Reducing PI exposures

In challenging times, some brokers may well be tempted to launch products and marketing initiatives to win more business. However, this can also create new exposures, advises Alan Eyre

2009 will be a difficult year for the UK insurance broking sector. Brokers will strive to sustain income and achieve organic growth by increasing their focus on new business and development ideas and opportunities.

When developing new products and embarking on marketing campaigns, it is important that brokers consider the risks that can arise. These should be both in terms of fulfilment of FSA requirements of ‘clear, fair and not misleading’ and also their professional indemnity exposures arising from the products and services being marketed.

Where products and services are designed for a particular market, it is important to ensure that your marketing matches what the products and services deliver. A key question to ask is: Do your target customers understand your marketing and other communications? Context and impression are everything. This can, however, present significant challenges in terms of complex specialist products, where the customer may not always be sufficiently informed to understand precisely the nature of the product being marketed and the offer being presented.

Treating customers fairly

The FSA definition of ‘clear, fair and not misleading’ is combined with your overriding obligation to treat customers fairly and you should ensure that your marketing material properly addresses these issues. You should ask whether the target customers understand your offering and what those customers are likely to know and need to know about the product. The process of converting enquiries into sales must also be compliant. The FSA focuses particularly sharply on direct sales campaigns, where the customer is invited to sign up immediately. There can be a fine line between invitation and putting a client under what could be perceived to be undue pressure.

To achieve all the above requires attention to the interlink processes of both product design and marketing. Crucially, your compliance team needs to be involved in the process from an early stage.

Under FSA requirements, management has clear responsibilities in respect of financial promotions and marketing material. These are:

- clear strategies for marketing and for relevant systems and controls
- accessible and clear procedures which are actually used by promotion designers
- systems covering all media, electronic as well as paper
- only trained staff issue such marketing promotions after signoff from the compliant function
- records are adequate and complete
- complaints are positively analysed for system failures to avoid repetitive mistakes
- positive and continuing steps at senior management level are taken to ensure that the approval system is operating properly.

If these procedures are not followed and a campaign to sell a particular product and/or service can be interpreted as misleading, it not only presents exposures in breaches of FSA requirements but can also lead to professional liability exposures for the broker concerned.

In the difficult year ahead, all brokers will be under pressure to increase and enhance new business performance. However, we must not lose sight of the need of both professionalism and compliance in achieving this and the risk to our own and our customers’ businesses if we do not keep these principles constantly in mind.

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