TISAtalks…RDR

18th DECEMBER 2012

CROSSED THE DIVIDE OR STARING INTO THE ABYSS?

The much anticipated RDR is now all but two weeks away and the qualification deadline of 31st December 2012 looms large. It is by this date that all existing retail investment advisers, which is any adviser assessed as competent prior to 30 June 2009, must hold an appropriate qualification and have completed any requirements for gap filling. In addition, they need to have obtained a statement of professional standing, from an accredited body.

Any investment adviser not qualified by 31st December 2012 must cease all retail investment activities, including advising and arranging, until they have obtained the appropriate qualifications.

Those advisers who have not met the deadline cannot continue as normal, simply with a view that they can refer to a colleague to write to or complete business on their behalf.

For those advisers who are also employers, this would indicate that they are faced with the choice of either dismissing the adviser, as they are unable to fulfil their employment contract, or implementing some rigid control measures to ensure that those individuals do not carry out retail investment activities whilst not authorised.

In general terms, an adviser who has failed to meet the qualification deadline will need to be de-authorised with the FSA, together with the ceasing to perform a controlled function application, to remove CF 30 status.

Advisers can still remain in contact with their customers providing that they do not conduct any investment activity. However, this is fraught with danger as the advisory firm will need to fully understand the risk that this may represent, and the onus is on the advisory firm to control and monitor their individuals and clearly prove they are not conducting any regulated activity. This effectively limits most interactive processes advisers would have with existing clients. There is always the risk of straying into verbal advice and it is hard to see unqualified advisers retaining contact with clients on an ongoing basis and rigidly maintaining only dialogue to unregulated activity and making factual statements. There are potentially significant regulatory implications for both the individual and the firm on conducting regulated activity without the appropriate authorisation. The FSA has indicated it will likely conduct thematic supervision activity to identify any breaches here.

Where the adviser is a sole trader and is not qualified by the deadline, that firm needs to suspend any investment activity with immediate effect. There is no clear guidance on whether the firm should de-authorise as a whole or remove the investment permissions and continue with insurance or mortgage activity, so this decision will need to be clarified for each individual circumstance.

If it is likely that there is no prospect of a quick resolution to the qualification issue, then it would presumably be appropriate for the investment permissions to be removed. It is not appropriate to utilise a locum to sign off business in these circumstances. If the firm wishes to continue to service its clients for investment business, it will need to get an appropriately qualified individual approved to undertake the servicing of these clients.

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