Investor Complaints: Adopting Systems to Address Regulatory Concerns

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Ish joined NRS in 2009 and is based in our San Diego office. Prior to joining NRS, Ish was the President of Manzanares Compliance Solutions, an independently owned consulting firm. Preceding his consulting career, Ish was Director of Compliance with Prudential Retirement. In addition, Ish was the President and CEO of Madison Avenue Securities, a full service broker dealer and advisor located in San Diego. Earlier in his career, Ish served as President of Foresters Equity Services, a San Diego based broker-dealer. Prior to being appointed as President at Foresters, he served as Chief Compliance Officer. He has over 20 years of experience in the financial services industry, including a position with FINRA as a Senior Examiner in Los Angeles. He served as the Chief Compliance Officer for Kennedy Cabot and Co.

He is held in high regard at FINRA and well respected by his peers in the industry. He served on the Western Region District Committee-District 2, has served as committee member of the National Association of Independent Broker/Dealers-NAIBD and the Southern California Compliance Group-SCCG. During his career, Ish has been a guest speaker at various LIMRA, FINRA and NAIBD conferences and special programs and an instructor at the FINRA Institute for the Wharton Certificate Program.

Ish holds a B.A. in psychology from Columbia University and previously maintained his series 4, 7, 24, 53 and 63.
Today’s Agenda

• What is a Complaint?
• Effective Complaint Processes
• Meeting Rule 4530 reporting requirements
• Archiving and Resolution of Complaints: How NRS can help
What is a Complaint?

- A customer’s dissatisfaction with a Financial Representative is a complaint.
- An allegation about a possible violation of FINRA, SEC and State Law.

Supervisory procedures must ensure that the Financial Institution properly identifies, resolves and handles, in accordance with the firm’s policy, all customer complaints.
What is a Complaint?

Regulatory Definition

Records of Written Customer Complaints - FINRA Rule 4513(b):

For purposes of the Rule, "customer complaint" means 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.
Why The Urgency?

In 2014, FINRA levied $134 million in fines to registered individual and member-firms through 1,397 disciplinary actions, some of which correlated to complaint initiated actions.
Registered Investment Adviser

As part of an adviser’s fiduciary duty and as a best business practice, any advisory client complaints should be handled in a prompt, thorough and professional manner.

The SEC staff examiners will request and review records of any advisory client complaints. Certain states require complaint files as required books and records for state registered advisers.
Supervisory System

Each financial institution shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations.

Final responsibility for proper supervision shall rest with the financial organization.

FINRA Rule 3110(a) and SEC Rule 206(4)-7
Inadequate Supervision

• Inadequate Supervisory Staffing. FINRA brought an action against a firm for relying on too few people to remotely conduct all of the supervisory and compliance functions for 1,274 registered representatives in 854 branch offices.

• FINRA charged that the firm’s supervision was inadequate with regard to customer complaints, amongst other items.

• As part of the settlement, the firm agreed to a fine of $100,000.
FINRA Rule 3110(b)(5)
Review of Customer Complaints

The firm must develop supervisory procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.
Establish and Maintain a Procedural System to Supervise

Institutions need to adopt procedures to implement the firm's policy and conduct reviews to monitor and ensure that the firm's policy is observed.

These may include the following:

- Maintenance of a Complaint File for any written complaints received from any clients;
- Representative receiving any written client complaint must forward the client complaint to Compliance Officer;
- Compliance Officer will promptly send the client a letter acknowledging receipt of the client's complaint letter indicating the matter is under review and a response will be provided promptly;
- Compliance Officer will forward the client complaint letter to the appropriate person or department, depending on the nature of the complaint, for research, review and information to respond to the client complaint;
- Compliance Officer will either review and approve or draft a letter to the client responding to the client's complaint and provide background information and a resolution of the client's complaint. Any appropriate supervisory review or approval will be done and noted; and
- Compliance Officer will maintain records and supporting information for each written client complaint in the firm's complaint file.
Market Challenge

In addition to being a regulatory requirement, complaints management is good business

• Effectively managing Customer Complaints is key to a good business strategy
  • “Price is not the main reason for customer churn, it is actually due to the overall poor quality of customer service” – Accenture global customer satisfaction report 2008.
  • “A dissatisfied customer will tell between 9-15 people about their experience. Around 13% of dissatisfied customers tell more than 20 people.” – White House Office of Consumer Affairs

• Upper Management should continuously evaluate customer complaints statistics to identify complaint trends related to products and customer service

• Problem Reps should also be identified and dealt with. According to FINRA, firms have indicated that they “adjust the incentive compensation payout percentage for representatives that have, for example, excessive customer complaints.”

