

Securities Regulation Daily Wrap Up, BROKER-DEALERS—E.D. Tenn.: No private right of action under broker-dealer financial responsibility rule, (Feb. 10, 2015)

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By Rodney F. Tonkovic, J.D.

A case was dismissed because there is no private right of action under the Exchange Act's broker-dealer financial responsibility rules. Three customers of TD Ameritrade brought a suit against the firm, complaining that it interfered with their right to convert their securities entitlement into legal ownership. The district court dismissed the complaint for failure to state a cause of action under Exchange Act Section 15(c)(3), Rule 15c3-3, or Article 8 of the Uniform Commercial Code (*Harris v. TD Ameritrade, Inc.*, February 9, 2015, Phillips, T.).

Background. According to the complaint, in 2005, one of the plaintiffs purchased shares of stock in his TD Ameritrade account. TD Ameritrade then removed funds from the plaintiff's account and credited it with the 48,000 shares that were purchased. Later, the plaintiff directed TD Ameritrade, via an entitlement order, to transfer 3,000 shares from his account to the account held by his parents (the other two plaintiffs). TD Ameritrade claimed that it could not comply with the entitlement order. The plaintiffs filed this action, asserting that TD Ameritrade is interfering with their right to convert their securities entitlement into legal ownership and that they are not able to enjoy the benefits afforded legal owners of the shares.

Exchange Act. TD Ameritrade argued that the complaint failed to state a claim for relief because there is no private right of action under Exchange Act Section 15(c)(3) or Rule 15c3-3. The plaintiffs countered that Rule 15c3-3 grants customers an "absolute right" to demand their securities in certificate form.

Rule 15c3-3, promulgated under Section 15(c)(3), provides that a customer of a broker-dealer has the "absolute right" to demand the physical delivery of certificates for fully-paid securities. The court observed, however, that no courts that have considered the question have found a private right of action under either Section 15(c)(3) or Rule 15c3-3. The court accordingly found that the plaintiffs failed to state a plausible claim for relief.

UCC. The plaintiffs similarly contended Article 8 of the UCC granted them enforceable property interests in their securities. Neither the parties nor the court were able to identify any authority allowing a private cause of action under the relevant provisions of Article 8, and the court found that the plaintiffs failed to assert a plausible claim for relief.

The case is No. 4:14-cv-017.

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Companies: TD Ameritrade, Inc.

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