Dear Madam or Sir:

As you know, broker/dealers have made a fortune over the past several years by effectively cheating their clients out of the far better returns they would receive by placing their excess funds into money market accounts. They have done this by, instead, putting the client's monies into "bank accounts" that not only provide lower yields for ALL participants, but, even worse, are "tiered" so that those with larger accounts at the broker/dealer get higher interest rates than those with smaller accounts.

Typically, at least in my experience, this has been done WITHOUT full and fair disclosure by the broker/dealer to the client. To the contrary, because the broker/dealer is anxious to get its hands on the clients' funds at lower interest rates to use to enrich themselves, they stress the fact that FDIC insurance is available for the sweep account bank deposits, WITHOUT also pointing out that balances over $100,000 receive no FDIC insurance, that there is SPIC insurance, or that, historically, the default rate in normal money market funds is sufficiently small as to suggest that no insurance is needed anyway.

I think it fair to say that, while it should be modified in some respects to require beefed up disclosure about the foregoing, your proposed rule does address some of it. However, I saw nothing that would address the following, which, in my opinion, are far more pernicious.

In this regard, as you are aware, broker/dealers almost always try VERY hard to get their clients to "agree" to place their brokerage investments and other funds in so-called "wrap accounts", wherein, in exchange for a flat percentage of the amount held in the account, the client is allowed to trade without incurring normal brokerage fees on a by securities trade basis (although additional fees CAN become payable in the case of investments in underwritten public offerings and CAN also earn additional amounts in various other ways, such as for placing customers funds in CDs or selling them debt instruments held on the broker/dealers own accounts). There are several disclosure problems in connection with the broker/dealers effectively pushing their clients into the use of "wrap accounts", and a few examples follow:

First, I do not think adequate disclosure is made of the fact that, particularly for those clients that engage in limited trading activity, the "wrap account" fees can be wildly excessive, since they are based on the total account value, not the account's earnings. For example, assume a 1% "wrap account" fee (that would be a fairly typical percentage). Also assume a $1,000,000 account balance. Obviously, the "wrap account" fee in this case would be $10,000 per annum, even if the broker/dealer never made any meaningful contribution to the equation. So, even if the client was, unlike MOST clients, able to "earn" 10% on his money annually via "total return", ten percent of those earnings would be taken by the broker/dealer even though it may have contributed almost nothing to the process other than effecting trades. In short, in this case, if the client was investing on the basis that he needed to earn $100,000 per year to meet living expenses, he might not realize that he's getting only $90,000; or that the broker/dealer is keeping the incremental $10,000 for itself. Far more disclosure of this fact is needed (better yet, the practice should be banned, if possible). The reason is that clients often are "induced" to sign up for the "wrap accounts" by the broker/dealer imposing what, very clearly, are grossly excessive fees for execution of trades in accounts that are not effected inside "wrap accounts".

Second, as regards "cash sweep accounts" specifically, you may not be aware that broker/dealers commonly follow the practice of charging "ticket fees" or other similar fees (collectively, hereinafter referred to as "ticket fees") in order to move money into and out of money market accounts if the client wants to do that instead of having the broker/dealer's normal "cash sweep" rules apply. If the client has a "wrap account", typically there is no ticket fee. However, if the client doesn't have a "wrap account" the broker/dealer operates differently, since, in that case, ticket fees are charged. The ticket fee costs involved can make it prohibitively costly for clients to opt for investing in a higher yielding money market account option instead of participating in the "sweep account" option, since the ticket fee typically is a FLAT FEE charged when money is moved into or out of the money market account, WITHOUT REGARD to the actual amount of money that is being moved into or removed from the money market account at the specific time; and this happens every single time money is moved into or out of the money market account.

For example, I think the ticket charge made by my own broker/dealer for having money moved to a selected money market account instead of being dealt with on a sweep account basis is something like $8.50 going in and $8.50 going out, as distinguished from no charge whatsoever for using the sweep account option, where, obviously, a far lower interest yield is being paid. In my opinion your proposed rule should not merely require notification of what is going on and the broker/dealer being required to get the client's informed permission AFTER full and fair disclosure, but, instead, ban this practice entirely. If you think about it for only a moment, you'll understand why. Suppose I have a $250 dividend [the amount just as easily could be much lower or higher] and standing instructions to my financial advisor to put all funds that hit my account into a selected, higher interest yielding money market account unless I instruct him otherwise. If I was to do this, I would be charged $17 if the money went in and out of the money market on two successive days, and this would be true even if the funds in question were being reinvested in the purchase of a security for which the broker/dealer was being paid a sales commission. The same reasoning applies to funds coming in from sales of securities for which the broker/dealer has already received a commission.

I would be happy to provide more information upon request. However, with all due respect, I find the brokerage practices on so-called "sweep accounts" and the use of these and other devices to push people into "wrap accounts" they don't really want or need to be downright obscene. And I think the time is long overdue for the SEC to address them effectively. In this regard, everyone understands that broker/dealers are in business, not running a charity; and no one expects them to work for free; but these practices are engaged in by all the "majors" (or at least that is what I am told); so, who in the heck is looking out for the investing public?

Respectfully yours,

G. Kirk Ellis

G.Kirk Ellis, Esq.
kirkellis35@sbcglobal.net