

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

Gary Brown
The Advice and Distribution Team
Policy, Risk and Research Division
Financial Conduct Authority
25 the North Colonnade
Canary Wharf
London
E14 5HS

9 October 2014

Retail investment advice: Clarifying the boundaries and exploring the barriers to market development

This is the Consumer Panel's response to the Financial Conduct Authority's Consultation Paper on Retail Investment Advice.

We welcome this guidance paper and hope it goes some way in providing the financial services industry with the clarity it seeks. We also agree that consolidating regulatory information is a valuable exercise.

We support the work the FCA intends to do with firms to improve customer communications by making these simpler, shorter and more useful. To this end, we draw on the findings of our annuities research published in December 2013. This research showed a significant lack of clarity in consumers' awareness and importantly, their understanding of the implications of purchasing products on a non-advice basis. Communication with consumers needs to go beyond simplifying language, it needs to ensure that firms fulfil their basic obligation; informing consumers of the real cost of services or products, and highlighting any limitations in consumer protection that may arise from procuring services via a particular process. Again we call on the FCA to implement our recommendation to embed, in its rules, a code of conduct to guide the sale of non-advice products.

Consultation questions

Questions in Chapter 5 (page 30)

1. Have we provided a sufficient range of examples for customers and firms to be more confident on the boundaries between services that provide a personal recommendation and those that do not?

The Panel has always believed that the existing regulations are clear on what is regulated advice and what is not and we have been puzzled by the industry's confusion over the so-called 'grey area' between regulated advice and execution-only. In our view, if a sale of a regulated product is accompanied by a recommendation then it constitutes regulated advice. If there is any doubt then the relevant firm should err on the side of caution and manage the service as if it were regulated advice.

The various examples of what constitutes regulated advice, personal recommendations and generic advice, coupled with the summary table provided on page 19, should prove useful going forward. Moreover, the FCA's offer of help and support to firms wishing to develop focused or simplified advice models should go a long way in helping firms to understand the boundaries of their obligations.

2. Based on the examples do you agree that our rules provide sufficient customer protection? If not, please provide feedback on areas where you believe our rules need to be enhanced?

Paragraph 3.16 states that firms providing regulated advice (but not a personal recommendation), still need to be authorised and must adhere to other Handbook requirements, for example the FCA's Principles for Businesses. What is not clear to us is the extent of the firm's liabilities and responsibilities where there is no personal recommendation, but there is regulated advice. This is an important question for consumer protection, and we would be grateful for clarification on this.

Questions in Chapter 5 (Page 45)

1. Are there other areas where you would need greater clarification or the other factors that you believe act as a barrier to providing the services discussed in this paper

Our research into the annuities markets revealed the need for greater consumer understanding of non-advice services. We continue to believe that this is an area where firms need to adhere to a code of conduct, embedded in the FCA's rules. This should set out the minimum criteria on how firms ought to engage with consumers who purchase products using this means.

By taking responsibility for the purchase (non-advice), consumers forfeit the right to a number of valuable consumer protection services, such as recourse to the Financial Ombudsman Service (FOS). Moreover consumers do not necessarily understand that non-advice services are not free ("commission

invisibility”). The Consumer Panel called for a code of conduct to be incorporated into the FCA rules. It is still our view that the FCA should work closely with firms to ensure that communications around the difference between advice and non-advice services is clearly explained to consumers, including the important reduction in consumer protection that come with this.

2. **Would you find it helpful if the guidance set out in this paper was codified in our Handbook?**

Yes. We believe that the extensive work the FCA has done to clarify what constitutes regulated advice, personal recommendations and generic advice merits codification in the Handbook. It is important to have this information on the face of the Handbook, as this will ensure that all the relevant information pertaining to definition and scope of full advice, personal recommendation and generic advice can be found in this significant source, this in itself will enhance clarity.

3. **Would you find it helpful if the examples were included in the Perimeter Guidance section of our Handbook?**

Yes. It is sometimes difficult to see where ‘guidance’ fits in with the regulations firms are required to follow, and codifying this guidance into the Handbook can leave firms in no doubt as to where their responsibilities to consumers lie. The inclusion of the examples into the Perimeter Guidance section can also aid to better understanding.