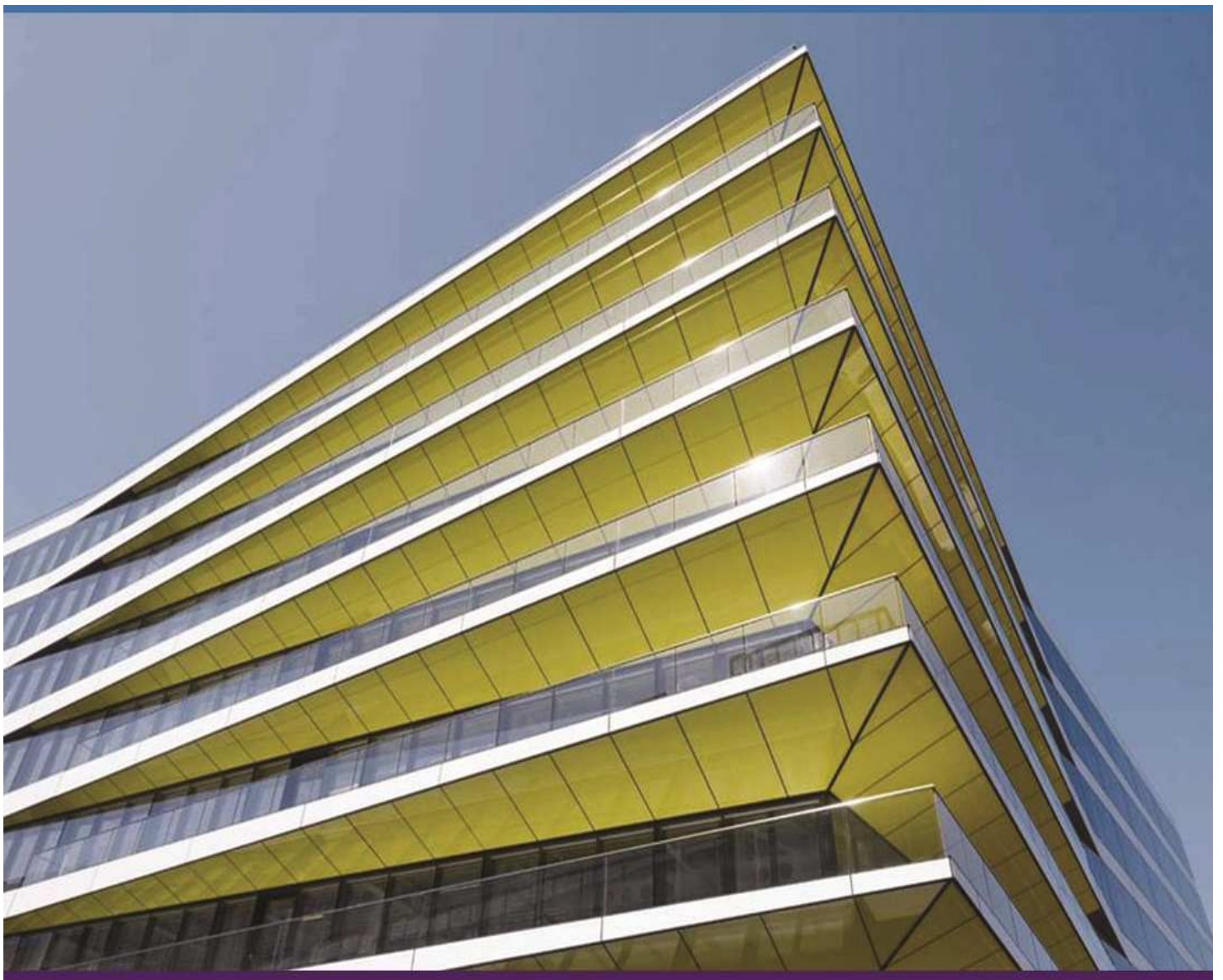


Affordable and accessible financial advice and guidance

April 2017



One challenge set out in the Financial Advice Market Review (FAMR) recommendations was to develop a market where affordable and accessible financial advice and guidance is available to everyone at all stages of their lives. The FCA's Guidance Consultation GC 17/4 considers a number of measures which address the FAMR recommendations. GC 17/4 is Part 1 of a two part consultation process designed to align their measures with the recent amendment to the regulated activity of "advising on investments" in Article 53(1) of the Regulated Activities Order.

