The Financial Services Authority Retail Distribution Review

Cartlidge Morland's Response to June 2009 Consultation Paper

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CARTLIDGE MORLAND

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1.0 Introduction

Cartlidge Morland is a privately owned consultancy firm whose activities include the provision of independent financial advice, advisory investment management, employee benefits consultancy and mortgage broking services. The firm is based in the City of London, with its operations supported by an administration office situated in the East Midlands. The firm's private clients are largely higher earners and/or those who have accumulated wealth through business/professional success or inheritance. The average employer client provides employee benefits to c 250 employees.

As stated in our response to the interim proposals, Cartlidge Morland (CM) considers a clear differentiation between advice that is independent 'whole of market' and any form of advice that is not, to be absolutely critical to the achievement of the Retail Distribution Review's (RDR's) objectives.

We agree with higher-level entry qualifications for independent financial advisers,but are less convinced that exactly the same qualifications should be necessary for those offering 'restricted' forms of advice. We are of the view that additional examination and/or training requirements should be imposed upon those who wish to graduate from offering 'restricted' forms of advice, to independent advice. We strongly disagree with any retrospective imposition of fresh qualification requirements upon existing independent financial advisers. There is little evidence this is justified, as there is small incidence of complaint against independent financial advisers in comparison to their market share. The problems in the retail financial services market are not within the independent financial advisory sector and the terms of the RDR should have recognised this. We further believe that as a matter of principle, it is inequitable and undesirable to impose revised qualification requirements retrospectively. The accounting, medical and legal professions have all experienced considerably increased complexity, whilst the incidence of compensation awards against financial advisers pales into insignificance beside awards against these other professions. 'The Law Society', the 'Institute of Chartered Accountants' and the 'British Medical Association' are not insisting upon re-qualification for their members. **Furthermore, the FSA is not imposing similar requirements upon bankers – nor upon the main board directors of our banks, yet they have lost this country £00bns and for every person in it £000's**. Partly because they failed to understand the complexities of the businesses they were running or the risks undertaken. Surely, if there is a case for existing professionals to accept the imposition of further qualification requirements, it lies in the banking industry? If it is not to apply to bankers, there is no justification for this retrospective application of fresh professional qualifications upon independent financial advisers. This said, we do not anticipate any significant difficulty in ensuring that our consultancy staff satisfy the proposed requirements by 31 December 2012. If revised qualification levels are to be imposed, we consider that the only appropriate method of assessment is formal professional examinations.

We agree with the principle that advisers should agree their charges with their customers in advance and that their charges should be transparent. We similarly agree that the potentiality for the advice provided to be influenced by third party inducements should be eliminated.

Client interests must solely determine the recommendations advisers make, but those interests will best be served if all consumers potentially gain access to the best advisory firms. This means permissible product structures which allow all firms to be paid immediately for the initial time they spend in advising their clients, should clients wish to pay for their advisers' services via the deduction of additional charges from the investments they make. Regulation should strongly deter either product or provider bias, but should not operate so heavy-handedly as to restrict the efficient functioning of the market. Ultimately, the RDR needs to balance the health of the market and the businesses that operate within it with customer interests – as consumers will most certainly suffer otherwise.

2.0 Questions Posed In the June 2009 Consultation Paper

Q1 An independent financial adviser should be capable of advising on a broad product range and has an obligation to recommend the most suitable products to his clients, from all those that might meet their needs. We agree that the range of products to which the new independence standard will be applied ought to be widened, as set out in the consultation paper.

Q2 We agree with the requirement that independent financial advisers should provide a fair, comprehensive and unrestricted view of the market, as defined in the consultation paper. However, we believe compliance monitoring should emphasise objective tests relating to the suitability of the advice actually given, as related to the client's particular circumstances – not the subjective testing of an independent adviser's specific examination of the various options available to his client. *(Whilst some evidence of this examination might reasonably be expected to be retained on record, the emphasis must be upon the outcome for the client in terms of the advice given, not the process followed. Client reports and 'reason why' letters should be required to focus upon the reasons a particular solution has been recommended, not upon the reasoning behind the rejection of an exhaustive range of alternatives).*

Q3 We are impressed with the market testing the FSA has conducted in its efforts to find a phrase that clearly differentiates between 'independent whole of market' advice and advice that is not independent. If the FSA's market research indicates the term 'restricted advice' to be that which most clearly describes advice that is not independent, we are prepared to accept this. We are pleased that the FSA has explained its reasoning so clearly in its consultation paper. However, the paper makes it clear that whilst 'restricted advice' is perhaps the best of the alternative phrases to use, its meaning is far from apparent to the public at large. **The written and oral disclosure requirements imposed upon 'advisers' who are not independent will therefore be crucial**.

