

## RIA Arbitration Numbers Have Increased; Make Sure You're Represented

Customer complaints should be taken seriously and reported to your errors and omissions carrier right away.

It can be unsettling to receive a letter of complaint from a customer or be served with an arbitration filing. For direction on how advisors should address these matters, I spoke to my partner, and chair of our Securities Arbitration Group, Brian Carlis. He and his team have successfully defended advisory firms throughout the country in securities arbitration and other types of regulatory matters for decades. In addition, when called upon by an RIA, Brian has also successfully prosecuted damages claims on behalf of an RIA's client against rogue brokers and other investment professionals.

The good news is that many such complaints lack merit, Brian advised. Still, regardless of your assessment of the merit, or lack thereof, any complaint you receive should immediately be reported to your errors and omissions carrier. Failure to report a customer complaint or arbitration filing in a timely manner can lead to a denial of coverage.

Also, most policies permit insureds to request appointment of legal counsel, who can assist in dealing with any customer complaint you might experience. In recent years, we have 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.

Still, RIAs should seek assistance in responding to these less formal complaint letters. There will be circumstances where a "less is more" approach will be the best method of responding. But in certain circumstances, a substantially detailed response 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, the advisory firm will find itself 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 arbitration of the dispute.

### MORE RIA ARBITRATIONS

One major change we've seen since the 2008 financial crisis is that American Arbitration Association arbitrations have become far more prevalent with the RIA business model. One reason most likely is that since 2008, a significant amount of customer investment assets have moved from the traditional, commission-based broker-dealer model, to the fee-based investment advisory model. For this reason, we anticipate that the volume of AAA arbitrations involving advisory firms will increase substantially. Most Investment Advisory Agreements between RIA's and

their customers contain a provision mandating that any dispute be submitted to the AAA for resolution.

Arbitration is an alternative to a more traditional state or federal court lawsuit. Arbitration 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. Parties in arbitration very rarely wait that long to get to a hearing.

Typically, arbitration hearings are scheduled for three or four days, several months in advance. They are conducted very much like a court trial. There are opening and closing statements, introduction of evidence and examination and cross-examination of witnesses. Arbitrators are permitted to question witnesses as well and often do. Rules of evidence apply in arbitrations but are usually not strictly enforced. Arbitrators commonly will admit evidence over objection, rather than exclude it. Awards usually are written and signed by the arbitrators. Absent agreement by the parties, arbitrators do not have to provide a reason for their decision.

Remember that a securities arbitration 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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