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REGULATORY NEWS & COMPLIANCE BEST PRACTICES

Actions that can confirm client claims of trade orders or uncover bogus ones

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An investor tells **IA Week** he twice instructed his adviser to pull his funds out of the market. The adviser allegedly ignored the requests and the client suffered huge losses.

Sound familiar? Complaints like this naturally go up in a down market. Sometimes the protestations will be legitimate; other times they're fake - an attempt to squeeze some cash from the adviser.

What begins as an internal complaint can lead to a regulator - or a courthouse. "It always takes some time for lawsuits to catch up ... [with] massive losses," says **Ethan Cohen**, partner with **Schiff Hardin** in Atlanta. "I think we're going to get into a situation where people may be claiming, as fiduciaries, investment advisers should have predicted this was going to happen."

Before problems progress that far, take some actions to reduce the risks. One of the most common techniques is to request changes to one's portfolio be done only in writing. A few weeks ago, **Michelle Kennedy**, consultant with **Compass Compliance Services** in Greenwood, S.C., helped a firm shift to this type of policy in response to clients contesting adviser actions. She urges firms to have the trade desk mark tickets as "non-discretion."

The best strategy is to adopt a policy that requires confirmation of the order and some type of follow up, says **Cynthia Stamer** with **Glast Phillips & Murray** in Dallas.

Key documentation

Advertise your policy in multiple ways: your contract, engagement letter, monthly or quarterly mailings and other correspondence; even your voicemail.

One North Carolina adviser says his firm attempts to send the confirmation to the client within 24 hours and places the responsibility on the investor to alert the firm if the correspondence doesn't accurately reflect the client's wishes.

The letter the adviser sends clients at **Ameriprise Financial Services** is called a "summary letter," says **Kurt Lofgren**, VP and CCO of U.S Retail Distribution in Minneapolis. Ameriprise hasn't seen a spike in such customer complaints, he says, but rather generic suitability claims.

Advisers may warn the investor of the risk of "bottom selling" and buying into a rising market, but "if a client unequivocally tells us to sell a security, at the end of the day we will sell that security," he says.

He counsels his staff to document the advice and the conversation and capsulate it into the summary letter.

Documentation is smart because you may well get an opposite claim from a client - after the market rebounds - questioning why he was taken out of a rising security.

When Ameriprise gets a complaint, the firm's investigations group examines the adviser's notes and records of the client's calls and the adviser's trading patterns. It also will interview the adviser, the client and the adviser's supervisor "and then we'd make a decision as to whether to recompense that client," says Lofgren.

Recorded lines

"If they want to take a call like that [client orders] on an unrecorded line, they need to get it confirmed in writing by e-mail, texting or something," says **Margaret Paradis**, partner at **Baker & McKenzie** in New York

BCG Securities in Delran, N.J., recently invested in a voice-over Internet product that can record targeted calls or all calls, says CEO **Bob Paglione**. All calls involving traders are recorded. If necessary, the firm "can even play [the call] back for" the client," he says. "The conversation improves because [the brokers] know they're being recorded."

BCG went with **Alteva**, which can work with your existing telephone system or replace it, says CEO **William Bumbernick** in Philadelphia. It permits searches by the recorded audio and written notes. The costs range from $25-$50 per line per month.

Short of going this route, you could always ask a client to produce phone records.

The real solution comes down to communications. "People will start complaining about a lack of communications from their rep," says **Steve Candela**, a consultant with **SEC Compliance Consultants** in Philadelphia, who has 33 years in the business. "This always precedes an increase in people complaining about their account instructions not being followed."

"If you speak to a client once a year, speak to the client three times a year in this market," says Lofgren. "You might not have all the answers but now is the time to listen" to them.

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