FOUR COMPLIANCE TIPS FROM JULY 2014

Behind most financial promotions problems lie faults in the way in which the product being promoted was constructed. Both manufacturers and distributors need to be aware of this.

- The FCA recently fined Yorkshire Building Society ('YBS') and Credit Suisse for issuing defective financial promotions for a structured deposit product. Neither the manufacturer, Credit Suisse, nor the distributor, YBS, seems to have understood what their customers were entitled to receive from what they were offering.
- Before marketing any product, one has to know the answer to all of the customers': "if x happens, what will I receive?"
- The promotions also promised a particularly attractive maximum return which was most unlikely to be achieved. Neither the bank nor the building society seems to have understood how improbable these returns were before launching and marketing the product.
- On financial services websites, one often finds products described obscurely because the providers do not understand them or because they want to cover up something embarrassing about the product.

A City insider who is caught passing slightly inaccurate inside information to people who may wish to trade on it should not succeed in convincing anybody that he is "unlucky".

- The Upper Tribunal decision in the Ian Hannam case concluded that passing around inaccurate information was market abuse so long as it contained or implied information that was true.
- When investment bankers tell their friends and customers that someone is interested in buying a business or part of it or that the company concerned has discovered oil, they must explain to the recipient of the information that he or she is now an "insider". This means that the person concerned must not pass the information onto anyone else or invest in the company until the material becomes publicly known.

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- Disclosure of confidential information to third parties can never be excused as being "in the ordinary course of employment" in a market abuse case.

Whatever changes to the FCA complaint rules may be in store, firms must currently report all complaints, however immaterial they are, if they allege a financial loss. They should anyway issue final responses to all complainants.

- In recent years, a number of conference speakers have suggested that firms only have to identify and report "material complaints". This is not correct. All complaints alleging a financial loss must be identified as such, recorded and reported. Indeed, neither the Markets in Financial Instruments Directives (MiFID) nor the international standard ISO 10002 impose any requirement of materiality.

- A recent suggestion made at a public event that we need to move past the definition of "complaint" in the FCA's DISP source book should be treated with the contempt that it deserves. First, "complaint" is not defined in DISP at all but in the FCA Glossary, a major gripe for compliance professionals. Secondly, firms cannot rely on such remarks as a defence to enforcement action by the regulator.

- Even if a complaint is resolved by the end of the next business day with an offer being made and accepted during that time, only laziness encourages firms not to issue a final response. All complainants who have drawn a company's attention to a problem deserve at least a thank you letter.

Do not offer partial or alternative redress or compensation in an interest rate hedging product or payment protection insurance (PPI) case unless you have evidence that the customer would have bought the alternative product.

- Where a customer has bought an unsuitable product, the firm that sold it must not offer "alternative redress" unless the alternative product on which the calculation is based would have been suitable for the customer at the time of the sale. It is assumed by regulators that sensible people do not buy inappropriate products if they have received sensible advice and the right information about them.

- So, where the loan has a twenty year term, do not offer interest rate hedging redress on the basis of a five year term to cope with a product sold with a mismatched term of ten which should not have been sold anyway. You will only be doing this to reduce your redress costs. You will not be responding to the problem or following the regulator's instructions in this area.

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- In a similar way, one of the major banks recently received considerable adverse publicity for offering compensation for its missold PPI policies on the basis that the customer would have purchased a regular premium policy. If the customers were short of money when taking out the loan and even worse where the borrowers were consolidating their debts, no policy was suitable. Equally, these lenders did not offer regular premium policies and would never have recommended customers to insurance brokers who might have been able to source one.
- Regulators and banks need to take these issues seriously. Otherwise, they risk yet another mauling before the Treasury Select Committee which they will have richly deserved.

Out and about

Dates for the diary are 16th and 17th September for the Infoline workshops that I am running in London on "introduction to SYSC" and "root cause analysis" and 15th October for the one on financial services product manufacturing.

The other big news is that the "Compliance Factory" is moving on August 7th (back) to West Hampstead.

Have a compliant summer

PS Many thanks to Chris Hamblin for his coruscating comments on the first draft and Elena Stagni for her help editing this.

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