If the fact that 'restricted advice' is not the same as (or similar to) independent advice, is not made crystal clear, abuse will most surely follow. In other words, the marketing departments of interested larger companies will soon find a form of words which eliminates the meaning of the phrase 'restricted advice' entirely. For this reason we consider the introduction of the following rules to be essential….

- All letterheads, business cards and documentation for 'restricted' advisers should state…. '*XXX only provides advice on the restricted range of financial products that we have either selected or developed for our customers*'.
- A prominent written disclosure should be made whenever a product is recommended, the content of such disclosure should be prescribed by the FSA and it should preferably be in the form set out below.
- An oral disclosure is a fine idea, but cannot be relied upon, because proof of what has been said will be notoriously difficult to obtain. We believe that representatives who offer 'restricted advice' should be prevented from implying that their advice is effectively independent, on the grounds their company has freely chosen the 'best' range of products/funds available from the market as a whole for its clients and will review/change them, as its view of what is 'best' for its clients develops in the future. **It is perhaps partly a case of issuing guidance upon what should not be said**.

Q4 In terms of a disclosure statement, our suggestion is……

'XXX does not provide independent advice; as we provide advice based upon a restricted range of products that we have chosen or developed for our customers. Customer interests and XXX's commercial interests influence the range of products we offer'.

This is a very short, accurate, description of what restricted advice is and consumers surely have a right to be told? What can possibly be wrong with them being told? Without this, the RDR will be imposing a 'fudge' which will operate to the advantage of those 'restricted' advisers wishing to suggest there is minimal difference between their own offering and independent advice. That consumers are properly informed of the difference is vital, given the very different standards and judgements the RDR will demand of independent advisers.

There will be strong objections to the disclosure statement we propose (and any similar), precisely because it is accurate and customers will understand what it means. A number of large organisations are seeking to impose a solution that will continue to allow them to disguise, or otherwise fail to disclose, the limitations of their offering to customers. The FSA must not allow a form of words that is crafted to be ambiguous, opaque or misleading, in order to be acceptable to the vested interests concerned. Most of all, the FSA cannot possibly allow 'restricted advisers' to dictate the content of their disclosure statements.

The June 2009 consultation document is suggesting a degree of capitulation to the demands of certain vested interests, with large stakes in 'restricted advice'. Such capitulation in the form of watered down disclosure requirements would be a disgraceful abrogation of much of what the RDR is setting out to achieve.

Q5 We believe that the existing exemption applicable to Group Personal Pensions (GPP's) described in the consultation paper should be removed.

Q6 Our preference would have been an amalgamation of 'simplified' and 'basic' advice. The objective should have been the development of a very limited range of 'non-toxic' life assurance, income protection and savings products within specified parameters. These should have included adequate adviser/sales incentives within permitted pricing structures, to ensure economically viable incentives for representatives/ agents of the financial services industry (or others) to permeate the most disadvantaged communities within our society. **Accessing these groups is very expensive and this has to be recognised in product pricing, as otherwise these groups will remain unserved**. The financial services industry will have very good products, but no economic means of distributing them amongst the lower socio- economic groups. The proposals set out in the consultation paper do little practical or effective to address this problem. Establishing government offices to deliberate upon or publicise 'basic advice' is a waste of taxpayers' money, in a very challenging economic environment.

Q7 Assuming 'simplified advice' is introduced in the form set out in the consultation paper, we agree that the same professional standards should apply as to 'normal' advice. This begs the question however, as to what the added complication of the inclusion of a 'simplified advice' regime will actually achieve? Basic advice with a limited suite of non-toxic products will be preferable.

Q8 We have already commented on this.

