

Why terminating an AR may be good business

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Termination for a poor regulatory compliance history may be a reality for those undertaking the acquisition of a financial advice firm, according to specialist legal firm the The Fold.

One of the firm's director, Simon Carrodus has used a blog to point out that retaining authorised representatives is not straightforward and that their individual compliance history should be reviewed.

“You may need to terminate a representative if they have a poor compliance history or require the seller to do so as a condition precedent,” he wrote.

Carrodus said that exposure to non-compliance could be fatal for purchasers but many buyers simply did not include a compliance audit in their due diligence.

He said the Australian Securities and Investments Commission (ASIC) “is on the warpath and you can be liable even if you weren't operating the business at the time of non-compliance”.

“So before you purchase a business that holds an Australian Financial Services Licence or Australian Credit Licence you need to make sure the compliance records and policies are up to standard,” Carrodus said.

“If you purchase a business with a history of non-compliance, ASIC may hold you accountable for regulatory non-compliance. This is possible even if the acts or omissions that led to non-compliance took place under the previous owner.”