

Policy Statement on retiring FG 12/15 and FG 14/1

Policy Statement

PS18/10

May 2018



This relates to

Policy Statement PS17/25
which is available on our website at
www.fca.org.uk/publications.

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abbreviations

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1 Overview

Introduction

- 1.1** In December 2017, we published PS 17/25: 'Financial Advice Market Review Implementation Part II and Consultation on Retiring FG 12/15 and FG 14/1'.
- 1.2** Part of this publication consulted on retiring the following guidance, which we considered had been largely superseded¹ by recent changes to our rules including to implement the re-cast Markets in Financial Instruments Directive (Directive 2014/65/EU) (MiFID II):
- FG 12/15, 'Retail Distribution Review: independent and restricted advice'
 - FG 14/1, 'Supervising retail investment advice: inducements and conflicts of interest'.
- 1.3** In this Policy Statement (PS), we summarise the feedback received for this consultation. In light of the feedback, we're confirming the retirement of FG 12/15 and FG 14/1.

Who this affects

- 1.4** Our PS may affect:
- financial advisers
 - providers of retail investment products (RIPs)
 - portfolio managers
 - trade and professional bodies that represent financial advisers, product providers, and other firms involved in the distribution of RIPs
 - compliance consultants and other firms that assist stakeholders
 - discretionary investment managers

¹ We consider FG 14/1 to have been "largely superseded" due to several references within the guidance to other parts of the FCA's Handbook of Rules and Guidance, the application of which has not been affected by the changes to our inducement and adviser charging rules.



Is this of interest to consumers?

- 1.5** In this PS, we are retiring 2 pieces of guidance which are predominantly used by firms providing investment advice, and firms producing RIPs. Consumers will be interested in the new rules designed to enhance consumer protection, and can find more information in PS17/14² and PS17/25³; however, the content of this PS on retiring guidance is unlikely to be of direct interest to consumers.

Context

- 1.6** In December 2017, we consulted on retiring FG 12/15 and FG 14/1 (which relate to our rules on describing advice services and inducements, respectively). Because of recent changes to our rules, including those implementing MiFID II, these have both been largely superseded. These changes are summarised below.

FG 12/15 – ‘Retail Distribution Review: independent and restricted advice’

- 1.7** This Guidance was originally developed to help firms apply the rules on describing advice services as either ‘independent’ or ‘restricted’. These rules were introduced as part of the Retail Distribution Review (RDR) at the end of 2012. However, new requirements on describing advice were brought in as part of our implementation of MiFID II on 3 January 2018.

- 1.8** The new MiFID II rules, which can be found in COBS 6.2B, clearly specify:

- what firms need to do to describe their advice as ‘independent’
- what range of products they must consider in order to qualify as providing independent advice
- the requirements on firms which are providing both independent and restricted advice

- 1.9** While these new rules cover many of the same issues as the old rules, the new rules are different in substance. These changes mean that the guidance in FG 12/15 is no longer current or required.

FG 14/1 – ‘Supervising retail investment advice: inducements and conflicts of interest’

- 1.10** In broad terms, FG 14/1 provides guidance to firms on compliance with the MiFID I-derived inducement rules. In particular, it focuses on the various kinds of non-monetary benefit which firms may be able to give and receive in relation to the sale of retail investment products (RIPs) in compliance with the rule on inducements.

- 1.11** With effect from 3 January 2018, we’ve made a number of changes to our inducement and adviser charging rules to:

² www.fca.org.uk/publications/policy-statements/ps17-14-mifid-ii-implementation

³ www.fca.org.uk/publication/policy/ps17-25.pdf

- implement MiFID II's updated inducement requirements, including the new MiFID II requirements restricting the monetary and non-monetary benefits which can be received by investment advisers and portfolio managers
- clarify the application of our existing RDR adviser charging rules in COBS 6.1A and 6.1B.

1.12 The effect of these changes is to further restrict the ability of retail advice firms to accept any monetary or non-monetary benefits (other than certain minor non-monetary benefits meeting various conditions) in connection with their business of advising. The further effect of these changes is that the guidance in FG 14/1 has been largely superseded and is no longer current or required.

Summary of feedback and our response

1.13 All respondents to our consultation who commented on the future of FG 12/15 agreed to our proposal to retire FG 12/15. We will be retiring FG 12/15 with immediate effect. FG 12/15 contained a reference to a separate FCA factsheet ('Using platform-based investments and the independence rule') which has also been superseded. We will also be withdrawing this factsheet with immediate effect.

1.14 Respondents also agreed that FG 14/1 had been superseded by the changes that came into effect in January 2018. However, some asked for us to clarify certain aspects of the new rules. We will be retiring FG 14/1 with immediate effect. We highlight below the new rules which have triggered the need for this retirement. We consider these rules to be sufficiently clear, therefore we are not providing further guidance or clarification in this document.

Equality and diversity

1.15 We have considered the equality and diversity issues that may arise from the content of this PS. We don't believe that the content of this PS adversely impacts groups with protected characteristics ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

Your next steps

1.16 Our new rules for inducements and the description of advice services came into effect on 3 January 2018. Firms should, therefore, already be complying with those requirements. Firms should no longer have regard to FG 12/15 and FG 14/1 as these are retired with immediate effect.