Background

Part 1 of the Consultation in GC 17/4 covers a number of FAMR recommendations:

- Recommendation 4: streamlined advice;
- Recommendation 10: a fact find process following;
- Recommendation 3: non-advised services;
- Recommendation 11: employer and trustee factsheets.

This Briefing Paper looks at the proposals in relation to these which are covered in GC 17/4.

The second part of the Consultation is expected in Summer 2017 concerning:

- consequential Handbook changes;
- perimeter and non-advised services;
- consolidation of non-Handbook guidance; and
- guidance informed by the experiences of the FCA's Advice Unit.

Streamlined advice services

The FAMR Review recommends developing a clear framework that gives firms the confidence to provide streamlined advice on simple consumer needs in a proportionate way. The existing suitability rules could allow firms to consider providing not just full advice but a sub set of them – streamlined advice. As described in the FAMR Report, streamlined advice is "A term used to collectively describe advisory services (such as focussed and simplified advice) that provide a personal recommendation that is limited to one or more of a client's specific needs. The service does not involve analysis of the client's circumstances that are not directly relevant to those needs."

The FCA in their Guidance Consultation use streamlined advice as an umbrella term which covers both simplified and focussed advice:

- **simplified advice** is where a firm sets out the boundaries of the service it provides. In the FAMR Report, focussed advice was described as "advice which is focussed, at the request of the client, on the provision of personal recommendations relating to a specific need, designated investment or certain assets",

Whereas

- **focussed advice** involves the client stipulating the boundaries of the service (and, in the FAMR Report, simplified advice was described as "a personal recommendation which is limited to one or more of a client's specific needs and does not involve analysis of the client's circumstances that are not directly relevant to those needs").

The FCA appreciate that streamlined advice might include automated robo advice services and also face to face advice. Whilst these terms are not used in the Glossary of definitions in the FCA's Handbook in a formal way, and it is not suggested that the firms use them as part of client communications, the FCA do state "firms should make clear the nature of the service they are offering in terms that their potential clients will understand" in developing a streamlined advice service.

There has been much heralding of the fact that this is guidance on robo advice. Certainly the Guidance Consultation is intended to reflect that many of the streamlined advice services will be automated but note that the Guidance Consultation relates to all streamlined advice including both automated robo advice services and also face to face advice.

Chapter II of the FCA's Guidance Consultation describes how a firm should develop processes to cover relevant topics – which are not just limited to the specific nature of the services but wider issues of the types of client at which the service is aimed and understanding their needs; and considering the firm's product governance obligations whether, in respect of a MiFID firm, prospectively under the MiFID II arrangements, or in other instances, RPPD.

The suitability requirements for simplified advice are the same as for all other forms of retail investment advice; and there must be compliance with the usual Principles 6 and 7; and information provided to comply with COBS 4. The FCA are offering further guidance on the individuals who can be involved in the process; the appropriate products which can be offered through streamlined advice services; and the nature of the information which should be disclosed about the nature of the streamlined advice service and how this should be provided – sometimes the "how" is just as important as the "what", given, for example, the poor practice example the FCA offer of where the nature of the service is hidden away in FAQs which are hard to find.

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It is likely that firms will find that their processes on obtaining client information and assessing suitability will change, particularly once firms factor in the MiFID II requirements (as explained in FCA CP 16/29). The FCA helpfully refer to the principle of proportionality in connection with MiFID allowing firms to collect the level of information proportionate to the products and services they offer, or on which the client requests specific investment advice. Nonetheless, firms are not allowed *"to lower the overall level of protection due to clients"* and so, for suitability requirement purposes, a firm should not recommend a client purchase an investment product unless they have a reasonable basis for believing that the investor can afford the new commitment, which involves considering the client's level of indebtedness and access to liquid cash to meet an emergency.

The FCA expect that there will be occasions when a client exits from the streamlined advice process in order to ensure that the client is not given an unsuitable recommendation, e.g. when the client's circumstances disclosed are too complex for the nature and scope of the service, or the client's debt is considered too high, or the desired investment horizon is too short given the asset allocation of the product on offer – the FCA give a range of the examples where this might occur at paragraph 2.30 of the Guidance Consultation.

In Annex A to their Guidance Consultation, the FCA provide a series of examples of particular streamlined advice services and the information which might be relevant in assessing suitability (attached to this Briefing Paper) are indicative of the extent of the work which should be involved - and how specific the FCA is becoming in indicating their expectations. Obviously the Annex A information is by way of illustration, but it is nevertheless indicative.

