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The Advice and Distribution Team
Policy, Risk and Research Division
The Financial Conduct Authority
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Dear Sirs

Guidance consultation: Retail investment advice: Clarifying the boundaries and exploring the barriers to market development (GC14/3)

The IMA represents the asset management industry operating in the UK. Our members include independent asset managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £5 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts, and a wide range of pooled investment vehicles. In particular, our members represent 99% of funds under management in UK authorised investment funds.

We support the FCA in its efforts to clarify the distinction between full advice, simplified or limited advice and sales that do not involve a personal recommendation. As long as these different concepts are not clearly defined, and as long as the legal and regulatory risks of making a mistake in this area can be considerable, we believe that potentially beneficial market developments will be constrained and consumers may miss out on services that would better meet their needs. This is particularly important at a time when the retail marketplace is undergoing significant change, not least as a result of RDR, and a number of retail investors have been squeezed out of the market for one-to-one financial advice. It is encouraging that the FCA is aware of firms' concerns about lack of regulatory clarity and that it is seeking to enable firms to help consumers make informed decisions without providing a personal recommendation.

It is useful to bring all existing guidance on what is and what is not a personal recommendation into one place. As a general comment, the growth of the unofficial Handbook is an increasing problem for firms trying to identify guidance relevant to any

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area they must comply with. In that context, we would support the idea of including all non-Handbook guidance in an appendix to the FCA Handbook.

These issues are made more complicated by the fact that there are two main sources of underlying legislation, each with their own definition of advising on investments (or investment advice), under the Regulated Activities Order (RAO) and MiFID, both of which must be complied with. While this is beyond the powers of the FCA, we note that differences between the RAO and MiFID are at the root of a number of complications in the retail investment market and that others have made the point that this situation might be mitigated by the Government committing to a review of the RAO in light of overlapping European legislation.

Some of the terminology used in the draft guidance, including a number of undefined terms, is not helpful. It would aid clarity if all the following terms were defined in one place at the beginning of the document: 'regulated advice'; 'generic advice'; 'personal recommendation'; 'implicit recommendation'; 'simplified advice'; 'limited advice'; 'focused advice'; 'full advice'; 'execution-only'.

The example scenarios in Table 2 are helpful, but the fact that most of them are caveated with the phrase "depending on the circumstances" reduces their value as guidance and, therefore, the likelihood that they might provide sufficient comfort to persuade firms that have shied away from developing certain distribution models to change their plans. This section would be more helpful if it included real life good and bad examples encountered by the FCA in the context of its thematic review of services where customers purchase investments without a personal recommendation or with simplified advice. Without this, there is something of a disconnect between the review findings and the guidance, where a more explicit link would be more helpful. From the point of view of IMA members, examples of guided models that do not involve advice would be most helpful.

On a more technical level, we note that the FCA has taken, in Table 2, an expansive view of the scope of article 53 of the RAO (Advising on investments). Note 1 to Table 2 states that "Regulated advice includes any communication with a customer which ...goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell". This is, we would suggest, at odds with:

- the market's understanding of article 53;
- the FCA's Handbook guidance – see PERG 8.28.1 G (second sentence) and 8.29.1 G, the first of which is reflected in CESR 10/293, "Questions and answers - understanding the definition of advice under MiFID", and in PERG 13.3, question 19, penultimate sentence;
- the definition of "personal recommendation" in the Handbook Glossary as "a recommendation that is advice on investments [i.e. article 53 advice]...and is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person." In other words, a personal recommendation is a sub-set of article 53 advice.

In our view, some of the things stated in Table 2 as likely to amount to article 53 advice do not, on the whole, have a sufficient connection between the opinion or judgement element and the "resulting" transaction.

We have a few more detailed comments, as below.

Paragraph 3.10 could be read as saying that if a filter results in a one product answer, that is necessarily a personal recommendation (and also article 53 advice). This appears to be at odds with PERG 8.26.3 G.

Although paragraph 3.61 refers to Section 5 examples, none of the examples in Table 2 seem to address model investment portfolios.

The example in (B)(4) seems to be based on a misunderstanding of the Morningstar rating system (which is based solely on past performance).

Please contact me if I can provide any clarification on our response.

Yours sincerely

A handwritten signature in cursive script that reads "Michael Gould".

Michael Gould
Senior Adviser, Retail Distribution