Effectively managing customer complaints reduces risk and prevents damage to the firm’s reputation
FINRA Rule 4530

• FINRA Rule 4530 was modeled after former NASD Rule 3070 and NYSE Rule 351 and became effective July 1, 2011.

• The Rule requires firms to report statistical and summary information regarding written customer complaints.

• The motivation for these changes was to support FINRA’s continued goal of enhancing risk-based approaches to examinations.
Rule 4530 was designed to increase the reporting that FINRA firms are required to complete, with the intention that the organization will thus be able to provide improved industry oversight.

The Rule puts a 30-day deadline on the reporting of disclosure events, defined as the violation of any “securities, insurance commodities, financial or investment-related laws, rules regulations or standards of conduct of any domestic or foreign regulatory body or self-regulatory organization.”

Any written customer complaints that allege the firm is in violation as stated above are subject to the 30-day reporting deadline.

In addition to the 30-day deadline, the Rule also requires all FINRA firms to submit quarterly reports of their customer complaints to FINRA.

The quarterly reports are due 15 calendar days before the end of the quarter and must include such information as the contact name and phone number, complaint number and date, branch ID, customer account number, etc.

A full list of reporting requirements can be found on FINRA’s website at http://www.finra.org/industry/4530/rule-4530-customer-complaints.
FINRA Rule 4530 - U4/U5 Filings and Related Litigation Filings

- FINRA charged that a broker-dealer failed to timely file 121 of 131 securities-related private civil litigation complaints filed against it.

- FINRA stated that when the firm amended its written procedures in advance of the effective date of FINRA Rule 4530, it failed to include securities-related private civil litigation complaints which are reportable under Rule 4530(f)(2).

- FINRA also charged that in 13 of 20 instances requiring the firm to amend the U4s for four registered representatives named as defendants in multiple securities-related private civil litigation complaints, the firm failed to timely update the registered representatives’ Forms U4.

- As part of the settlement, the firm agreed to pay a $350,000 fine. FINRA charged that another firm failed to file timely reports on 80 occasions over a five-year period. As part of the settlement, the firm agreed to pay a fine of $120,000.
FINRA Rule 4530 - U4/U5 Filings and Related Litigation Filings

- Rule 4530(f) requires firms to promptly file with FINRA copies of specified civil complaints, criminal actions, and non-FINRA arbitration claims.

- Firms are required to amend the Form U4 for registered persons within 30 days after learning of facts requiring the amendments.

- Firms are also required to file a Uniform Termination Notice for Securities Industry Registration (U5) when it terminates the registration of an individual and must disclose in that filing, among other things, whether at the time of termination the individual was under internal review for compliance-related matters or the individual was named in a sales practice complaint.
Records of Written Customer Complaints

Every financial institution must keep and preserve a separate file of all written customer complaints and action taken by the firm, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaints.

FINRA Rule 4513(a) and SEC Rule 204-2
Market Challenge: FINRA Rule 4530 Recap

The two main FINRA Rule 4530 reporting requirements are:

1. FINRA Rule 4530(d) requires firms to report **quarterly** statistical and summary information regarding **written customer complaints**. Filing is required no later than the 15 calendar days after quarter end (e.g., Apr 15th, Jul 15th, Oct 15th, Jan 15th).

2. FINRA Rules 4530(a) and 4530(b) require firms to promptly report to FINRA, specified events and internal conclusions of violations, respectively, no later than **30 calendar days** after the firm knows or should have known of their existence.
How can NRS help?

The **cMAX Customer Complaints Module** is NRS’ technology solution to FINRA Rule 4530.

It is the newest addition to the cMAX product portfolio and demonstrates NRS’ commitment to expanding its product offering to its core market.

It establishes a central repository for all information and supporting documentation pertaining to customer complaints and a reliable process for remediation.

It enables clients to realize the benefits of technology to combat damaging complaints as part of a proactive approach to risk management.
cMAX Customer Complaints Module

Customer Complaints within ComplianceMAX

The cMAX Customer Complaints Module covers more than just Rule 4530 requirements.
Questions?
Thank you for attending today’s webinar.

For those interested in seeing how NRS can help, we will now be conducting a technology demonstration of the cMAX Customer Complaints Module.