Financial Conduct Authority

Accompanying notes for disclosure assessment template

The Retail Distribution Review (RDR) was introduced on 31 December 2012. One of the main aims of the RDR) was to increase transparency for consumers on the services offered by advisers and the charges for these services, and the clarity of the information firms provide to their clients[1] through their disclosure material is an important element of this.

The initial disclosure of the firm's standard charging structure should help clients understand how much the advice is likely to cost and the service they can expect to receive in return (e.g. whether the firm is providing an independent or a restricted service). The client specific disclosure should then provide clients with the cost of advice for their particular circumstances. It should also be clear to the client what ongoing services are being provided, if applicable.

The findings[2] of the second cycle of our review, published in April 2014, were unacceptable. We expect to see significant improvements during the third cycle, which starts in mid-July 2014. We will consider further regulatory action against firms that are failing to be sufficiently clear with their clients.

To assist firms in meeting the disclosure requirements have published an assessment tool to enable firms to review their disclosure documents against the key disclosure requirements of the RDR. This is similar to the template that we used to assess compliance with the disclosure requirements in the second cycle of our RDR thematic review. We plan to use this to assess disclosure in the third cycle of our review. We encourage firms to use this assessment template to make any required amendments to their client facing documentation prior to this.

Although the template highlights many of the key disclosure requirements introduced by the RDR, it is not exhaustive. The template does not replace compliance with or having regard to the Handbook Rules and Guidance, FSMA and other regulatory requirements. When reviewing the disclosure material, firms should also refer to our Handbook (specifically COBS 6.1A and COBS 6.2A) and our thematic findings (TRs) that have been published:

- TR13/5: Supervising retail investment advice: how firms are implementing the RDR[3] (July 2013)
- TR14/6: Supervising retail investment firms: being clear about adviser charges and services[4] (April 2014)

In addition to this we have also published a factsheet: 'Disclosing your firm's charges and services'[5] and a video highlighting the key disclosure requirements[6].

[1] Unless otherwise indicated, 'client' is used in this document to mean 'retail client'.

[2] http://www.fca.org.uk/static/documents/thematic-reviews/tr14-06.pdf

[3] http://www.fca.org.uk/static/documents/thematic-reviews/tr13-05.pdf

[4] http://www.fca.org.uk/static/documents/thematic-reviews/tr14-06.pdf

[5] http://www.fca.org.uk/static/documents/factsheets/fca-factsheet-no-007.pdf

[6] http://www.fca.org.uk/news/thematic-reviews/tr14-6-supervising-retail-investment-firms

Completing the template

When completing the template, firms should also refer to the 'Explanatory Notes' section of this document. This provides an overview of the requirements and refers firms to the relevant section of the FCA Handbook.

This template outlines the minimum requirements in specific areas. Although this can be used as a checklist by firms, we would encourage firms to think about their business model, their proposition and the services they offer when considering how best to adapt their disclosure documents to improve client understanding. Firms should think more broadly about how to make their disclosure material clear and engaging for their client base.

This template is not compulsory but we would encourage all firms that are subject to the RDR requirements to complete the template and save a copy for their records.

Once the template has been completed, we would expect firms to take action to remedy any issues highlighted.

Use of the template alone does not constitute compliance with all the disclosure requirements.

Answering the questions in the template

There is certain functionality in the Excel version that is not available in the PDF version:

- For the functionality in the Excel template to work, you must first click on the 'enable edit' button at the top of the page.
- All yellow-shaded cells provide a drop-down menu of possible answers.
- There are blue markers next to each question. Once you have answered the question, the blue marker will disappear.
- There are comments boxes for each set of questions within the template. This can be used by firms to record any notes relating to the responses.
- Once the template has been completed, all compliant answers will have a green background and any non-compliant answers will have a red background.

<u>Explanatory notes</u>

Section 1

This section of the template refers to the firm's <u>standard</u> (i.e. generic) charging structure.

<table>
<tr><th>Question number</th><th colspan="2"></th><th>Rule reference</th></tr>
<tr><td>1a)</td><td colspan="2">This question is in relation to whether the firm (i) has a generic disclosure document; and ii) whether it is provided at the correct time.</td><td></td></tr>
<tr><td></td><td>(i)</td><td>Firms must determine and use an appropriate charging structure for calculating their adviser charge for each retail client.

