



Procedures for change of appointment

This Guidance Statement applies to all member firms and employees of member firms insofar as to whether they choose to adopt all parts or only selected parts, at their discretion of this guidance.

Member firms and their staff are reminded of the Code of Ethics and Professional Conduct when dealing with the matters set out below, which they may wish to refer to.

Introduction

- 1.1 All Clients have the right to choose their compliance consultant and to change their compliance consultant if they so desire at any time, subject to their individual contracts with the retained consultant.

Member firms have the right to choose for whom they act.

- 1.2 It is in the interest of all stakeholders, that a member firm which is asked to act by a prospective client in respect of recurring work is aware of and appreciates the background and reasons for the change, so that he can then make an informed decision as to whether to accept the appointment. This position can best be achieved by communication between the prospective and the existing compliance consultant.

- 1.3 Communication is meant to ensure that all relevant facts are known to the member who, having considered them, is then entitled to accept the nomination if he so wishes. However, care must be taken when communicating all relevant facts to a member in situations where the existing compliance consultant knows or suspects that their client is involved in money laundering, proceeds of crime, offences under the Bribery Act, terrorist activity or any other criminal activity.

Under the Money Laundering Regulations 2014 and the Terrorism Act 2000 (and subsequent amending and codifying legislation), it is a criminal offence to “tip off” a money launderer or terrorist.

Disclosure of money laundering or terrorist suspicion reporting to your potential successor should be avoided because this information may be discussed with your client or former client.

For further information, please refer to the money laundering legislation and guidance.

<http://www.jmlsg.org.uk/industry-guidance/article/jmlsg-guidance-current>

The need to communicate may exist whether or not the existing compliance consultant intends to make representations to the proprietor and whether or not he still continues to act.

Communication of the facts to a prospective compliance consultant cannot relieve the existing compliance consultant of his duty to continue to press on the client his views on any technical or ethical matters which may have led him into dispute with the client, nor does it affect the freedom of the client to exercise his right to a change the compliance consultant.

Procedure for change of Appointment

2.1 The appropriate guidance for any member firm who is invited to act in succession to another, whether the changeover is at the insistence of the client or of the existing compliance consultant, is to:

- explain to the prospective client that as a matter of good practice, there may be a need to communicate with the existing compliance consultant.
- include the appropriate authorisation and consents for disclosure of information by both the member firm and the previous consultant in the standard terms of business with the client, should this be considered necessary. (Pro-forma terms are included in Appendix I to this document).
- request the client to (i) confirm the proposed change in compliance consultant to the existing compliance consultant and (ii) to authorise the existing compliance consultant to co-operate with the prospective compliance consultant, if this is necessary, subject to the existing terms of business with the existing consultant.
- write to the existing compliance consultant regarding his involvement with the client and request disclosure of any relevant issue or relevant circumstance which might be relevant to the successor's decision to accept or decline the appointment (making oral enquiry, if considered necessary or if no written reply is forthcoming, it is felt appropriate). (A proforma letter is included in Appendix II to this document).

When these procedural steps have been taken in whatever form is considered appropriate, the prospective compliance consultant should consider, in light of any information received from the existing compliance consultant, or any other factors, including conclusions he reached following discussion with the client, whether:

- to accept the engagement,
- accept it only after having addressed any factors arising from the information received from the existing compliance consultant (this may include imposing conditions on acceptance),
- decline it.

The fact that the existing compliance consultant's fees have not been paid is not of itself a reason for refusal to act.

The prospective compliance consultant should ordinarily treat in confidence any information provided by the existing compliance consultant, unless he needs to disclose it to perform his role (such as making investigations into matters which need the perspective of the client's officers or senior employees).

