

INVESTOR SECURITIES DISPUTES

ARBITRATION & LITIGATION

Representing those with portfolios mismanaged by brokers, broker-dealers investment advisors or insurance advisors.

GAIL E. BOLIVER

Background

- Graduated with a law degree from Creighton University in 1979. MBA from Arizona State University in 1976 and received a Bachelors Degree from Iowa State University (1971) a Masters Degree in Political Science from Iowa State University (2001).
- A member and past board member of the Public Investors Arbitration Bar Association (PIABA). A member of the Iowa Association for Justice, the Iowa State Bar Association, the Nebraska Bar Association, the Omaha Bar Association, the Marshall County Bar Association, the Arizona State Bar Association, Arizona Association for Justice, Maricopa County Bar Association, East Valley (AZ) Bar Association and the American Immigration Lawyers Association (AILA).
- Was commissioned in the USAF in 1971 and completed pilot training in 1972. Was an instructor pilot from 1972 to 1975. Left active duty in 1976. Joined the Air Force Reserves in 1980 and retired from the Iowa National Guard in 1999

SECURITIES REGULATION - RETAIL

- **U.S. SECURITIES AND EXCHANGE COMMISSION (SEC)**
- **FEDERAL LAW & DISCIPLINARY CASES**
- **FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)**
- **F/K/A - NASD (1939-2007) - NYSE MERGER - SRO (SELF REGULATORY ORGANIZATION)**
- **LICENSE REGISTERED REPRESENTATIVES (RR'S)**
- **AND BROKER DEALERS (BD)**



INVESTMENT ADVICE - RETAIL

2 MAJOR PLATFORMS:

1. Registered Representatives (RR) [Series 7, 63; others]
Stockbrokers/financial advisors, account representatives, etc.
Broker Dealers - Morgan Stanley, Merrill Lynch...(CFP, CFA...)

2. Investment Advisors [Series 65]
Investment Advi Representative (IAR)
Firm's - Registered Investment advisor (RIA)

FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA)

Purpose: Safeguard investing public against Fraud & Bad Practices

FINRA VIOLATIONS:

- Churning (fraud)
- Ponzi Scheme
- **Bad investment Advice**
- Elder abuse
- Fraud (omissions)
- Overconcentration
- Unauthorized trading
- Others

STATE REGULATION

States: Arizona Corporation Commission
State Registered Investment Advisors

FINRA - KEY RULES (CUSTOMER PROTECTION)

Code of Arbitration Procedure (Customer v. Industry)

Governs Dispute Resolution Forum

Customer Rules - Basics

Forum Requirements:

- a) Rule 12200 Agreement or Customer Requests
- b) Rule 12206 "Eligibility Rule"
*Key Words..."occurrence or event"...
- c) Rule 12213 - Hearing Location



CASE SPECIFIC RULES

- i) Rule 12302 "Statement of Claims"
- ii) Rule 12303 "Answer"
- iii) Rule 12312 "Multiple Claimants"
- iv) Rule 1240 "List Selection"
- v) Rule 12500 "Initial Pre-hearing conference"
- vi) Rule 12503/12504 "Motions/Motion to Dismiss"
- vii) Rule 12506 "Discovery"
- viii) Rule 12602 "Attendance"; Rule 12604
- ix) Rule 12800 "Small Claims"
- x) Rule 12904 "Awards"

FINRA - WEBSITE "FOR INVESTORS"

<https://www.finra.org/investors#/>

Investing Basics and more..

- Investment Goals
- Rules
- Fees and Commissions
- Asset Allocation and Diversification
- Evaluating Performance

ASSET ALLOCATION AND DIVERSIFICATION



[HTTPS://WWW.FINRA.ORG/INVESTORS/INVESTING/INVESTING-BASICS](https://www.finra.org/investors/investing/investing-basics)

[HTTPS://WWW.FINRA.ORG/INVESTORS/INVESTING/INVESTING-BASICS/ASSET-ALLOCATION-DIVERSIFICATION](https://www.finra.org/investors/investing/investing-basics/asset-allocation-diversification)

FEES - COMMISSION OR PERCENT A.U.M.

