

## Official client complaints increase

Advisors should learn how to defuse anger

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Complaints against financial advisors typically increase during market meltdowns, and this recession is proving to be no exception. But experts say that by practising a little preventative medicine, advisors can prevent a problem from growing into an official complaint.

The numbers are sobering: as of the end of July, the **Investment Industry Regulatory Organization of Canada** had received a total of 842 complaints about investment professionals, including 292 from the public. That puts complaints on track to be at least as numerous as in 2008, when the total reached 1,532, of which 452 were from the public. Both of those totals are up significantly from 2007, when complaints numbered 1,205, including 374 from the public.

This is not exactly surprising. As IIROC numbers over the past decade show, significant market dips are typically followed by sharp upward spikes in client complaints. Advisors will be dealing with the fallout of last year's market meltdown for years to come. Conversely, when market stability returns, client complaints decline.

One of the key lessons advisors should be taking from this episode is knowing how and when to defuse client anger, say lawyers and accountants. As unpleasant as the task may seem, successful efforts in the early stages can mean avoiding something much worse — such as a regulatory investigation, or even a lawsuit — down the line.

In fact, the initial conversation with an irate client can be the most important one of all. Although most firms have formal policies in place to deal with client complaints, it's not always easy to know when to handle such faceoffs alone — and when to refer the matter to others.

At the heart of it, advisors must decide whether they deal with clients' concerns "right up front" and successfully neutralize a conflict, says Gordon Johnson, a securities litigator with **Borden Ladner Gervais LLP** in Vancouver, or risk being drawn into a confrontation and "saying things that come back to cause harm down the road."

There are some strategies that advisors can try at the very outset without prejudicing their position in the future should the effort fail. One is to be prepared for tough questions from clients who fall into an older demographic slot. Such clients may be closer to retirement and, therefore, far more concerned about their losses.

This group may also be among an advisor's richest clients; that means their losses are larger and that they may well have the means to take their complaints all the way through the complaint and litigation process.

"They may be at or near the peak of their savings," points out Peter Weinstein, an investigative accountant and business valuator with **Stern Cohen LLP** in Toronto.

Weinstein, who specializes in assessing damages when client complaints end up in litigation, says typical older investors "have a limited investment horizon and they may or may not be able to make up their losses."

Weinstein, who can be retained by either the client or the advisor, says that based on what he is seeing, the number

of lawsuits is currently higher than what it has been in recent years — and that rate is continuing to ramp up.

Typically, Weinstein's work begins when the usual complaints process has been exhausted. But his experience has given him considerable insight when it comes to the best ways to sort problems out in the early stages.

In many cases, a precise explanation of what happened — and why — is all that is required, he says. Advisors who can do that and answer their clients' questions in full have a better chance of cooling off tempers.

This can start with something as simple as reviewing exactly how much a client has put into a specific account, when the funds were put in and how they have grown or declined over certain periods of time. A similar tracking exercise should be conducted for amounts that have been withdrawn. Management fees and expenses also have to be taken into account.

These assessments can show that a client's perception of their losses may be out of sync with reality, as many clients have strong memories for the high point of their portfolios but their recollections may be dim when it comes to periodic dips, transfers or withdrawals.

Meanwhile, BLG's Johnson suggests other, similar types of analysis early in the process, so long as a client has an open mind and is willing to listen to an alternative scenario.

In that case, it can be helpful to take a client back five years and show the result if fixed-income investments had been chosen over equities at that time. (Weinstein uses a method that compares relevant stock and bond indices to show this relationship.)

Depending on the time frame that is chosen, clients may well find that they would have arrived at the same place, in terms of investment gains, regardless of the route they chose.

It's also often highly instructive to remind clients that because virtually all equities went down at the same time, it's very difficult to conclude that particular investment decisions led to the losses. A good way to illustrate this crucial point, Johnson says, is to take clients through another type of alternative scenario.

This one would deal with different types of equities, showing the results if highly conservative equities had been chosen and riskier ones avoided. As even blue-chips have declined by 40% in many cases, the results probably would have been the same. "Those kinds of [analyses]," Johnson says, "may calm the client down."

Far more difficult is the client who has already decided that the advisor is to blame, Johnson says: "Something disastrous has happened in their lives, they've laid the blame out in their head already and, from then on, every conversation is seen as something to be used to get compensation."

So, how do you identify such clients and avoid these potentially dangerous conversations? There are some red flags to watch out for, Johnson says. One of the most important is inconsistency: be extremely careful if the client is making statements that clearly deviate from conversations that were conducted over time.

"That [behaviour] is exactly typical of both the crash from last year and the tech bust of 2001," Johnson says. (Complaints related to that downturn peaked in 2003.) He adds that these types of clients are very often the most aggressive when it comes to investment decisions. For instance, they may have demanded a trade the advisor does not recommend. In that case, it's very unlikely an advisor can successfully revisit a "reality that the client doesn't even accept" — as Johnson puts it.

In some cases, Johnson cautions, the advisor may become the focus of anger so intense that it develops into hatred. It then becomes crucial to get others involved who are objective and independent.

Then, it's best to follow the usual advice that investment firms provide: be polite, keep the conversation brief, ask for the complaint in writing and note that it will be forwarded to the branch manager, who will deal with it according to the firm's procedures. **IE**