Q9 We agree with the principle that the amount a regulated firm may charge for particular advice should not be influenced by either the type of product recommended or the product provider selected. The consultation paper seems to recognise that certain products are more difficult to describe/discuss than others and that to this extent, it accepts that advisory firms may need to charge more in particular product areas. We consider that more detailed clarification is needed here. From our own experience, we know that the case for pension policies, ISA's and portfolios utilising annual capital gains tax exemptions is far

more easily made/discussed than that for onshore/offshore investment bonds. The latter will suit certain client situations and we occasionally (though by no means regularly) make a slightly higher value-based charge when discussing bonds, due to the additional explanation/consideration involved and the more cumbersome establishment/management procedures concerned. This should not be misinterpreted or forbidden on the basis of potential product bias. It is not product bias at all – merely a reflection of the additional time that can be involved if complex analysis/discussion and explanation takes place. What is key is that proper dispassionate analysis should occur and that bonds should only be recommended if the client's personal taxation situation justifies them.

We agree with the proposed prohibition on rebated commission payments financing adviser charges.

Factoring & Similar

The proposed ban on the 'factoring' of adviser charges by product providers will be highly damaging to the independent advisory sector and ultimately extremely damaging to consumer interests. This proposal utterly ignores current credit market/business conditions, whilst broadly accepting that for many clients, payment of adviser charges via product charges will either be the most attractive, or only realistic option.

- Those who can only afford to invest on a monthly basis can rarely afford to pay significant lump sums for financial advice. Culturally, they do not expect to and if forced, most individuals in this position will either be unable to take independent advice, or will be forced into taking 'restricted' advice. Such an outcome is entirely undesirable and is at odds with the desirable outcomes set out in the original RDR consultation paper.

- Most advisory firms will be unable to provide their services on the basis of 'interest-free credit', due to cash flow considerations. There is no evidence currently that either banks or finance houses will 'factor' such charges for IFA businesses. The appetite for risk has significantly reduced in current economic conditions. The notion that clients will arrange their own financing to pay their advisers' fees is nonsensical.

- Any factoring facilities offered by product providers may provide those concerned with a marketing advantage over their potential competitors. **It seems to us that product providers should be permitted to 'factor' adviser charges, but that advisers should be discouraged from recommending/discussing factoring of their charges except when it is clear that actual client circumstances demand it**. In other words, only those clients whose circumstances demand that adviser charges are factored would/should be offered factoring.

- Product providers could be made to agree a common basis of factoring with the Financial Services Authority, enabling providers to lend support to advice for customers – without such support leading to potential competitive advantage over their peers. Non-participant providers might then not be considered by advisers for those customers unable to pay upfront fees, but we consider this preferable to those customers being denied access to the best advice. Where the existence or otherwise of factoring restricted the range of product providers an independent adviser could consider, he would be obliged to explain this to his 6 client in writing – including a statement that he would have recommended an alternative, without the fetters imposed by the client's choice of adviser remuneration method, if indeed there would have been a more advantageous alternative available.

- Without factoring, it seems to us that a significant part of the general population will be unable to afford access to independent financial advice. A limited range of firms may offer bureau type services on a 'retainer' model, but we consider this is unlikely to satisfy consumer needs adequately. Ultimately, only provider balance sheets can underwrite the factoring of advisory charges – or can provide the ultimate guarantee to potential commercial providers of such factoring. Although factoring does have the potential to cause a very limited degree of provider bias, we consider that controlled risk is worth accepting, if the alternative is the wholesale withdrawal of the availability of high quality independent financial advice to an even larger section of the population.

Q10

- We agree that adviser charges should be separated from other product provider charges and that they should be clearly identifiable.

- We accept that provider organisations should have the option not to offer a facility for adviser charging within their product structures. **It therefore follows that depending upon client profile/business model, certain advisory firms will be less likely to use the providers concerned**. One assumes such providers will be focussed exclusively upon the higher quality fee-paying end of the market and that their products will not suit clients who choose to pay for their advisers' services via deductions from their investments. It logically follows that if this potential distortion is to be permitted for the benefit of top-end clients and their advisers, the potential (and very limited) distortion that would be caused by factoring at the lower end of the market should be permitted too. Above all, a properly functioning market should offer customers choice – and most importantly, a range of choices relating to pricing and payment methods. Although we accept the worthy principles and practices outlined in the consultation paper, we disagree with the imposition of a monolithic, 'communist'-style system in which 'doctrine' becomes a reason for removing choice from the free market. **Ultimately, customers should be permitted to make informed choices from the full range of alternatives the market is able to offer**.

