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Market conduct and treating the customer right

By Richard Rattue

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Market conduct regulations are coming to a place near you soon. Do you know how the changes could impact your advisory business?

When the Financial Sector Regulation bills (aka Twin Peaks) are finally enacted, the Financial Services Board (FSB) will be divided into two. A Market Conduct Authority and a Prudential Authority(falling under the auspices of the Reserve Bank) will come into play.

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Market Conduct Authority

The Market Conduct Authority will not unsurprisingly mean that the way industry treats customers and conducts itself in the marketplace, is set to become the FSB's key focus area and of course, aims to ensure the outcomes of TCF (Treating Customers Fairly) are met by the industry.

To some, Twin Peaks is overkill and concerns exist around excessive costs of implementation, but to the majority it represents a leap forward, long overdue. Twin Peaks and its supporting legislation will lend hands to this, deterring disingenuous individuals in financial services from accessing or mistreating the consumer.

Consequently, compliance with these new principles blended with a rules-based approach will be tough to get used to for some. Market conduct risk has thus emerged as a primary business risk facing advisers who are not geared up for the changes ahead.

Equivalence of reward

There are several key principles surrounding good market conduct. We can perhaps focus on one of the more important ones namely, the principle of equivalence of reward – in layman's terms “a fair day's pay for a fair day's work”. This principle would need to be implemented into an advisory business and measured to ensure that the firm is on the right side of the regulator.

In effect, compliance to this principle will make it difficult to justify excessive charging where work undertaken simply bears no correlation to the effort involved.
One can expect the regulator to spend more time looking at how you earn your fees and the rates involved. It is unlikely that fees will be set, but possible that fees may be capped if industry feedback shows widespread abuse. We need only look at binder holders, and how the regulator can lose patience and move to cap fees.

I was recently consulting to an offshore trust operation seeking to render professional trustee services in South Africa. On closer observation of their schedule of fees, I was astounded to find that a simple email cost £29 (just under R500) to send. This is a glaring example of where the equivalence of reward principle has somehow been lost, or indeed was never present.

Striking a balance

Our financial services industry, as a whole, has supported the TCF regime, although there remain some institutions and related stakeholders who are not exactly rushing to make changes. I am always amazed when I see that a firm will not implement TCF until they see some regulations on the matter, notwithstanding the fact that the FSB has consistently said that there will be no regulation to define fair treatment. I concur that if you need legislation to tell you what to do to treat your clients fairly, then we have an even bigger problem than we originally thought.

There is also increasing pressure to transform industry and this includes bringing new entrants into the market. I don't see this abating in future, in fact quite the opposite. Too many rules can scare off the good guys as well as the bad, and this is where principles with a softer face may help ease the dearth of new entrants.

All advisers must be able to earn a fair remuneration for their work and the regulator will need to strike a balance accordingly.

ABOUT RICHARD RATTUE

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