

dividends

vestors, it's downright scary. But it is possible to play the futures market without making any decisions yourself. One way is to invest in a futures pool. The pools are managed by commodities trading advisers (CTAs), and they allow people to invest small sums of money (sometimes as little as \$2,000) in large portfolios of futures—much like investing in a mutual fund. If the CTA makes only one or two bad bets, it won't make too much of a dent in the pool's performance. And the pools have a panoply of built-in protection clauses. Most important, they include a guarantee that investors cannot lose more than their initial investments.

Be careful, though. Both your CTA and the broker who referred you to him should be registered with the National Futures Association (800-621-3570, or, in Illinois, 800-572-9400) which can tell you if any disciplinary actions have been brought against them.

Another option for risk-averse investors is the Oppenheimer Real Asset fund, the first mutual fund to provide exposure to the physical-commodities market. The fund, launched in March, gets around regulations that prevent conventional funds from trading commodities futures by purchasing bonds tied to futures contracts. Real Asset manager Russell Read hedges the risk by also investing up to 35% of assets in stocks and conventional debt instruments. "We're trying to open a new asset class and create a natural complement to stock and bond investing," Read says. "Commodities frequently peak in a different part of the business cycle than stocks, but over the long haul, both stocks and commodities can be strong."

Indeed, over the long haul, a well-thought-out portfolio that contains futures as well as equities can easily outperform a portfolio that contains only stocks. But before you jump onto the bandwagon, you might want to cross your fingers. And your toes. ■

See You in Market Court

You can't sue an unscrupulous broker, but you *can* get even.

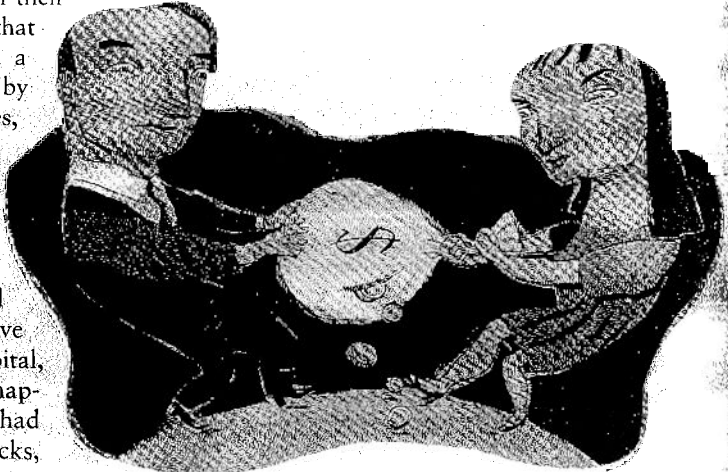
BY LINDA KESLAR

IN 1992 HELEN ANDERSON entrusted \$70,000 to a stock broker, then watched in horror as her portfolio lost \$55,000 over three years. Her broker assured her that things would turn around, but Anderson (a pseudonym) didn't buy it. She contacted the couple who had recommended him, and was amazed to hear that their losses were running into six figures. Convinced it was more than bad luck, Anderson and her friends sought help.

That scenario is far from rare. Last year the National Association of Securities Dealers (NASD) received more than 20,000 complaints of broker misconduct. "I'm seeing more cases than ever before," says David Shellenberger, a Boston lawyer who specializes in securities disputes. "If you're losing money in a great market, that's a real warning sign."

Shellenberger interviewed Anderson and her friends, then analyzed account statements and correspondence with their broker. He concluded that the broker had violated a slew of the rules set down by the major stock exchanges, as well as state laws. For example, 95% of the securities in Anderson's portfolio were high-risk instruments such as warrants and options. Since her objective was preservation of capital, those investments were inappropriate. The broker had traded in and out of stocks, mostly without Anderson's permission—an activity called churning. "In Helen Anderson's case, the portfolio would have had to earn 18.5% in 1993 just to cover the commission costs," says Shellenberger.

Churning and investing in unsuitable securities are two of the most common violations filed with the NASD. But thanks to the 1987 Supreme Court ruling in *Shearson vs. McMahon*, investors cannot sue brokers. Look at the fine print on any new-account documents you've signed in the past 10 years, and you'll see you've waived your right to sue. But you do have recourse against an unscrupulous broker.