Firms must disclose their charging structure to a retail client in writing.</td><td>COBS 6.1A.11R

COBS 6.1A.17R</td></tr>
<tr><td></td><td>(ii)</td><td>Firms must disclose their charging structure to a retail client in writing, in good time before making the personal recommendation (or providing related services).

Typically this is provided at the beginning of the initial meeting with the client or before the meeting. It would be a problem if the firm did not provide its charging structure until the second meeting (when delivering its recommendation) as this does not allow the client to understand what they will pay early enough in the advice process</td><td>COBS 6.1A.17R</td></tr>
<tr><td>1b)</td><td colspan="2">If a firm has a percentage based charging structure, they should provide examples in cash terms to illustrate how the charging structure will be applied in practice.

E.g. if a firm have a charging structure of 3% of the value of investment, they should provide a generic example, such as:

'For example, if you were to invest £100,000 our fee would be £3,000.'

This guidance applies to both initial and ongoing adviser charges so there should also be illustrative cash examples for the ongoing</td><td>COBS 6.1A.19G</td></tr>
</table>

	service.		
1c)	If a firm uses a charging structure based on hourly rates, they should ensure that the client is able to understand the likely adviser charge.		
	(i)	To assist clients in understanding the likely adviser charge, firms should specify if the hourly rates quoted are the actual hourly rates used by the firm, or whether they are indicative.	COBS 6.1A.20G
	(ii)	If the hourly rate is indicative, the charging structure should include an explanation of the basis on which the rates may vary.	COBS 6.1A.20G
	(iii)	Firms that are using an hourly rate charging structure should provide an approximate indication of the number of hours each service they offer is likely to take in order for clients to be able to understand the likely overall cost.	COBS 6.1A.20G
1d)	To assist clients in calculating what the charge is likely to be, firms should ensure that the standard charging structure is an accurate reflection of what the charges are likely to be. This means that firms should avoid using wide ranges in their charging structure The key point here is whether or not it is likely to prevent the client from understanding what the charges are likely to be. If a firm do use a range is it likely to be clear to potential clients what the likely charges are going to be? For example, is there an indication of what they might be charged within this range such as giving some indications as to what services are at the bottom and top of the range?		COBS 6.1A.20G (1)
1e)	Where the firm have more than one option in their charging structure (i.e. if they use a combination of two or more of, typically, hourly rates, percentages, fixed fee) it is important that potential clients are able to understand which charging structure would apply and when. If the firm offer different charging methods then is it clear to the client which would apply to them? Is this explained in the document? For example, if a firm charge a percentage for lump sum investments but an hourly rate for regular premium investments,		COBS 6.1A.20G (1)

	this should be made clear. Similarly if they will calculate a fee based on a percentage and a fee based on an hourly rate, then charge the lower fee, this should be clearly stated.	

Section 2

This section of the template refers to the disclosure of the specific charges – i.e. how much the individual client is due to pay.

Question number			**Rule reference**
2a)	Firms are required to agree and disclose the total adviser charge (i) as early as practicable, (ii) in a durable medium or through a website meeting certain conditions, and (iii) in total when payable over a period.		
	(i)	A good practice approach would be to disclose the specific charge at the end of the first (or fact-finding) meeting or shortly afterwards. It would be problematic for a client if this disclosure is after chargeable work has started. If the firm work on a contingency basis (ie no adviser charge is levied unless the recommendation is taken up), and the recommendation meeting follows shortly after the fact-finding meeting, then it is acceptable for the specific disclosure to be made at the recommendation stage (for example in a key features illustration or suitability report). It is reasonable for the disclosure of the ongoing services total charge to be made at the end of the recommendation stage as it might not be until this stage that the client decides whether they want to take up the ongoing services.	COBS 6.1A.24R
	(ii)	A website which is not a durable medium will be acceptable e.g. if the client is happy to receive information that way and the information is up-to-date and can be accessed for as long as the client may reasonably need to look at it.	COBS 6.1A.24R
	(iii)	This applies to initial advice on regular contribution investments. Where adviser charging payments are over a period of time then the firm must quote the total adviser charge. For example, if the adviser charge is £50 per month for the first year then the firm must quote the total adviser charge of £600. Similarly, if the adviser charge is 3% of the contribution of £500 pm over a 20 year term then this would be £3,600 total adviser charge. An open-ended percentage charge for initial advice on a regular contribution investment is not acceptable under COBS 6.1A.22R – an ongoing charge must either be to pay off an agreed initial charge or be for ongoing	COBS 6.1A.24R

