

Assessing Fiduciary Complaints

FIRMA NATIONAL CONFERENCE
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Who Cares?

- Management
 - Performance, scorecards
- Operational Risk
 - Loss aggregation/mitigation; internal controls
- Regulators - Laws/Regs, including common law of agency (...whether a/c is discretionary usually the determining factor for a broker or RIA as to whether a fiduciary under state or federal law)
- In-House Counsel
 - Error → client service issue → complaint → lawsuit for breach

Why do we care?

- Reputation risk
- Early warning system
- Good client service – provide comfort to client that there is a process should something go wrong
- Demonstrate proactive process for managing risks; affirm adherence to established practices
- Turn complaints into action - identify opportunity to do more for the client or the firm; reduce follow-up or remediation costs, time, efforts

Rule References

Complaint Defined	Policies & Procedures	Supervisory Handbooks
"...written expression of dissatisfaction..."	<ul style="list-style-type: none"> • Reduce the likelihood of litigation, prevent reputation harm, control expenses, mitigate loss 	<ul style="list-style-type: none"> • Litigation and Other Legal Matters
"...consider <u>all</u> channels, in person, telephone, email, litigation, regulatory, and social media..."	<ul style="list-style-type: none"> • Centralized oversight of client communications • CEO attestation of compliance programs • Identifying, managing and analyzing complaints 	<ul style="list-style-type: none"> • Large Bank Heightened Standards • Consumer Compliance: Compliance Monitoring Systems (2018) • Corporate and Risk Governance • Asset Management; Personal Fiduciary Services; Investment Management Services ('customer') • Community Bank Supervision • Regulation 9

Rule References

Complaint Defined	Policies & Procedures	Securities Agencies
“...problem with investments, an investment account, or a financial professional, including trade orders, execution, or confirmation; dividends , fees, commissions, and more”.	<ul style="list-style-type: none">• Establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of issues.• Complaints to be reviewed by someone who does not have access to client funds	SEC <ul style="list-style-type: none">• Investor Bulletins<ul style="list-style-type: none">• Focus on ‘investor’ and registered persons• Complaints regarding registered assets/securities or mutual funds
“... any grievance by a customer or any person authorized to act on behalf of the customer involving the activities of the member or a person associated with the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.”	<ul style="list-style-type: none">• Supervisory procedures should include procedures to capture, acknowledge, and respond to all customer complaints	FINRA <ul style="list-style-type: none">• Supervision Rules<ul style="list-style-type: none">• Customer Complaints• Customer Correspondence• Recordkeeping Requirements

Complaints defined

Webster/Oxford

“...something is unsatisfactory, wrong, or simply not good”

ERISA – standard is “...what you should have known”; a complaint refers to information received which indicates or alleges that a violation of the law has occurred or is about to occur. Complaints may be specific or nonspecific, written or oral, within or outside EB’s jurisdiction and may come from a number of sources, such as individuals, news media, and other enforcement agencies

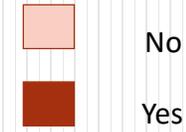
“Fiduciary” Complaint

May be governed by federal law, the governing instrument, and state laws

Common Pitfalls to Effective Fiduciary Complaint Assessment

- Limited definitions
 - Omit operating errors, client service issues, third party service issues; “consumer” vs “client” or “customer”
- Lack of data or detail
- Decentralized, centralized complaint collection
 - One collection point within multiple silos, e.g. Personal vs Institutional
- Lack of technology or other resources
- Not reviewing/knowing applicable federal law, state law, governing instrument, trust document, investment policy statement; prospectus, account objectives , etc.

Fiduciary Complaint Survey



Fiduciary Units (25)				Managed Assets		
RIAs [4]	BDs [4]	Trust Companies [2]	NR [1]	Under \$1 B [12]	\$1 B - \$20B [7]	Over \$20B [6]

Written policies, procedures, practices

Do you have written policies and procedures covering the fiduciary complaints process.

