

Call for Input: Regulatory barriers to innovation in digital and mobile solutions

As a general point, we believe that relevant sections of the FCA Handbook should be reviewed to see if they can be redrafted in a way that makes them more relevant to modern communications technology. While recent consultation exercises (eg. GC14/3 and GC14/6) have concentrated on explaining how existing rules and guidance should be interpreted when firms are using the new media, we take the view that the rules and guidance are approaching the point where the context in which they were written makes them increasingly out of sync with the reality of how firms would like to do business in the digital age.

As an example, FG15/4 was a useful addition to the scope of regulation and guidance insofar as it addressed the specific issue of whether a particular social media communication would or would not constitute a financial promotion under existing rules, and what that entailed in terms of risk warnings. But squeezing new technologies into regulatory frameworks written for a different age is almost bound to be less successful than writing appropriate rules for new environments. Online discussions were not contemplated when the Financial Promotion Rules were written and it is not surprising that getting the rules to fit the practice, or vice versa, is a less than satisfying exercise for the regulator or for a regulated firm trying to use the new technology. The scope of digital communication affords opportunities for cost-effective unregulated guidance aimed at significant numbers of consumers, but these are unlikely to be fulfilled as long as regulated firms with large market share (ie. those in a position to make a positive difference) feel constrained by the regulatory risk of inadvertently giving advice or issuing financial promotions.

The area of what is and what is not investment advice is overly complex and as such acts as a regulatory disincentive to firms which might otherwise develop online, digital services designed to help consumers make smarter decisions about their wealth or income. This is particularly important in the context of new pension freedoms **and society's** need for individuals to take more responsibility for retirement saving and their post-retirement income. While we commend the FCA for trying to help regulated firms understand the boundaries between regulatory concepts such as guidance, advice and personal recommendations, FG15/1 was arguably most successful in demonstrating just how complicated this area is. Within European regulatory constraints, we believe a rethink of the concept of advice is necessary, taking into account the objectives and intended outputs of the Financial Advice Market Review and the way that digital solutions can be harnessed to help fulfil these objectives.