

## 2.1. Theme 1: Adviser categorisation

This theme focusses on the adviser categorisation model initially set out in RDR Proposal K, together with a number of related proposals<sup>2</sup> regarding adviser categorisation. Although these proposals are not Phase 1 proposals, the FSB recognises that they require priority focus because any material changes to the adviser categorisation model will trigger consequential changes to a number of the other RDR proposals. For this reason we shared our updated thinking on adviser categorisation in the RDR Phase 1 Status Update.

In summary, the update confirmed that:

- The FSB has agreed to change or review some aspects of the initial categorisation proposal. In particular, we recognise that terminology used to describe adviser categories is vague and confusing – particularly the term “multi-tied”. We also agree that Proposal M, which would have required independent financial advisers to offer a minimum range of products and product suppliers, would have unintended consequences and will not be pursued in its current form. Instead, the extent of product supplier influence – tested mainly against the criteria listed in Proposal N – should be the main determinant of the status of advice.
- The FSB remains of the view that “tied” advice should be restricted to the products of a single product supplier or product supplier group, but possibly with some exceptions where the primary product supplier / group is not licensed to provide certain classes of business.
- The FSB is still considering whether the adviser categorisation model should comprise three tiers of advice (as per the initial proposed model), or be simplified to two tiers. We requested comment on a possible two-tier model that will distinguish between (a) tied advisers operating on the licence of a product supplier, and (b) advisers that operate on their own licence as sole proprietors or on the licence of an adviser firm that is not also a product supplier. The former could potentially be referred to as “registered product supplier agents” and the latter as “registered financial advisers”.
- In such a two-tier model, there would be no separate licence category for “independent” financial advisers, although an adviser or adviser firm would be permitted to use the term “independent” if additional limitations on product supplier influence were met. In

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<sup>2</sup> Including but not limited to Proposals L to S and Proposals BB to DD.

addition, either category of adviser would be permitted to designate themselves as a "financial planner" if specific standards in this regard were met<sup>3</sup>.

- Regardless of whether a two-tier or three-tier categorisation is adopted, additional controls are required to address potential conflicts of interest where an adviser could be subject to different levels of influence from different product suppliers. Specific proposals to address these types of conflict are set out in the RDR Phase 1 Status Update.

### 2.1.1. Key stakeholder feedback and initial responses for Theme 1

Please refer to the RDR Phase 1 Status Update, which summarises the key issues raised by stakeholders in respect of the adviser categorisation model, and the FSB's revised thinking in light of those inputs.

Three proposals falling under this theme that were not dealt with in the RDR Phase 1 Status Update are Proposal C: *Standards for "wholesale" product advice*; Proposal W: *Juristic representatives to be disallowed from providing financial advice* and Proposal X: *Standards for adviser firms*.

#### (a) "Wholesale" advice:

Stakeholder feedback regarding "wholesale" advice included general comment that the RDR, by its nature, focused mainly on "retail" distribution models and that further information was required on the extent to which the various proposals would apply to non-retail business models and customers. The FSB accepts that more discussion is required regarding the implications of the RDR proposals for non-retail models. This needs to be considered as part of the broader discussion on the extent to which the future Twin Peaks market conduct regulatory framework will distinguish between retail and non-retail customer segments and how these segments will be defined.

At this stage, we would like to clarify that the primary focus of the current RDR proposal is to ensure that the end customer's interests are adequately taken into account in models where advice is not provided directly to the end customer but rather to an intermediate entity (such as an employer or retirement fund) purchasing a financial product to provide

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<sup>3</sup> See RDR Proposals T, U and II.

benefits for the end customer (such as the employee or fund member). It is in this relatively narrow sense that the term "wholesale" is used in the RDR. Standards in relation to wholesale market conduct issues affecting the efficiency and integrity of financial markets more broadly, will be considered in the development of the overall market conduct regulatory framework, but are not specifically addressed in the RDR. Some aspects of this RDR proposal also link to the broader discussions underway on retirement fund reform.

