



AdvisorLaw®

What to do When it Might be a Complaint

Topics We'll Discuss

01

First Steps

- Who received the communication and what should they do with it?

02

What are the Compliance Officer's next steps?

- Notify E&O
- Decide if it meets 14I reporting requirements

03

If I am the named Representative, what will I have to do along the way?

- Pay retentions / deductibles
- Gather records
- Remember what you can to support your defense
- Cooperate with your attorney

Topics We'll Discuss

04

What will the Assigned Attorney do?

- Draft a Response
- Mediate?
- Arbitrate?

05

How might this end?

- Deny
- Settle
- Award
- Finding in your favor

06

What can I do about the disclosure on my BrokerCheck?

- Expungement may be possible

First Steps



Is it a complaint?

How do I know?

Is the communication verbal? Is it in an email?

Is the client “just venting”? Hard to know.

What does your firm’s compliance manual say about receiving customer complaints?

Is it a formal written demand from an attorney? Is it a Statement of Claim?

SEND IT TO THE COMPLIANCE DEPARTMENT



***What are the Compliance Officer's
next steps?***

Errors and Omissions Insurance

Notice of a potential complaint

No downside, report it.

Form U4 14. I

14I. (1) Have you ever been **named** as a respondent/defendant in an investment-related, **consumer-initiated arbitration or civil litigation** which alleged that you were involved in one or more sales practice violations and which: (a) is still pending, or; (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or; (c) was settled, prior to 05/18/2009, for an amount of \$10,000 or more, or; (d) was settled, on or after 05/18/2009, for an amount of \$15,000 or more?

Form U4 14. I

14I. (2) Have you ever been the **subject of** an investment-related, consumer-initiated (written or oral) complaint, which alleged that you were involved in one or more sales practice violations, and which: (a) was settled, prior to 05/18/2009, for an amount of \$10,000 or more, or; (b) was settled, on or after 05/18/2009, for an amount of \$15,000 or more?

Form U4 14. I

14I (3) Within the past twenty four (24) months, have you been the subject of an investment-related, consumer-initiated, written complaint, **not otherwise reported under question 14I(2) above**, which: (a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or; (b) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?

Form U4 14. I

14I. (4) Have you ever been the **subject of** an investment-related, consumer-initiated **arbitration claim or civil litigation** which alleged that you were involved in one or more sales practice violations, and which: (a) was settled for an amount of \$15,000 or more, or; (b) resulted in an arbitration award or civil judgment against any named respondent(s)/defendant(s), regardless of amount?

Form U4 14. I

14I. (5) Within the past twenty four (24) months, have you been the **subject of an investment-related, consumer-initiated arbitration claim or civil litigation not otherwise reported under question 14I(4) above**, which: (a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the arbitration claim or civil litigation must be reported unless the firm has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or; (b) **alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?**

A hand with a watch points to a document. In the background, there is a laptop and a document with a pie chart and bar graphs. A blue arrow-shaped banner is overlaid on the image.

If I am the named Representative, what will I have to do along the way?

Definitions (My Interpretations)

Investment Related

Consumer Initiated

Sales Practice Violation

Complaint

Involved

- Anything to do with an account at the firm
- Customer has or had an account at the firm or represents someone who does/did
- Any conduct directed at or involving a customer that may violate a law or rule or firm policy or procedure
- Any grievance by a customer or any person authorized to act on behalf of the customer involving the activities of a registered person in connection with their activities involving securities or funds of that customer
- You are the IAR or Rep of record, you are named, you serviced the account

Who Decides if it is reportable?

The Firm has full discretion

The firm decides it is reportable

The firm will
send the U4 for
your signature

**Ask that they report the ALLEGATIONS
with care:**

Allegation(s) and a brief summary of
events related to the allegation(s) including
dates when activities leading to the
allegation(s) occurred.

Example of not so “careful” reporting

Claimant alleges that, in approximately 2007, Claimant’s registered representative recommended various unsuitable private-equity products. Claimant further alleges breach of contract, material omission, fraud, unsuitability, control-person liability, and failure to supervise under applicable federal and state securities laws, common law, and FINRA rules and industry standards.

Example of “careful” reporting

Claimant alleges that, in approximately 2007, representative recommended various unsuitable private equity products and other causes of action related to the recommendation.

Example of not so “careful” reporting

Client alleges that representative violated Texas Securities Act, breached his fiduciary duty, committed fraud and misrepresentation, acted negligently, and made unsuitable recommendations.

Example of “careful” reporting

Customer alleges unsuitable recommendation of ETF portfolio in 2023 and other causes of action.

Example of not so “careful” reporting

Claimant alleges that, in 2012, their representative recommended various unsuitable private equity products and alleges breach of contract, fraud, unsuitability, and failure to supervise under federal and state and securities laws, and relevant FINRA Rules.

