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Dear Jenny

CP11/26 Distribution of retail investments: RDR adviser charging treatment of legacy assets**

This is the Financial Services Consumer Panel's response to CP11/26** Distribution of retail investments: RDR adviser charging – treatment of legacy assets.

Key issues

We are pleased that the FSA has provided further clarity about the treatment of advice on legacy assets in the proposed guidance and we support the FSA's approach. It is the right policy and is consistent with RDR objectives.

We are aware however that this particular issue has led to some confusion in the market and that some firms have argued they may not be in a position to make the necessary revisions to their processes, procedures and agreements before 31 December 2012. Consequently we are concerned that this might lead to poor consumer outcomes, such as consumers making further investments in existing products where the products have not been re-priced to remove the commission element, thus effectively resulting in them paying for advice twice; or advisers perceiving the rules as a disincentive to giving new advice on legacy assets, contrary to their clients' interests.

We urge the FSA to address any potential consumer detriment arising from industry's response to the legacy assets rules. We would envisage behaviour of the type we have identified as being breaches of the Principle of Treating Customers Fairly and, given that the industry will have the benefit of RDR rules and the guidance proposed in CP11/26**, we would expect the FSA to enforce TCF swiftly and emphatically.

We think there is potential for confusion amongst clients about how advice on their existing investments will be paid for post-RDR, particularly if, for example, trail commission is also being paid. We have suggested in our response to the questions in the consultation that further guidance on communication might be helpful. It is

important that clients receive clear and unambiguous information about what they are paying for and how payment will be made. We would also like the FSA to consider extending the guidance to communications with employers and employees to cover questions on charges and payment that are likely to arise when an employee leaves a group personal pension scheme, but retains their pension savings.

Questions

Q1: Do you agree that it would be helpful to have guidance on when the ban on new commission does and does not apply, to ensure consistency of approach across the industry? If not, please explain why.

We agree that it would be helpful to have guidance as this issue seems to have caused some confusion within the industry in recent months. We are concerned that this confusion could result in consumer detriment of the kind referred to earlier in this letter. It is vital that the FSA takes robust steps to ensure that poor consumer outcomes are recognised and addressed. As we have said, we consider this an area where the principle of Treating Customers Fairly must be applied. We would like the FSA to ensure too that industry reaction to its policy on legacy assets does not result in inconsistent treatment across product types, tax wrappers and distribution channels. The use of guidance should help industry as a whole to comply with RDR requirements, with resulting consistency of treatment of consumers. This is an important area for all concerned as failure to introduce and enforce robust policies could not only lead to individual consumer detriment, but could also undermine the ultimate objectives of the RDR.

Q2: If your answer to Q1 is 'yes', do you have any comments on the draft guidance in Appendix 1? If you have suggestions for changes, please explain what you think these should be and why.

Advisers themselves are best placed to comment on the detail of the draft guidance. We thought it might have been a little clearer if the table at 8.29.7 could be more explicitly linked to legacy assets and trail commission and the difference between the two. The table could also reference further guidance on communications with consumers, as we have suggested in response to question 3 below.

Q3: In particular, do you think that there are any other specific situations or particular examples where guidance might be helpful? If you have suggestions for changes, please explain what you think these should be and why.

Given that we have concerns about the way in which advisers will explain to their clients how they will be paid for new advice on existing investments, perhaps as well as receiving trail commission for advice given pre-RDR, guidance on how this could be achieved would be helpful from the client perspective. In this respect we think that it would be helpful to consumers if the Money Advice Service were to provide information about the RDR to help clients understand what to expect when the RDR comes into effect, and what they should be asking for from their advisers. It is also important that clients receive clear information explaining in plain language what they are paying for and how payment will be made.

We would like the FSA to consider extending the guidance to, or producing separate information on, communications with employers and employees covering questions on charges and payment that are likely to arise when an employee leaves a group personal pension scheme, but retains their pension savings.

Q4: Do you have any comments on our analysis of the costs and benefits?

We have no comments on the analysis of costs and benefits.

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel