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ART OF SEDUCTION

TISAtalk has returned on a number of occasions to the subject of marketing packages, inducements in distribution and what is the right interpretation. Everyone should be aware of the central objectives of RDR, one of them being to remove financial incentives to distort the advice consumers receive. In January the FCA stirred the waters again by issuing final guidance on inducements and conflicts of interest. Nothing in the rules has changed but the issuing of the final guidance has sparked differing reactions and it is clear that some confusion remains. Some providers have pulled all their hospitality and events, whilst others are carrying on in the belief that how they are operating and interpreting the rules is fine.

The whole idea of removing commission payments under RDR was designed by the regulator to ensure that providers compete on the price and quality of their products and advisers are not inappropriately influenced by the payment of commission when providing advice to their customers. The direction of travel here is clear, and the rationale makes sense. Since the original consultation paper, the FCA has been reviewing the market to ensure that these objectives were not being undermined. They were particularly concerned with the possibility that either advisory firms were soliciting payments that could lead them to channel business to particular providers, and therefore affect the advice given to clients, or that providers were making payments to secure the distribution of their products.

So now commission payments are banned and adviser charging rules apply. However there are certain payments that still pass between providers and advisers and the FCA is keen to ensure that these payments are not paid in relation to any personal recommendations for retail investment products. It is clear our regulator believes that certain practices are likely to cause conflicts of interest and result in firms not acting in their customers' best interests. Their final guidance in this area sets out how firms should comply with their regulatory requirements.

It has always been the case that both the provider and advisory firm make sure that any payment is compliant with the COBS inducement rules and that any conflicts are managed fairly.

One of the most common areas where this is paramount is where providers provide training, lectures, written materials, software support etc. on the understanding that quality of service to the client must be enhanced as a result of these 'payments'. The FCA would also expect that UK based firms receive this training in the UK. Caution has to be exerted if non-UK based training is involved as this would prove difficult to justify to the regulator.

The second area is where providers pay advisory firms to take part in the firm's own conference or seminar. Here it has always been clear that payments accurately reflect the specific nature of the involvement, accommodation and travel arrangements and who is allowed to pay for what.

Whilst we now have the emergence of CIPs and vertically integrated advisory distribution, certain distribution arrangements can lead to conflicts, especially where the selection of a provider is influenced by sizeable payments or benefits offered by the provider which then may result in advisory firms putting their commercial interest ahead of their customers' interests. The regulator would look for where the advisory firm relies on the on-going revenue generated from such arrangements.

It must be said that the regulator is aware some payments or benefits offered can be in the customers' best interests and that any conflicts arising may be managed. Firms should therefore be familiar with the rules and ensure that any payments or benefits:

- Do not impair their duty to act in the best interest of the client;
- Are designed to enhance the quality of service provided to a client;
- Are clearly disclosed to clients (with some exceptions for non-MiFID business).

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