	services.	
2b)	Firms must disclose the total adviser charge in cash terms both for the initial and, if applicable, the ongoing services. There is one exception to the requirement to provide cash terms in advance of the execution of the transaction. This is when the amount of the adviser charge is not known as it is percentage based and the value of the assets on which the percentage is charged varies in line with the market (COBS6.1A.24AG). For example, this might apply: • when a firm recommends X units in Y RIP and the price of the RIP fluctuates. A contract note (or similar) as soon as practicable after the transaction has taken place is acceptable; or • replacement business where the value of the transferring or switching asset is not known until the transaction takes place. In both cases, we would consider it good practice to estimate the specific adviser charge for the client in advance.	COBS 6.1A.24R
2c)	It must be clear from the disclosure material when the adviser charges are incurred. It would not be acceptable if the client is in the position where they have started to incur adviser charges without this being clear to them	COBS 6.1A.26G (2)
2d)	If the ongoing adviser charge is percentage based then the firm should clearly reflect in the disclosure that the adviser charge may increase as the fund grows.	COBS6.1A.26G (4)

Section 3

This section of the template refers to general disclosure requirements – i.e. this applies to both the initial and the client specific disclosure

3)	Firms should consider if there are any other aspect(s) of their disclosure of charges that: are non-compliant; or, could materially affect a client's understanding of their charging structure. This applies to both the standard charging structure and the specific disclosure of charges.	

Section 4

This section of the template refers to the disclosure of the <u>scope of service</u> that the firm offer – i.e. whether they offer independent or restricted advice (or both)

Question number		**Rule reference**
4a)	All firms must disclose whether they offer independent advice or restricted advice (or both), (i) in writing and (ii) in good time before the provision of services.	COBS 6.2A.5R (and 7R)
4b)	**This only applies to firms offering restricted advice.** Firms must use the expression 'restricted advice' in the disclosure material.	 COBS 6.2A.6R
4c)	**This only applies to firms offering restricted advice.** Firms must explain the nature of the restriction. This means that if a firm is operating a restricted model, it must clearly disclose the nature of the restriction in a manner that is likely to be understood by its clients. For example, the explanation should clearly state whether the firm is restricted by product, provider or both.	 COBS 6.2A.6R (3)
4d)	**This only applies to firms offering restricted advice.** It is important that firms do not provide clients with contradictory or conflicting information on the nature of their restriction.	
4e)	**This only applies to firms offering independent advice** Firms must use the expression 'independent advice' in the disclosure material.	 COBS 6.2A.6R

4f)	**This only applies to firms offering independent advice within a 'narrower relevant market'.** Firms must explain the nature of the relevant market *if* the relevant market is narrower than the whole of market for all retail investment products. For example, if the firm only deals with pension decumulation clients, then it should be clear that the firm provides independent advice in this area only and the types of retail investment product this involves.	COBS 6.2A.6R (2)

Section 5

This section of the template refers to the disclosure of the <u>ongoing services</u> that the firm offer.

Question number		**Rule reference**
5a)	Firms must disclose the nature of their services. It is important that a client has a clear idea of what is included in a firm's ongoing service to enable them to make an informed decision about whether they are willing to pay an ongoing fee. Therefore, a firm's disclosure documents must provide clients with sufficient information to understand what service they can expect to receive. For example, consider whether the description of an 'annual review' is likely to be clear to clients given that an annual review could be interpreted in a variety of ways and is likely to mean different things to different individuals.	COBS 2.2.1R
5b)	Firms must disclose to clients the right to cancel an ongoing service.	COBS 6.1A.22R (1)(b) and COBS 6.1A26G (5)

Section 6

This section of the template refers to the general disclosure requirements when describing the services offered by the firm, i.e. it includes disclosure of the scope of service (i.e. independent, restricted or both) and also the ongoing service that

6)	Firms should consider if there any other aspect(s) of their disclosure of the services that: is non-compliant; or, could materially affect a client's understanding of the services they offer.	