By Thomas D. Giachetti

Steel Yourself for What Lies Ahead

History has shown us that as meltdowns happen, the level of customer issues goes up. Advisors need to be prepared.

One lesson to be learned from history is that history repeats itself. Following the dot.com meltdown or "tech-wreck" of 2000, we saw a significant increase in customer complaints and securities arbitration filings. After the 100-year flood, followed by the perfect storm, also referred to as the worldwide financial crisis of 2008, we saw a significant increase in customer complaints and securities arbitration filings. And now we expect to see a surge in customer complaints and securities arbitration filings stemming from the "Corona Crash" of 2020.

This surge in customer complaints not only will be the result of the sudden, steep decline in the markets, but also will be due to today's unprecedented market volatility. To address this important matter, I consulted with my partner, Brian Carlis, who has successfully handled both typical and complex complaints and arbitration matters throughout the country for almost 30 years.

In recent years, Brian has seen a growing trend in customers' sending less formal letters of complaint, seeking a pre-filing, amicable resolution, before commencing a formal securities arbitration proceeding. Brian cautions that RIAs should be careful in responding to these less formal complaint letters. There will be circumstances when a "less is more" approach will be the favored response. In certain circumstances, a substantially detailed reply may be warranted. Regardless, the wording of any response should be carefully considered.

If these less formal customer complaints cannot be amicably resolved, or if the customer simply proceeds to a formal arbitration filing, RIAs will find

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themselves named as a respondent in a securities arbitration proceeding. If the RIA's business model is a hybrid, it is quite possible that the RIA, or the investment advisor representative, will be subject to mandatory FINRA jurisdiction for the arbitration of the dispute.

One major difference we have seen since 2008 is that American Arbitration Association arbitrations have become far more prevalent with the RIA business model. Since 2008, a significant amount of customer investment assets have moved from the traditional, commission-based broker-dealer model, to the fee-based RIA model. For this reason, we anticipate that the volume of AAA arbitrations involving RIAs will increase substantially.

AAA VS. FINRA

Arbitration as a means for resolving securities industry disputes has gained popularity, in part, because it is less expensive and less time-consuming than litigating in a court of law. In many court systems throughout the United States, it can take two or more years to get to trial from the time of the filing of a complaint. Most FINRA arbitration claims get to hearing within 17.4 months and sometimes sooner. AAA arbitrations typically get to hearing in less than one year.

There are many differences between AAA and FINRA arbitration. In addition to AAA arbitrations moving at a more rapid pace, AAA fees are typically higher than FINRA fees. Most AAA arbitrators charge on an hourly, or per diem basis for their service. Depending upon the amount of compensation paid to AAA arbitrators and the number of days of the arbitration hearing, arbitration at the AAA can potentially cost tens of thousands of dollars more than a FINRA arbitration.

Brian advises that if you receive a customer complaint letter, or are served with an arbitration filing, you should the complain to your errors and omissions carrier. Many errors and omissions policies give the insured the right to select the counsel to defend them in the arbitration proceeding. As a general rule, errors and omission carriers will approve their insured's requests to appoint legal counsel, as long as counsel is experienced in securities arbitration matters and agrees to the billing rates permitted by the carrier. Securities arbitration practice is significantly different than litigating in a court of law and RIAs faced with securities arbitration claims should be certain that they are represented by experienced securities arbitration counsel. **IA**

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