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Margaret Hope  
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Dear Ms Hope

## **Solicitors Regulation Authority: consultation on independent financial advice**

This is the Financial Services Consumer Panel's response to the SRA consultation paper on independent financial advice.

The Consumer Panel is an independent statutory body, set up to represent the interests of consumers in the development of policy for the regulation of financial services. Our primary focus is to advise and challenge the Financial Services Authority from the earliest stages of its policy development to ensure they take into account the consumer interest. The Panel also takes a keen interest in broader issues for consumers in financial services where it believes it can help achieve beneficial change/outcomes for consumers.

The Panel strongly supports the FSA's Retail Distribution Review and we are pleased to respond to the SRA's review of its current position on the provision of independent advice to clients of member firms. We have focused primarily on the key question of revising Outcome 6.3 in the context of both the FSA's RDR and the SRA's more outcome-focused supervisor regime. Overall we support Option 3, which appears to the Panel to meet the aims of the RDR and be compliant with the new requirements, as well as reflecting the SRA's regulatory approach. We do however have some concerns about how the referral decision will be made in practice and we have included in this response suggestions for specific record-keeping and regulatory checks and balances.

Our answers to the specific questions in the consultation paper are set out below.

***Q1: Do you have any comments to make about the suggested change of terminology and removal of references to independent intermediaries and to packaged products and replacement with language arising from the FSA's Retail Distribution Review in terms of advice and retail investment products?***

We think it is a given that the relevant sections of the SRA Handbook must be compliant with the requirements of the Retail Distribution Review, including revising

the terminology used to describe advice services and retail investment products. We support the proposed changes.

***Q2: Which of the three options do you prefer in respect of chapter 6 of the SRA Code of Conduct?***

We prefer option three as being the most appropriate way forward. We support consumer choice and think it entirely right that the client should be provided with sufficient information to make a decision on the type of advice service that would meet his/her needs, rather than automatically being referred to an independent financial adviser. This is particularly important given the potential cost of independent financial advice and the availability of possibly more appropriate and cost-effective advice services, such as restricted advice. Under the RDR independent advisers and restricted advisers are required to meet the same levels of professionalism in the quality of the service they provide and wider considerations, such as ethical behaviour. Where a product is recommended, the suitability requirements also apply. Consequently regulated advice which is restricted in scope should not be considered automatically as 'second best' for the client. It may well be an entirely appropriate option for clients who, for example, know which financial product they need but require help with specific choices, or where specialist advice is required.

The consultation paper refers to the need for the member firm to provide the client with enough information (including the payment of referral fees or other incentives) to make a decision on the service that would best suit their needs. This is the key to the success of option three. If incorrect, inadequate or insufficient information is provided there is a significant risk that the client will be 'steered' in the wrong direction, particularly if there is some kind of undisclosed business relationship between the SRA member and the financial adviser. We urge the SRA to mitigate this risk by putting in place prescriptive requirements for recording the referral process, which include copies of the documentation provided to the client, a record of information provided verbally and a note of the reasons for referring to a restricted or independent adviser. This is an important area where effectiveness and compliance with SRA requirements should be monitored closely. SRA members failing to meet their obligations should be identified and brought to book swiftly.

No doubt the SRA will liaise with the FSA on the content and presentation of financial services information to the client.

***Q3: Do you have any comments on the possible impact of these options in terms of effects on legal firms and protection of clients' interests?***

We are not in a position to respond to this question.

***Q4: Do you have any comments on the costs and benefits of the options as identified in the cost benefit analysis?***

We understand that at present no cost benefit analysis has been published.

***Q5: Do you have any other comments to make on these proposals?***

We have no other comments.

Yours sincerely

Adam Phillips  
Chair  
Financial Services Consumer Panel