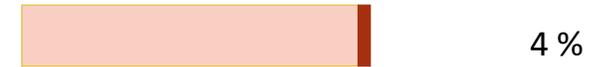


Does definition of complaint include

Telephone calls



Transaction/trade errors



Written complaints to regulators



Email



Centralization of Complaints

Employees instructed to send all complaints to specific person



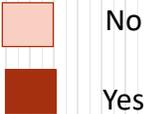
Manager



Compliance

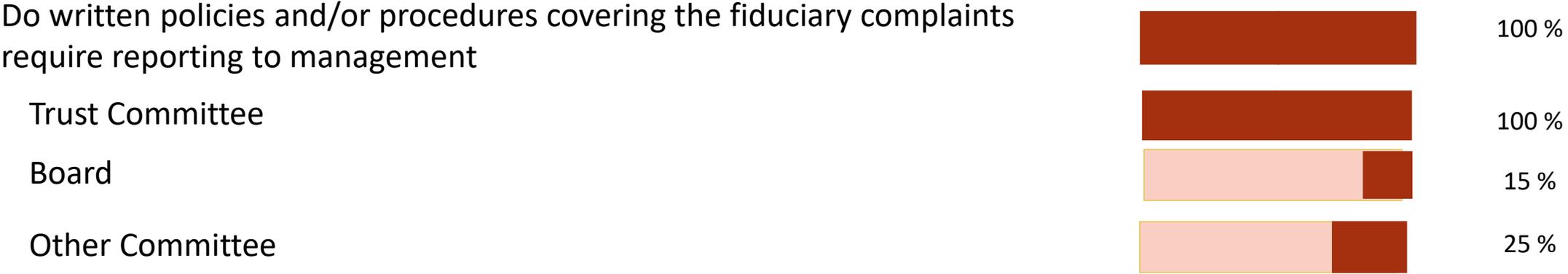


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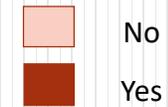
Reporting and Monitoring



Use of technology to manage complaints



Fiduciary Complaint Survey



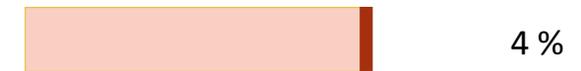
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Timing and Recordkeeping

Do written procedures address recordkeeping



Does written policy or procedure specify how quickly complaint should be resolved



Does written policy or procedure specify how long and where to retain complaint records



Number of Complaints

Lowest 0

Highest 11 note: 10 from same client

OCC "consumer" complaints closed or referred in 2018 22,119

CFPB "consumer" complaint responses in 2018 329,800

Written Polices and Procedures 100% respondents

- Compliance Policy and Procedure
- Operations Procedure
- Account Administration Policy and Procedure

Ancillary or Complementary Polices and Procedures 92 % respondents

- Client Servicing/ Client Service Issues
- Incoming Client Communications or Correspondence
- Social Media
- Whistleblowing

95% or more of client initiated inquiries were Operations or Client Service Issues

- Late or unposted dividend
- Delayed delivery of stock/asset
- Asset no longer reflected on statement
- Unrecognized debit/credit
- Statement not received
- Distribution or payment not received
- Tax forms not received
- Bill not paid
- Too much mail

Reporting/Reviews

100% respondents

- Reports to management
 - Outstanding, open or unresolved; monetary losses > \$ threshold
- Account administration review
 - Manual review process vs automated
- Annual or ongoing audits/compliance reviews
 - Cycled requests
- Regulatory examinations

Recordkeeping

92% respondents

- Client file
- Compliance Officer/Department

Retention Periods

4% respondents

- No specific turnaround times – “timely”; “promptly”; “appropriately”
- Retention periods not specified – “...in accordance with applicable standards...”

Elements of a good complaint policy

- Clear definition of what constitutes a “complaint”
 - Oral, written, electronic, other
- Clear delineation of duties, accountabilities, responsibilities
- Resolution and escalation procedures
 - Response or turnaround times, and responsible parties
- Tracking/ Monitoring/ Reporting
 - Types, frequency, root causes, trends, parties involved
- Official Recordkeeping
 - Retention periods, how and where

Sample Fiduciary Complaint Policy/Procedure Statements

Example A

“ A complaint is defined as any written statement by a customer or a person acting on behalf of a customer alleging a grievance involving the activities of the firm.

When a written complaint is received, a copy should be forwarded immediately to Compliance for follow-up.”

Sample Fiduciary Complaint Policy/Procedure Statements

Example A, cont.

“ Oral complaints should be reported immediately to the Regional Manager for administration or sales issues or to Operations for operational issues.”

Compliance will maintain a central record of all client complaints.

Each office location will maintain a file of written complaints received.

Each client has been provided with the address and telephone number of where complaints should be directed.

The Regional Manager is responsible for establishing procedures to provide this information to the customer.”

Sample Fiduciary Complaint Policy/Procedure Statements

Example B

“Policy:

All employees shall be responsible for reviewing with their supervisors and the Compliance Officer, any client complaints which may result in monetary loss or which, in their judgment is significant. The Compliance Officer shall determine whether to consult the Law Department.

Procedure:

All responses to customer complaints shall be dealt with in a timely and courteous manner. Every effort should be made to address the client’s concern. The compliance officer shall maintain a permanent file of such complaints.”

The end

Sample Fiduciary Complaint Policy/Procedure Statements

Example C

“Any written or oral communication expressing a grievance or dissatisfaction about products, services, and/or sales practices where a client requests, either specifically or by implication, that action be taken to remedy the situation is considered a complaint. This would also include any service-related complaints.

