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FOUR COMPLIANCE TIPS FOR SEPTEMBER 2012

Client agreements, insurance policies, investment terms and conditions and any other similar contract must all contain adequate details of the service or return that the firm is going to provide and the remuneration and other commitments that it is going to expects from the customer.

- If you cannot explain these documents to consumers, they need re-writing by someone who can draft the relevant explanations. An agreement is supposed to be an exchange of promises. It does not work if the promises are unclear. COBS 8.1.3R(1) requires all the parts of a client agreement to be present.

- Drafters of insurance policies could also do with avoiding being the target of comments like this from the Penrose Report on Equitable Life (the only near joke in the whole report):

  > "One senior actuary told me that he had written contracts in which he incorporated a statement that neither the contract document nor the articles of association of the company set out the whole terms of the contract. It was not immediately obvious to him that he had demonstrated his lack of capacity for the task."

- It is almost impossible for product providers or advisers to monitor whether what has been done, particularly in terms of service, complies with the relevant contract without a clear agreement in place.

Do not offer financial services concerning, or under, foreign pension, investment and tax regimes without having your advice signed off by a suitably qualified expert in the foreign country concerned.

- Offering banking, investment or other forms of financial advice in a foreign country, to customers in such locations or on the basis of overseas tax and, in particular, pensions regimes without local support is fraught with dangers. Both the local regulator and the FSA will want to know that the service provided is allowed and suitable under the local arrangements.

- Pension knowledge goes out of date very quickly. When the FSA or FOS queries advice, it will expect to see a local expert's view that a recommendation based on a foreign tax or pensions regime was sensible.

- If you receive a complaint about advice on a foreign pension or tax regime, have a foreign expert provide a technical opinion which should be attached to the final response.

Advisers should not be recommending unregulated collective investment schemes and other products offering "unusual" or "alternative" investments in whatever form they are offered.

- The FSA is clearly gunning for such recommendations both in terms of the restrictions on promoting unregulated collective investment schemes under section 238 of the Financial Services and Markets Act but also suitability. See CP 12/10. This also raises questions about other alternative investments not covered by the consultation paper.

- Almost no financial adviser knows these funds or products well enough to be able to recommend them sensibly.

- Life settlement funds, funds of hedge funds and a whole variety of other strange property investments are still around. Even firms who feel comfortable with their understanding of the opportunities concerned should realise that the regulator (with good reason) does not share their confidence.

Non-advised business must be done through a separate channel without sales incentives to avoid the risk of either advice being given or breaches of the requirement to be clear, fair and not misleading.

- The Financial Services Authority and the Financial Ombudsman Services and their predecessor regulators and Ombudsman schemes have all expressed serious concerns as to the genuineness of non-advised business (regardless of how erratically they have sometimes reflected their published views in individual cases). When this type of sale is mixed in with advised business, the worries become even greater.

- Execution-only business done over a telephone link should always be monitored with extreme care with the tapes carefully checked for signs of advice or breaches of "clear, fair and not misleading".