



SHOW ME THE EVIDENCE!

In the last week, the Financial Services Authority (FSA) has published a helpful document to explain the top 22 most frequently asked questions from advisers about the Retail Distribution Review (RDR), including how to prove independence and why firms need to consider inclusion of advice on unauthorised collective investment schemes.

Advisers need to be fully aware that, going forward, regulatory reviews will be focused particularly on governance, culture and controls. As such, they have to understand the RDR is relevant to all of these areas. It is likely there will be some specific questions on the RDR principles and advisory firm's approach to implementation. Be warned, this could lead to questions which are designed to determine the firm's ability to identify and mitigate risk. Therefore, be prepared to demonstrate process and control principles that operate within the whole advice chain, including any outsourcing.

For any firms who are retaining an independent advice proposition, those businesses will need to show evidence that they are able to advise on all retail investment products (RIPs) that are capable of meeting the investment needs and objectives of their retail clients. Remember, they need to be assessed on an individual client basis, and many firms will be unable to say upfront what products may be capable of meeting the investment needs and objectives of their clients.

The Regulator will therefore expect most firms providing independent advice to be able to do so on all types of RIPs. Advisory firms typically use research to distil the product market (whether or not they formally construct a 'panel'). If a firm does this, it should have evidence of its selection criteria to choose products, the product research undertaken, and how these are consistent with the independence requirements and the client's best interests rule. This also applies if panels or research is outsourced, including DFMs and tools.

If a firm excludes a certain type of RIP from its panel as, following review, it decides that there is a valid reason consistent with the client's best interests rule for doing so, it should be able to provide evidence of this decision. A firm that says it provides independent advice also needs to be able to advise off-panel if that would be in the best interests of a particular client.

Many advisers may have forgotten that in previous guidance (FG12/15), to do this a firm's advisers should maintain an awareness of what is and is not included in the panel. This is so it can identify clients for whom an off-panel solution would be the most appropriate. The firm will also need to show evidence of how it regularly reviews the decision to exclude certain product types from its panel. It goes without saying that a firm that holds itself out as independent should also genuinely be able to consider all RIPs of the relevant market.

Advisory distributors should note with caution that the FSA (FCA) would question a firm that said it was independent and considered all products but did not have a mechanism for actually advising on a particular product – investment trusts or exchange traded funds (ETFs) for example. We would also expect the Disclosure documentation to be clear about the service the firm provides.

The firm does not have to regularly advise on all products/funds etc to remain independent, but does need to consider all retail investment products in the relevant market, ultimately not recommending all retail investment products as a matter of course.



Within this, FSA (FCA) deems Ucis (unauthorised collective investment schemes) to be potentially suitable for retail customers who can be classified as sophisticated or high net worth. A firm's independent status will not be affected if it does not consider Ucis in its review of product types when giving advice to those retail customers who are not financially sophisticated or high net worth, i.e. 'ordinary retail investors'.

If the firm has reviewed its client base and decided that Ucis are not suitable for its clients, it could still call itself independent and not offer advice on these products. The firm would need to be able to show evidence of this and would also need to keep this under regular review.

Firms that deal with sophisticated/high net worth clients who may receive promotions of these investments, conversely, may need to include the products in the market review for those clients, for instance if the clients have the requisite appetite for risk. The firm will also need to consider how it will deal with new clients who already hold Ucis products in their portfolio. Similarly, ETFs and unit trusts are retail investment products, so a firm holding itself out as independent has to be able and willing to advise on these products if they meet the investment needs and objectives of any of its retail clients.

The real message here is for advisory firms to have a very clear and detailed documentary process of their practices and client advice journey, and be able to articulate this in a clear fashion to both the regulator and, ultimately, their customer base.

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