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Jeremy Evans
Financial Services Authority
Quayside House
127 Fountainbridge
Edinburgh
EH3 9QG

Cp09_31@fsa.gov.uk

Dear Mr Evans

CP09/31: Delivering the Retail Distribution Review: Professionalism; Corporate pensions; and Applicability of the RDR proposals to pure protection advice

The ICAEW is pleased to respond to your request for comments your request for comments on CP09/31: *Delivering the Retail Distribution Review: Professionalism; Corporate pensions; and Applicability of the RDR proposals to pure protection advice*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

John Gaskell
Manager, Financial Planning & Advice
Financial Services Faculty

T +44 (0)20 7920 8693
F +44 (0)20 7638 8784
E john.gaskell@icaew.com



ICAEW REPRESENTATION

CP09/31: DELIVERING THE RETAIL DISTRIBUTION REVIEW: PROFESSIONALISM; CORPORATE PENSIONS; AND THE APPLICABILITY OF THE RDR PROPOSALS TO PURE PROTECTION ADVICE

Memorandum of comment submitted March 2010 by the ICAEW, in response to the Financial Services Authority consultation paper CP09/31: Delivering the Retail Distribution Review: Professionalism; Corporate pensions; and Applicability of the RDR proposals to pure protection advice, published in December 2009.

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INTRODUCTION

1. The ICAEW welcomes the opportunity to comment on the consultation paper *Delivering the Retail Distribution Review: Professionalism; Corporate pensions; and Applicability of the RDR proposals to pure protection advice* published by Financial Services Authority.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. The ICAEW Financial Services Faculty was established in 2007 to become a world class centre for thought leadership on issues and challenges facing the financial services industry, acting in the public interest and free from vested interests. It draws together professionals from across the financial services sector and from the 25,000 ICAEW members specialising in the sector.

MAJOR POINTS

Support for the initiative

5. The ICAEW supports any initiative that is capable of inspiring confidence in retail investments markets and which protects the interests of consumers within a regulatory environment that encourages sustainable business models. We welcome the proposals to raise professional standards in the retail investments sector and support the objective to develop a regulatory framework that accommodates both corporate pensions and pure protection.
6. We favour an evolutionary approach to regulatory change that builds on the positive trends that have emerged in the retail financial services sector. The retail distribution review (RDR) needs to focus on finding simple and practical ways to build confidence in the retail financial services sector by encouraging consumers and responsible distributors / providers to interact to close the savings gap. Raising the level of professionalism in the sector should help to restore trust, which in the longer term will help increase the demand for high quality financial advice, and investments and protection products.
7. To achieve its public policy objectives, the RDR needs to facilitate a step change in attitude towards the importance and need to take advice on personal finances, and value generally associated with personal financial planning and investment advice and products. This has to be accomplished within a regulatory environment that allows suppliers to develop transparent products and services that are relevant to the long term needs of consumers and which can be delivered profitably on a long term basis. Raising standards of qualifications, mandatory continuing professional development (CPD), an overarching code of ethics, adviser charging and better information should all help build public confidence. The emergence of financial and investment planning as a valued professional discipline in its own right will help to generate higher levels of consumer engagement in retail financial services by nurturing a more responsible attitude toward financial self provision. Professional bodies have an important role

to play in helping drive this change and they should therefore have an enhanced role in setting professional standards moving forward.

