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Financial Conduct Authority
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19 May 2017

Dear Sir / Madam,

GC17/4: Financial Advice Market Review (FAMR): implementation part I – Section 4: non-advised sales

The Financial Services Consumer Panel welcomes the opportunity to respond to section 4 of the FAMR guidance consultation on non-advised sales.

The Panel believes that the original intention of FAMR, which was to be consumer driven, (not to help the industry understand the difference between advice and guidance), has been lost in some of this work. Advice is either regulated (the adviser recommends a course of action), or it isn't. Consumers do not need to understand the difference, but they need to know what they are getting, what they are paying, and the extent to which they are protected if they have a problem.

People need help that is impartial. They have an interest in knowing whether their adviser is trying to sell them a product – and will benefit financially from doing so, directly or indirectly – or whether the adviser is looking impartially at their overall financial position and helping them meet their financial goals. We believe that the term 'guidance' should be a protected term, offered only by organisations that can provide a truly impartial service. Advice or guidance which is not impartial should include 'sales' in the title. This would be much easier for consumers to understand.

Consumers should not have to determine what type of advice is right for them and why. Firms need to be clear about the service they are offering and take responsibility for ensuring consumers aren't misled into thinking they are getting regulated advice when they aren't. We welcome the fact that the FCA has been clear that 'implicit recommendations', where a firm tells its client what a 'customer like you' would do, are personal recommendations. We believe that a number of online services that exist at the moment will have to either stop this practice, or at least make it clear they are offering a personal recommendation, and what this means for the rights of the customer.

Question 7: Do you agree with the guidance in this section?

We have always thought that the FCA rules on the matter of what constitutes regulated advice and/or a personal recommendation are clear and that the boundary between financial guidance and financial advice is not "the grey area" that regulated providers claim it is. Given this, we agree with the guidance relating to non-advised services in GC17/4 although we feel more examples – perhaps based on current online services – would be useful.

Our reading of GC17/4 is that many online investment services currently being offered as 'non-advised' services should not fall into the "non-advised" category. The guidance strongly suggests that any service offering a solution e.g. a model portfolio based on a customer's particular investment profile would be providing a personal recommendation.

It is vital that customers of these services understand whether they are getting advice or non-advice at every stage, so they can understand their rights to redress. We would suggest that the FCA undertakes a review into online investment services in order to label each service either 'advised' or 'non-advised' so the appropriate descriptions of the services and right to redress can be clearly shown to customers.

Question 8: Are there any further specific areas where there is insufficient clarity in existing guidance?

No.

Question 9: Are there specific areas where further clarity will be needed as a result of the forthcoming amendment to the Regulated Activities Order?

It will be imperative that firms offering non-advised services or "guidance" that leads to the sale of a regulated product have their service labelled correctly at the outset. Currently there is a broad range of services, particularly online, some of which are either crossing the regulated advice boundary or are coming very near to it, but are still labeled as "non-advised". We feel the FCA will have to make a judgement regarding individual business models as to whether they are inside or outside the regulated advice boundary.

In the FAMR report 'guidance' is correctly described as impartial. Therefore, going forward, if a service is deemed to be "guidance" it must also demonstrate impartiality. The FCA will need to provide clarity on what constitutes impartial guidance. For example, we would question whether a non-advised online sales service providing own company products can be classified as "impartial".

We would like the FCA to consider introducing a specific definition for services which do not offer regulated or streamlined advice, but nor do they offer impartial guidance. As we have said above, advice or guidance which is not impartial and which will lead to a product sale, should include 'sales' in the title.

Yours faithfully

Sue Lewis
Chair, Financial Services Consumer Panel