*(b) Juristic representatives:*

Commentators on the proposal to disallow juristic representatives from providing financial advice focused mainly on submitting scenarios where the juristic representative model was operationally justified and should be permitted. These included group structures where a single juristic entity houses the financial adviser operations in relation to multiple product suppliers within a financial conglomerate. As has been explained in the RDR Phase 1 Status Update, the FSB is considering permitting juristic entities to operate as tied advisers (product supplier agents) within a group, subject to branding and other controls. The FSB remains concerned that the complexity of other juristic representative models, outside the tied adviser model, is unwarranted but will consider further specific motivations in this regard.

*(c) Other proposals related to adviser categorisation:*

As indicated in the RDR Phase 1 Status Update, the FSB is considering a revised two-tier adviser categorisation model – in other words a reframing of Proposal K ("Types of adviser defined"). Our thinking will be informed by any feedback we receive on this proposed model, which is due by 1 February 2016. Once this feedback has been reviewed, further consultation with the industry reference group<sup>4</sup> on this workstream will be set up to debate views on the model.

The following RDR proposals are closely related to the adviser categorisation model, so work on these proposals will be combined with the work on Proposal K<sup>5</sup>:

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<sup>4</sup> Industry reference groups for each of the six RDR theme workstreams have been set up as sub-structures under the Market Conduct Regulatory Framework Steering Committee (MCRF), which is a multi-stakeholder consultation forum established by the FSB. The reference groups comprise representatives of various financial sector industry and professional bodies who provided input on the initial RDR discussion document.

<sup>5</sup> Note that, as indicated in the RDR Phase 1 Status Update, Proposal M will fall away. Proposal L (*An IFA may advise on certain products on a multi-tied basis*) was related to Proposal M, and will no longer be required.

- *Proposal N*: Criteria for an IFA to be free of product supplier influence (dealt with in the RDR Phase 1 Status Update).
- *Proposals P, R and T*: Criteria for different types of financial advisers.
- *Proposals O, Q, S and U*: Status disclosures to be made by different types of advisers.
- *Proposal V*: Insurer tied advisers may no longer provide advice or services in relation to another insurer's products (dealt with in the RDR Phase 1 Status Update).
- *Proposal X*: Standards for adviser firms.
- *Proposal Y*: Advisers may not act as representatives of more than one adviser firm (dealt with in the RDR Phase 1 Status Update).
- *Proposals BB, CC and DD*: Proposals dealing with product supplier responsibility for different types of advisers (dealt with in the RDR Phase 1 Status Update).
- *Proposal FF*: General product supplier responsibilities in relation to receiving or providing customer related data (dealt with in the RDR Phase 1 Status Update).

The final adviser categorisation model will also be informed by the review of the FAIS competency framework that is currently underway. Industry consultation on this framework is in progress, and the FSB will issue a proposal for public consultation by the end of the first quarter of 2016. The objective of this review is to build on the existing FAIS "fit and proper" competency requirements by establishing an effective and proportionate regulatory framework to ensure advisers and other intermediaries have the right levels of product related knowledge, meet appropriate standards of professionalism and undergo continuous professional development where necessary. The development of appropriate standards for different levels of advice<sup>6</sup> – including standards for financial planners and standards for advisers in so-called "low advice" models<sup>7</sup> – will also be dealt with through this work.

### **2.1.2. Implementation phases for Theme 1**

#### **(a) Phase 1**

As discussed in the RDR Phase 1 Status Update, the following proposals fall within Phase 1 and next steps for these proposals are set out in that document:

- *Proposal V*: Insurer tied advisers may no longer provide advice or services in relation to another insurer's products.
- *Proposal Y*: Advisers may not act as representatives of more than one adviser firm.

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<sup>6</sup> See RDR proposal A

<sup>7</sup> See RDR proposals T, U and H and proposal B, and the discussion on Theme 5 below.

