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## **Delivering the Retail Distribution Review: Professionalism; Corporate pensions; and Applicability of RDR proposals to pure protection advice (CP 09/31)**

The City of London Law Society ("CLLS") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS Regulatory Law Committee. Members of the committee advise a wide range of firms in the financial markets including banks, brokers, investment advisers, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

We have focused our response on the FSA's proposals relating to the governance of professional standards and the applicability of the Retail Distribution Review ("RDR") to pure protection advice. We also respond to the FSA's comments in page 37 of the consultation paper relating to the scope of the RDR as it applies to firms providing discretionary investment management services. We have not addressed the FSA's proposals on qualifications and related transitional issues or the corporate pensions market.

### **Professionalism - governance of professional standards**

We note the FSA's preference for an internal FSA model for the oversight of professional standards, as opposed to the establishment of an independent Professional Standards Board. As a general comment, we believe that a number of significant matters should be carefully considered by the FSA when devising the detailed governance framework for professional standards and would welcome the opportunity to discuss these matters with the FSA at an early stage.

In particular, it is important that FSA clarifies the apportionment of roles and responsibilities for the oversight of professional standards as between the FSA and the recognised professional bodies, bearing in mind the obvious potential for overlap and confusion among firms and individual advisers as to who is responsible for particular matters. This is particularly crucial in the case of disciplinary matters in relation to which it is clear that the FSA envisages that the recognised professional bodies will have a significant role to play. At present, it is uncertain if the Code of Ethics for investment advisers proposed in Consultation Paper 09/18 will be enforced by the FSA or by recognised professional bodies. In addition, there is obvious potential overlap between the provisions of the draft Code and the FSA's Statements of Principle and Code of Practice for Approved Persons, which raises further questions as to whether disciplinary issues relating to individual advisers will be dealt with under the Code (whether by the FSA or recognised professional bodies) or by the FSA under its regime for approved persons. We think it would be important for each Memorandum of Understanding entered into by the FSA with a recognised professional body as part of the recognition process to be very clear as to the precise division of responsibilities. A worst case scenario to be avoided at all costs would be where an individual adviser found himself subject to separate disciplinary processes brought by the FSA and a recognised professional body in relation to the same matter.

Given that the FSA estimates that six to eight professional bodies will seek recognition, we are concerned that there is a risk of inconsistent application and monitoring of professional and ethical standards across the retail advisory sector. We assume that the FSA will play a key role in mitigating this risk by exercising appropriate oversight over each recognised professional body.

### **Applicability of RDR proposals to pure protection advice**

We appreciate that the FSA has not at this stage set out its detailed proposals on the application of the RDR to advice on pure protection products, and that its thinking on these issues is still very much work in progress. Nevertheless, we have taken this opportunity to provide some general comments on the FSA's stated preferences.

We see some merit in the proposal that advisers should disclose product provider commissions where pure protection products are sold under the FSA's Insurance Conduct of Business Sourcebook (ICOBS) alongside investment products sold on an advisory basis under the FSA's Conduct of Business Sourcebook (COBS). In particular, we agree that disclosure of these commissions will avoid any confusion on the part of customers as to what is included in adviser charges relating to any investment products. We think that customer transparency is particularly important in this area, bearing in mind the obvious potential for confusion arising from the fact that some firms may provide advisory services under the ICOBS and COBS regimes whereas other firms may opt to provide these services exclusively under the COBS regime.

We believe that the significant concerns previously raised in connection with the labelling regime for advice on retail investment products are equally relevant to any labelling regime covering advice on pure protection products. In particular, we would consider it unreasonable and potentially confusing to customers where advisers who advised on a "whole of market" basis in relation to some (but not all) categories of pure protection product were required to label their advice as "restricted". We note that the FSA will consult on its proposals once its work on labelling undertaken in connection with its Mortgage Market Review has progressed further. In the meantime, we urge the FSA to take into account concerns previously raised in relation to the labelling regime for advice on retail investment products when formulating its detailed proposals for pure protection products.

As the FSA points out, the European Commission's future work to update the Insurance Mediation Directive could have an impact on its thinking on pure protection products. As such, we believe that there is considerable merit in the FSA waiting to finalise its rules in this area until the outcome of the Commission's work is known. A similar argument exists in relation to the RDR itself, there being an obvious dependency on the outcome of the European Commission's ongoing work on packaged retail investments products.

## **Scope as it applies to discretionary investment management services**

It is helpful that the FSA has acknowledged on page 37 of the consultation paper that firms which provide only discretionary investment management services to retail clients will fall outside the scope of the RDR. This confirmation is particularly relevant to some private client wealth managers who wish to structure their business model to exclude the provision of investment advice.

Less helpful is the fact that the FSA appears to be suggesting that firms who are actively engaged with clients on a regular basis will be likely, at some point during the relationship, to provide their clients with investment advice.

We believe it is important that the FSA does not pre-judge the position and effectively force firms in this position to operate on the basis that the RDR will apply to their business. What matters here is whether investment advice – within the meaning of the Markets in Financial Instruments Directive – is being given to a retail client in relation to a retail investment product. We believe that firms who provide discretionary investment management services to retail clients can implement systems and controls to ensure that investment advice is not provided to their clients. While this obviously places an onus on those firms to ensure that their systems and controls are effective, we do not think it is helpful for the FSA to suggest that such an approach is untenable ahead of its promised thematic work.

We would be delighted to discuss the above observations and suggestions with you. You may contact me on +44 (0)20 7295 3233 or by e-mail at [margaret.chamberlain@traverssmith.com](mailto:margaret.chamberlain@traverssmith.com).

Yours sincerely



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**Chair CLLS Regulatory Committee**

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