

# FIDELITY'S JIHAD

## MAY 2007

Outrage doesn't even begin to describe my feelings after finding out about this story this past month. The NASD announced that it has fined two Fidelity broker dealers a **whopping** \$400,000 for preparing and distributing misleading sales literature promoting Fidelity's Destiny I and II Systematic Investment Plans, which were targeted at U.S. military personnel. These plans, which required investors to make a fixed number of monthly payments over a 10 to 15 year period, were actually outlawed by Congress in the fall of 2006.<sup>1</sup> Sadly the legislation allowed for the existing plans to remain. I agreed with the banning of these high commission plans; however I find it ridiculous and incomprehensible that Congress allowed the existing plans to continue. If the FDA found that an existing prescription drug was harmful, do you think that they would only ban new prescriptions, but allow individuals that are currently taking the harmful drug to continue on?

This in my opinion, ridiculous settlement requires for the next five years that two Fidelity broker-dealers (Fidelity Investments Institutional Services Company and Fidelity Distributors Corporation) to notify Destiny Plan holders who want to increase their investments in existing plans that they can purchase the shares of the underlying fund outside the plan without paying the creation and sales charge of up to (drum roll please...) **50%**.

***"NASD's advertising rules are designed to protect investors by prohibiting misleading sales literature and other misleading communications,"*** stated James S. Shorris, NASD Executive Vice President and Head of Enforcement. ***"In this case, the Fidelity Destiny Plans were sold using various performance charts and data that presented a misleading picture of the plans' performance. These failures were aggravated by the fact that the plans were sold primarily to military personnel, who often have limited time to study the marketing materials for investment products. And these particular products involve complex or unique features that may not be fully understood by the customers to whom they are offered or by the brokers who recommend them."***<sup>1</sup>

The NASD found that Fidelity distributed marketing materials and literature that were disingenuous. For example: From May 2003 through January 2006 Fidelity distributed a brochure entitled "Time is Money" that stated that Destiny Plans significantly outperformed the S&P 500 over a 30-year period. The reality was that over the most recent 10- and 15-year periods the time frame that was most relevant to current and prospective investors the plans substantially underperformed the S&P 500 Index. The sales literature also showed the Destiny Plans' return over 1, 5 and 10 years, as well as the life of the plan, without showing comparable returns for the S&P 500 Index which in turn created the illusion that Destiny outperformed the S&P 500 Index. The S&P 500 Index blew away the Destiny Plans during the time periods. Fidelity used the performance data of the Destiny Plan Class O shares in the charts. Destiny Plan investors couldn't even purchase those shares. Plan holders bought the high commission high expense N shares so they did not perform nearly as well.

Last but not least...The NASD found that Fidelity distributed a Destiny newsletter to over 325,000 plan holders/victims. The newsletter included a chart that supposedly showed the Destiny Plan performance. The reality was that Fidelity only showed the performance of the underlying mutual fund portfolio. They didn't include the fact that the plan holders paid a 50% upfront commission on each of the first year's payments plus a continuing sales charge on each additional payment until the plan payments were completed. The returns for plan were substantially lower than advertised.

I find it quite disturbing, however not surprising, that an outrage like this has attracted zero attention in the main stream press. A \$400,000 fine and an order to tell the truth is not what I would call justice for ripping off military personnel. What it is, in my opinion is an outrage. I fail to understand how this type of penalty to an enormous corporation like Fidelity is any sort of deterrent; not to mention the free pass the press has given them. I would much rather send those responsible to **Club Jihad** in Guantanamo, Cuba. They would at least have something in common with the current inmates.

1. [NASD Fines Two Fidelity Broker Dealers \\$400,000 for Distributing Misleading Sales Literature About Systematic Investment Plan Sold to Military Personnel](#)  
NASD Press Release NASD Staff