

GET OFF OF MY CLOUD

The FCA has at last issued its consultation paper to help the industry clarify what constitutes retail investment advice. The paper on guidance – GC4/3 - seeks to clarify the boundaries around personal advice recommendation, alongside the results of its thematic review into purchasing investments without a personal recommendation or with simplified advice (TR 14/10). The regulator has said it recognised that the increasing use of technology and delivery of internet-based services, as well as the market impact of the Retail Distribution Review, had caused uncertainty within the industry on what activities can be performed without triggering additional regulatory obligations that arise when personal recommendations are being provided to customers.

They stated: "For advice to be regulated at all, it must relate to a specific investment and must be given to the person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or potential investor, and relate to the merits of them buying, selling, subscribing for or underwriting (or exercising rights to acquire, dispose of or underwrite) the investment. If it does not have all of these characteristics then it is generic advice and is not regulated."

The FCA also reiterated the requirements of a 'personal recommendation' under the European rules brought in by MiFID, which is narrower in scope than investment advice.

"A key consideration in deciding whether a personal recommendation is given will be if the decision tree process involves identifying one or more particular retail investments for the customer, rather than providing a list of products meeting the customer's criteria," the FCA said. "To establish whether an activity constitutes advising on a retail investment, firms must consider whether the process is limited to, and likely to be perceived by the customer as assisting them to make their own choice of product that has the particular features that the customer regards as important."

In announcing the results of a related thematic review into simplified advice, distributors and advisers may need to publish the basis of the research they have conducted into financial products when displaying a 'best buy' list to customers. Failure to do so could result in those businesses being deemed to have misled customers.

TISA has been running a project on this subject for the last 18 months and the group will now be able to move the outputs forward as a result of the clarification.

The FCA's papers are aimed at all firms involved in the distribution of retail investments, from platform service operators to those with customer-facing websites and call centre operators. The regulator's consultation has asked for views on a number of issues, including whether additional clarification is needed by the affected firms and if firms would find it helpful if the guidance were embedded in its handbook. The consultation ends on 10 October and TISA will be responding via the project group to help shape the future for members and the wider market.

Peter Smith, Head of Distribution Engagement