- Commission - Charge Or Fee Per Transaction (Buy Or Sell) Percent A.U.M.

1

● Commission - purchase \$100,000 - Stock 5% = \$5,000

2

● Percent A.U.M. - over time \$100,000 - 1% = \$1,000

3

● 5 years - 1. = \$5,000; 2. if stocks moves up to \$150,000 =
1% per year $1,000 \times 4 = 4,000$
 $1,500 \times 1 = 1,500$
\$5,500

4

● Buy and hold - commission. Trader - A.U.M. (annuities broker book; reduces churning);
Claim - "same side as customer".

FINRA - STANDARDS FOR BROKERS

- **Rule 2310 - Suitability**
- **Rule 2111 - Amended July 9, 2012**
- **S.E.C. Regulation B.I. (Best Interest - June 30, 2020)**
- **Rule 3110 BD Supervision**

FINRA additional standards/guidance.

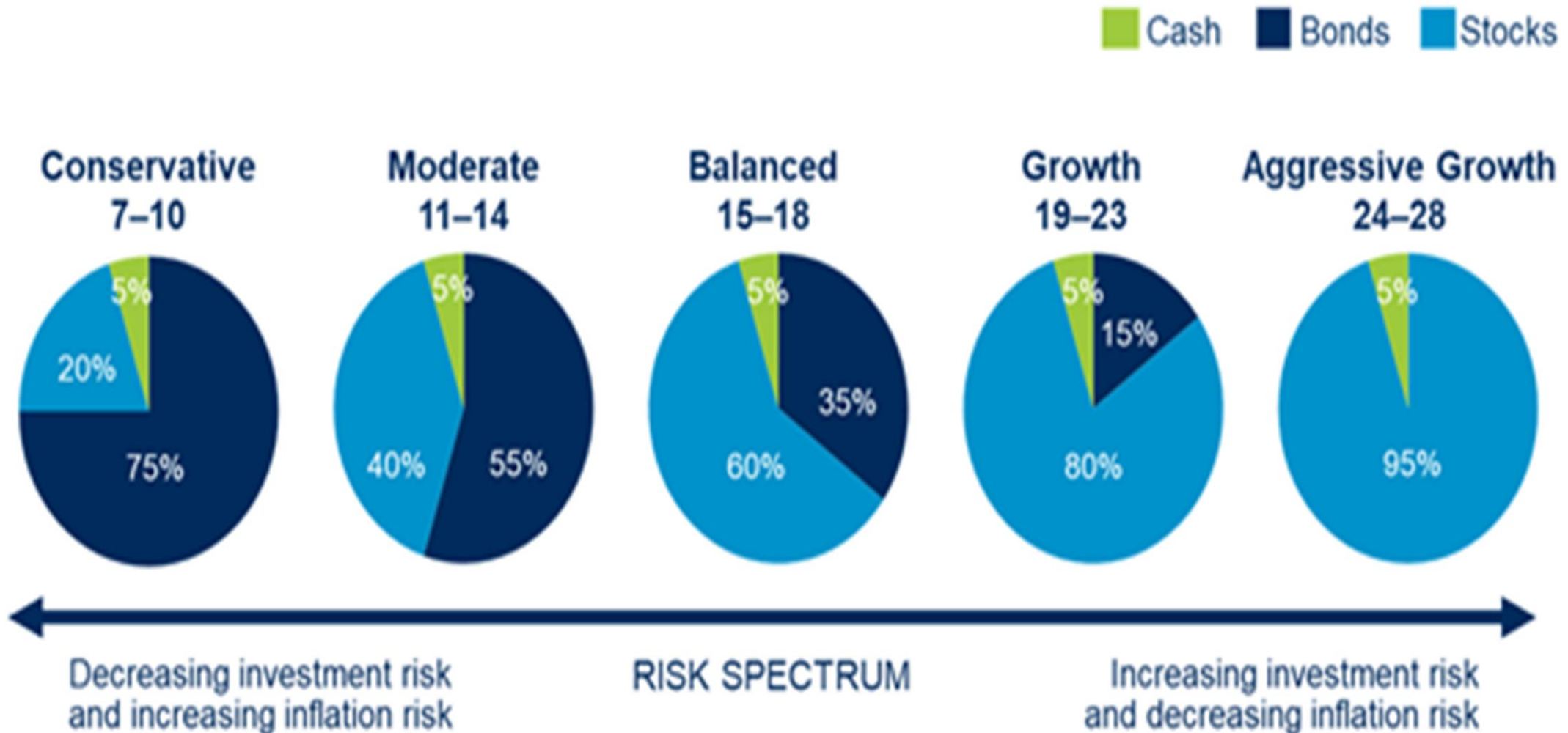
- **Notices (f/k/a)- Notice to Members - NTMs**
- **Now- Regulatory Notices (RN's)**
- **Reminders, or change of standards or other**



