annuities, lack of liquidity makes these instruments an unsuitable investment for customers who have short-term investment objectives (such as the typical retiree, or those near retirement), or know that they will need access to cash in the near future.

While variable annuities may provide unique benefits to a limited number of investors, they do not provide any additional tax deferral treatment of earnings beyond the treatment provided by a tax-qualified retirement plan itself. This is of particular concerns to regulators and securities attorneys, as it is common for investment professionals to recommend that investors purchase variable annuities with their tax-qualified IRA rollovers.

The subaccounts in a variable annuity are "units" contrasted with "shares" in a public mutual fund. Upon initial funding in the variable annuity, the investor is allotted a fixed number of units. There are no reinvestments that could add units. The number of units remains permanent until either new cash is added that increase the number of units or withdrawals are made that reduce the number of units. This structure contrasts with mutual funds that can be put on reinvestment of dividends and capital gains increasing the number of shares. This option is not available in variable annuities. The advantage of this option is to replenish shares while at the same time the mutual fund shares are sold if the fund is set up on systematic withdrawals for income.

THE LOOKOUT

In this issue (page 3), we provide some tips for what you can look out for on a few of the more common investment abuses, including:

- Senior Investment Fraud
- Insurance Agents and Other Unlicensed Securities Sellers
- Mutual Fund Business Practices
- Variable Annuity Misrepresentation

Did You Know?

The Kansas Securities Act was passed in 1911, making Kansas the first of the United States to regulate the securities industry. Lawmakers stated that the law was an attempt to prevent the sale of securities which had nothing behind them other than the "blue sky." In the next few years, other states passed similar laws. Following the great Stock Market Crash of 1929, the federal government began to regulate investment activity with the passage of the Securities Acts of 1933 and 1934 and the creation of the Securities and Exchange Commission.

This newsletter is intended for informational purposes only, as a way for investors to gain a better understanding of their rights. The information contained within this newsletter is not legal advice and should therefore not be relied upon as such.

Midwest Securities Law Update

Vol 3 Issue 3

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Visit the firm on-line at www.kruskelaw.com to learn more about current securities industry news, the law firm, securities arbitration and litigation FAQs, download articles and reports, schedule a free consultation, and more.

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About The Firm

Types of Claims Typically Handled

Unsuitability

Customer alleges that the broker recommended investments that were not appropriate for his or her investment goals, or even his age and investment objectives.

Material Misrepresentations or Omissions

Customer alleges that the broker intentionally misled him or failed to disclose a material fact about an investment.

Failure to Diversify

Customer alleges that the broker over concentrated their portfolios in minimal sectors.

Variable annuities

Carry very high expenses, and earn brokers very large commissions.

Churning

Customer alleges that the broker purchased and sold securities solely to generate commissions, without regard to the customer's investment objectives or goals.

Unauthorized Trading

Customer alleges that the broker entered transactions into the account without the customer's knowledge or approval.

Breach of Fiduciary Duty

Customer alleges that the broker breached his duty (position of trust and confidence) to a client.

Negligence

A claim for negligence is that the broker failed to use reasonable diligence in handling the affairs of the customer, and did not act as a reasonable and prudent broker would have acted.

Selling Away

This often occurs in situations where the broker is not reporting a particular transaction to his or her employer.

Margin Violations

Failure to fully inform the customer of margin risks can result in liability for any losses caused as a result.

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Variable Annuities & Equity - Indexed Annuities (continued)

In the variable annuity, when withdrawals are made the units are permanently reduced and there is no replenishment of these units. Therefore, the units must perform to overcome this structural deficiency. Further, coming out of a bear market the value of the mutual fund holding would go up faster as there would be more shares. The value of the variable annuity sub-account units in a rising market would be penalized by virtue of having fewer units.