- One inviolate RDR principle would appear to be that advisers should determine their own charges and be responsible for communicating them to and agreeing them with their clients. This will be entirely their business in the future. On this basis, we cannot see that the proposed policing role for product providers in respect of adviser charges should be forced upon them. It will lead to inflexibility and arbitrary limits being imposed, which could lead to bias themselves. Advisers must take sole responsibility for the fairness of what they charge and for communicating it to and agreeing it with their clients. In terms of flexibility, it might be that a client and his adviser agree to load one particular investment with all the adviser's charges, whilst other investments are made on a charge-free basis. This form of flexibility would be undermined if providers were given a policing role.

- Provided payment is disclosed to and agreed with a client, we cannot see any objection to the payment of commission. This subject to the commission concerned being clearly identifiable as an 'adviser charge' amongst all quotations/key features documents issued to the client. Commission is just one form of 'adviser charging' ultimately and to adopt a 'commission bad' and 'anything else good' approach is simplistic and unprincipled. The quantum and agreement of the amount of commission with the client (not the provider) is what is essential, not whether the actual payment takes the form of commission or not.

- Client agreement to adviser charges in respect of a particular product should apply until it is rescinded or otherwise amended by the client concerned. In other words, there should be no compulsion to seek

fresh client consent periodically – provided the client is informed annually that the payments are being deducted and paid to the advisory firm concerned.

- Product providers that agree to deduct and remit 'adviser charges' should be compelled to do the same for any FSA authorised firm of independent financial advisers or investment managers, where applicable. Providers should not be able to influence a client's maintenance or otherwise of his relationship with a particular adviser, by refusing to offer the same deduction of adviser charges to an alternative properly authorised adviser of the client's choice. *(For this same reason, we believe wrap providers and others should be forced to facilitate in specie transfers of assets to third parties, upon the clients' request, subject to payment of a reasonable administration charge).*

Q11 'Vertically integrated firms' should be compelled to properly calculate and separate 'adviser charges' if 'restricted advice' is indeed being provided to their customers. We do not accept such compulsion should exist either for independent advisory firms or vertically integrated firms when a 'direct offer' is being made.

Q12 We consider the consumer will be best informed if tariff cards of 'adviser charges', issued by advisory firms are kept simple. In other words, the degree of FSA prescription beyond basic salient information should be kept to a minimum. This way, consumers might actually read and compare the charges made by alternative firms. Similarly, firms should be able to create and maintain their own tariff cards, without resort to external compliance consultants, due to the complexity of the content demanded by the FSA and continually shifting requirements. Regulatory conduct in this area has been utterly disgraceful, with the unwieldy menu based comparisons complicated, often very misleading and expensive to create and maintain. They have achieved absolutely nothing for consumers, whilst resulting in a mountain of unnecessary paperwork and considerable unnecessary expense for regulated firms. A tariff card should include the hourly rates charged for each category of staff, if a firm charges its time and also the units of time in which such charges will be levied. Firms should be able to offer fixed fees if they wish, or value-based fees. The rates of the latter should be variable within a scale published on the tariff card, according to either quantum or the complexity of the work undertaken. A general tariff card should show the scale within which value based charges will be made and a supporting statement should be made to the client (in writing) setting out what will actually be charged in respect of any transaction that is recommended, before it takes place. We consider that the provision of a tariff card, combined with a written statement of what will be specifically charged in respect of every transaction recommended should be adequate. We do not accept that it should be necessary for clients to sign an assent by way of agreement to such charges. Tariff cards should remain in force until either altered by the firm concerned or until a client ends his relationship with the firm concerned, or otherwise withdraws his/her consent to the continued imposition of the charges concerned.

We believe that firms should be able to state their charges solely in percentage terms, unless there are reasonable grounds for belief that a particular client may not have the capacity to interpret what a percentage charge means. However, we remain of the view that provider illustrations should include full cash disclosure of adviser charges.

As a matter of principle, regulated firms should be free to design their internal remuneration and incentive structures. We cannot accept that there are reasonable grounds for regulation in this area. However, there should be a general statement of principle that remuneration structures or incentive programmes that are likely to materially distort the provision of suitable advice (restricted advisers) or impartial advice (independent advisers) are likely to be scrutinised as part of the 8 regulator's consideration of whether a firm's remuneration arrangements are likely to result in its customers being treated fairly. In our view, TCF requirements already deal adequately with this area and duplication by the RDR should be avoided.