Example of “careful” reporting

Customer alleges unsuitable recommendation of private equity products in or around 2012, as well as other causes of action.

A photograph of a business meeting. In the foreground, a person's hand holds a pen over a document with text. Another person's hand points at a tablet displaying a bar and line chart. A third person's hand points at the same chart. The background shows three people in business attire (suits and blouses) looking at the tablet. A blue semi-transparent banner is overlaid across the middle of the image.

What will the Assigned Attorney do?

An Attorney has been assigned...

Is it a grumpy email?

- Compliance may reply on their own.

If it is a Demand Letter or a Claim for Arbitration, an attorney will likely be assigned to reply on behalf of the firm and the Representative.

The attorney needs the facts. The firm should put a litigation hold on all documents (don't alter or destroy anything related to this client). All related documents, whether deemed relevant or not, should go to the attorney. This includes email and text messages with the client.

Tell your attorney as much as you can - they are on your side.

Upjohn Warning

To Mediate or not to Mediate

Often, firms will try to settle a matter before going to binding arbitration. This may be achieved through informal mediation between the lawyers, or a mediator may be engaged.

Get a good mediator that knows the industry. If both sides are unhappy but can live with the Settlement, it may be a good one.

If you go to an Arbitration Hearing

It takes a long time

It is expensive

You may not win

The arbitration panel's decision is binding on both parties. It may not feel fair.

Insurance may not take the risk

The Errors and Omissions carrier may deem the facts to be too risky to go to a hearing. They may offer a settlement amount and say that, if you want to fight further, they will not pay. The policy usually gives the carrier this discretion.

Possible Results

Firm Denies the claim

Firm Settles the Claim

You win at arbitration

You lose at arbitration

All are reportable on your
Form U4 and feed to
BrokerCheck or IAPD

A close-up photograph of a person's hands holding two interlocking puzzle pieces. The person is wearing a dark blue suit jacket and a striped tie. The puzzle pieces are light gray. A semi-transparent blue banner with a right-pointing arrow shape is overlaid across the center of the image, containing white text.

What can I do about the disclosure on my BrokerCheck?

Are disclosures on my record permanent?

Yes, unless you do something about it.

You can engage an experienced firm to attempt to expunge your record. The rules have become more challenging in recent years, and there are no guarantees. The process is costly and time-consuming, but possible.

What else could go wrong

If the allegations are that you have violated a rule or regulation, your regulator (FINRA, your State Securities Division or Insurance Department, or the SEC) may make an inquiry or start an investigation.

This can lead to an enforcement action that would also be reportable on your record.

These can end in Letter of Caution (not usually reportable), Settlements (called AWCs), or Orders or Awards against you.

Best to avoid Customer Complaints

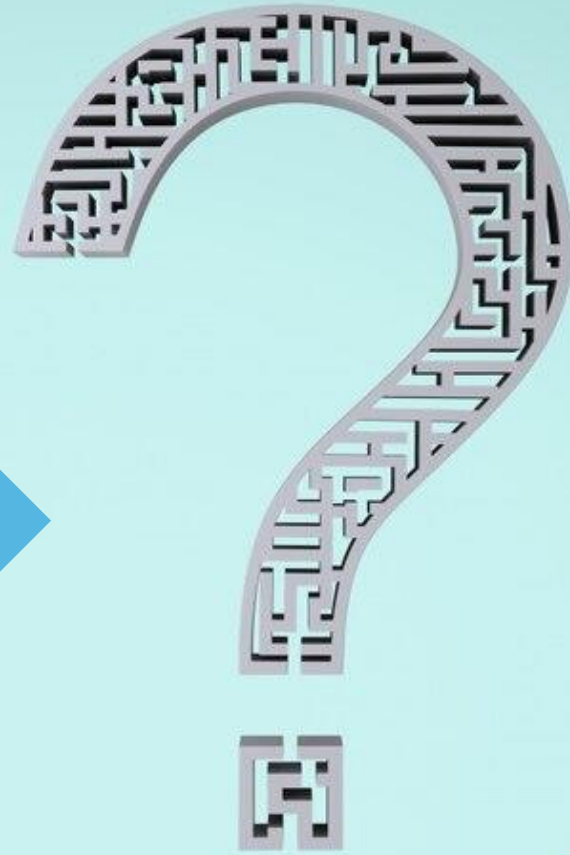
- Communicate regularly with clients
- Follow your firm's procedures
- Know the rules
- Don't get overwhelmed and rushed

Remember, we live in a litigious and highly regulated world.

Complaints may happen. Have patience and rely on the folks who do this often, your compliance team, and/or your attorney.

Be patient as it is a long process.

Q&A





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