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More tough love for advisors

No matter where you are in your career, compliance requirements are a must

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I have spent years writing and presenting workshops with direct, tough messages trying to convince advisors that they need to integrate compliance with growing their businesses. When they do this, they reduce their business risks and protect their licences and reputations. This article is more tough love.

In the past, I cautioned that most advisors who were sued by their clients were caught without meaningful (or any) notes of client interactions. For my advisor-clients who didn't keep meaningful notes, it was a tough wakeup call, as they were left exposed to a judge and regulatory panel, which accepted the client's version of events, even when the client didn't have notes. The expectation was that advisors are professionals (see *Rhoads v. Prudential-Bache Securities Canada Ltd.*); therefore, it is incumbent on them to prove their version of events with notes as proof of client interactions. Otherwise, the clients' versions would be believed.

I often felt this message fell on deaf ears. Advisors who assumed that if they didn't have a complaint in the past they likely wouldn't have one in the future wondered why their note-taking habits, or lack thereof, should change. The short answer is, with the client-focused reforms (CFRs) it is now the law to have well-documented interactions with clients.

Before CFRs came into force, you would not likely be audited for your note taking of client interactions. If you were audited, and compliance or the regulator concluded that your notes were either nonexistent or light, they would explain what could happen if a client complained and urge you to change your habits.

But since Dec. 31, 2021, documentation of meaningful interactions with clients is the law. You must have both meaningful interactions and documentation of those interactions. Superficial interactions (with or without notes) must be a thing of the past, even with smaller accounts. When it comes to compliance, size of account does not matter.

When you are audited and subject to your dealer's regular supervision, there must be documented evidence of meaningful client conversations relating to KYC and any updates to the KYC form. If not, this alone, even in the absence of other infractions or client complaints, can be an infraction against you and potentially reported to the regulator and investigated. So, note taking is no longer a risk only when there is a client complaint; it is a risk by itself.

That is why I urge advisors to review their books of business and consider segmentation or target marketing (see my article "Set your client-advisor relationships up for success"). Choose fewer clients you want and can continue to work with to grow their assets, shedding the other clients you cannot properly find the time to engage with. Engage in meaningful conversation with those fewer remaining clients and document it.

I spoke about segmentation recently at a client presentation (Segmentation Leads to Big Payoff), explaining to 200+ advisors the most vulnerable times in an advisor's career to face an enforcement matter and why compliance, as well as client segmentation, was relevant at every stage:

1. **The first years (one to 10 years in business)**

Advisors at this stage are breaking their backs to get their businesses to a level that can support them and possibly their young families. Growth may be more of a focus than documentation and compliance. This is a critical and vulnerable stage, as they may not have amassed significant assets, but they are building momentum and see promise and hope for a long runway ahead of them.

If suddenly faced with an enforcement matter, their plan is side-railed and their dealer might not want to continue to license them as there might be too much risk, especially due to the size of the business. Further, the dealer might consider it a bad sign that someone at such an early stage in their career has failed to build their business in a compliant manner and keep apprised of their legal and regulatory obligations.

Finding a new dealer, while under investigation, is not easy at any stage of an advisor's career, but it could be even harder if your assets are not yet significant. Advisors at this stage might have to consider a new vocation, which is depressing and very stressful considering all the work they put in already.

2. **The middle years (11 to 25 years in business)**

Advisors at this stage are usually working hard after building a significant business. They likely feel some good momentum but might not have considered what is and isn't working. They might be under the false belief that they need to keep working the same way without considering compliance requirements that would impact them and their processes. Their remuneration is now significant, but their personal and business overhead have grown significantly, with family members and office staff depending on them. So, the machine needs to keep going to support all of that, and there is a lot to lose if an advisor at this stage is distracted and stressed out with an enforcement matter.

3. **The senior years (25+ years in business)**

Most advisors have built significant businesses by this stage. Hopefully, they have properly considered their own retirement plans. They might be under the false impression that they will be fine if they just keep doing what they're doing.

However, one never knows if there will be an enforcement matter, with a suspension from the dealer and/or the regulator, and potentially the need to sell the business in short order. Without a succession plan, particularly at this stage, an enforcement matter can flush the prospect of a nice retirement down the drain. If an enforcement matter sheds light on an advisor's business (at any stage) as non-compliant, its sale value can be diminished considerably.

At this stage, it is harder to manage the stress of an enforcement matter, and the risk of losing the business built through the advisor's entire career is daunting.

I urge advisors before they reach this stage to have their business sale-ready. What that means is, if compliance audited their business, they would find it was in good shape. Otherwise, if there is a surprise blip at this stage of their career — an enforcement matter or a health issue — and it is not in good shape, it may be too late to clean it up for sale and it will likely be considered more of a liability than asset, so the plans to retire on the proceeds of sale cannot be achieved.

Conclusion

So, when I am speaking to your group, please, regardless of what stage you are at in your career, don't dismiss any compliance requirement as irrelevant to you. There is a lot to lose and more to gain by listening and considering the risk and using the processes laid out.

My next article will set out processes and tips and tools for meaningful, documented conversations with clients. Until then, educate yourself on the CFRs and what you need to do to ensure you will pass an audit. Good luck!

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