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Further information

You can keep up-to-date on our news and requirements by regularly visiting our website. In particular, you may find our **RDR web** pages helpful.

If you would like to receive a copy of the newsletter when released, please email firmcommunications@fsa.gov.uk.

We are now 18 months away from the RDR deadline and all firms should be assessing their business models and making the necessary changes. There may be a number of considerations that a firm will need to address when making the transition, for example, consider the impact on your back-office system, your clients, your advisers and your financial promotions.

In relation to business model change, we have previously **highlighted** some key risks where firms may attempt to take advantage of the next 18 months. This could result in unsuitable products being recommended to consumers, including those bearing excessive costs, and unnecessary churn in the retail investment market. They include:

- providers may seek to use the period before the RDR is implemented to acquire market share by offering large commission to advisers;
- before leaving the industry, firms may look to build up their book of commission-based products to make their business more attractive to potential buyers before 31 December 2012; and
- there is a risk that some firms may increase the amount of trail commission on their books, as a way of cushioning the removal of commission on new business carried out post-2012.

We will be increasing our supervisory scrutiny in this area and we will continue to intervene where we believe there will be poor outcomes for consumers. We will continue to monitor these risks, and others we identify, in the run up to the end of 2012.

Peter Smith
Head of Investments Policy



“ *All firms should be assessing their business models and making the necessary changes.* ”

What's the latest? Reporting requirements – proposed changes to the Retail Mediation Activities Return (RMAR) and complaints

In May we published our consultation paper (**CP11/08**) which sets out our proposals on collecting data through the current RMAR and complaints systems.

Proposed changes to the RMAR

We are proposing changes to the RMAR (**SUP 16**) to incorporate the additional data needed from firms giving advice to support supervision of the adviser and consultancy charging rules.

The proposals are:

- a new section (Section K) that requires firms to provide data on adviser charging revenue, payment method, client numbers and charging structures;
- a new section (Section L) that requires all firms that provide services on Group Personal Pensions (GPP) to provide data on consultancy charging fees, payment method, employer client numbers and charging structures; and

- minor changes to Section B (profit and loss account) and Section G (training and competence) to reflect the new definitions of adviser charging, consultancy charging, and independent and restricted advice.

The proposals in this CP do not change the timing, frequency and level of a firm's current reporting requirements. BIPRU firms will not have to submit Section B under the new proposals.

Complaints data at individual adviser level

Increasing the professional standards of advisers is a central element of the RDR, and we will continue to increase our focus in this area. ▶

We currently require firms to provide us with a complete report of complaints received twice a year. We are proposing that firms break down their complaints data to individual investment adviser level, detailing:

- number of complaints;
- number of complaints upheld; and
- amount of redress paid in the firm's last reporting period.

We also propose to ask firms to alert us when an adviser is subject to three or more complaints in a 12-month period or an adviser is subject to a complaint with a claim of more than £5,000.

Reason for these proposals

The collection of this data will help us supervise and achieve our objective of establishing a resilient, effective and attractive retail investment market. It will be an important part of our supervisory approach post-2012, to mitigate the risk of poor consumer outcomes.

The consultation closes on 8 July 2011. You can submit your response to cp11_08@fsa.gov.uk.

Notifying the FSA about individual advisers starts in July

As part of our risk-based supervisory strategy for individuals, firms will be

required to notify us of competence issues with their advisers from July 2011.

Firms should notify us if an adviser:

- is no longer considered competent;
- failed to attain an appropriate qualification within the prescribed time limit;
- failed to comply with a Statement of Principle (**APER**); or
- performed an activity without demonstrating competence and without supervision.

If any of the above has happened, from July, you should complete a **notification form** and email it to RIAnotifications@fsa.gov.uk.

Firms are already obliged to monitor their advisers and should continue to do so. The ethical behaviour and competence of advisers is very important and this notification requirement informs our supervision of individual advisers by providing us with insights into individual competence and behaviour. One concern we have is that firms only have access to part of the picture i.e. the duration the adviser is at their firm. This notification allows us to build a better view of advisers as they move between firms.

Qualification gap-fill

Advisers who already hold certain qualifications published in our Handbook must also carry out qualification gap-fill to meet the appropriate qualification requirements. These qualifications assess individuals at level 4 and meet the content of the 2004 exam standards, and so individuals will not have covered all the new content such as ethics and investment risk. If you have to carry out qualification gap fill then you need to decide what form of structured learning activity suits you. This could include e-learning packages, educational conferences, seminars and workshops.

It is important that any gap-fill activity you carry out is capable of being independently verified by an accredited body. It is primarily for this reason that we do not expect advisers to use reading when planning their gap fill activities. We do recognise that there may be occasions where other activities are simply not available, and so we accept that some advisers may choose to read educational material with some form of self assessment in order to meet a minority of their identified gaps.

We have published a **web page** that covers six points you need to consider when gap-filling.