IN THE BEGINNING

The first step is to trace the root of a misdeed; that may entail going back to the start of your relationship with your broker. "A broker is obligated to record information about a person's financial situation—their income and net worth," says Cary Lapidus, a San Francisco lawyer. Brokers often inflate those figures so they can sell a customer speculative instruments without raising the suspicions of their supervi-

Illustration: Amanda Daffy

sors. Helen Anderson's broker had recorded her liquid net worth as \$175,000—more than twice the real amount. Because brokers are not required to give clients copies of their new-account applications, and Anderson didn't ask for hers, she didn't see the inflated figure until it was too late. If you suspect wrongdoing, request a copy of your application and check it carefully. You also should scrutinize your monthly statements and trading confirmations, looking specifically for activity you didn't authorize.

If you think you have grounds to file a complaint, hire a lawyer who is an expert in securities disputes. "This has become a complex world, and if a lawyer doesn't know what he's doing, he'll get eaten alive," says Shellenberger. The Public Investors Arbitration Bar Association in Oklahoma City (405-360-8776) maintains a listing of securities lawyers.

The lawyer prepares your case for arbitration, at which one person or a panel hears testimony and examines the evidence. The New York and the American stock exchanges offer arbitration services, but the NASD's forum is the most frequently used, primarily because all brokers are NASD members. Three firms (Dean Witter, Merrill Lynch, and PaineWebber) also offer clients a forum—the American Arbitration Association.

"Arbitration is becoming more and more like court litigation," Lapidus says. Shellenberger, for example, hires consultants who analyze the client's monthly statements for signs of churning and other violations. About 70% of the time, such fact-finding facilitates the settlement of cases before they reach the arbitration table. In the action filed by Helen Anderson and her friends, Shellenberger recovered about half their losses in a settlement reached nine months after the filing.

They were lucky. According to a survey by the *Securities Arbitration Commentator*, a journal based in Maplewood, New Jersey, investors prevail in about 54% of complaints filed against brokers, typically recovering about 40% of their losses. The average complaint can take up to a year to resolve. It isn't cheap either, and if the NASD gets its way, arbitration may get even more expensive. Pending SEC approval, filing fees for investors claiming losses of \$100,000 to \$500,000 will jump from \$200 to \$300, plus a deposit of \$1,125 (up from the current \$750).

If your claim does not exceed \$10,000, you can mail a written complaint to Ruth Brooks, NASD Financial Center, 33 Whitehall Street, New York, New York 10004. For filing fees ranging from \$15 to \$75, depending on the size of the claim, a single arbitrator reviews the evidence and renders a decision. In that scenario, however, the investor prevails only 41% of the time, according to the *Securities Arbitration Commentator*.

EASIER ALTERNATIVES

Not surprisingly, many legal experts urge investors to avoid securities arbitration at all cost. One way is to use the NASD's mediation system, in which a neutral party helps the two sides reach a settlement. Last year the NASD mediated 300 cases, charging \$600 for each four-hour session. (For information, call the NASD at 212-858-4000.)

Of course, preventing a broker dispute is the ideal course. One resource you can use to check out your broker is the NASD's Central Registration Depository (call 800-289-9999 or visit www.nasdr.com). State securities agencies also provide broker information. Be aware, however, that those sources won't reveal everything. Helen Anderson's broker, says Shellenberger, had a clean record, despite some disciplinary problems.

After selecting a broker, write out your investment objectives and send them to the broker and the firm's branch manager. Keep a copy of your new-account application. Most important, thoroughly research any stock your broker recommends. "Brokers aren't like doctors and lawyers," says Lapidus. "You're not paying them for a neutral opinion." ■



Bargain Bin

What analysts don't know might help you.

BY STEPHEN GANDEL

IF YOU'VE NEVER HEARD of Arizona Instrument, NextHealth, or Telesoft, you're not alone. They're among a gargantuan group of obscure companies that stock analysts ignore, and that investors, who hang on those analysts' every word, ignore as well. Stephen Barnes says they shouldn't.

Barnes, a Phoenix portfolio manager who oversees \$25 million for 80 clients, favors the stocks of companies that are fundamentally sound but have little or no following. His reasoning? It's only a matter of time before such stocks get noticed. He's right: the mock portfolio in his newsletter, *Arizona Stock Analysis*, was up 40% through July of this year, whereas the Russell 2000 was up just 16.5%. Barnes explains his knack for picking winners and discusses some of his current favorites.

Why do underfollowed stocks offer superior returns?

When few people know the company, the stock gets mispriced. Then analysts discover or rediscover the stock, and they recommend it, highlighting what you know but the majority of Wall Street doesn't. Money flows into the stock, sending its price higher.

Do you have a recent example of that scenario?

Three-Five Systems is a good one. It did well supplying liquid crystal displays to Motorola, and it was the darling of Wall Street, receiving a lot of attention from analysts. But when Motorola had a slowdown and began to cancel orders, Three-Five ran into tough times. The