CLEVELAND & CO

External in-house counsel

GOOD AND POOR PRACTICES FOR MEETING INDEPENDENCE REQUIREMENTS

Key points	Poor practices	Good practices

DISCRETIONARY INVESTMENT SERVICES

Key points	Poor practices	Good practices
• Have you considered a wide range of discretionary investment management service providers? • Do you have processes in place to ensure your advisers do not restrict their advice to discretionary investment services, or recommend them without considering the needs and circumstances of the individual client? • Each time a discretionary investment service has been recommended, would it be clear that the advice was in the individual client's best interests in light of the other investment solutions available in the market?	**A firm does not meet the requirement to objectively consider a wide-range of investment solutions.** ***Example:*** *A firm refers clients to the same discretionary manager for a number of years. They find that the service provided by the firm is very good and existing clients are very happy with the management of their investments. So the firm feels no need to review the choice.*	**A firm is able to recommend any discretionary investment managers not just the associated firm.** ***Example:*** *A firm is a firm of financial advisers that also has a discretionary investment management firm in the same group. The firm has no constraints on advisers about which clients should be referred to discretionary managers, nor any requirement that when this is the case that it should be the associated firm. The decision about which discretionary manager advisers would refer to is left to the advisers. The firm carries out a market review and creates a short-list of approved discretionary managers to help, but advisers can use other firms if they want to, subject to their research being approved centrally.*

Key points

Poor practices

Good practices

PROVIDING ADVICE ON ALL RIPS

- Is each adviser in your firm willing and able to advise on all RIPs?
- Are there any products you have 'excluded', either formally or informally, as unsuitable for your client base? If so, do you review this on a regular basis and keep an open mind about possible changes to the products and new clients?

An adviser does not have sufficient knowledge of each product type.

Example: *A firm is not willing to provide advice on structured investments. The adviser is unwilling to recommend these products on the basis that they do not fully understand how the products and underlying investments work.*

Comment: Advisers should have sufficient knowledge of each product type to identify if it is potentially suitable for a client. They should then have the knowledge and ability to carry out further work to identify a suitable product and make the recommendation, if appropriate.

If the adviser does not have the knowledge and ability to identify if a particular product type is potentially suitable for a client, they should not hold themselves out to be independent.

If a firm is not able to advise on all RIPs.

Example: *A firm says it provides advice on all investments but does not advise on annuities and refers clients to another firm specialising in annuities.*

A firm is able to recommend any discretionary investment manager not just the associated firm.

Example: *A firm is a firm of financial advisers that also has a discretionary investment management firm in the same group. The firm has no constraints on advisers about which clients should be referred to discretionary managers, nor any requirement that when this is the case that it should be the associated firm. The decision about which discretionary manager advisers would refer to is left to the advisers. The firm carries out a market review and creates a short-list of approved discretionary managers to help, but advisers can use other firms if they want to, subject to their research being approved centrally.*

Key points

Poor practices

Good practices

RELEVANT MARKET

- Can your firm identify a relevant market across all of your clients?

Comment: A relevant market is defined as “all retail investment products which are capable of meeting the investment needs and objectives of a retail client”. The requirement refers to the needs and objectives of the client and not product categories that the firm wants to advise on i.e. ethical investments, Islamic financial instructions and pension decumulation.

If the product the firm advises on is not focused on the clients’ needs and objectives, the definition of the relevant market is not meet.

Example: *A discretionary investment management firm considers that it is independent as it advises on what it refers to as ‘investments’. In practice this includes collective investment schemes but does not include life and pension contracts.*

If the firm can identify a relevant market across all of its clients.

Example: *A firm is able to identify all RIPs which are capable of meeting the investment needs and objectives of a retail client.*

REFERRALS TO ANOTHER ADVISER

Key points

- Is each adviser in your firm willing and able to advise on all RIPs?
- If you have specialists or advisers that are experts in certain areas, do you have processes in place to ensure that all advisers are willing and able to advise on all RIPs?
- If you operate a licensing arrangement (or similar), have you considered the impact this could have on each adviser's ability to meet the independence requirements?

Poor practices

If the adviser is not willing and able to advise on certain RIPs and refers the client to another adviser.

Example: *A firm operates a licensing agreement with their advisers for certain high risk products. Where a particular adviser identifies that his client has a need for a product that he is not permitted to advise on, he would refer the client to another adviser in the firm.*

Comments: It is possible to operate a licensing agreement and still meet the independence requirements, as long as all advisers are permitted to provide advice on all RIPs.

Good practices

A financial adviser sought advice from a product expert and is able to provide advice to the client without referring him to another adviser.

Example: *A Firm has an income drawdown specialist. All advisers have sufficient knowledge to identify when a client would potentially have the need for income drawdown and are able to provide advice to clients, but typically sought additional support from the product expert.*

The adviser would arrange a second meeting where both he and the expert meet with the client to discuss the various options available. If it is… established that income drawdown is an appropriate option, the adviser would carry out the research and draft the suitability report, both of which are checked by the expert. The adviser then has a final meeting with the client where he provides the final advice.