The impact of MiFID II should not be underestimated. It comes within various guises, for example:

- the MiFID product governance provisions are similar to RPPD but they do go further;
- MiFID II will require product manufacturers to establish procedures to identify the target market and assess the risks of that target market for each new product that the firm manufactures and/or distributes – to consider and define a distribution strategy; to identify appropriate distribution channels; and to ensure that the distribution strategy is consistent with the target market of the end clients (see proposed new PROD 3.2 and proposed in CP 16/29);
- to require a product distributor to understand the financial instrument it offers, recommends or sells – assess the compatibility of those instruments with the needs of the client, taking into account the identified product manufacturer's target market; ensure the instruments are only offered, sold or recommended when in the best interests of the client, and identify a distribution strategy which considers the nature of the products to be recommended and how they fit with the end client's needs and risk appetite.

Introduction of revised processes to accommodate the above Guidance will of course cause various implementation issues. The issues should be governed by whether or not, once the new processes come in, they are providing advice. There will though be issues about existing information held by a firm which might be used in relation to a personal recommendation once the new Guidance is implemented. Firms may need to consider whether existing information they already hold is complete and correct.

With regard to relying on information, it is relevant to note that MiFID II will introduce express requirements on firms to take reasonable steps to ensure that the information they do collect is reliable. Those steps should include ensuring that clients understand the importance of providing accurate and up to date information, that all tools used in a suitability assessment process are appropriate and fit the purpose, and checking the consistency of client information, including any obvious inaccuracies. For ongoing relationships – whether advice or portfolio management services, firms must be able to demonstrate the processes for maintaining adequate and up to date information – see draft COBS 9A.2.10 set out in CP 16/29.

Not surprisingly, the FCA is taking a strong line on so-called "self-assessed suitability". The point of suitability is that the authorised firm assesses suitability. Self-assessment is when the client makes an execution only decision. The FCA will clearly take a strong view if a firm dresses something up so as to give the implication of some suitability process which does not in fact involve such an assessment.

Assessing a client's risk profile remains important. Firms should still have regard to the FCA's Finalised Guidance 11/05. Firms should take care particularly if they use third party automated solutions – the authorised firm still remains responsible.

The FCA is asking in the Guidance Consultation whether any guidance in FG 15/1 or FG 12/10 should be reconsidered. Firms should comment if they think this is the case.

Fact find information and portability

Chapter 3 of GC 17/4 consults on guidance which is designed to provide clarity on the standard types of information required as part of the fact find process – and also setting out key considerations for verifying a fact find that has been performed by third parties.

The potential for utilising a fact find from one advice to another is likely to be used more now innovative technology solutions are becoming available. This is seen as offering new efficiencies which can avoid duplication of updating personal information stored for a customer. The FCA indicate they see no objection to a consumer's personal information being used with their express permission for a conventional advice consultation.

Nonetheless, it remains the firm's responsibility to ensure that it has the information it needs to provide the service and so it remains responsible for ensuring that whatever is a pre-completed fact find is not only correct and up to date but that it also contains the relevant information from which it can then provide the suitability assessment which is in question. It is therefore not something to be accepted without careful consideration. Procedures will need to be developed in to make firms think about whether or not a new fact find will be required.

The critical point though is that firms obtain all the necessary client information and take all reasonable steps to ensure it is correct and up to date, regardless of the source of that information.

Standardisation of the information collected is not an easy issue because some information is qualitative – about level of knowledge, investment experience and attitude to risk. Depending on the firm and its services and products, the way in which attitude to risk for example will be assessed and so the relevant information to be collected might differ. Consequently, the FCA take the view that standardised fact finds might need to be quite flexible in order to facilitate the adviser concerned asking supplementary questions to clarify responses or follow up on information provided.

Non-advised services

A later Consultation will follow up on changes arising from the amendment to the definition of investment advice in the Regulated Activities Order that will take effect in January 2018. Before that review of FG 15/1, the FCA are setting out some initial thinking on specific areas where they are aware that there is some uncertainty despite the existing FG 15/1 Guidance. Chapter 4 of GC 17/4 seeks to offer new guidance to support firms offering services that help consumers make their own investment decisions without a personal recommendation.

