

# USING A COMPLIANCE CONSULTANT

## FSA FACTSHEET FOR USING A COMPLIANCE CONSULTANT

In an attempt to assist firms in choosing a suitable compliance consultant the FSA has drawn up a list of questions and issues to consider before making an appointment.

This list is not exhaustive and it may be appropriate for the firm to consider further aspects, depending on the circumstances. Firms should realise that it is their responsibility to ensure that the firm of consultants appointed has the necessary technical knowledge and expertise to properly provide the timely and accurate advice requested.

Many of the questions suggested by the FSA directly relate to the technical competence and expertise of the consultancy firm. It is our view, that the whole negotiated package, including issues of cost and service levels, ability of the firm and the consultant to work together in partnership, as well as the range of facilities and back-up available, are all equally important in ensuring that the service provided will keep firms out of regulatory trouble.

The list of questions the FSA recommends firms should ask when looking to recruit a firm of compliance consultants include:

### **Identifying What You Need**

#### What type and level of service do you need?

Firms should ensure that they know exactly what type and level of service they require. This could be a small one-off project, or could involve the subscription to ongoing services that the firm may rely upon to ensure that that it is made aware of, and remains compliant with, all regulatory changes that take place. Firms should review their compliance service requirements on a regular basis and particularly when there are substantive business and personnel changes.

### **Skills and Competence**

#### Do they have the necessary experience to assist you and your type of firm?

Firms should look at how long the firm of consultants has been established, whether they focus exclusively on compliance with FSA rules and the range of clients for whom they act or have acted.

Firms should check out the number and types of client that the firm has also worked, and continues to work, for. This is one of the best indicators as to the amount of experience the consultant will have across different sectors of the market.

#### How do they keep up-to-date with regulatory and product changes?

Consultants should be able to demonstrate that they have systems in place to keep abreast of all developments in the industry. Consultants will be best placed to demonstrate this if they have a team of dedicated staff. Such a dedicated team should ensure that it keeps itself updated at all times by making daily checks of the FSA website and associated regulatory sites, by attending appropriate seminars and briefings, by establishing contacts with firms of financial services lawyers, and that any necessary information is passed to all consultants. In addition, membership of appropriate organisations will help firms to stay abreast of developments through the communication discussion channels they provide.

#### Have you asked for a selection of clients and taken references?

However well qualified a firm of consultants appears to be it is still important to make certain checks to establish their integrity, reputation, skills and competence within the market-place.

References from reputable firms within the same sector of the market-place that have already used the services of the consultant are one of the best ways of establishing this.

Have you compared them to any other consultants?

There are many companies offering compliance help. By comparing different firms, their experience, reputation and technical knowledge and qualifications, and the terms that they are prepared to offer, it will often become obvious which firm should be appointed.

What is the financial services and regulatory experience of the consultants proposed for your account?

Firms should look to ensure that the consultants they propose to appoint have sufficient experience of the industry itself in which the firm operates, as distinct from experience simply from a regulatory perspective. Industry experience will give the consultant the ability to provide advice that is business focused and practical.

Firms should look at the amount of experience the consultants have within the required field. Firms should look at the projects that have been undertaken and satisfy themselves that this suitably qualifies the consultants for the work that they need undertaking. Experience is key to the ability to provide advice that is of real practical value to the firm.

**Services Provided**

Can they provide the type and level of service you need?

Firms should look at the experience and qualifications held by the consultants and the senior personnel within the compliance consultancy firm to ensure that they are relevant to the advice and compliance support being sought. In particular firms should ensure that the consultancy firm has experience in the market sector in which the regulated firm operates.

How will you satisfy yourself that they are providing the service you need to achieve compliance? How will you know if the consultant has helped??

Firms should ensure that the scope of the appointment is appropriate to the firm's needs and that the firm is working with consultants who have sufficient experience and qualifications for the work to be undertaken. Compliance advice received by the regulated firm should be clear and relevant to the topic in question and the regulated firm should be able to put this advice into practice. If the regulated firm chooses not to implement recommendations received from the compliance consultant then the regulated firm should document why and how they have come to this decision.

What are their charges?

In order that firms can be sure that the package that they are agreeing with a firm of consultants is appropriate and cost effective it is important to establish from the outset the level of charges that will be applied for the various services.

Do they have sufficient resources to support your firm?

It is of particular importance to ensure that the consultant is adequately resourced. If inadequate resources are available, not only may specific projects not be properly fulfilled, or not be fulfilled in a timely manner meaning that regulatory deadlines may be missed, but there will be a significant risk that they may not be aware of and/or communicate regulatory developments in a timely manner, which may result in firms failing to implement changes in time or at all.

It is important, particularly with smaller firms to ensure that service will not be compromised through staff absences. Where firms are dealing primarily with one consultant it is important to ensure that that there is sufficient knowledgeable back-up available.

**Services and Service Levels**

Have you asked for, and will you enter into, a service level agreement (SLA)? and;

Have you ensured that the SLA details the work that will be undertaken?

Consultants are to be encouraged to provide terms of business and service level agreements and such other documentation so that there is no doubt as to the level of service agreed to be provided. Failure to provide such documentation may result in areas of compliance "falling down a hole" and failing to be addressed, and as such this understanding at the outset is paramount.

It should be noted that consultants will only provide advice on areas that it has agreed to provide advice on. However competent and efficient, firms cannot expect advice or assistance above and beyond that which it has been contracted to provide.

Many firms of compliance consultants will provide regular regulatory updates, either for a subscription or, of a more limited nature, for free. However, where this service is not available, or not subscribed to, it will be assumed that firms have in place their own procedures for keeping abreast of, and implementing into their procedures, regulatory developments.

Firms and consultants should ensure that the service level agreement and the firm's requirements are reviewed regularly so that the advice given is at all times suitable and meet the needs of the regulated firm.

### **Other Information**

Has any regulated firm the compliance consultancy firm has worked for ever been subject to any action by the FSA?

Action taken against a regulated firm that is on the client list of a firm of compliance consultants should be looked into. It may be that the matter resulting in the action does not result from any failure in the advice given by the consultant. This could simply be because they were appointed to assist after the regulatory action was commenced or because the consultants were not appointed to provide advice in the area concerned.

Does the consultant have Professional Indemnity Insurance and is it sufficient?

Although not a formal requirement most reputable firms of compliance consultants will maintain Professional Indemnity Insurance to a level suitable for the nature of the business that it operates.

Which associations or trade bodies are they members of?

#### **The Association of Professional Compliance Consultants (APCC)**

The APCC is the professional body for compliance consultancy firms. APCC members advise firms who are regulated by the FSA. The APCC was formed on the initiative of the FSA to improve the professional standards of compliance consultants. The APCC is recognised as a trade body by the FSA and APCC members are also required to sign up to certain standards of behaviour, ethics and organisation. APCC member firms are subject to a disciplinary procedure.

Other consultants including contractors or small self-employed consultants may belong to other professional bodies, but those bodies will not focus exclusively on setting standards for compliance consultancy firms.

## **CONCLUSION**

It is only through firms ensuring that the consultants they appoint are adequately qualified, experienced, ethical and otherwise in a position to provide the advice needed, that firms will be in a position to rely on the consultants.

We strongly advocate that when appointing a compliance consultancy firm you should consider only those firms who are members of the Association of Professional Compliance Consultants (APCC). This is the main evidence that you can rely on that the firm aspires to deliver a professional service and has submitted to an independent disciplinary process in the event of unprofessional conduct.

September 2010.