



# Four Compliance Tips

## FOUR COMPLIANCE TIPS FROM NOVEMBER 2012

**Do not allow advisers who have not been approved by the Financial Services Authority to have anything to do with the composing, signing or sending out of suitability reports. Keep the electronic signatures of approved advisers under lock and key.**

- With the Retail Distribution Review starting on 1 January 2013, ex-advisers who will not have passed the relevant exams will have to give up their approvals as advisers. There is a serious risk that a number of these individuals will continue giving advice to their existing customers.
- Sending out advice under the name of an approved adviser is not good enough if the actual advice has been put together and is being communicated by someone who is not approved for this purpose. The approved adviser must actually have made the recommendations concerned on the basis of his or her view of what is suitable for the client.
- Classic signs of compliance problems in this area will be suitability reports that refer to "my meeting with you" when the approved adviser has never met or spoken to the client.

**Websites and other promotions for financial services firms need to contain more than just a basic risk warning on the front page.**

- The regulator insists on two different things. First, the promotion of any product or service that puts customer's capital at risk must make this clear (COBS 4.2.4R). Secondly, for retail clients, the description of the product or service must not emphasise any potential benefits without also giving a fair and prominent indication of any relevant risks (COBS 4.5.2R(2)).
- In practice, this means that every time a service is promoted on a website, you have to consider whether the downside risk has been properly and fairly presented.
- A solution to this is to keep the descriptions of the services or products out of other parts of the website. So, profiles of individuals should ideally state their role, qualifications, past experience and things about them without trying to promote the regulated activities that they do. Otherwise, one has to weave into the text something to balance the enthusiasm with which they present their work.



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- The FSA does not like bottom of the page risk warnings with good reason. People tend not to scroll down on a computer screen to see them.

## **When promoting products or services, businesses must stop making promises in promotions that they may not wish to fulfil in the future.**

- In June, the Financial Ombudsman Service ruled that a pet insurer who promised to insure an animal throughout its life had misled its customers and effectively required the firm to provide that insurance regardless of the content of the small print.
- As far back as the 1940s case of Sun Life of Canada v. Jervis, the Court of Appeal required an insurer to pay the bonuses that it had promised on a projection document given to the client when he took the policy out.
- Arguing that what was said was just advertising puff or that the small print contradicts the offer will not work if the customer buys the product or service on the basis of the promise.
- Compliance and management needs to apply some necessary control to the enthusiasm of marketing departments. Remember Hoover and its free flights to the USA offer!

## **It is time for wholesale trading desks to have another unauthorised trading audit after the Kweku Adoboli conviction and UBS £29.7 million fine for allowing it all to happen.**

- Do not move a trading desk without moving the infrastructure for it at the same time.
- Management and compliance has to be in the trading area and tuned into the office culture to spot major compliance problems.
- Trading limits breaches, unidentified internal and unmatched trades need to trigger high level prompt action.

## **Have a compliant December and tell me what you think of the new design.**