Myth busting

We hear many myths about the RDR. Here we aim to dispel the most topical of these.

Discretionary investment managers' obligations under the RDR

There has been much discussion about when discretionary investment management (DIM) services are subject to the new rules. The three scenarios below establish when a DIM will be subject to the RDR rules.

A discretionary investment manager makes a personal recommendation

Where a DIM discusses proposed asset allocation directly with the customer ahead of selecting a retail investment product, a personal recommendation is likely to be given, so the firm would

need to comply with the adviser charging rules.

A discretionary investment manager does not make a personal recommendation

DIM will not be caught by the new requirements if there is no personal recommendation to a retail client, for example where the DIM firm is instructed by the client's IFA. The firm will remain subject to other existing rules e.g. the requirements in COBS 6 for firms that manage investments and the qualification requirement for TC activity 14 (managing investments).

An adviser firm recommends that a client invests through a particular discretionary investment manager

Adviser firms should not be allowed

to receive commission set by DIMs for recommending their services, just as they cannot receive commission set by product providers for recommending their products. For the avoidance of doubt, in describing the types of services that can be thought of as related to a personal recommendation and therefore covered by the adviser charging requirements, we have now included (in COBS 6.1A.6G) the example of the adviser firm managing a relationship between their client and a discretionary investment manager.

We have issued guidance (**PS10/6**) that describes the types of services that could be related to a personal recommendation and which are therefore covered by the adviser charging rules. ▶

Requirements for restricted advice

One of the decisions that a firm needs to make is whether it will provide independent advice or restricted advice.

Some firms/advisers think that adopting a restricted advice label is the lesser of the two and they should strive to become independent. You should choose the advice service that best suits your business and clients.

To confirm, restricted advice:

- is still advice;
- must be suitable for your client;
- is subject to the adviser charging rules;
- must still meet the professional standards; and
- as an addition to your written disclosure, you must give an oral description of the nature of the restriction. The oral disclosure must take place before the advice process.

Passporting

There are a number of different scenarios where firms/advisers fall either in or out of scope of the RDR requirements when passporting under either the Markets in Financial Instruments Directive (MiFID) or the Insurance Mediation Directive (IMD). We aim below to clarify when a firm/adviser is within the scope either of the RDR rules or the rules of the

EU Member State where their business is established (the home state).

- If a branch is set up in the UK under either MiFID or IMD, the Conduct of Business (COBS) rules will apply. This includes scope of advice (independent or restricted) and adviser charging.
- If a firm passports into the UK without having a branch in the UK, they are subject to the rules set by their home state.
- Firms who passport into the UK under MiFID or IMD are not subject to our training and competence requirements, which includes holding a relevant qualification or ongoing CPD. They will be subject to their home state's regime.
- MiFID and IMD do not include all investment products. For example, personal pensions are not in scope of MiFID and IMD, so firms passporting into the UK who are seeking to provide pension advice will require a top-up permission, and will be subject to the FSA rules.

Receiving additional income from Distributor Influenced Funds (DIFs)

Distributors using DIFs will not be able to receive additional income over and above comparable products, unless they undertake a

substantive manufacturing role such as managing the money as well.

In **PS10/6** we clarified that one of the effects of our adviser charging rules would be that advisers will not be able to adopt higher charges for recommending DIFs and other similar products, than for recommending competing products like third party Collective Investment Schemes (CIS).

Advisers will not be able to continue to receive additional income from other sources in relation to DIFs. This includes remuneration currently paid, for example, to the firm for its role on the governance committee of a DIF.

Adviser firms should not be financially incentivised to recommend a DIF over another CIS, or indeed any other potentially substitutable product. Our current rules are clear that a DIF can only be recommended where it is suitable for and in the best interests of the client.

Don't forget to...

- Collate new information or use current management information from your clients on the service they would like to receive and how much they are willing to pay.
- Think about different charging structures for different clients.
- Investigate how product providers will facilitate adviser charging (if they choose to do so).
- Consider alternative roles for advisers who do not meet the professional standards in time and which you are certain cannot involve giving advice.
- Demonstrate that your advisers are complying with the Statements of Principle and Code of Practice for

Approved Persons (APER) and consider how you are monitoring compliance on an ongoing basis.

- Check that you are ready to start notifying FSA about any issues with your advisers' competence from July 2011.
- Review your training and competence records so we are able to monitor that advisers are maintaining their knowledge.

RDR timetable

End 2012:

- advisers must attain an appropriate qualification. (key a or b in the qualification list – TC Appendix 4E).
- advisers who need to undertake gap-fill need to do so in sufficient time. They will need to leave enough time to apply to an accredited body to validate their gap-fill and issue a statement of professional standing (SPS).

From January 2013:

- all advisers and product providers must prepare and be ready to operate adviser charging and consultancy charging.
- all advisers must describe their services as either giving independent advice or restricted advice.