

# ST. LOUIS POST-DISPATCH

## Your Privacy Isn't Secure in the Securities Industry.

By Thomas Grady

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If the sender of a specific piece of personal communications wants its content to remain private, his desire is protected by the U.S. Constitution's 9<sup>th</sup> Amendment via numerous Supreme Court rulings that put the right to privacy squarely in the human rights category. If you violate someone's right to privacy, you violate one of their human rights. Which means, you're in trouble.

Unless, of course, you're a retail securities firm. Then it's no problem.

Brokerage firms, like AG Edwards, Merrill Lynch, etc., that serve everyday account holders are categorized as "retail." Their personal communications travel in two directions: 1) those sent from the stock broker inside the firm to a client or prospect and 2) those sent to the stock broker from a client or prospect.

Let's examine #1 first. By affiliation, the stock broker forfeits his privacy rights on all communications sent to clients or prospective clients. Here's how this works. In order for a stock broker to even be a stock broker, he must first become a member of the National Association of Securities Dealers (NASD). The NASD can be loosely characterized as a private club with many by-laws and regulations, one of which strips its members of the right to privacy on all professional communications. In other words, when a stock broker sends a client a letter, email, fax, etc. its content has been reviewed meticulously (or should have been) by the firm's compliance department. The stock broker, by becoming a member of the NASD, fully recognizes and agrees to the forfeiture of communications privacy.

The intent of this is to ensure that the stock broker is not fabricating all sorts of equity performance facts in the communication in order to lure more assets, which of course produce more commission. This regulation is an entrenched, noble and worthwhile effort at protecting the investor.

Number 2, however, is a different matter all together. When a client or prospect sends a communication to the stock broker, it comes under the same scrutiny by unintended eyes before it ever reaches the stock broker. U.S. Postal mail is opened by compliance administration personnel before it is routed to the addressed stock broker. There is sound logic to this exercise; if there is a personal investment check in an envelope, its receipt detail must be recorded. Since it is impossible to determine whether an envelope houses a check, all envelopes are opened, exposing all private communication to unintended – and certainly curios – eyes.

With emails, it gets uglier for the investor. Unlike envelopes, emails can't physically deliver personal checks for investments, so the rationale for their review disappears. But that doesn't stop retail brokerage firms; emails are still opened and scrutinized. In fact, in most cases, they are rerouted to the brokerage firm's compliance department – and God knows who's reading them – before they ever hit the intended stock broker's computer.

So unbeknownst to the investment public, the communications they send to their stock brokers are being reviewed and stored before that stock broker even sees them. And since members of the general investment public don't belong to the NASD, which means they have not declined their privacy rights, this behavior raises serious questions about the violation of those rights.

Let me make clear that these regulations have nothing to do with the Patriot Act. These are long-standing ordinary operating procedures for the NASD.

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