CLEVELAND & CO

External in-house counsel

FCA ALERT: RISKS OF ACCEPTING BUSINESS FROM INTRODUCERS

29 September 2016

The FCA have recently produced an alert that highlights some of the risks that an authorised firm (the "Firm") can encounter by accepting business from unauthorised introducers, lead generators and/or other authorised introducers (the "Introducers").

The FCA have previously published two other alerts on the same topic in 2013 and 2014 which indicates that Firms are not complying with the FCA's guidance and this has resulted in enforcement action against Firms and individuals. This is an ongoing issue and a concern for the FCA. They are continuing to visit Firms and it is evident that many Firms do not have adequate input or control over the advice they provide to their customers and to whom they are ultimately responsible for.

FCA CONCERNS AND TAKE-AWAYS FOR FIRMS

1. Some Introducers have been using Firms' reference numbers (FRN) in order to obtain consumer policy information and requesting that such information is sent directly to them as an "administration office".
   - Firms should not allow any other entity to use their FRN on their behalf unless they are satisfied that they are doing so appropriately. Otherwise, policy information may be passed onto individuals who have no right to it and Firms will have no control over how the information is subsequently used by the introducer.
2. Some Introducers will present the referral to a Firm with a completed fact find, attitude to risk questionnaire, application/transfer forms and with a clear investment desire expressed by the customer.
   - Firms should not allow any interference with the provision of independent advice and should ensure that their systems and controls are adequate to demonstrate that the Firm has complete ownership of the advice provided.
3. Some Firms provide a separate and limited advice process to customers that have been referred to them by Introducers, which often results in no direct contact with the customers themselves.
   - Firms should be discouraged from providing limited advice to introduced customers. This can result in the provision of either unsuitable advice or simply a lack of advice. The provision of suitable advice requires consideration of the suitability of the overall proposition and it is unlikely that all the necessary information can be gathered without any contact with the customer or through a limited advice process.
4. The limited advice process tends to be designed by the Introducer with pre-prepared suitability reports and the Introducers will claim that the process meets all necessary regulatory requirements.
   - Firms should not rely on this as ultimately they must be able to demonstrate that they have ownership of the advice they are providing and they must undertake an assessment of suitability themselves.
5. Some of the investment outcomes facilitated by the Introducer are in relation to unregulated investment products and are either closely linked to or controlled by the Introducers and can be poorly run or illegal.
   - Firms should carry out robust due diligence on the Introducers they transact with and ensure they have been legitimately sourced. Furthermore, Firms should only recommend products that their Firm fully understands in order to assess suitability as a whole. Customers' investments can be put at great risk and in some cases, where the investments are unregulated, come without compensatory recourse. Due to the risks of such investment outcomes, the FCA

does not believe such products should be promoted to retail clients as they are unsuitable.

6. There are situations where Firms have delegated certain regulated activities to either unauthorised entities or authorised firms but who do not have the necessary permissions and have not been appointed as a representative.

   - Firms should only delegate the performance of regulated activities to other authorised firms that have the necessary permissions or who are their appointed representatives.

CHECKLIST

As a Firm, if you are accepting customer introductions from Introducers, you should consider the following questions:

- Do the customers introduced to you have a pre-determined investment in mind?
- Does the Introducer obtain, on your behalf, authority from the customer for you to access their existing investment(s)?
- Does the Introducer have any input in completing fact find and/or attitude to risk questionnaires?
- Do you delegate any of your regulated activities to an unauthorised third party or to another authorised firm that does not have the required permissions or who are not your appointed representative?
- Does the Introducer influence the final investment choice?
- Does the Introducer directly benefit from the resulting investment?
- Does most of your business from the Introducer go into the same group of investments i.e. is the Introducer introducing business to the one investment product?

The FCA is taking a clear stance; do not provide limited advice to customers especially if it is to facilitate investment into unregulated and high-risk products because ultimately Firms will not be able to avoid liability or regulatory action for unsuitable advice, even if delegated to an unauthorised party. Firms can limit their risk by ensuring that they maintain full and complete ownership of the advisory process between themselves and their customer.

If you need any guidance or advice on how your firm should best manage Introducers, Cleveland & Co, your external in-house counsel, are here to help.

DISCLAIMER

WHY WE'RE DIFFERENT

Cleveland & Co are specialists in financial services, investment management and commercial contracts and related courses. Our team's in-house experience means we understand client challenges and we work alongside you to create solutions. We can provide insight on real vs hypothetical risks and help your team evolve.

WE OFFER

Cleveland & Co offer you fixed fees and retainer structures that provide you with certainty of cost and we offer industry experience that cuts through common legal complexity.

CONTACT

EMMA CLEVELAND

Managing Director

+44.79.6387.8756
ecleveland@cleveland-co.com
www.cleveland-co.com