8. All stakeholders need to work on a collaborative basis moving forward and high standards of professionalism are required from all that carry a fiduciary responsibility. Professionalism is at the heart of our ethos and we believe that ICAEW has a valuable role to play in helping to progress this element of the RDR. To address demand side problems and encourage more responsible behaviours, higher levels of financial literacy are required. A high profile publicity campaign is needed so that the general public understands the nature and importance of what is being undertaken to raise professional standards in the retail financial services sector. This message needs to be communicated in simple terms that are perceived as relevant and meaningful by the general public at large.
9. The governance of professional standards in respect of individuals that operate in the retail financial services sector should focus on oversight of the recognised professional bodies, rather than simply the implementation of statutory regulation. Professionalism is complementary to statutory regulation and facilitates compliance with regulatory principles and rules, but a profession and professionalism is qualitatively different and more far reaching. To move forward, more detail is required to clarify the boundaries and responsibilities of all stakeholders, to include the FSA, firms, recognised professional bodies and their members, the independent Professional Standards Board (PSB), should one emerge, and the Financial Services Ombudsman.
10. At the heart of the concept of a profession and professionalism is the application of professional judgment through the controlling mechanism of professional ethics. A profession can be understood in terms of the collective accumulation of special knowledge and skills that are valued and which are applied by a disciplined group of individuals for the benefit of others. Professionalism can be understood as a state of mind which permits the expression of a reasoned conclusion without being affected by influences that compromise integrity, and that exercises objectivity and professional scepticism. The professional model requires an environment that encourages the application of professional discretion and which naturally therefore lends itself to a principles based regulatory culture. To achieve the objective of raising professional standards in the retail financial services sector, professionalism needs to be perceived as mentality, rather than as simply a means of implementing the regulatory rule book.
11. A profession needs to be conceptualised in terms which do not imply that the body of financial planning and investments professionals is limited to individuals that undertake a FSA regulated activity, such as investments advisers deemed competent at or before 30 June 2009. The development of a credible profession requires a clear understanding that a profession consists of a diverse group of knowledgeable and ethically minded individuals who are brought together under the umbrella of a professional body. A profession therefore needs to be understood in terms of the broad church of individuals that are professionally equipped to undertake differentiated activities across a range of different occupational roles. In the context of the financial planning and retail investment sector, this grouping needs to include both FSA authorised investment advisers and others whose work does not require regulated status, such as technical experts and trainers. The process of accreditation in respect of legacy examinations needs to be structured on a consistent basis so that all suitably qualified individuals are able to have their prior learning formally recognised during the transitional period and thereafter, irrespective of their job role, employment or regulatory status on a given date.
12. The market for retail financial services is not homogenous and performance across the sector has been mixed. Different segments of the market require different products and services and the effects of regulatory change needs to be looked at in the round. Regulation should be proportionate and consistent so that providers can develop profitable, sustainable business models that can meet the long term differentiated needs of consumers. Regulation has

different implications for different segments of the market. Regulatory change provides an opportunity to develop a regulatory environment that is more able to meet the differentiated needs of the different market segments. We believe that recognised professional bodies can help to develop regulatory structures and cultures that are more closely aligned to the particular needs of different segments of the market, which would help reduce costs for all stakeholders and protect the interests of retail consumers.

13. The concepts referred to in the consultation need to be communicated in clear and simple terms that can be readily understood and valued by general public and translated on a cost-effective basis. Regulation should not disproportionately raise the costs of supplying products and services, particularly during an exceptionally challenging economic environment. In the longer term, the proposals for improving standards of professionalism and managing product bias should help to raise the demand for high quality advice with transparent products and services that are aligned to the long term interests of consumers. It will take time for the general public and distributors / providers to adapt to the new regulatory landscape and it is important that regulatory change does not reduce the supply of advice to the less affluent and those living in rural areas.
14. We understand that the FSA has indicated it will be receptive to proposed models for simplified advice moving forward. We have anecdotal evidence which suggests that one of the biggest unanswered questions remains how to deliver advice to the mass market on an economic basis and that distributors are seeking more collaborative guidance from the FSA in this area. It is clear all stakeholders will need to continue to work together so that the mass market is able to access good quality financial advice and products on an affordable basis under a post RDR regime. Less affluent consumers will need to have access to financial advice and products across a broad range of issues over and above pure protection needs. The removal of aspects of cross subsidisation that operate under a commission system, poses challenges for distribution models moving forward.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Do you agree, for the reasons outlined above, that the internal model is the least costly to establish and will achieve broadly the same outcome as an external PSB?

