

Distribution of retail investments: referrals to discretionary investment managers and adviser complaints reporting

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In this Policy Statement we report on the main issues arising from Consultation Paper 13/4 *Distribution of retail investments: referrals to discretionary investment managers and adviser complaints reporting* and publish the final rules for referrals to discretionary investment managers.

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You can download this Policy Statement from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this paper

CBA	Cost benefit analysis
COBS	Conduct of Business sourcebook
CP	Consultation Paper
DIM	Discretionary investment manager
DISP	Dispute Resolution: Complaints sourcebook
FSMA	Financial Services and Markets Act 2000
Gabriel	GATHERING Better Regulatory Information Electronically system
PS	Policy Statement
RIA	Retail Investment Adviser
RDR	Retail Distribution Review
SUP	Supervision Manual
TC	Training and Competence sourcebook

1. Overview

Introduction

- 1.1** We are publishing final rules on the first two of the proposals we consulted on in CP13/4 in July 2013:
- Banning new referral payments by a discretionary investment manager (DIM) to an adviser when the adviser recommends that a client places additional money with the same DIM from whom they receive payments following a pre-RDR referral.
 - Banning referral payments where an adviser firm does not provide personal recommendations to particular clients, but provides other services to them.
 - A minor amendment to the rules requiring complaints against individual advisers to be reported to us, to match the policy intention that complaints concerning activities when acting as a retail investment adviser – such as advice on shares and derivatives as well as retail investment products – should also be included.
- 1.2** We have not published final rules on the third proposal, as these changes need to coincide with an update to text in Gabriel, which is scheduled for June 2014.

Who does this Policy Statement affect?

- 1.3** You should read this Policy Statement if you are:
- an adviser
 - discretionary investment manager, or
 - provider active in the retail investment market

Is this of interest to consumers?

- 1.4** Consumers and consumer groups may be interested in the rules on referral payments, as they will affect how firms interact with retail clients. The clarification we propose to make to the complaints reporting rules means that consumers can be more confident that we will be aware if their adviser's actions result in a complaint.

Context

- 1.5** The rules we have made are part of the Retail Distribution Review (RDR) and contribute to our objectives of consumer protection, financial system integrity and effective competition in the interests of consumers. The final rules described in Chapter 2 will ensure clear adviser and discretionary investment management charges, with advisers no longer receiving payments from DIMs for new referrals. The rules explained in Chapter 3 (to be made later this year) will help to raise professional standards, as they make clear that complaints reporting covers all activities when acting as a retail investment adviser.

Summary of feedback and our response

- 1.6** Respondents broadly supported our proposals for both referral payments and complaints reporting, and we have not made any changes to the rules we consulted on for referral payments. The rules on complaints reporting require a change to be made to Gabriel, to make it clear which activities we expect the report to cover.

Next steps

What do you need to do next?

- 1.7** If your firm is a discretionary investment manager, you will no longer be able to make new referral payments to advisers where:
- the adviser recommends that the client places more money with your firm, or
 - the adviser does not provide advice, but does provide other services to the client such as market research reports
- 1.8** If your firm is an adviser firm, you will need (once the changes on complaints reporting have been made later this year) to report all complaints against individual advisers to us when an adviser is acting as a retail investment adviser, including complaints relating to advice on shares and derivatives.

What will we do?

- 1.9** The rules banning new referral payments come into force on 31 December 2014.
- 1.10** Our intention currently is that the rules on complaints reporting should come into force in June 2014.

2. RDR – payments for referrals to discretionary investment managers

- 2.1** In this chapter we set out in more detail the feedback we received to our proposals on referral payments and our response.
- 2.2** We received only nine replies to the CP chapter, including replies from two trade bodies and the Financial Services Consumer Panel. However, as reported in the CP chapter, 27 discretionary investment managers (DIMs) and 37 adviser firms responded to the survey we carried out before consultation, to obtain information on the costs and benefits of different options for the treatment of pre-RDR referrals and new referrals post-RDR to the same DIM. So the views of these firms had already been taken into account in formulating our proposals and in the cost benefit analysis.

Summary of feedback received and our response

Q1: Do you agree that referral payments for pre-RDR referrals to discretionary investment managers should continue, with new payments on top-ups being banned?

- 2.3** There was general support for our proposal to ban new payments for top-ups. However, four respondents, including the Financial Services Consumer Panel, thought we should go further and ban all referral payments (not just those for referrals to DIMs) or should phase out payments for pre-RDR referrals to DIMs over a transitional period. The Consumer Panel thought switching off all referral payments following a transitional period would adequately balance the interest of consumers and advisers, as advisers would get some time to work through the impending changes, and consumers would have a definite cut-off period after which referral payments would no longer continue to apply.

Our response

We have gone ahead with our proposed solution, which is consistent with the position we have adopted for trail commission for pre-RDR advice (which can continue indefinitely under certain conditions). A wider ban would require further consultation, and the responses to the CBA survey we carried out before consultation showed that our proposed option was deemed to have the lowest overall impact on firms' business strategy.

Q2: Do you agree with our proposal to ban adviser firms from receiving referral payments if they do not make personal recommendations to particular clients but provide other services to them?

- 2.4** One firm opposed this proposal. However, other respondents supported the proposal. One commented that adviser firms would generally make personal recommendations to clients, so this proposal was unlikely to have a significant effect on firms.

Our response

We have made the rule banning referral payments where a firm does not provide personal recommendations to a specific client but does provide other services, such as market research or passing information between the client and the DIM.

COBS 6.1A now applies to firms which provide personal recommendations generally, even if they do not provide personal recommendations to a specific client. So the rule amendment referring to 'other services' does not apply to firms offering only non-advised services or to pure introductions, where the introducer has no further contact with the client. Referral payments in these circumstances can continue.

