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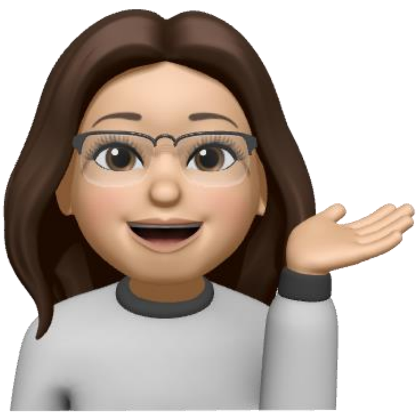

How to avoid becoming an enforcement statistic

Regulators measure their success based in part on how many enforcement matters they open and prosecute

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Almost every client who retains me for a regulatory matter is surprised. This is typically their first encounter with the enforcement department of their regulator — something they thought would never happen to them. They are upset and scared. And now, with many people working from home, a regulatory matter can feel even worse as you are isolated from your dealer.

Remember, regulators measure their success annually, based in part on how many enforcement matters they open and prosecute, as well as the fines they levy. The perception and message is that the more enforcement matters they pursue and the more fines they levy, the better they are doing.

From my vantage point, it appears that the pressure continues to be on the regulators — including self-regulatory organizations such as the MFDA and IIROC as well as provincial securities and insurance regulators — to increase these numbers. My practice certainly reflects that increase, year over year.

So how can dealers and advisors/agents stay off the radar of regulators while this pressure mounts? Here are some suggestions:

1. Keep up with regulatory and internal policy changes

This includes the client-focused reforms, which have implementation deadlines at the end of June and December 2021. Did you know that each dealer needs to establish new conflict-of-interest guidelines that must be adhered to by June 30, 2021? Do you know what those new guidelines are and how they might apply to you?

If not, ask your compliance or branch manager to share this information with you. Ask them to tell you what education plan — if any — they will roll out so you know what changes you need to make to fulfil your obligations. Many of my clients have not paid sufficient attention to changes in regulations and get caught violating rules without realizing it. This is not an excuse accepted by the regulators.

2. Know your knowledge gaps and plan your continuing education credits accordingly

Consider how you learn — by listening, reading or a combination of both — and seek out the training you need presented in the manner you can digest best. Even though your dealer offers education, if it isn't sufficient or isn't presented in a manner you can digest, seek out other modules.

3. Know your personal weaknesses and surround yourself with others who complement your strengths and fill in for your weaknesses

We all have strengths and weaknesses. It's important to be self-aware and honest with yourself to identify where you fall short and find others who are strong where you are weak to join your team. Most advisors are entrepreneurs, so many of my clients are A types who move through paperwork quickly. If you are not great with details, make sure you have an assistant who knows the rules and reminds you to dot your I's and cross your T's. Many of my clients are caught by regulators due to being sloppy and trying to cut corners on paperwork.

4. As new opportunities present themselves, consider how they might be impacted by rules

An example could be a real estate deal that your buddy (who is also a client) asks you to get involved in. Not only is this an "outside activity," it is a potential conflict of interest. Don't wait for your annual questionnaire to declare this conflict. Ask compliance before you engage in this venture and get permission in writing.

Some of my clients have briefly discussed certain opportunities with their supervisors and assumed they received permission. However, the supervisor may not remember the conversation or may not have realized that you were seeking permission, which he or she may claim was never granted, leaving you holding the ball.

5. Develop processes that fill gaps

If you know that there are certain aspects of your business that are lacking, install processes that fill those gaps. For example, if you don't keep notes of every client meeting and telephone conversation, you need to develop a process that makes you do it. The regulators (and judges) take the position that if you don't have a contemporaneous note — a note taken at the time of the conversation — then it didn’t happen, especially if the client claims otherwise.

So, think about where you fall short and fill those gaps. Otherwise, you might be caught by surprise, have to call me and end up contributing to the regulators’ ever-increasing enforcement numbers.

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