INVESTMENT ADVISOR REPRESENTATIVE (IAR) AND REGISTERED INVESTMENT ADVISOR (RIA)

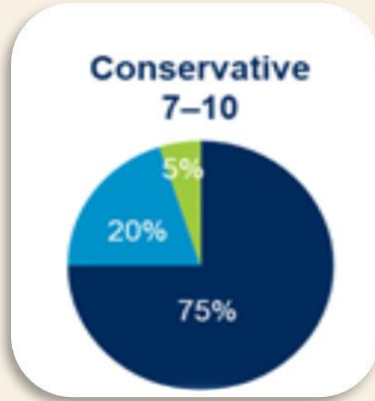
- A. Not FINRA (unless dually registered)
- B. Contract Language - Dispute Resolution
S.E.C. Registered - Study June 27, 2023 - Report to congress - 60% arbitration clause.
- C. Limiting Language: Hedge, Statute limitation, Venue, Etc.
- D. Arbitration - What Platform?
- E. AAA - Consumer or Commercial Rules
- F. I.A.R./R.I.A. - Non-payment
- G. AAA- Process - Form - Contract - Claim

SAMPLE CASE - PORTFOLIO



CONTINUED

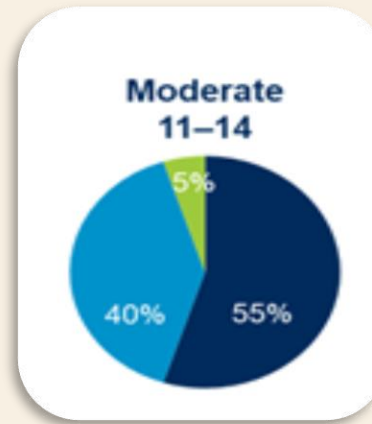
Cash Bonds Stocks



CONSERVATIVE (INCOME WITH LIMITED GROWTH):

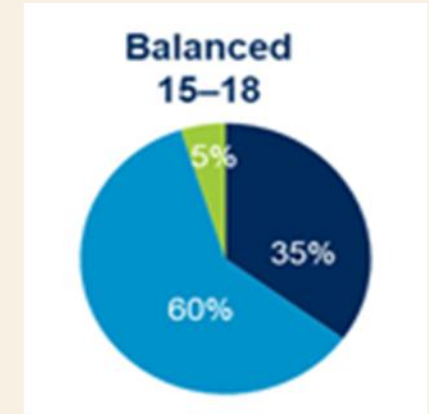
I am willing to accept limited risk to my investment principal in this account, even if that means this account does not generate significant returns and may not keep pace with inflation.

This objective generally focuses on the generation of current income.