Q3: Do you have any comments on the referral payment rules in Appendix 1 Annex A?

Q4: Do you have any comments on our analysis of the costs and benefits in relation to our proposals on payments for referrals to discretionary investment managers?

- 2.5** One firm thought the new rules should be brought into force sooner, as they simply clarify existing rules.
- 2.6** One respondent (which took the view that all referral payments should be banned) thought the costs of systems changes to identify top-up payments would be significant. A wealth manager also thought the costs would be more significant than indicated in the cost benefit analysis (CBA) if we did not ban all referral payments. Another trade body and a wealth manager thought there would be little impact on firms, in line with the general response to the survey carried out for the CBA before consultation.

Our response

We have not made any changes to the wording of the rules we consulted on.

The responses we received to the pre-consultation CBA survey showed that the proposed rule changes would only impact a small proportion of the market. And most of the affected firms noted that the implementation costs would be minimal. So we consider that the CBA in the CP is still valid.

3.

Retail investment adviser complaints reporting

- 3.1** In this chapter we set out the feedback we received to our proposals on retail investment adviser complaints reporting.
- 3.2** We received six replies to this CP chapter, including replies from two trade bodies and the Financial Services Consumer Panel.

Summary of feedback received and our response

- 3.3** We asked two questions about the proposed changes.
- Q5:** Do you have any comments on our analysis of the costs and benefits in relation to the adjustment to the rules on adviser complaints?
- Q6:** Do you agree with our proposal to adjust the adviser complaints rules as described in Appendix 1 Annex B?
- 3.4** All the respondents agreed with our proposals, with some confirming they were already reporting as proposed. One respondent said there would be no significant impact to firms as a result of the amendment and that it would create a level playing field.

Our response

We intend to go ahead with the proposed changes. These changes need to coincide with an update to text in Gabriel, which is scheduled for June 2014.

Annex 1

List of non-confidential respondents to Chapter 2 of CP13/4

Aegon

Association of Professional Financial Advisers (APFA)

Bartlett Wealth Management

Brewin Dolphin

Clay Rogers

Financial Services Consumer Panel

Openwork

Prudential

Wealth Management Association (WMA)

Annex 2

List of non-confidential respondents to Chapter 3 of CP13/4

Association of Professional Financial Advisers (APFA)

Bartlett Wealth Management

Brewin Dolphin

Financial Services Consumer Panel

Prudential

Wealth Management Association (WMA)

Appendix 1

Made rules (legal instrument)

**RETAIL DISTRIBUTION REVIEW (ADVISER CHARGING NO 7)
INSTRUMENT 2014**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers); and
 - (c) section 139A (Power of the FCA to give guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 31 December 2014.

Amendments to the FCA Handbook

- D. The Conduct of Business sourcebook (COBS) is amended in accordance with the Annex to this instrument

Citation

- E. This instrument may be cited as the Retail Distribution Review (Adviser Charging No 7) Instrument 2014.

By order of the Board of the Financial Conduct Authority
30 January 2014

Annex

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6.1A Adviser charging and remuneration

Application – Who? What?

6.1A.1 R (1) This section applies to a *firm* which makes ~~a *personal recommendation*~~ personal recommendations to a *retail client* *retail clients* in relation to ~~a *retail investment product*~~ *retail investment products*.

...

...

Requirement to be paid through adviser charges

6.1A.4 R Except as specified in *COBS* 6.1A.4AR, *COBS* 6.1A.4ABR, *COBS* 6.1A.4ACG and *COBS* 6.1A.4BR, a *firm* must:

...

...

6.1A.4AA G ...

6.1A.4AB R A *firm* and its *associates* may solicit and accept a commission, remuneration or benefit of any kind from a *discretionary investment manager* in the circumstances in *COBS* 6.1A.4R if:

- (1) the *firm* or its *associates* recommended the *discretionary investment manager* to a *retail client* on or before 30 December 2012;
- (2) the solicitation and acceptance of the commission, remuneration or benefit of any kind was permitted by the *rules* in force on 30 December 2012;
- (3) the contract under which the right to receive the commission, remuneration or benefit of any kind was entered into on or before 30 December 2012;
- (4) the terms of that contract as at 30 December 2012 included the right to receive the commission, remuneration or benefit of any kind; and
- (5) the *retail client* agreed an investment mandate with the *discretionary investment manager* within a reasonable time of the

recommendation to use the *discretionary investment manager* being made.

- 6.1A.4AC **G** (1) If a *firm* makes a recommendation of a *discretionary investment manager* to a *retail client* and wishes to:
- (a) receive remuneration for that recommendation in addition to any commission, remuneration or benefit of any kind it receives in the circumstances contemplated by *COBS* 6.1A.4ABR; or
- (b) be paid additional amounts for any actions linked to a new amount invested by the *retail client* through the same *discretionary investment manager*;
- it should only be paid those additional amounts for that recommendation or for those actions by *adviser charges*.
- (2) A *firm* may offset against any *adviser charges* which are payable by the *retail client* any commission, remuneration or benefit of any kind it receives in the circumstances contemplated in *COBS* 6.1A.4ABR.

...

6.1A.6 **R** ‘Related service(s)’ for the purposes of *COBS* 6.1A includes:

...

- (3) recommending a *discretionary investment manager* to a *retail client* (to whom the *firm* provides *personal recommendations* ~~or~~ or other services in relation to *retail investment products*).

6.1A.6A **G** ‘Other services’ in *COBS* 6.1A.6R(3) includes:

- (1) providing information relating to *retail investment products* to the *retail client*, for example, general market research; or
- (2) passing on information from the *discretionary investment manager* to the *retail client*.

Financial Conduct Authority



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