As recently as May 27, 2003, NASD issued on of many "Investor Alerts" concentrating on the deceptive sales practices registered representatives utilize when recommending variable annuities. Of note in the May 27 release is section 7, "Variable Annuities within IRAs". Here the NASD reiterates the position that: "[I]nvesting in a variable annuity within a tax-deferred account, such as an individual retirement account may not be a good idea. Since IRAs are already tax-advantaged, a variable annuity will provide no additional tax savings. It will, however, increase the expense of the IRA, while generating fees and commissions for the broker or salesperson."

Equity-Indexed Annuities are financial instruments in which the issuer, usually an insurance company, guarantees a stated interest rate and some protection from loss of principal, and provides an opportunity to earn additional interest based on the performance of a securities market index. Equity-Indexed Annuities (EIA) have characteristics of both fixed and variable annuities. Their return varies more than a fixed annuity, but not as much as a variable annuity.

EIAs theoretically give you more risk than a fixed annuity, but less risk than a variable annuity.

According to one recently published estimate, in 2004 sales of EIAs increased over 50%, from \$14 billion in 2003 to an estimated \$22 billion.

EIAs are complex investments. Many EIAs permit investors to participate in only a stated percentage of an increase in an index. Many of these investments also impose a "cap rate" that represents the maximum annual account value percentage increase allowed to investors. EIAs have other features that contribute to their complexity such as minimum guarantees and fees and expenses, including surrender charges, premium bonuses, and multiple premium payment arrangements. In addition, investors may assume mistakenly that EIAs provide the same returns as an index mutual fund.

Particular concern with EIAs should be directed to the sales practices employed in recommending these investments to customers. Typically, the sales materials do not fully disclose the features and risks of the product. Examples of EIA sales materials include: "A win-win investment vehicle;" "Growth Potential without Market Risk;" "How Your Retirement Funds Can Have: Security of Principal, Higher Than CD Rates of Interest, Opportunity for Growth (No Losses)!" Because of the complexity of variable annuities and EIAs, and the costly features that may or may not benefit an investor, these products should be analyzed thoroughly to determine if an investment professional made a suitable recommendation for the investor.

Recent Developments in Securities Law...*Court Ruling Gives New Avenues for Investors*

Defrauded investors have a new avenue to sue stockbrokers and securities dealers in Kansas after a federal judge's ruling that the Kansas Consumer Protection Act covers securities sales.

The ruling may make it easier to sue for investment losses caused by Kansas brokers because the consumer law is less demanding to sue under than other traditional avenues of recourse, such as the Kansas Securities Act or federal laws.

U.S. Magistrate David Wasse ruled July 28, 2005 that a 1983 change in the consumer law opened the door to a Shawnee woman's claim that two investment firms and their owners violated the state statute by selling mutual funds with inadequate disclosures.

In the News**Securities Fraud On the Rise in Kansas**

In August 2005, a Johnson County jury convicted Melvin D. Bryant for committing securities fraud. The conviction resulted from Bryant, a former insurance agent and securities professional, selling an investor an interest in a fictitious High Yield Trading Program that would return 40% per month for six months. The overseas investment, known as the "Capital Enhancement Program," referred to the Federal Reserve Bank and the International Chamber of Commerce in its promotional documents to make the program appear legitimate.

Bryant, 51, faces a sentence up to 38 months in prison, a fine up to \$200,000 and up to \$50,000 in restitution.

In a similar scheme, Shawnee county resident Donald Atteberry was arrested in August 2005 on felony securities charges related to the alleged sale of investments in a cattle embryo program. Atteberry, who resides in Berryton is charged with engaging in business as a broker-dealer or agent without registration, unlawful acts in connection with the offer, sale or purchase of securities, violation of an order issued under the Kansas Securities Act, and the offer or sale of unregistered securities.

The State alleges that Atteberry operated a cattle embryo investment program, and that he did not properly register the investment program, did not have a license to sell the investment, and violated a prior cease and desist order. The state contends that the investment program was operated as a "Ponzi scheme" where money from recent investors was used to payoff early investors.

