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Five Compliance Approaches That Chase Away Advisor Talent

Several months ago, I took my wife's car out on an errand and noticed the front driver side panel protruding out at the seam. I didn't notice any scratches or dents or so I simply pressed the panel back in place. Investigating further, taking a walk around the front of the car and then to the passenger side, I saw scratches and a large dent. It turned out that our teenage daughter had driven into a mailbox as she swerved the car off the road reaching down to the floor to grab a CD to play. There was no mention of the incident until we brought it up, as is so often the case with teenagers, who are at a phase of life where rational thought and responsibility are in short supply.

The incident reminded me of the early 90s when I was brokering at Prudential Securities. Our branch had five new advisors at the time, and as can be expected, rookie behavior predictably reared its head. One advisor was immediately fired when he executed an unauthorized trade resulting in a customer complaint. It was uncomfortably common to see advisors tracing client signatures on paperwork the clients neglected to sign. Like our daughter, this is a stage where a short leash and close scrutiny are essential in order to protect the firm as well as protecting advisors from themselves.

As parents, our radar is on full alert for our daughter at this stage of her life as she dabbles with adulthood. As she grows into her 20s and 30s, makes her own life and settles into being a responsible adult, our need as parents to be hypervigilant will wane (at least I hope so). So should it be with compliance departments when dealing with advisors who are responsible and settled into their practice.

Unfortunately, compliance departments often treat well-established advisors with good compliance records like teenagers. When experienced advisors are treated as if they were newly licensed, it not only burns relationship bridges, but also can be unsettling enough to drive them to change broker-dealer. Here are categories of destructive compliance behavior we've seen as repeating patterns:

French Law: Guilty Until Proven Innocent

When a customer submits a complaint, you would hope that your broker-dealer would fight for you unless an egregious act has been committed. However, for some compliance departments, standard practice is to treat the advisor as if they are guilty until proven innocent. One advisor shared a story of heirs to a client's estate submitting two complaints over the sale of universal life policies. The advisor had financial plans to back the investments, so he felt confident he had done nothing wrong. The advisor ended up leaving the firm before the arbitration date due to being treated as if he were a criminal. The compliance department assumed the worst of the advisor, siding with the heirs in their complaint stance. Later, at the new firm, the arbitration hearing completed and the advisor's UL policies were found to be appropriate investments, so the two complaints were dismissed.

Politics and Religion Don't Belong in the Workplace

Compliance and broker-dealer staff are best served by being neutral on the topics of politics and religion, or avoiding them in discussion in any context. We've witnessed both sides of the political debate offended by back-office voicing of their political or religious convictions. One advisor who headed a local Tea Party chapter was suing his firm because he believed they had terminated him for his political stances, while a female advisor expressed her desire for a broker-dealer that was less "Bible Belt" and more progressive because her current firm made her feel somewhat like an outsider due to her sexual orientation.

On the religious front, since 2010, we've noticed an increasing pattern of Christian advisors leaving their broker-dealer because they feel like outcasts. One such case shared a phone conversation he had with two compliance staffers. One of the staffers expressed with disdain how he didn't share his values, meaning his being Christian. The compliance person was demeaning and condescending to the advisor, so much so that the other compliance person, who was mostly silent during the call, called the advisor back to apologize for his colleague's behavior. However, the damage was done and the advisor decided to leave.

Catering to a Lowest Common Denominator Culture

In this environment, overreaching compliance, policies and processes replace sound judgment and common sense. When a substantial producer with 30 years in the industry and a clean compliance history calls and shares a story of being treated like a child by compliance, lowest common denom-

inator culture is typically what surfaces. In this case, his compliance department had sent him a "letter of education," which noted that "next time" he would be fined. The letter was sent despite the fact he had done nothing wrong. The advisor referred to these communications as "Nasty Grams," and he was furious over such demeaning communication.

This behavior can be invasive and destructive. Here are six indicators of broker-dealers with lowest common denominator cultures:

- Instead of doing only what the FINRA requires, the firm institutes additional policies, procedures and paperwork that go well beyond FINRA requirements. This results in many layers of bureaucracy, which can make getting needs such as compliance approval on marketing material painfully slow or limited to only the most generic marketing concepts.
- Committees or groups determine decisions, with no one really taking ownership, which is a way to avoid accepting risk and accountability.
- All advisors are treated as if they are high risk, rather than differentiating risk levels through a common-sense litmus such as compliance history and experience. In these environments, the advisor is a necessary evil in the eye of management: "We like your revenue but not your potential liability."
- The higher quality, energetic and ambitious people are leaving, while those remaining are akin to checked-out urban public school teachers on tenure.
- The culture is consumed by a fear of failure, resulting in hyper-defensive behavior.

The most common segment to the lowest common denominator mentality historically has been insurance-owned broker-dealers, which by their very nature are overtly risk adverse. However, as FINRA has drilled down on many aspects of our industry with corresponding upticks of fines, the financial stress of broker-dealers has spread, and along with that stress comes a tendency to fall into lowest common denominator compliance.

Egos Gone Wild

Many advisors that come to us discuss clashes with compliance staff where their inflated egos escalate conflicts well beyond what is necessary. These encounters are not limited to compliance, and can involve other members of upper management as well. An advisor I had placed years ago recently contacted me about his interest in buying books of business. While commenting on the firm he was currently with and why he had left the prior firm, he explained an uncomfortable and unnecessary encounter he had with a member of upper management. He had submitted a stock trade an hour before trading closed and the broker dealer failed to execute the trade until the next day. During overnight trading, the price went down a dollar, which resulted in a substantial loss to the client. A non-compliance person in upper management blew up at him, escalating a situation that never should have escalated, with name-calling and accusations of lying. The advisor explained that there was nothing to argue about because the trade time was documented. Despite that, the person in upper management went on a tirade and the relationship between the advisor and the broker-dealer was severed.

The Parental Management Style

K. Palmer Hartl, an independent consultant to businesses and nonprofit organizations says, "Far too often managers operate psychologically like parents and their employees function like children (control freak managers are frequently guilty of parental management). The consequences of this are that many American businesses are not realizing the full potential of their labor force so creativity and productivity suffer."

Regarding parent-type managers, Hartl explains, "They make too many decisions for those who work for them. Just count the number of emails they receive. This style of management means bosses can use their power status to intimidate others and demand conformity and obedience."

For employees that function like children under parental management, Hartl says they seek and ask permission for almost any action, especially anything that could be deemed controversial or out of the norm. They rarely take creative risks and often operate from survivor mode, doing little to distinguish themselves or call attention to themselves. They spend an inordinate amount of time worrying about the security of their situation, wondering, "Does the boss still love me?" Parental management applies to anyone that heads a department and not limited to the president of the firm. Compliance-driven broker-dealers quite frequently have this management style permeate their work environment.

When a compliance staffer is performing an annual audit of an advisor's office and they seem driven to find something wrong with the books and records of the advisor, chances are good that the chief compliance officer (CCO) is a parent-type manager and the staffer is his child, hoping to please the CCO with something to report from their audit.

The real tragedy for compliance departments and management in all these circumstances is they often lack self-reflection, rarely even realizing that there is a problem—until of course it is too late and their best advisors head to the exit door.

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