15. The governance of professional standards in the retail financial services sector needs to meet the public interest test and be structured so that it builds public confidence in retail financial services sector on a cost-effective basis and without duplication.
16. The concept and practice of professionalism is qualitatively more far reaching than the implementation of regulatory principles and rules, and the governance of professional standards in retail financial services sector needs to reflect this at the conceptual and practical level from the outset.
17. The governance of professional standards should focus on the oversight of recognised professional bodies to ensure that standards of professionalism are applied on an appropriate and consistent basis in a way that builds public trust in the retail financial services sector. To achieve these objectives, governance needs to be structured so it is transparent, free of vested interest and on a basis that inspires long term confidence in the integrity of the retail financial services sector.
18. More detail is required in respect of the role, responsibilities and accountabilities of different stakeholders in connection with the governance of professional standards and statutory responsibilities, to include regulatory boundaries and accountability between firms and individuals, recognised professional bodies, the FSA and any external governance model that may emerge. Until this level of detail is available, we do not believe it is possible to estimate with any degree of accuracy what the probable costs and relative benefits of the internal model will be in comparison to the establishment of an external governance model, such as an

independent PSB. The key issue relates to the ability to undertake a meaningful analysis of the likely long term benefits of regulatory proposals relative to ongoing costs on all stakeholders in the round, rather than narrowly defined costs in the shorter term.

19. The Professional Oversight Board (POB) of the Financial Reporting Council provides an example of a governance structure that is intended to support investor, market and public confidence in its members. We believe that the model has characteristics which could be applied to the oversight of professional standards in the retail financial planning and investments sector. The costs associated with the POB discharging its role in 2008/9 were reported in terms of a budgeted operating cost of £1.5m and actual operating cost of £1.3m: Financial Reporting Council Annual Report 2008/9 p24
www.frc.org.uk/publications/pub1983.html.
20. The focus of the debate should be on the approach used towards governance of professional standards. In the shorter term, there may be practical advantages associated with using the internal model as this should allow the professionalisation initiative to move forward in a timely manner. However, we believe that there should be representation of the professional bodies on the FSA's committees that deal with this work.
21. In the medium term, however, we believe that the oversight of professional standards should be migrated to the governance of an external model under the oversight of an independent PSB, as broadly recommended by the FSA's Professionalism Group, chaired by Michael Foot, in autumn 2008.

Q2: Are there any additional criteria that should be included for the initial and ongoing recognition of professional bodies?

22. Our view is that the suggested list of recognition criteria is generally sufficient. We would add an additional point, which may already be encompassed in some of the other points, that the body's representational work is separate from the work involved in its monitoring and discipline. However, we do have other concerns about these proposals. Paragraph 2.44 suggests that recognition would be for a set period. We believe that recognition should be for an indefinite period but that it can obviously be withdrawn if a body is not fulfilling its obligations. Any withdrawal process would include reasonable time in which remedial action by the body, in conjunction with FSA oversight, during which time recognised status would continue. Periodic renewals would not seem to serve any useful purpose.
23. The commentary in paragraph 2.42 indicates that a body would have to meet a 'non-exhaustive list of criteria'. In our view a body has to know exactly what criteria its application will be judged on.
24. We do not see the benefit of an independent audit in this particular situation. The FSA (presumably acting through the 'internal governance model' described in the consultation document) has oversight of the recognised professional bodies. That role should include making enquiries (by visits or otherwise) to check that a body is meeting its responsibilities as a RPB. This is a model already used by the FSA in its oversight of the Designated Professional Bodies (of which ICAEW is one). It would allow a more coordinated approach which could more easily adapt thematic approaches if necessary. Also, it is more proportionate as the FSA may determine that some bodies need more oversight than others. We would also see this as a more cost-effective solution as we believe that the suggested costs of an annual audit as set out in the cost-benefit analysis are much under estimated. Similar comments apply if and when the governance of professional standards was migrated to an independent PSB.

Q3: Do you agree that the arrangements described will deliver the required increase in the quality and consistency of professional standards across the investment advice sectors?

25. In our view these few paragraphs are central to how the recognised professional body arrangements will work and in particular where the dividing line sits. Our understanding is that

professional bodies will implement CPD requirements (although the scale of these may be set by the FSA) and monitor individuals compliance with them. However, investigation into individual advisers' activities will still be a matter for the FSA, although responsibility for the advice given is the firms'. This will potentially lead to confusion. It is not clear what would happen to an individual who was 'de-registered' by a recognised professional body for poor CPD compliance but whose day to day work was satisfactory. The reverse situation could also apply.