MODERATE (INCOME WITH MODERATE GROWTH):

I am willing to accept relatively low risk to my investment principal and will tolerate some volatility to seek a modest level of income and/or objective returns. This objective generally focuses on asset appreciation sufficient to offset inflation over time while also generating current income.



BALANCED (GROWTH AND INCOME):

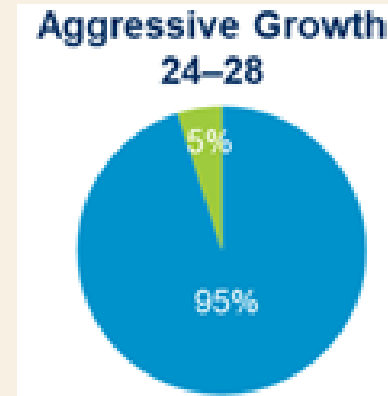
I am willing to accept moderate risk and volatility to my investment principal to seek higher returns. This objective generally targets a balanced asset allocation approach that seeks to provide growth potential and generation of interest or dividend income.

CONTINUED



GROWTH (PRIMARILY GROWTH):

I am willing to accept a relatively higher risk to my investment principal, including greater volatility, to seek higher returns over time. This objective generally targets growth of the portfolio, which may or may not focus on the generation of interest or dividend income.



AGGRESSIVE GROWTH (GROWTH):

I am willing to accept maximum risk to my initial principal in order to aggressively seek maximum returns. This objective generally seeks maximum growth potential or generation of income from equities or alternative investments.

CONTINUED



Generally, among asset classes, stocks may present more short-term risk and volatility than bonds or short-term instruments but may provide greater potential return over the long term. Although bonds generally present less short-term risk and volatility than stocks, bonds contain interest rate risk (as interest rates rise, bond prices usually fall), default risk, and inflation risk. Foreign investments, especially those in emerging markets, involve greater risk and may offer greater potential return than U.S. investments. These target asset mixes are hypothetical models and illustrate certain examples of many combinations of investment allocations that can help an investor pursue his or her goals; these target asset mixes do not constitute investment advice under the Employee Retirement Income Security Act of 1974 (ERISA). You should choose your own investments based on your particular objectives and situation. Remember, you may change how your account is invested. Be sure to review your decisions periodically to ensure that they are still consistent with your goals. Education on investment alternatives and services does not generally constitute investment advice as defined under ERISA. Asset allocation does not ensure a profit or protect against loss. For illustrative purposes only.