All complaints or possible complaints should be immediately reported to the Manager. A report of all complaints must be forwarded to the Compliance Department on a monthly basis. Any complaints received from a regulator must be forwarded to Compliance immediately.”

Sample Fiduciary Complaint Policy/Procedure Statements

Example C, cont.

“Compliance must be contacted immediately, if a written complaint alleges any one or more of the following: violation of any law, regulation, rule or standard; misappropriation of funds or assets, fraud or forgery; the firm or its employee is a defendant or respondent in a litigation, arbitration, judgment, or settlement; or a claim for damages exceeding \$15,000.

All complaints must be entered into the complaint database. All required information must be completed for all complaints such as client name and account number, relationship manager, investment officer, account type, discretion, dates, and brief synopsis of the situation, among others.”

Sample Fiduciary Complaint Policy/Procedure Statements

Example C, cont.

“In the case of a verbal complaint, information must be verified by a manager and entered into the system as ‘verbal complaint’.

Client responses, except for legal requests or requests from a regulator, shall be prepared by the Manager. Corrective steps needed to resolve the complaint will also be handled by the Manager. Under no circumstances should the employee make an agreement with the client to reimburse for any losses or expenses or correspond without advance approval from the Regional Manager.

Compliance will respond to regulatory inquiries. The Law Department will respond to legal inquiries.”

Creating Useful Fiduciary Complaint Practices

- **Determine what you want to achieve, collect, identify**
 - What is your definition of a complaint
 - What do you want to discover
- **Create standards and naming conventions for collectible/trackable data**
 - Provide clear and complete standard definition of what constitutes a complaint
 - Limit the number of choices, use 'drop-down menus' or 'check boxes' where possible
 - Quantify to the extent possible; paragraphs are not searchable...
- **Provide clients with written acknowledgement of the complaint**
 - Discuss steps to take or that will be taken
 - Identify any relevant communication received from the client, e.g. phone call; email message; letter
 - Summarize the details of the issue
 - Explain current status of the issue

Creating Useful Fiduciary Complaint Practices

- **Centralize collection of complaints; consider maintaining a database**
 - Fix responsibility for maintaining a complete and accurate file of complaints
 - Identifying/categorizing/coding complaint information- date; name of client; primary a/c number; account type; narrative statement of issue; summary of evidence considered; reason for decision or resolution
 - Categorize classify your response and resolutions – closed; in progress; pending action; root causes
 - Use imaging to retain copies of correspondence, where available
- **Train employees**
 - Expand awareness of accountabilities for what to identify, how to resolve or escalate, who to contact, where to report, and how to find guidance

Creating Useful Fiduciary Complaint Practices

- **Track ‘effort’ not just ‘satisfaction’**
 - Look at data by client/account or product/service type; issue type; resolution code; # of contact points; resolution time; source - allows management to identify areas that consume high efforts or resources that can be used elsewhere
 - Include a review of errors/client service issues in your periodic testing/reviews
 - Include # of contact points as well as amount of monetary loss, if any
- **Centralize regular reporting**
 - Identify governing bodies, both vertical and horizontal, who will need to consider complaint information in decision making or strategic planning

Prospective Problem/Issue Codes/Data Points

Fees1	Client alleges that fee is too high
Fees2	Client alleges fee too low
Asset	Asset/shares not received as expected
Unexpected withdrawal	Client does not recognize withdrawal
IRS	Tax notices not received
NoReply	Client alleges untimely or no response to inquiry
Investment	Investment(s) not performing
Discretionary Distribution	Client requesting additional funds or payments
Statements	Statements/ notices not received
Trade Error	Wrong asset purchased or sold

Prospective Resolution/ Response Codes/Data Points

Per Document	Resolved in accordance with fiduciary documents
Reimbursement	Funds returned to client account
Asset Allocation	Change in asset allocation
Restitution	Funds returned in excess of original amount
Investment Objective	Change in investment objective
Asset Out	Asset removed from portfolio
Asset In	Asset added to portfolio
Available Cash	Account lacked sufficient cash balances to complete transaction
Duplicate Sent	Duplicate statement sent

Fiduciary Complaint Analysis Considerations

- Are there co-trustees, advisors or other parties that need to be notified
- Does the trust document require any specific approvals by other parties for resolutions requiring an exchange of assets
- Does the resolution maintain the appropriate balance among beneficiaries
- If a monetary payout occurs would it create an inadvertent distribution, extension of credit, premature withdrawal, or taxable event
- What should occur if document is silent as to conditions applied with a resolution
- If complaint names an employee who is also a registered person, were appropriate notifications made

Key Takeaways

- You can't assess what you can't see
- The details are in the definitions
- Consider opportunities for better outcomes, not just the potential for problems
- To “assess”, you need the means to identify, measure, monitor, and reported

Questions

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