26. While we note that you will consult on guidance as to the criteria a potential recognised professional body must meet, we believe that you should also clarify the respective responsibilities of the FSA and the professional bodies. Without this clarity it is difficult to judge what responsibility and obligations being a recognised professional body would bring and to what extent, therefore, the regulatory proposals will achieve their objectives.
27. As we state above, the conceptual model articulated in the proposals does not capture the true nature of a profession. Professionalisation is qualitatively broader than simply the effective application of the regulatory rulebook and the structure and role of recognised professional bodies moving forward needs to reflect that distinction. The RDR presents a prime opportunity to accelerate the development of a credible financial planning and investment profession whose expertise and integrity is recognised and valued by the public and other established professions. We have concerns that, in their current format, the implementation of the ideas contained in the proposals may fall short of achieving this key objective.
28. Ethics is at the heart of professionalism and a clear understanding and articulation of what this means, both conceptually and in practice, is required to meet the objectives of the RDR. We believe that further work is required in this regard. As an established professional body the ICAEW has a rich tradition in the area of ethics and professionalism. The ICAEW pioneered principles-based threats and safeguards approach to Codes of Ethics in the accountancy profession. We believe that this approach is flexible but robust because it focuses on the spirit of guidance and encourages the exercise of professional judgement. The guidance can be applied to the infinite variations in circumstances that arise in practice and can be adapted to the rapid changes of the modern business environment. We would be happy to share our experience with the FSA and others and join advisory groups and working parties, as appropriate, to help take this work forward.

Q4: Do you agree that the updating of the FSA Register with the information about advisers' qualifications and introducing practising certificates for advisers, will contribute to the restoration of consumer trust and confidence?

29. We believe that details of advisers' qualifications should be included in the FSA register and in principle support the introduction of practising certificates, although we are not sure how this would work for those advisors who are not members of a professional body. Provided that the significance of these is clear from outset, we believe that these developments should help to build public trust and confidence in the retail financial services sector. All disclosures need to be made on a consistent basis and in terms that are easily understood and readily valued by the general public.
30. We note the summary of professional body 'attributes' produced by PARN. In respect of CPD the main methodology seems to be based on an inputs measure of hours and / or points. This is, in our view, an outdated approach. Instead there should be a greater focus on assessing an individual's particular CPD need, as target hours or points can become an end in themselves.

Q5: Do you think that the arrangements described above will support the aim of beginning to improve the reputation of retail investment advice?

31. In general terms, and subject to the points we make elsewhere in our response, we believe that the proposals to raise professionalisation will help improve the reputation of retail investment advice and build confidence. The process will be evolutionary and incremental in

nature and will require a sustained, consistent public policy initiative which brings together all stakeholders on a collaborative basis over the long term. This work needs to be supported by a credible and high profile publicity campaign.

Q6: Can you provide evidence of any other qualifications meeting all three of the stated criteria?

32. We are no longer an awarding body. However, we note your comments in paragraphs 2.75 and 2.76 in respect of professional qualifications in related financial disciplines, such as accountancy. The professional training of Chartered Accountants tests the ability to apply knowledge at a higher level than the revised examinations standards. There is significant overlap of content in respect of personal taxation, and relevant areas of learning in respect of ethics and regulation and investment principles and risk. We agree that a pragmatic approach to meeting the new qualification standards is appropriate and that flexible ways to fill knowledge gaps should be explored moving forward.

Q7: Do you agree that option IV is the most pragmatic solution and do you agree that these provide advisers with the transferable evidence of their qualifications?

33. The awarding and professional bodies and the FSSC are best equipped to map across areas of accredited prior learning to the new Approved Examinations Standards and to work toward an agreed and consistent framework to address gaps in knowledge moving forward. The accumulation of relevant accredited prior learning is not something that can be appropriately determined on the basis of a particular job role, or by the existence of regulated status on a given date. The formal recognition and transferability of knowledge acquired under legacy examinations, relevant professional learning and CPD under the no regrets approach needs to be capable of fully accommodating all these points moving forward.

34. A detailed mapping exercise will be required to ensure that all prior learning is adequately and accurately captured and accredited within both the transitional arrangements and the new examinations, to ensure that the supply and future development of a professional body of relevant knowledge is not impeded or otherwise lost. Working on the basis that the conditions referred to above are implemented, we believe that option IV represents a generally workable option moving forward. However, we stress that the transition to the new approved qualifications standards regime needs to be structured so that it fully accommodates accreditation in respect of all individuals that hold relevant examinations and / or CPD irrespective of job role or regulatory status. Not to do so will be counter-intuitive and inequitable, serving to artificially limit the potential supply of knowledgeable professionals, the net effect of which would be detrimental to the public interest and objectives of the RDR.