- 2.2 The appropriate procedure for any member or member firm who receives any communication in terms of paragraph 2.1 above whether or not he is still in office is to:
- answer promptly any communication from his potential successor about his client's relevant regulatory affairs;
 - confirm whether there are any matters about those regulatory affairs which in his opinion, his potential successor ought to know, explaining them meaningfully.
- 2.3 The fact of dealing with a professional enquiry in terms of paragraphs 1.2 and 2.2 above does not remove the existing compliance consultant's rights or duties in accordance with statute or otherwise.
- 2.4 It is good practice for the prospective compliance consultant and the existing compliance consultant to record in writing such discussions as are referred to at paragraphs 2.1. and 2.2 above.
- 2.5 If the client fails or refuses to grant the existing compliance consultant permission to discuss the client's affairs with the proposed successor, the existing compliance consultant should consider reporting that fact to the prospective compliance consultant who should consider carefully the reason for such failure or refusal when determining whether or not to accept nomination/appointment.
- 2.6 Where the member firm decides to accept nomination/appointment having been given notice of any relevant matters which are the subject of contention between the existing compliance consultant and the client he should be prepared, if requested to do so, to demonstrate to the Steering Council or its designated sub-committee that proper consideration has been given by him to those matters.
- 2.7 Member firms should consider undertaking the same procedures with non-members as they would with member firms.
- 2.8 Member firms invited to undertake work additional, and related, to that carried out by another compliance consultant should consider if they need to consult paragraph 3.1.
- 2.9 In circumstances where the enquiries referred to at paragraph 2.1 above are not answered in terms of paragraph 2.2 above, the prospective compliance consultant should consider writing to the existing compliance consultant in whatever medium he considers appropriate stating his intention to accept the engagement in the absence of a reply within a specific and reasonable period. He may be entitled to assume that the existing compliance consultant's silence implies he had no adverse comment to make.
- 2.10 Members' attention is drawn to additional guidance contained in the APCC Code of Ethics, which they may wish to consider.



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Joint Compliance consultant

- 4.1 A member firm which is nominated as a joint compliance consultant should consider the need to communicate with all existing compliance consultants, if appropriate, where both are involved in providing regulatory advice or regulatory guidance on the same or similar matters and be guided by similar principles to those set out in relation to nomination as a compliance consultant. Where it is proposed that a joint appointment becomes a sole appointment, the surviving compliance consultant should communicate formally with the other joint compliance consultant as though for a new appointment.

Succession following vacancy

- 5.1 A member or member firm invited to accept nomination on the death of a sole practitioner may wish to consider whether it is appropriate to obtain such information as may be needed from the latter's agent or (where appropriate), the administrators / executors of the estate, or other source.

Co-operation with a Successor

- 6.1 An existing compliance consultant should deal promptly with any reasonable request from a client for the transfer of records and may have the right of particular lien if there are unpaid fees.
- 6.2 The incoming compliance consultant may need to ask his predecessor for information as to the client's regulatory affairs which the client is unable to provide and lack of which might prejudice the client's interests. Such information should be promptly given and unless there is good reason to the contrary, such as a significant amount of work involved, consider providing the information without charge.

Additional Related Work

- 7.1 A member firm invited to undertake recurring or non-recurring work, which is additional, and related, to continuing work carried out by another compliance consultant, should consider if they need to notify the other compliance consultant of the work he has been asked to undertake unless the client provides acceptable (to the consultant) reasons why the other compliance consultant 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 consultant and consider how these may impact on his ability to discharge his duties.

Sources of Advice

- 8.1 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.



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Appendix I

Guidance 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 Standards Guidance on a Change of Appointment the Firm should ensure that the terms of business agreed with the client:

- authorise the Member Firm to seek only relevant information connected with the firms appointment by the client, from the consultancy firm previously appointed by the client
- give consent to the previous consultancy firm to disclose the requested relevant information to the appointment previously agreed.
- authorise the Member Firm to provide relevant information to the appointment to a successor consultancy firm

Guidance 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 consultants (if any) all relevant information and / or relevant documentation which we believe may be necessary or advisable for us to receive in order to enable us to provide regulatory services to you under this agreement and you consent to the provision by them to us of all such relevant information and documentation.
- X.2 You acknowledge that we are authorised to make available to any subsequent compliance consultant engaged by you any relevant information and relevant documentation which they believe may be necessary or advisable for them to receive in order to enable them to provide regulatory services to you under their agreement with you and you consent to the provision by us to them of all such relevant information and relevant 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 consultant and pursuant to the Contract (Rights of Third Parties) Act 1999 (The Act applies in England and Wales and Northern Ireland, but not Scotland, which has its own rules on privity and the rights of third parties) such provisions may be relied upon and if necessary enforced directly by all such parties.



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Appendix II

Specimen letter to send to the existing compliance consultant of a prospective client

Our ref:

Dear Sirs

I/We have recently been approached by (name of prospective client) to act as compliance consultants in respect of(name of prospective client) obligations as a firm authorised and regulated by the Financial Conduct Authority.

Please could you inform me/us of any relevant circumstances or relevant information which you have knowledge of, which I/we need to consider in deciding whether or not to formally accept this appointment.

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

.....

I/we enclose a letter from your (previous) client / the prospective client authorising you to release the relevant circumstances or relevant information to me/us.

Thank you for your assistance in these matters.

Yours faithfully