

DEFENDING ALTERNATIVE PRODUCTS

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DEFENDING ALTERNATIVE PRODUCTS

- FINRA Guidance
 - Rule 2310: Direct Participation Programs
 - Notice to Members 03-71: Non-conventional Investments
 - Notice to Members 05-18: Private Placements of Tenant-in-Common Interests
 - Regulatory Notice 13-18: Communications With the Public
 - Regulatory Notice 05-02: DPP and Unlisted REIT Securities

DEFENDING ALTERNATIVE PRODUCTS

- Suitability claims vs. Due Diligence claims
 - Preparing a defense where the suitability claim is weak but the due diligence claim has merit (ie. high net worth accredited investor purchased failed investment)
 - Suitability issues:
 - Accredited Investor = Suitable Investor?
 - New Account Form vs. Offering Materials
 - Discrepancies within account opening documents and disclosure documents
- New Discovery Battles
 - Obtaining records and cooperation with sponsors

DEFENDING ALTERNATIVE PRODUCTS

- Rule 12206 – AKA “The Six Year Rule”
 - Pros and cons of pursuing a motion to dismiss
 - When to file
- Statutes of Limitations
 - Application in FINRA vs. Court
 - Complicating factors
 - Fiduciary Duty
 - Ongoing Misrepresentations/Omissions
 - Lack of Damages

DEFENDING ALTERNATIVE PRODUCTS

- Experts
 - Suitability Expert
 - Is it necessary?
 - Due Diligence
 - Is it worth obtaining a separate expert specific to due diligence?
 - Damages
 - Complicated tax issues
 - Value of independent appraisals
- Expungement Proceeding
 - Who to sue?
 - Notifying the underlying customer
 - Selecting an arbitrator
 - Presentation of evidence
 - Handling high dollar settlements