

**FSA publishes Retail Distribution Review feedback statement
Ed Anderson, February 2009**

As part of the Retail Distribution Review (RDR) the FSA has published its final proposals for the future of the retail market for investment products. A formal consultation process will now begin with the new regulatory environment commencing in 2012. Their latest thinking disappoints in many respects.

The previous interim report envisaged a very simple and clear market in which there would either be advice or sales. All advice would be fully independent. However because of concerns expressed over the effect of this on the market and EU regulations the latest report now dilutes that proposal. Non-independent advice by tied intermediaries for example may now be permitted, provided it is made clear that it is not independent. It will be still subject to the same standards as independent advice. The FSA needs to be careful in this regard as there is a danger that it will confuse the situation and in doing so it will fail to meet one of its major objectives, namely providing consumers with much greater clarity on services and products.

The FSA had also originally wanted to fundamentally change the manner in which advisers are currently paid under existing commission arrangements and ban outright any provider involvement in their remuneration. This has also been much watered down, due mainly to concern on whether this would be consistent with the European Markets in Financial Instruments Directive (MiFID). Therefore providers will still be allowed to facilitate payments to intermediaries subject to a number of safeguards. To prevent them unduly influencing advisers they will no longer be able to finance the payments in advance as currently happens with funded initial commissions for example. It will be the adviser who will set the level of their fees, which should be the same in respect of all product providers. Again there is a danger that this retreat will prevent there being a radical enough change. The main root cause of most problems in the market is the current method of charging and the fact that advisers are overly influenced to recommend those products that pay them the most fees or advise on unnecessary switching to generate additional revenue.

The FSA has confirmed that an Independent Professional Standards Board (IPSB) for financial advisers will be set up. This will set the standards for the industry and lay down minimum qualifications with continuing professional development. It will also introduce a code of conduct and deal with breaches.

Most disappointingly the FSA has decided not to consult further on introducing a 15 year long stop period for complaints made to the FOS. In the feedback received 80% of respondents had been in favour of this. It felt that an insufficient case had been made out for the benefit to firms and in turn consumers. This is very disappointing and despite pushing financial advisers towards becoming a true profession it is surely difficult to justify maintaining such a fundamental departure from the normal limitation periods that apply to others.

In our view the FSA have failed in this regard to give any weight to the continued sub-optimal insurance market for financial advisers and the detriment this can cause consumers. Because their insurance is not subject to minimum terms and conditions there are many cases in which cover is not in fact actually available to protect consumers when claims are brought. The new IPSB is a good opportunity to lay down some minimum terms and the appetite of the insurance market may have been greater than it currently is because of the raised standards that the other reforms will bring. However the open ended ability of the FOS to consider claims far into the future is likely to remain a major impediment to this and it is to be hoped that the FSA will reconsider their stance in this regard.

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