Ex-Chiefs Players Among Alleged Victims in Securities Fraud Case

KANSAS CITY, Missouri. - A suburban Kansas City man was charged with using a securities fraud scheme to bilk investors - including former Kansas City Chiefs players Dan Salcaunna, Devon Cherry and Tracy Simien - out of more than \$900,000 over a 10-year period. A state grand jury issued a 19-count indictment against Kurt J. Holdeman this past June. Holdeman, 45, of Raymore, is currently free on \$20,000 bond.

Prosecutors allege in court records that Holdeman lied to investors in his company, Mesa Data Services, falsely claiming that the company was about to be purchased by electronics retailer Best Buy Co. Holdeman also is accused of making up business relationships with other companies and failing to disclose that the securities were not licensed in Missouri. It is estimated that the victims' losses ranged from \$1,000 to \$245,000.

Carnahan Enters Into Consent Order with Wachovia Securities, LLC

Missouri Secretary of State Robin Carnahan's Commissioner of Securities, David B. Cosgrove, issued a consent order in June against Everen Securities, Inc. and First Union Securities, Inc. now known as Wachovia Securities, LLC.

The Order requires Wachovia to pay \$300,000 to the Missouri Secretary of State's Investor Education and Protection Fund for the alleged failure of Everen Securities, Inc., and First Union Securities, Inc. to supervise an agent in Missouri.

William Ramey Mead, Jr., was a registered agent of Everen Securities, Inc. and First Union Securities, Inc., working in branch offices located in Belleville, Illinois and Clayton, Missouri from 1992 until 2002.

The order alleges that William Ramey Mead, Jr., made unsuitable investment recommendations, but was not disciplined at any time by either Everen or First Union until his employment was terminated in May of 2002.

Mead failed to document clients' financial status, including annual income, liquid assets, and net worth on a sampling of 38 new account forms completed by him. The order alleges that Mead often encouraged clients not to provide personal financial data, which minimized the supervisor's ability to make an appropriate suitability determination.

Mead is no longer registered to sell securities in Missouri.

Wachovia indicates in the Consent Order that it has enhanced its supervisory procedures in detecting and preventing customer account abuses by its Missouri registered agents relating to the suitability of investment recommendations.

From May 2002 to October 2004, Wachovia entered into settlement agreements in excess of \$2 million with former clients of Mead.

**THE LOOKOUT
Common Investment
Abuses to Watch Out For** **Senior Investment Fraud**

Volatile stock markets, low interest rates, rising health care costs, and increasing life expectancy, combined to create an opportunity for investment fraud against senior investors. Older investors are being targeted with increasingly complex investment scams involving unregistered securities, promissory notes, charitable gift annuities, viatical settlements, and Ponzi schemes all promising inflated returns.

 Insurance Agents and Other Unlicensed Securities Sellers

While most independent insurance agents are honest professionals, too many are lured by high commissions into selling fraudulent or high-risk investments, such as promissory notes, ATM and payphone investment contracts and viatical settlements. The person running the scam instructs the independent sales force - usually insurance agents but sometimes investment advisers and accountants - to promise high returns with little or no risk.

 Mutual Fund Business Practices

Although mutual funds play a tremendous role in the wealth and savings of our nation, ongoing scandals throughout the industry clearly demonstrate that some in the mutual fund industry are putting their own interests ahead of America's 95 million mutual fund shareholders. State securities regulators, the SEC, NASD, and mutual-fund firms themselves have launched a series of inquiries into mutual fund trading practices. To date, more than a dozen mutual funds are under investigation and several mutual funds and mutual fund employees have either pleaded guilty, been charged or settled with state regulators.

 Variable Annuity Misrepresentation

Sales of variable annuities have increased dramatically over the past decade. As sales have risen, so too have complaints from investors. Regulators are concerned that investors aren't being told about high surrender charges and the steep sales commissions agents often earn when they move investors into variable annuities. Some investors also are misled with claims of guaranteed returns when variable annuity returns actually are vulnerable to the volatility of the stock market. The benefits of variable annuities - tax-deferral, death benefits among others - come with strings attached and additional costs. High commissions often are the driving force for sales of variable annuities. Often pitched to seniors through investment seminars, these products are unsuitable for many retirees.

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