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TISAtalk

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YOU DON'T BRING ME FLOWERS

This blog has returned to the ongoing subject of inducements and marketing packages in distribution a number of times over the last 12 months.

This week, in final guidance on inducements, the FCA has made it clear now that financial advisers and product providers share the responsibility of managing potential conflicts of interest when receiving and making payments under service and distribution agreements. The guidance follows a review that found payments were still being made that could result in advisory firms favoring one product provider over another, due to the influence of payment or benefit, undermining the aims of the Retail Distribution Review (RDR). The FCA has been clear that firms have to comply with the spirit of the RDR, which aimed to increase transparency and professional standards in the investment advice industry.

The final guidance states that payments from product providers to advisory firms should be based on reasonable reimbursement for the costs incurred by advisory firms. Furthermore, any such payments should always enhance the quality of service provided to customers. The regulator has provided additional examples of good and poor practice, and guiding principles to further help industry.

Clive Adamson, Director of Supervision, FCA, says of the guidance: "The rules on inducements and conflicts of interest are not new. However our review made it clear there were certain practices that did not stand up to scrutiny. In the guidance published today we are helping firms better understand our expectations. Now it is for firms to make sure any payments are legitimate are in consumers' interest and that potential conflicts are well managed." The original review was published in September and found a number of practices that gave cause for concern. They included:

- Some payments by product providers to advisory firms appeared to be linked to securing sales of their products.
- Financial arrangements in place with product providers that potentially incentivised advisory firms to promote a specific provider's product to their advisers.
- Further, the FCA also identified that certain joint ventures, where a new investment proposition is jointly designed by providers and advisory firms, could create conflicts of interest and potentially lead to biased advice.

The FCA has published its final guidance together with a summary of the feedback received from the guidance consultation, to help firms better understand its expectations. The FCA expects firms to review, and, if necessary, revise their existing agreements in light of the final guidance, and to do so within three months of its publication.

To reprise the FCA approach, in September 2013, the FCA consulted in guidance GC 13/5 on how payments made by providers to advisory firms under service or distribution agreements can breach Principle 8 (Conflicts of interest) and the COBS inducements rules, and so undermine the

objectives of the RDR. The FCA has now considered the responses and has published final guidance (FG 14/1), along with a feedback summary.

The guidance explains the FCA's concerns and why certain practices under service or distribution agreements are likely to create conflicts of interest and result in firms not acting in their customers' best interests. The guidance sets out a number of ways, but not the only ways, firms can comply with the relevant requirements in the FCA Handbook.

Interestingly, Sesame Bankhall Group has recently cancelled up to 10 provider-sponsored roadshows following the FCA's announcement on inducements. If you want to fully check your position, the report is available at the undernoted link.

http://www.fca.org.uk/static/documents/finalised-guidance/fg14-01.pdf

HELP!

In order to further help the industry continue to embed distribution models, the Financial Conduct Authority is rolling out a series of workshops for advisers aimed at the implementation of the Retail Distribution Review. The programme is still currently being formulated but topics will include independent and restricted propositions as well as disclosure.

This follows on from the FCA publishing the first of its three RDR implementation reviews. The first thematic review of 50 firms, published in July 2013, revealed the regulator had concerns about proposition disclosure. The FCA did not approve of advisers disclosing charges solely in percentages without stating fees in cash terms or offering a cash equivalent and it said some charging structures were confusing for clients. The focus on the independent and restricted definitions also follows on from the admission earlier this month by Martin Wheatley, chief executive of the conduct watchdog, that the new binary breakdown is "not completely working".

Press comment over the last few weeks indicates there is still a lack of clarity over the new definitions, with the FCA stating they would be "redoubling our efforts" in the coming year. Clearly, more work is needed to clarify the definitions but the regulator has categorically stated that the FCA would not be seeking to change the rules.

Positive compliance workshops will provide an opportunity for firms to hear directly from FCA and to share examples of good practice. The content will help firms develop and enhance their business and provide clarity on regulatory requirements. The FCA is still yet to publish its further two thematic reviews into the RDR implementation.

TISA is liaising with the FCA to help deliver these workshops when they are finalised.

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