THE PROVERBIAL "HOLD" RECOMMENDATION – IS IT SUITABLE AND LEGALLY ACTIONABLE?

Investor Question: Mr./Ms. Financial Advisor, the market has been down [for days, weeks, months] and I'm feeling anxious. What should I do?

Financial Advisor Answer: Do not panic and just "stay the course."

How many times have you heard this? Often times it's prompted by a sudden, or sometimes prolonged, market disruption: the 1973-74 oil crisis, 1987 market crash (Black Monday), recession of the early 1990s, Russian Ruble devaluation in 1998, the dot.com bubble 2000-2002, terrorist attacks on 9-11-11 and the 2007-2009 Financial Crisis. *Siri* perhaps would echo the same thing! It's early 2016 and six (6) years removed from the last down market, but we all know another one is coming. We saw the Chinese Stock Market rocked in the Summer of 2015 and the Fed continues to tease us with interest rate increases.

The turbulence table has been set, so how do you know whether the advice you're receiving is flawed, or if there are violations of any laws, rules of industry regulations – these are not black and white issues. Further complicating matters, the answers may depend on the licenses and applicable standards of care that your Financial Advisor must adhere to.

A large majority of financial professionals provide a valuable service with a high degree of professionalism. A recommendation to "hold" or "stay the course" certainly has some consoling appeal doesn't it? Advisors are quick to point to a dearth of their own firm-generated research or market data that suggests staying the course is the prudent choice – God forbid you sell and miss an "opportunity" when the market inevitably rebounds. Don't be a market timer! They have plenty of data to support this and routinely profess that a properly diversified portfolio is the key for *long-term* success. Staying the course is fine and dandy for many, but when isn't it? What if you do not have a long term investment horizon? Well that's when the rubber meets the road.

You may have various types of accounts (individual, joint, IRA, Trust, etc.) with a particular financial institution. These financial firms earn commissions on a particular transaction (i.e. the purchase of sale of a security) or they may charge an annual fee (i.e. 1-2% of the overall portfolio). Commission-based and fee-based accounts require different legal standards of care with respect to the recommendation to buy, sell or hold a particular security and investment strategy. The legal distinctions between these standards of care are beyond the scope of this article; however, at a very basic level, a Financial Advisor's recommendation to buy, sell or hold a particular security, or to adhere or deviate from a particular investment strategy, must be "suitable."

In order for a Financial Advisor to make a suitable recommendation, the securities rules, laws and regulations require that your Financial Advisor know his or her customer. I'm not talking about knowing your golf handicap, favorite post-game beverage, favorite vacation spot or the name of your cherished childhood pet. No, I'm talking about your age, investment experience, financial situation and needs, other holdings, tax status, investment objectives, investment time horizon and risk tolerance – all of which change over time along with your life-circumstances.

Often times a Financial Advisor's recommendation to hold or stay the course may be made without much analysis, but rather just pacifying afterthoughts that we've all heard many times before – sort of like your mother's advice to have a bowl of chicken soup, get plenty of rest and have plenty of liquids upon catching a cold. Effective July 9, 2012, the Financial Industry Regulatory Authority ("FIRNA"), the regulatory body that issued your Financial Advisor's securities license and predominately governs the securities industry by issuing and enforcing rules, issued a new "Suitability Rule," Rule 2111. Rule 2111 states that in order for a Financial Advisor to meets its suitability obligation, he/she must obtain and analyze enough customer information to have a reasonable basis to believe that the recommendation to hold is suitable. Think about that for a moment. The next time you bring your concerns to your Financial Advisor's attention, is he or she giving due deference to these issues when expressing to you to stay the course and simultaneously inquiring about your availability for next week's shindig at the "the club?"

The 2015 market volatility should serve as a catalyst for specific communication with your Financial Advisor. While your relationship with your Financial Advisor may be centered on a social and personal connection, you should be aware that FINRA felt it important enough to issue a new rule addressing the recommendation to "hold." So at your next quarterly or annual review meeting with your Financial Advisor, do not take a "hold" recommendation at face value. One way or another, you're paying for the advice.