Our next steps

- 1.17** We are retiring FG 12/15 and FG 14/1 with immediate effect. We will continue to monitor the market through our usual supervisory approach and broader industry engagement.

2 Retiring FG 12/15, 'Retail Distribution Review: independent and restricted advice'

- 2.1** In PS 17/25, we asked whether you agree that we should retire FG 12/15?
- 2.2** All respondents to this question agreed that we should retire FG 12/15. One respondent asked us to provide additional guidance for financial advisers which present themselves as 'independent' and only use a single platform for their clients. This respondent also asked whether firms can continue to use the separate FCA Factsheet 'Using platform-based investments and the independence rule' to which FG 12/15 contains a link.

Our response

In view of the responses to our proposal, we will retire FG 12/15 with immediate effect.

We won't be publishing further guidance for financial advisers which present themselves as 'independent' and only use a single platform for their clients. COBS 6.2B.24 R and 6.2B.25 G make provision for firms in this situation, and we consider that the new rules are clear. Because the FCA Factsheet 'Using platform-based investments and the independence rule' has also been superseded, we will be withdrawing it with immediate effect.



3 Retiring FG 14/1, 'Supervising retail investment advice: inducements and conflicts of interest'

- 3.1** In PS 17/25, we asked whether you agree that we should retire FG 14/1?
- 3.2** The responses to the consultation broadly agreed that FG 14/1 had been superseded by our new rules. Respondents asked us to update FG 14/1 to reflect our expectations under MiFID II. In particular, respondents (as well as firms posing questions outside of the consultation process) asked us to clarify how the new rules on inducements and adviser charging apply to various scenarios and industry practices. A specific focus has been on how the rules apply to advisers and product providers attending and paying for conferences, as well as other scenarios such as accepting hospitality, or paying an adviser for marketing.
- 3.3** One respondent asked whether we would consider updating FG 14/1 to reflect our expectations for providers of, and firms which give advice on, non-MiFID products.

Our response

In view of the responses to our proposal, we will retire FG 14/1 with immediate effect. The changes which triggered the need to retire FG 14/1 include our implementation of MiFID II's inducement rules as well as changes to our existing domestic RDR adviser charging rules. We consider that these rules are clear, and we don't plan to publish further guidance on this topic at this time.

The practical effect of one aspect of these new rules is that firms which provide independent or restricted advice to retail clients in the UK, and which are subject to COBS 2.3A.15 R, and / or to the rules in COBS 6.1A, **cannot accept any payment, commission or benefit of any kind which is paid or provided in connection with their business of advising**, except for:

- any form of charge payable by or on behalf of a retail client in relation to the provision of a personal recommendation (ie adviser charges)
- acceptable minor non-monetary benefits (which, for the avoidance of doubt, cannot involve any monetary payment)

These new rules do not prevent firms from organising or attending conferences, providing that their actions comply with applicable rules. The list of potentially acceptable minor non-monetary benefits (in COBS 2.3A.19 R(5) and 6.1A.5A R(2)(e)), expressly refers to participation in conferences.

As explained in PS 17/25, we have amended our restrictions on the payments which can be received by firms providing investment advice

to retail clients in the UK (in COBS 2.3A.15 R and COBS 6.1A.4 R) to apply in connection with firms' business of advising. The aim of this was to tackle a concern identified through thematic reviews following the implementation of the RDR, that firms were using various types of payment to secure distribution. We believed this undermined the spirit of the RDR. The combined effect of these rule changes is that there is a consistent inducements regime for advisers giving investment advice to UK-based retail customers on both MiFID financial instruments and RIPs.⁴

We don't intend to retain FG 14/1 for providers of, and firms which provide advice on, non-MiFID products. The new rules referred to above apply to firms advising on both MiFID financial instruments and RIPs. They therefore have wide application. We aren't aware of FG 14/1 being widely used by firms involved in advising on, or producing, products outside of this scope (ie products which are neither MiFID financial instruments nor RIPs). Firms to which the Insurance Distribution Directive (IDD) will apply should be aware that additional inducement rules applying to insurance-based investment products in scope of IDD will come into effect on 1 October 2018.

We don't intend to produce guidance on these rules at this time. However, we will continue to monitor the market through our usual supervisory approach and broader industry engagement.

⁴ RIPs and MiFID financial instruments are defined in the FCA's Handbook of Rules and Guidance. They both have very broad scope, and in general terms they refer to different groups of product or instrument. One area of overlap is in relation to units and certain types of structured product, which may constitute both a RIP and a MiFID financial instrument.



Annex 1

List of non-confidential respondents

Aegon UK

Association of British Insurers

PIMFA (Personal Investment Management & Financial Advice Association)

Prudential

Standard Life

Annex 2

Abbreviations used in this paper

COBS	Conduct of Business Sourcebook
CP	Consultation Paper
FAMR	Financial Advice Market Review
FG	Finalised Guidance
IDD	Insurance Distribution Directive (2016/97/EU)
MiFID I	Markets in Financial Instruments Directive (2004/39/EU)
MiFID II	Markets in Financial Instruments Directive II (2014/65/EU)
P2P agreement	Article 36H agreement, as defined in article 36H(4) of the Regulated Activities Order 2013
PS	Policy Statement
RDR	Retail Distribution Review
RIP	Retail investment product

We have developed the policy in this Policy Statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework in the future.

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