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Helping clients through crunch

Lawsuit Risk; Advisors need to steer clients away from state of fear

Presented by



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Martin Oeser, AFP, Getty Images

Why do clients sue? Usually because they lost money and they're looking to the advisor, dealer or insurance company to recover it.

The market downturn we face today may be the sole cause of the loss but clients do not have the basis upon which to sue unless the advisor breached his duty or contractual obligations to the client.

Too often, clients refuse to spend enough time with their advisors or to disclose their personal information, which advisors are legally required to obtain before opening accounts. As well, clients will often not trouble themselves to understand explanations provided by advisors and dealers, or to read the material they are given.

Certain clients have unreasonable expectations of returns on investments, expecting every investment to yield positive returns. In a downward-moving market, advisors will need to call their clients to reassure them that markets go up and markets go down.

If the investments were suitable for them at the time, the investments were and seem to be those that will and should hold their value in the long term and have a long time horizon, then your advice may be to buy and hold. If their time horizon is shorter or if the risk of the investment no longer seems suitable, then a rebalancing will likely be in order.

Many advisors faced with such complaints reflect on their meetings with the complaining clients and recall that the clients were sufficiently knowledgeable and, therefore, able to understand the products. The advisor remembers that the explanation of the product risks seemed clear to the client.

But later, when the market turns and the client complains, the client's memory paints a picture completely different than what the advisor remembers. At this juncture, advisors worry because their integrity, reputation and licence are on the line. It is ultimately the advisor's word against the client's, but with a paper trail, advisors and dealers can prove that they fulfilled their obligations -- legal and regulatory.

The market downturn has caused advisors, bank managers and senior officers to worry about complaints from clients -- no matter how groundless they may seem. Advisors have been asking me over the past few weeks, what if my client wants to move his account entirely into cash? Assuming the investments are sound and those you expect will hold their value, I suggest that the advisor take the following steps: - Advise the client upfront that it is entirely their right to liquidate their accounts at any time--it is their money. - Advise the client if there would be any charges (DSC etc.) associated with the liquidation of any of their investments. You will need to put this in writing to the client so that they don't later accuse you of not providing them with this information. - Advise the client that by selling they will crystallize their losses, and if the investments are in good products that will likely rebound they will not have

the opportunity to allow their investments to bounce back. - Remind them of the conversation you had with them when the investments were chosen. Pull your notes, investment policy statements or other documentation and take the client through the logic. - Do not, under any circumstances, make any comments that could be construed as a guarantee to the client. This is an unusual downturn and it might not recover for some period of time. However, history

Jonathan Chevreau interviews Ellen Bessner about this column in a video posted today at

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is such that investing in sound investments over the long run favors the client well. - Remind the client that you don't have a crystal ball so you cannot know if this is the bottom of the market or not. - After you run through all these warnings, remind them again that it is their money and their choice as to whether they liquidate their account.

Remember, risk tolerance does not positively correlate with the market. In other words, as the market goes up or down, I don't believe the client's risk tolerance truly changes. It is clients' fear and greed that moves with the market -- as the market tumbles, clients fear they will lose money and this motivates them to sell and as the market improves, clients can be motivated by greed to assume risk.

Advisors need to keep this concept clearly in their minds to manage their clients and protect their business by calling their clients and managing their fear in this tough market. These are tough times but we have been here before and we will be here again.

The key is to ensure that as the market does improve, as history shows it always does, that we not forget these dreadful times and not permit clients to allow their fear and greed to rule the day. - Ellen Bessner is a litigation partner at Gowling Lafleur Henderson in Toronto. She represents dealers and advisors in litigation and regulatory matters and provides compliance courses for CE credits. She is also the author of the recently released book

Advisor at Risk - A Roadmap to Protecting Your Business.

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