35. On a related issue we would raise the matter of exemptions from examinations. It would seem a much more efficient process if the FSSC indicated that an examination qualification from a particular professional body gave an exemption from parts of the appropriate examinations.

Q8: Do you have any comments on our analysis of the current GPP market?

36. In general terms we believe that the analysis represents a fair summary of the market, the relative provider concentration and economic drivers. We believe that there may be some question as to the interpretation of the persistency statistics. For example, the analysis may not be sufficiently detailed to accurately record instances of early leavers transferring out of a GPP to personal pension with the same pension provider on cessation of employment. This as a statistic that can be masked by new entrants transferring into the GPP scheme. The regulatory stakeholder AMC constraints have had both generally uneconomic prospects and outcomes for providers as well as cross-subsidisation issues across scheme members.

Q9: Do you agree with our proposals for applying the principles of adviser charging to the GPP market? If not, please say why.

37. In general terms, we agree with the proposal to apply the principle of adviser charging to the GPP market and support the principle that the regulatory changes needs to be aligned with the individual personal pensions market. However, there needs to be a clear understanding and articulation of who is the client (employer or employee) with full disclosure in simple and comprehensible terms to individual members on a consistent basis.

Q10: Do you have any suggestions for the fairest way of allocating consultancy charges among different members of a GPP, allowing for different contribution levels, whether initial member or a subsequent new entrant and any other relevant factors?

38. Each and every member deserves appropriate safeguards that are applied on a consistent basis across the market. The implication of the application of consultancy charging in cases where the employer does not meet the full cost, is that the costs will tend to fall disproportionately on lower value cases and early leavers. In circumstances where an employer does not meet the full costs of adviser charging, we believe that costs should be allocated in way that is based on and proportional to contribution levels, subject to a minimum charge applied to all members.
39. Disclosures will need to be consistent with the Personal Accounts and expressed in a format that enables prospective and existing members to make an informed comparison of the relative costs and potential benefits. The RDR presents an opportunity to engage with consumers to encourage them to save for their retirement. This requires a pensions system that is comprehensible and that integrates the fragmented components of the state, personal and occupational pension regimes into a comprehensible and cohesive pensions system that can be delivered on an affordable, profitable and sustainable basis.

Q11: Do you have any comments on the CBA outlined in Annex 2 to Section 3?

40. There is a reasonable high level articulation of considerations. At this stage, however, the consultation does not provide the level of detail required to undertake a full analysis of what the regulatory change will entail and what the impact will be in different segments of the market. As it stands, we believe the CBA reflects this lack of detail and does not therefore provide a detailed cost-benefit assessment and conclusion of the impact on respective segments of the market, and the annex appears more in terms of a risk statement.

Q12: Please provide any analysis or evidence you may have on the application of professional standards (professional conduct, qualifications and keeping knowledge up-to-date) to pure protection advice, both: a) where it is provided by an investment adviser; and b) where it is provided by an adviser who does not advise on investments.

41. Professional standards apply to individuals and firms, not to products. If an individual of an industry is to gain trust and confidence based on professional standards, then those standards must be followed and displayed in all that they do. An industry that operates variable standards depending on different types of product will not be understood and will not gain the trust and respect of the public, and nor will it deserve to do so as it will not have adopted the concept and practice of true professionalism. A weakness in one area will only serve to undermine strength and compliance elsewhere in the sector.
42. Protection needs should be considered in the context of the customers' overall circumstances and cannot therefore be considered in isolation. In practice, a customer needs protection solutions that are consistent with their overall financial circumstances and it is therefore difficult to understand how an adviser can identify a particular need unless they have a broad awareness of all the main circumstances and issues at hand. This requires a basic minimum level of knowledge of the fundamental principles of personal financial and investment planning, along with a broad awareness of the different types of products and how they interrelate with one another in context of an appropriate holistically framed course of action. From both a conceptual and a practical perspective, therefore, minimum standards of professionalism should be applied across all relevant areas of activity in the sphere of personal financial and investment planning on a consistent basis.

E john.gaskell@icaew.com

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