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Sent via email to: **DP23-5@fca.org.uk** 28 February 2024

UK Finance response to Policy Paper DP23/5 "Advice Guidance Boundary Review – proposals for closing the advice gap"

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

We work for and on behalf of our members to promote a safe, transparent and innovative banking and finance industry. We offer research, policy expertise, thought leadership and advocacy in support of our work. We provide a single voice for a diverse and competitive industry. Our operational activity enhances members' own services in situations where collective industry action adds value.

UK Finance welcomes the opportunity to respond to the Policy Paper regarding the Advice Guidance Boundary Review – proposals for closing the advice gap.

Summary

UK Finance's view is that share ownership is key to a healthy, dynamic economy. Comparative to other markets, the UK has an underdeveloped retail shareholder base and investment culture. In the 1960s, over 50% of the UK stock market was owned directly by UK individuals[1] – today that number is closer to 12%[2]. UK savers hold most of their savings in cash.

The current regulatory limitations on providing even relatively simple guidance and advice to retail customers on investing in stocks and shares (without triggering complex regulatory requirements) can mean that, in practice, many retail investors struggle to find expert advice or perceive advice as an expensive / inaccessible option. This dynamic not only impacts individuals' ability to effectively plan their financial futures, but also has broader implications for the health of UK equity markets and the companies that underpin our economy, which could be missing out on a significant pool of domestic capital.

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[1] Schroders In Focus: "Causes and consequences of the dramatic changes in ownership of the UK stock market in the past 55 years" (November 2020)

[2] Office for National Statistics

Reforms to the advice guidance boundary can be an important lever for progressing government and regulatory ambitions to foster greater participation in UK capital markets, and at the same time, ensuring that domestic savers have the opportunity to build investment and equity ownership into their lifetime savings strategy.

Reform could also be a significant driver in the context of improving financial inclusion and resilience by encouraging firms to reach out to support their customers in changing savings behaviours and managing their financial affairs more effectively.

Turning to the questions in the Discussion Paper, we received quite diverse feedback from a limited number of firms across our membership, including input from some of the largest retail banks and firms with mainly a digital market presence. Those members which responded to us are generally supportive of a review, however firms have differing opinions as to how the issues the review seeks to address can be resolved. We understand that several members will be providing you with their bespoke, detailed responses directly which align with their own strategic business model aspirations.

Drawing out key points from member feedback, at a high level, firms have mixed views as to whether a change is required to the Regulated Activities Order. Whilst some see the value of legislative change to underpin a new framework to provide firms, customers and regulators with greater certainty, the majority would prefer to rely upon the Consumer Duty and the flexibility it affords them to take the best approach for their customers. The majority are also pro- 'Targeted Support', with some notable exceptions, and most would also welcome additional clarity on the current boundary.

Given the above we are unable to provide a cross-industry view on the detailed issues outlined in the Discussion Paper. We are, instead, taking this opportunity to highlight those points where members have identified a need for clarification:

Points for clarification (and related questions)

Q4) Do you think that further guidance would provide more clarity to enable firms to get closer to the boundary? What scenarios, if any, do you think could be set out in FCA guidance? Is guidance needed on the scenarios in Chapter 3? Would there be any appropriate cases for Handbook rules rather than guidance being used?

- Members would like a clear definition of phraseology that can be permitted in guidance conversations with clients, particularly where there is the risk of harm to the client by allowing them to make their own decision.

Q6) Do you support the concept of targeted support and do you support developing a regulatory framework to deliver it? If not, why not? Are there any key features (in addition to those discussed below) that you believe targeted support should include?

- To help firms design and implement a targeted support offering, it would be helpful if the FCA could set out to what extent firms should or may seek information from the customer directly vs. use of existing data points to determine if the customer falls into the target market.
- Firms seek clarity that Targeted Support is not intended to substitute for personalised recommendations. Without clear parameters, the risks and uncertainty of exposure from customer redress will preclude firms from acting in this area. One approach to achieve this would be to amend the suitability rules under COBS 9 for Targeted Support.

Q9) Do you agree that the scenarios outlined are appropriate for a new targeted support regime? Please suggest any other specific scenarios where targeted support might be appropriate and could benefit consumers.

- It is not clear whether the FCA intends for targeted support to be purely opt-in (i.e., the customer has motivation/made a decision to invest already; or whether firms could use their own analytics to proactively reach out to customers. Clarity on this point would be useful, particularly in how the FCA intends this to work alongside Consumer Duty expectations to support good outcomes and avoid consumer harm.

Q32) What steps could be taken to provide reassurance about the electronic communications that firms can provide to give greater consumer support, in compliance with the Privacy and Electronic Communications Regulations (PECR) direct marketing rules? Do you consider a similar approach to the joint FCA / ICO letter on savings rates may help provide additional clarity on this?

- Joint guidance from the FCA and ICO would be beneficial to help clarify how firms are to balance their obligations under PECR with the FCA's expectations for any new rules and guidance enacted in connection with these proposals. Our members would appreciate clarification from the relevant regulators on whether and how proactive electronic mail communications can be sent by firms to their existing customers to make them aware of advice and guidance services they offer and would ideally like specific authority to proceed with proactive communications to customers where doing so would help to achieve good outcomes and/or avoid harm in line with Consumer Duty expectations.
- Key areas of uncertainty to address in relation to the current ICO guidance on ‘regulatory communications’ include:
    - Clarifying that communications about products *distinct from those already held* by the customer can be outside of the e-marketing rules, provided they are for the purposes of Consumer Duty compliance and satisfy the ‘neutral tone’ and related criteria in the ICO’s guidance.
    - Similarly, clarifying the situations in which educational messages (e.g.: explaining jargon) can be outside of e-marketing rules.
    - Clarifying that communications do not have to be against a firm’s interests to be outside of the e-marketing rules.
- Indeed, these points go beyond just financial advice so we would see benefit in a more holistic piece of joint FCA-ICO guidance on navigating electronic marketing rules and Consumer Duty obligations.
- We would be happy to provide more detailed input to assist with this work in due course.
- Industry consultation is important to ensure that the key points of uncertainty for industry are addressed. We note that the joint FCA-ICO letter on savings products did not involve industry consultation and, though helpful in some ways, also created fresh uncertainty among some members.

Summary Comments

There is general support amongst those members which fed back to us for a review and changes to be made to the advice/guidance regulatory regime. How this is best achieved remains an open question and needs further detailed consideration to ensure any changes are effective in driving the improved customer outcomes we all want to see.

We trust that this response is helpful, and we would be happy to discuss this submission in more detail. Please contact denise.flowers@ukfinance.co.uk in the first instance to discuss further.

Yours faithfully,

Eric Leenders
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UK Finance