Key points	Poor practices	Good practices
PANELS		
• Do you use the whole of the market as a starting point when designing your panel(s)? • Do you review your panel(s) regularly and update them as appropriate? • What do you do to make sure that all advisers consider off-panel solutions where these may be in the best interests of a client?	**Advisers are unsure of how to recommend "off-panel" products to clients.** ***Example:*** *A firm constructs a panel of products that it feels would meet the needs of the majority of clients. However advisers are unsure of how they would access off-panel products and don't have any tools to access off panel products.*	**Advisers have the ability to recommend 'off-panel' solutions and these are subject to pre-sale checks, minimum research and due diligence standards.** ***Example:*** *A firm uses a panel for the majority of its recommendations. The panel is constructed by reviewing the whole of the market and contains a wide range of products and providers. The panel contains a list of products and providers that have been pre-approved and advisers can recommend off panel products.*
PLATFORMS		
• Have you undertaken appropriate research on the platform market before deciding which ones to adopt and is this reviewed periodically? • Have you conducted robust due diligence on the selected platform(s) and is it reviewed periodically? • Does your due diligence process include steps to ensure that the platform service(s) you use resents RIPs without bias and are you satisfied that the platform provider only	Using one platform for all clients **A firm which recommends the same platform as it uses for their main clients, without adequately considering if it is appropriate for different clients.** ***Example:*** *A firm adopts a single platform as all clients' circumstances appeared to be fairly similar. The firm also advises the children of the main clients whose needs and circumstances are very different and recommends the same platform without*	Using one platform for all clients **NOT APPROPRIATE**

Key points

receives remuneration for business carried on in the UK which is permitted by the rules?

- Have you considered which platforms are appropriate for which clients, and which clients may be best off-platform?
- Are you aware of the limitations of the platforms you use?
- Do you have a process in place to enable your advisers to make recommendations both off-platform and via other platforms where this is in the best interests of clients?

Poor practices

adequately considering the different needs and circumstances of these individual clients.

Using one platform for the majority of clients

Where the platform has a fixed fee and the client's investment level is very low (so that the flat fee has a disproportionate impact on the overall costs for the client).

Example: *A firm uses a single platform but has not assessed for which clients the platform-based services is – and is not − suitable. The firm uses the platform routinely for all clients without adequate consideration of the clients' needs and personal circumstances.*

Using one platform for some of their clients

A firm offers a single platform to those clients whom it is not suitable for potentially leading to increased costs.

Example: *A firm adopts a particular platform to support the ongoing services it plans to offer to clients. It recommends platform-based investments with ongoing services to all clients irrespective of their individual needs and circumstances.*

Comments: The firm has no clear idea of when providing ongoing advice is in the client's best interests, and when it is not. The firm's management also does not put in place any controls on the

Good practices

Using one platform for the majority of clients

A firm recommends from single platform but is mindful of all products across the market.

Example: *A firm takes on most of its clients as a result of referrals from existing clients.*

Comments: When a client has a particular individual need, the firm is able to recommend a product off-platform that is suitable for the client and is in its best interests.

Using one platform for some of their clients

A firm considers the individual needs of their clients and identifies those which would benefit from a single platform and those which would not.

Example: *A firm decides it wants to provide a 'premier service' to clients over a certain level of investable assets. It undertakes appropriate due diligence on which platform to adopt and considers which clients this approach would be suitable for, and which it would not.*

Comments: Although this service and the platform used to underpin it proves to be suitable for most clients within this defined segment, it does not adopt a 'one-size-fits-all' approach. The

Key points

Poor practices

recommendation of the platform-based services. The firm risks recommending unnecessarily expensive platform-based services when, a lower cost transactional service might have been in the best interests of some clients.

Using more than one platform

A firm does not understand if and when platform-based services are suitable and not suitable for their clients.

Example: *Individual advisers within a Firm adopt different platforms from each other.*

Comments: This risked unsuitable advice, given the lack of understanding about the suitability issues. There is the potential for costs for clients to be higher than would have been the case has the firm used platforms in a more focused and economic way.

Good practices

firm continues to recommend products off-platform where the platform-based solution is not suitable for the individual client's needs and circumstances.

Using more than one platform

A firm considers its clients' best interests and, if suitable, may offfer more than one platform. The firm may also want to offer different levels of service to different categories of client.

Example: *A firm develops a range of services to meet the needs of the different clients it deals with and undertakes appropriate due diligence on platforms to ensure it adopts the right ones for itself and its clients.*

Comments: It bases the client segmentation on investable assets and adopts a platform with a wide range of products and services. For the next category of clients, it adopts a lower cost platform and a simpler service appropriate for these clients.

For clients whose needs are simple and are not require routine ongoing services, it works on a transactional basis setting out which clients the services are most likely to be suitable for and processes in place to ensure that each client is considered individually.

Key points	Poor practices	Good practices

MODEL PORTFOLIOS

Key points

- Have the model portfolios you adopted been constructed on the basis of a comprehensive and fair analysis of the market?
- Do you have processes in place to ensure your advisers do not restrict their advice to the model portfolios, or recommend the model without considering the needs and circumstances of the individual client?
- Each time a model portfolio has been recommended, would it be clear that the model portfolio was in the individual client's best interests in light of other options available in the market?
- Are your advisers willing and able to recommend alternatives to the model portfolios and/or adapt a portfolio to suit the needs of an individual client?

Poor practices

A firm does not meet the independence requirements when it builds his model portfolio from assessing all investments in the market that are suitable for cautious investors and have then restricted his advice by not considering other options for clients when appropriate.

Example: *A firm designs a single model portfolio that it feels would suit all of his clients as they have similar needs and risk tolerances.*

The firm does not consider any other investment solutions as it feel his model portfolio is the best option available. However, the advisers can tailor recommendation to multiple options for the particular client.

Good practices

The adviser can tailor the underlying assets to suit a particular client if there is not a suitable option for a particular client. However, the firm also recognises that in some situations a model portfolio would not be the most suitable option and is able to provide examples where it has recommended different investments.

Example: *A firm designs a range of risk-rated model portfolios in light of their client bank and target market and it feels there would be one of these to suit the majority of clients depending on their needs and circumstances.*

DISCLAIMER

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