- *Proposal FF*: General product supplier responsibilities in relation to receiving or providing customer related data.

***(b) Phase 2***

As previously communicated, the FSB shares the view of a number of commentators that the extent of product supplier responsibility for customer outcomes should be aligned to the extent of product supplier influence over advice. It follows that proposals BB, CC and DD dealing with product supplier responsibility for different types of advice need to take the final adviser categorisation model into account. The FSB is however concerned that, even in the current regulatory framework, product suppliers do not take sufficient responsibility for customer outcomes arising from their choice of distribution channel. This point has been made in various forums in the context of our Treating Customers Fairly (TCF) expectations, and various product suppliers have asked us to provide greater clarity on what we expect of them in this regard. We therefore intend to introduce elements of these product supplier responsibility proposals in Phase 2, prior to full implementation of the new adviser categorisation model. In particular, product supplier responsibilities in relation to ensuring that any adviser who provides advice on their products has adequate product specific knowledge, will be introduced together with the enhanced FAIS competency framework (see above).

It is also expected that implementation of the enhanced FAIS competency framework will start during the Phase 2 period. This means that aspects of the proposals relating to levels of advice (financial planning, product advice, "low advice", etc.) will be introduced during this phase.

The proposal to disallow juristic representatives from providing financial advice (Proposal W) is also not a change that the FSB believes needs to be, or should be, deferred until Phase 3. As pointed out in the initial RDR discussion document, the FSB believes that these juristic representative models pose significant risk of customer confusion and conflicted advice. We therefore propose to implement this change in Phase 2, subject to possible motivated exceptions discussed above. As part of the development of the FAIS competency framework, we will also consider whether the use of juristic representatives is justified in certain types of "low advice" distribution models and / or in relation to certain types of products.

Lastly, standards to improve the protection of end customers in "wholesale" financial advice models, as contemplated in Proposal C, will also be progressed in this phase.

In summary, the following RDR proposals will be implemented during Phase 2:

- *Proposal A*: Forms of advice defined, with related conduct standards (insofar as this will be addressed through the enhanced FAIS competency framework).
- *Proposal C*: Standards for "wholesale" product advice.
- *Proposals T and U*: Criteria for financial planners and related status disclosures (to be addressed through the FAIS competency model review process).
- *Proposal W*: Juristic representatives to be disallowed from providing financial advice.
- *Proposals BB, CC and DD*: Proposals dealing with product supplier responsibility for different types of advisers (subject to further refinement in Phase 3).

### **(c) Phase 3**

The final adviser categorisation model entails material changes to the current FAIS licensing framework. It therefore makes sense to implement this change in Phase 3, together with the introduction of a new market conduct licensing framework for financial institutions more broadly under the CoFI Act. The intention however is to finalise the framework proposals well in advance of the commencement of the CoFI Act, to allow sufficient time for any necessary changes to business models.

Standards for adviser firms, governing the relationships between adviser firms and their individual advisers, and related remuneration arrangements (Proposals X and SS) will be developed together with the final adviser categorisation model and final adviser remuneration related proposals.

Proposals that will be addressed in Phase 3 are therefore<sup>8</sup>:

- *Proposal A*: Forms of advice defined, with related conduct standards (to the extent not covered in Phase 2 through the enhanced FAIS competency model).
- *Proposal K*: Types of adviser defined.
- *Proposal N, P and R*: Criteria for IFAs to be free of product supplier influence and criteria for tied and multi-tied advisers.
- *Proposals O, Q and S*: Status disclosures to be made by different types of advisers.
- *Proposal X*: Standards for adviser firms.

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<sup>8</sup> Note that the language used in many of these Proposals is linked to the original three-tier adviser categorisation (tied, multi-tied and IFA) and will need to be updated if this is changed.

- *Proposals BB, CC and DD:* Proposals dealing with product supplier responsibility for different types advisers (any necessary refinement of requirements implemented in Phase 2).