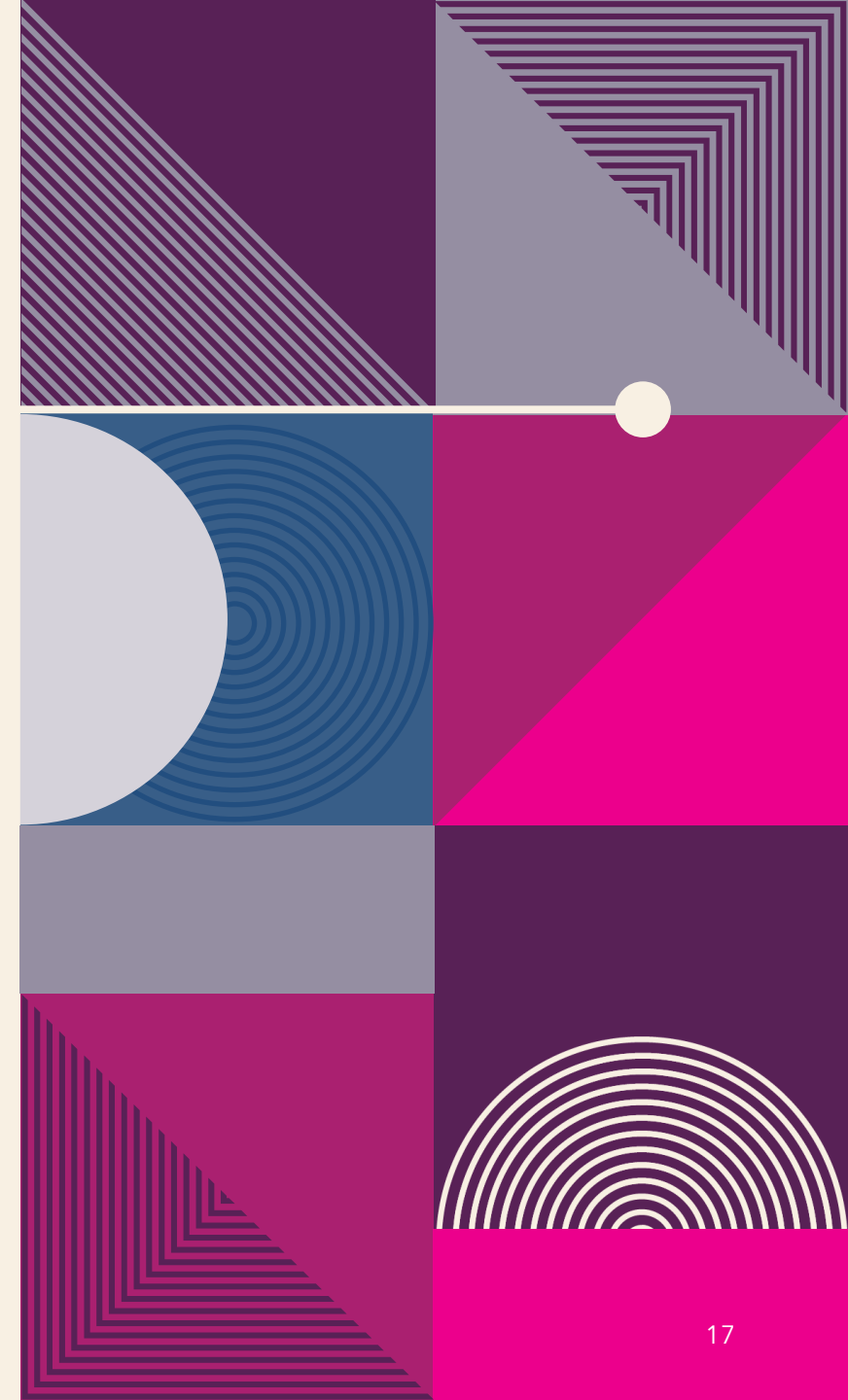
DAMAGES

DEFENSE

- **Net out-of-pocket (NOP) - Cash**
(cash in and out; no
"investment loss")

PLAINTIFF

- **Well Managed Account (WMA) - Opportunity lost**
- **Punitive Damages**
- **Attorney Fees (via Arizona State Securities Act.)**



PRODUCT - VARIABLE ANNUITY

SECURITIES PRODUCT

- Effectively “Mutual Funds Packaged in Insurance Wrapper”
- Expensive Life Insurance fees
- Commission: High
- Surrender fees - Typically 6-7 years...

ISSUES

- “Twisting” (turnover/churning)
- “Subaccount selections”

PRODUCT STRATEGY

- Long term hold product



SAMPLE CASES

Churning (almost gone)

Unsuitable portfolio

Failure to Supervise

Negligence

Fraud

Breach of fiduciary duty



SUMMARY

Representing investors involves understanding the industry, rules and guidance and the arbitration process (if FINRA case).

If representing an investor against an investment advisor, the contract for advice must be reviewed. The contract could designate arbitration (AAA or other) or no designation (so court).

The arbitration process can be faster and may be more efficient but neither are guaranteed. Discovery can be as challenging as court (despite FINRA guidance on discovery)

Questions?



Thank You!

Gail E. Boliver
602-448-8427
boliver@boliverlaw.com
www.boliverlaw.com