The change to Article 53 of the RAO has the effect that a regulated firm with permission to carry out a regulated activity other than, or in addition to, the permissions of advising on investments and/or agreeing to advice on investments will only require the permission to advise on investments where that firm provides a personal recommendation. The FCA plan to consult later in 2017 on consequential amendments to the FCA Handbook as a result of this change as well as supporting guidance for firms. In addition, there will be consultation on guidance on the perimeter and considering the FCA's approach with regard to Guidance previously provided in FG 15/1 on Retail Investment Advice: Clarifying the Boundaries and Exploring the Barriers to Market Developments, which was issued in January 2015.

It should be unregulated firms which will in due course remain subject to the current advice boundary, although, in its Guidance Consultation, the FCA is extending this to firms which hold only the Article 53(1) permission and/or the Article 64 permission of agreeing to carry on the Article 53(1) activity.

Chapter 4 of the April Guidance Consultation seeks views on whether greater detail is needed in a number of areas, ahead of the forthcoming Consultation. Concerns include:

- **how to deal with implicit personal recommendations**

A firm might easily move over into the territory of personal recommendations at various items where there is no specific personal recommendation: the FCA give the example of where a firm tells its clients that similar clients to them often invest or disinvest from a particular regulated financial instrument. Firms should be very clear that they are simply providing factual material without implicit recommendations.

- **the implications of a transaction**

In some instances, a firm might believe that an instruction from a client for a transaction might not be in that client's interests.

If a firm indicates that the client may wish to consider taking regulated advice, that might be one option which would obviously not be a personal recommendation – it is a recommendation to take advice.

Interestingly, for a complex product, the appropriateness rules do envisage a firm being able to refuse to carry out a transaction where a client has been given a warning but still wishes to proceed. So there might be the possibility for a firm to refuse to effect the transaction, or indeed in other circumstances.

The important point is that the firm does not provide any opinion that amounts to a personal recommendation unless it has an advisory mandate.

- **use of risk profiling**

The answer on whether any profiling amounts to a personal recommendation, regulated advice or neither, depends on the circumstances. Aside from utilising different boundaries, the issue is back to whether there are generic explanations of factors (e.g. regarding asset classes and risks attached, benefits of diversification etc) or something which comes within the terms of personal recommendations and regulated advice as now defined.

Even if the service does not amount to personal recommendation or regulated advice, the FCA are reminding firms that information should still be presented in a balanced manner – reference back to the Principles would be prudent.

The examples that are given within the terms of paragraph 4.22-4.25 of the Guidance Consultation illustrate though how easy it is to stray into the area of personal recommendation when there is any degree of bias towards one product or another, or there is any reference to the client's personal circumstances. This could arise simply if the generic risks are

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presented in such a way that would link them to the client's personal circumstances.

- **Whether supporting a client with budgeting can be regulated advice**

Firms should differentiate general financial planning from regulated financial advice which might arise if a particular course of action is recommended as a result of that general financial planning.

The FCA ask for input on whether there are any further areas which need clarity as a result of the forthcoming amendment to the definition of the scope of financial advice in the Regulated Activities Order.

Employer and trustee factsheet

Chapter 5 of GC 17/4 sets out the FCA's ideas for developing and promoting a new factsheet to set out what help employers and trustees can provide on financial matters without being subject to regulation

There has been a long running issue with employees and pension scheme members wanting support and guidance but employers and trustees being reluctant to provide anything too helpful.

Whilst one can seek to rely on the "not by way of business" point for employers and trustees, there has always been reluctance to rely upon this as a way of proceeding, given that the non monetary commercial benefit could take a number of forms, and most business models do not try and rely on this. Nonetheless, the FCA do make this their first point in Chapter 5 of their Guidance Consultation.

More realistically, employers and trustees will continue to be looking to make it clear that they do not provide more than general information and will signpost to other available services, and ensure formal advice is provided by a suitably authorised financial adviser or the pension scheme provider.

Clearly the financial promotion arrangements must also be carefully considered but most of these are already made clear in the existing FCA publications and perimeter guidance. Indeed the FCA ask in the Guidance Consultation whether, once they publish a new factsheet along these lines, will they need to retain the existing guide "Promoting pensions to employees – a guide to employers". Really the change will be that the new factsheet will be one which is simply wider than pensions.

Timing

The FCA intend to publish a Response to this Part 1 Consultation in September 2017. The response to the Part 2 Consultation should follow in December 2017. The consequence is that a package of measures is likely to take effect in January 2018, in line with MiFID II implementation.

It is important to note though the FCA expect that firms will be able to use any material that is published by the FCA in September as from September 2017.

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