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Rachel Donaldson
Professional Standards Policy Team
Investment Policy Department, Conduct Policy
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Dear Ms Donaldson

Consultation Paper 10/12 Competence and ethics

ICAEW is pleased to respond to your request for comments on CP10/12 *Competence and ethics*.

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 7683 6009
E john.gaskell@icaew.com

**ICAEW REPRESENTATION****CONSULTATION PAPER 10/12 *COMPETENCE AND ETHICS***

Memorandum of comment submitted in August 2010 by the ICAEW, in response to Financial Services Authority Consultation Paper 10/12 *Competence and ethics*, published in June 2010.

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INTRODUCTION

1. We welcome the opportunity to comment on Consultation Paper *10/12 Competence and ethics*, published by the Financial Services Authority in June 2010.

WHO WE ARE

2. ICAEW operates under a Royal Charter, working in the public interest. ICAEW's 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.

GENERAL COMMENTS

4. ICAEW supports the FSA's initiative to raise standards of professionalism in the retail advice and investments sector and welcomes the emphasis that has been given to improving standards of competence and ethical behaviour across the whole sector and at all levels. The renewed focus on Training and Competence can only be a good thing for consumers.
5. To restore confidence in the retail advice and investments sector, consumers need to feel confident that firms and individuals will act in their best long-term interest, and are able to provide sound advice on an affordable basis. If this basic goal is to be achieved, the general public needs to be fully aware of changes that are taking place in the sector and benefits that are intended to flow from the proposed regulatory changes.
6. The retail advice and investments sector is not homogenous and performance of the different segments of the sector has been mixed. Various types of business model are required to serve the diverse and varied needs of customers, and organisations and individuals that operate in the sector arguably occupy different positions in the evolutionary chain. In some areas of the sector professionalism is already highly developed, whereas in other areas it is less so. To achieve its public policy goals the Retail Distribution Review (RDR) needs to be applied so that the diverse needs of customers are served on a cost-effective basis, whilst ensuring that competent and ethical advice is delivered consistently across all segments of the market.
7. While as noted above there are various types of business model, we believe the retail advice and investments sector generally falls into two distinct types of model, each of which has developed to fulfill different aspects of market demand. Broadly speaking, we would describe the two models as: the professional advice model; and the advised sales model.
8. The professional advice model is more suited to a principles-based regulatory regime, which is supportive of the application of professional discretion to act in the best interest of customers with more complex needs. The advised sales model, on the other hand, tends to serve customers with less complex needs and is a model that is generally suited to a more rules-based regulatory approach. We note this important distinction as the FSA faces the challenge of responding on a basis that recognises the differences between these two models. It is important therefore that the regulatory balance between principles and rules is applied in such a way as to enable the retail advice and investments market to deliver high professional standards on a consistent and cost effective basis.

9. Training and Competence represent an essential foundation but of itself is not sufficient to enable professionalism and deliver effective consumer outcomes. The role of skills is also important, such as the ability to explain complex solutions to consumers. In large part, however, market failures in the retail advice and investments sector have resulted from a failure to adhere to ethical standards rather than from gaps in technical knowledge. We believe that greater emphasis is therefore needed to convey the message that professionalism is fundamentally a state of mind and evidenced through behaviours, whereby technical competence and doing the right thing should be taken as a given. Professional Bodies have an important role to play, but within firms it is senior management that sets the tone and has responsibility for instilling a culture that ensures professionalism is applied at all levels within the business.

RESPONSES TO SPECIFIC QUESTIONS

Q1; Do you agree with our proposal to introduce an overall time limit of thirty months, within which individuals must be qualified?

10. As a regulatory time limit we believe this to be reasonable, although it should be left to firms to apply shorter time limits if they wish.

Q2: Do you agree that no Transitional Provision is required to accommodate the new thirty month time limit for attaining qualifications?

11. In general terms yes. However, as paragraph 3.8 of the consultation implies that this change is retrospective, we suggest that the change should only be applied to new entrants and individuals and firms will have planned training on the basis of existing requirements. This may purely be due to the wording used in 3.8, as some new entrants will have joined the sector before 30 June 2009 but not have been judged competent on or before that date.

Q3: Do you agree that those Transitional Provisions should now be removed on the basis that individuals relying upon them will have thirty months (noting activities that involve ‘overseeing on a day today basis’ will not be subject to a time limit), provided that a further Transitional Provision, in which to attain a qualification?

12. In general terms, we agree this seems reasonable, but note that in paragraph 3.14 it is implied that you believe the transitions only apply to certain activities. Firms and individuals need certainty. Anecdotal evidence suggests the numbers of people affected may be greater than cited in the consultation.

Q4: Do you agree that we should amend APER to clarify our expectations of competence governance within firms as suggested in the draft Handbook text?

13. We believe that the current position, whereby the Board of the firm is collectively responsible for competence and ethics throughout the firm is, generally, the correct approach. Increasing the burdens on individual approved persons will lead to increased box ticking and increased costs and is unlikely to improve the governance of firms.

Q5: Do you think we should create a separate activity for ‘dealing in securities and/or derivatives’?

14. We do not believe that this should be regarded as a separate activity. As a general point, the RDR should be applied on a consistent basis across areas of activity in the retail advice and investments sector. For noting, we generally consider that the key criterion for deciding if a separate activity is necessary is whether there is a fundamentally different inherent risk or customer-specific risk.

Q6: Do you agree that we should add guidance to our Handbook suggesting that firms may wish to implement a TC scheme?

15. We believe that firms should be encouraged to implement an appropriate TC scheme and that general outcomes-focused guidance would be helpful but that the design and implementation of TC schemes should be left to individual firms. We believe that the implementation of an appropriate TC scheme is reflective of evidence that a firm has embedded a competence culture at both the firm and the individual level and such firms should benefit from some form of meaningful regulatory dividend.

Q7: Do you agree that all appropriate examination standards should be updated every three years?

16. We understand that the examination content is reviewed every year by the awarding bodies and that, subject to exceptional circumstances, a three years review period for standards is appropriate. It would be important that appropriate transitional arrangements were put in place when changes are made.

Q8: Which appropriate examination standards do you think we should review first and why?

17. A risk-based approach should be applied which, in general terms, implies reviewing the oldest examinations first. We believe that long-term care and lifetime mortgages could represent high-risk areas of activity in the current climate and that these areas warrant timely review.

Q9: Are there any other criteria we should consider when determining whether qualifications meet the regulatory requirements?

18. We have no specific comments to add, other than to say that the new examination standards should stress professionalism is fundamentally a state of mind and evidenced through culture and behaviours as much as acquiring a particular level of knowledge.

Q10: Do you agree that we should add additional descriptions of behaviour to APER as outlined in paragraph 5.7?

19. Yes. We note that it is somewhat inevitable that such descriptions will be brief, so we suggest that the FSA gives thought to issuing supporting guidance (and especially case examples of good and bad behaviours) outside of APER itself. We suggest that the FSA reviews on a continuing basis the extent to which such guidance is current and helpful in fostering desired behaviours, and refreshes content where appropriate.

E john.gaskell@icaew.com

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