



The Association of Professional Compliance Consultants Professional Clearance on Change of Appointment

This Professional Standard applies to all member firms and representatives of member firms. Member firms and their staff are reminded of the Code of Ethics and Professional Conduct when dealing with the matters set out below. The procedure set out below is designed to ensure that on a change of appointment the incoming consultant firm is made aware of any material matters that the incoming firm ought reasonably to be made aware of when taking up the appointment. While the standard is not mandatory it should be regarded as best practice.

Introduction

- 1.1 It is in the interest of the public, the FSA and of other compliance consultancy firms, that a member firm which is asked to act by a client in respect of recurring work is aware of all relevant facts regarding the client's compliance with its FSA obligations and appreciates the background and reasons for the change of appointment. This position can only be achieved by communication between the newly appointed and previous compliance consultancy firms.

Procedure on Appointment

- 2.1 The appropriate procedure for any member firm who is newly appointed to act in succession to a previous compliance consultancy firm, is within one month of appointment, to:

- explain to the client that the member firm has a professional duty to communicate with the previous compliance consultancy firm; and
- include the appropriate authorisation and consents for disclosure of information by both the member firm and the previous compliance consultancy firm in the standard terms of business with the client. Proforma terms are included in Appendix I to this document; and
- request the client (i) to confirm the change in compliance consultancy firm to the previous firm (if not already done so) and (ii) to authorise the previous firm to co-operate with the newly appointed member firm if the terms of business do not already include such terms; and
- write to the previous compliance consultancy firm regarding the involvement of the member firm with the client and request disclosure of any issue or circumstance which might be relevant to the member firm when carrying out their duties to the client. A proforma letter is included in Appendix II to this document.

The newly appointed member firm should ordinarily treat in confidence any information provided by the previous compliance consultancy firm, unless the information needs to be disclosed in order for the member firm to perform their role.

- 2.2 The appropriate procedure for any member firm who receives any communication in terms of paragraph 2.1 above whether or not the firm is still appointed is to:

answer promptly, and in any event within one month, any communication from the successor firm about the client's affairs; and



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- confirm whether there are any matters about those affairs which the successor firm ought to know, explaining them meaningfully, or confirm there are no such matters.
- 2.3 It is best practice for the newly appointed and previous compliance consultancy firms to record in writing such discussions as are referred to at paragraphs 2.1. and 2.2 above.
- 2.4 If the client fails or refuses to grant the previous compliance consultancy firm permission to discuss the client's affairs with the newly appointed firm, the newly appointed firm should consider carefully the reason for such failure or refusal and to what extent this will impact on the member firm's ability to perform their services to the client in accordance with the highest professional standards.
- 2.5 Member firms should undertake the same procedures with non-members as they would with member firms.
- 2.6 Member firms invited to undertake work additional, and related, to that carried out by another compliance consultancy firm should consult paragraph 6.1.
- 2.7 In circumstances where the enquiries referred to at paragraph 2.1 above are not answered in terms of paragraph 2.2 above, the newly appointed compliance consultancy firm is entitled to assume that the previous compliance consultancy firm has no adverse comment to make.
- 2.8 Members' attention is drawn to additional guidance contained in the APCC Code of Ethics

Defamation

- 3.1 Provided that the member firm's terms of business or other formal agreement with the client expressly give the prior permission of the client to the member firm to disclose information and documentation to a successor firm then a member firm which communicates to a successor firm matters damaging to the client or to any individuals concerned with the client's business will have a strong measure of protection provided that any statements made by the member firm are made without malice. There is little likelihood of a member firm being held to have acted maliciously provided that:
- the member firm states only what is sincerely believed to be true; and
 - the member firm does not make reckless imputations against a client or connected individuals which the member firm can have no reason for believing to be true.

For the position as regards the successor compliance consultancy firm, see 2.1 above.

Succession following vacancy

- 4.1 A member or member firm appointed on the death of a sole practitioner should endeavour to obtain such information as may be needed from the latter's alternate (where appropriate), the administrators of the estate, or other source.

Co-operation with a Successor



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- 5.1 A member firm should deal promptly with any reasonable request for the transfer of client information records and may have the right of particular lien if there are unpaid fees.
- 5.2 Where a newly appointed compliance consultancy firm needs to ask the predecessor firm for information as to the client's affairs which the client is unable to provide and lack of which might prejudice the client's interests then this information should be given promptly. The predecessor firm is entitled to make a reasonable charge for the provision of the information where this requires a significant amount of work.

Additional Related Work

- 6.1 A member firm invited to undertake recurring or non-recurring work, which is additional, and related, to continuing work carried out by another compliance consultancy firm, should notify the other compliance consultancy firm of the work he has been asked to undertake unless the client provides acceptable reasons why the other compliance consultancy firm should not be informed. The member should be aware of the risks of undertaking such work without the advantage of communicating with the other compliance consultancy firm.

Sources of Advice

- 7.1 A member who is in doubt as to their ethical position or duty of confidentiality may seek advice from the APCC Steering Council or its designated sub-committee.



Proforma Clauses to be included in a Member Firm's Terms of Business

In order for a Member Firm to be able to comply with the Professional Standard on a Change of Appointment the Firm should ensure that the terms of business agreed with the client:

- authorise the Member Firm to seek information from the consultancy firm previously appointed by the client
- give consent to the previous consultancy firm to disclose the requested information
- authorise the Member Firm to provide information to a successor consultancy firm

Proforma clauses to effect these three requirements are set out below.

X On Change of Appointment

- X.1 You confirm and agree that we are authorised to request from your previous compliance consultancy firms (if any) all information and / or documentation which we believe may be necessary or advisable for us to receive in order to enable us to provide services to you under this agreement and you consent to the provision by them to us of all such information and documentation.
- X.2 You acknowledge that we are authorised to make available to any subsequent compliance consultancy firm engaged by you any information and documentation which they believe may be necessary or advisable for them to receive in order to enable them to provide services to you under their agreement with you and you consent to the provision by us to them of all such information and documentation.
- X.3 The provisions of paragraphs [X.1] and [X.2] are intended to be for the benefit of ourselves and any previous and subsequent compliance consultancy firm and pursuant to the Contract (Rights of Third Parties) Act 1999 such provisions may be relied upon and if necessary enforced directly by all such parties.



Appendix II

Specimen letter to send to the previous compliance consultancy firm of a newly engaged client

Our ref:

Dear Sirs

I/We have recently been appointed by (name of client) to act as compliance consultancy firms in respect of(name of client) obligations as a firm authorised and regulated by the Financial Services Authority.

The Professional Standards of the Association of Professional Compliance Consultants provide for consultancy firms which are invited to act as consultants to a regulated firm to seek information from the outgoing consultancy firm. Please could you inform me/us of any circumstances or information which you have knowledge of, which I/we need to consider in undertaking this appointment.

If there are no circumstances that I/we need to be aware of, would you please confirm this to us.

.....

I/we enclose a letter from your previous client authorising you to release the above information to me/us.

Thank you for your assistance in these matters.

Yours faithfully