

Compliance Corner: What Constitutes Investment Advice?

Sales of indexed products have received increased scrutiny due to the concern that agents are giving investment advice when the customer liquidates a security to fund the index product purchase. But what exactly constitutes investment advice that requires registration?

Whether an agent is giving investment advice that requires securities registration depends on the circumstances, but generally speaking, these actions will get you in trouble:

- Recommending the liquidation of a security (for example, to provide a source of funds for the purchase of an indexed product)
- Advising a customer of the relative advantages and disadvantages of investing in securities as directly compared to an indexed life insurance or annuity product
- Recommending a specific asset allocation amongst asset classes
- Emphasizing or focusing solely on the risks of the stock market
- Providing assistance in the completion of paperwork to liquidate a security
- Using the term “investment advisor” or other similar terms that lead the customer to believe that you’re licensed to advise on and sell securities
- Using professional designations considered misleading
- Describing indexed products as “investments”

3 Common Scenarios to Watch Out For

Here are three common scenarios where fixed agents can get themselves into trouble and what you can do to stay compliant.

1. Selling Against Securities

Fixed agents may stray into investment advice if they explore the advantages and disadvantages of investing in securities as directly compared to fixed products. This may be advice because it will help a customer evaluate the products and make a decision between the two.

2. Recommending Securities Allocation

Securities advice could also include a recommendation that a customer allocate a specific percentage of their assets to different asset classes. Therefore, the fixed agent must be careful not to recommend specific allocation percentages of securities and instead focus on the characteristics of the fixed product and general allocation issues.

3. Finding Funding Sources

After a fixed agent presents a suitable fixed product and the customer agrees with this recommendation, there is often a discussion of what assets should be used to provide the funding. It is natural for the customer to inquire about the advisability of selling certain equities or classes of assets. However, the recommendation to sell a stock or a particular class of equities will probably be considered securities advice. The fixed agent is limited to discussing the generic ideas of asset allocation, the positive characteristics of the fixed product and directing the customer to an investment advisor for advice on liquidating any securities.

Follow these General Guidelines to protect yourself:

1. Do not provide specific advice about, or recommend, the liquidation or “replacement” of a security.
2. Consider using a disclosure form that clearly reinforces what service you do and do not provide. [Download Sample Disclosure Here.](#)
3. Clearly indicate the services you are, and are not, licensed to provide to the customer without using phrases that may lead the customer to believe otherwise.
4. Obtain a clear acknowledgement from the customer that any decision they make to liquidate securities to provide some or all of the funds for the purchase of an insurance product is their independent decision and choice, and not the result of any specific recommendation on your part.
5. Be clear with the customer that if they require investment advice, they should seek the advice of a properly licensed securities professional in conjunction with the liquidation of any securities.
6. Do not recommend allocating a certain percentage of assets to securities, although a general discussion of different asset classes should be proper.
7. Limit discussions to the general characteristics of different types of securities.
8. Do not charge advisory or other management fees if you are not a Registered Rep or RIA.