Q14 In dealing with Group Personal Pension Plan's (GPP's) it is crucial to recognise the paramount relationship that exists between the advisory/consultancy firm and the employer/employing organisation. Generally speaking, the employer is responsible for selecting both the advisory organisation and the GPP provider. The employees generally participate in such schemes in order to qualify for their employers' pension contributions. Some employers make information seminars available or indeed individual 'sign-up' meetings, with the advisory firms or product providers that have advised them on the establishment of the plan. Where an advisory firm's relationship with an employee is confined to advising him/her on his employee benefits package and his/her participation in the underlying arrangements, we believe the advisory firm's relationship and obligations lie solely with the employer, on whose behalf they are acting. We believe this changes if the advisory firm discusses contribution levels exceeding the minimum needed to qualify for maximum employer contributions, or if advice is given on the selection of investment funds or on the transfer of other pension benefits into the GPP. In these circumstances, the advisory firm concerned is providing services to both the employer and the employee in their separate capacities.

In dealing with the employer situation, the 'arranger charging' suggested in the consultation document seems sensible to us. The costs relating to an employer-sponsored scheme are entirely the responsibility of the employer, which will ultimately determine whether they are acceptable. We further believe that the employer should agree the basis of 'arranger charging' for all regular payments into the scheme, whether by the employer or its employees. Details should be included within employee illustrations, but provided the advisory organisation restricts its activities to arranging the payment of employer/employee regular premiums into the employer-sponsored GPP it should not need to agree its remuneration basis separately with the employee. *(As part of its duty of care to an employee, the advisory firm should be compelled to consider whether beyond the minimum employee premium required to attract the maximum employer contribution, the employee's personal interests are best served by adding further premiums to the same GPP. The adviser charging included within the GPP arrangement should not influence the opinion the adviser provides to the employee in this area).*

If the advice provided to employees extends to investment advice in relation to their choice of funds, or to the transfer of other pension benefits into the GPP, or to other advice entirely, then a remuneration basis should be separately agreed with the employee – unless the provision of investment advice to employees has been specifically agreed with the employer, as part of the advisory firm's charges included within the 'arranger charging'.

Q15 Wrap providers and fund supermarkets should be forced to state exactly what the basis of their charges are – including a statement of the percentage quantum of any bank interest they are likely to retain in respect of their clients' funds and broad details of any other pecuniary advantages they are likely to obtain as a result of their customers investing with certain fund managers etc. In general terms, we favour a model in which wrap/supermarket providers make clearly defined charges for their services which are applied directly to their clients' accounts. We consider it to be to the consumer's detriment that platform providers obtain and retain retrocessional and other payments from deposit takers, fund managers and others. In return for the charges they make, it should be incumbent upon them to apply the weight of the funds they hold to drive down third party charges to investors and to improve deposit rates, rather than to maximise a concealed profit for themselves. Their profits should instead be derived from their own explicitly stated and deducted charges. The concealed nature of the payments changing hands in this environment is detrimental to consumer interests and is anti-competitive, as it conceals the relative costs of different platform propositions from consumers (and even from their advisers). Ultimately, the UK wrap/platform 9 market is failing to allow customers to truly benefit from the reduced administration costs and wholesale/institutional fund manager pricing that the weight of their funds collectively should bring*.

**Certain partners of Cartlidge Morland retain a strategic shareholding and additional share options in the Ascentric Wrap platform.*

Q16 We do not accept that adviser remuneration is relevant when a manufactured product is being offered on a 'direct offer' basis. The charges themselves need to be clearly illustrated, but the proportion payable to the firm marketing the proposition is irrelevant. On other 'execution only' business however, the advisory firm should agree the charges it proposes to make with its client, in advance.

Q17 We are entirely in favour of a code of ethics for all organisations purporting to provide financial advice.

Q18 There is a need for CPD, but what is adequate should be a matter for individual firms and the individuals that work within them to determine. Specialisation should be encouraged and CPD is an important part of this. Firms/individuals need to ensure that individuals match their CPD to their actual areas of practice or to any additional areas of practice they aspire to. 'Presenteeism' at seminars and other structured training events should be avoided. We also consider that greater onus should be placed upon registered individuals themselves by the regulator in respect of CPD. This would assist firms' efforts in this area and ensure the requirements are better appreciated and understood by those concerned. *('The Law Society', 'The Institute of Chartered Accountants' and others place far greater responsibility upon the individual than upon the employer. In our view, this is the correct approach to CPD and it would be more effective*).

Q19 Most people in the UK are inadequately protected against catastrophe risk and if the changes contained within the RDR result in some advisers developing a more focussed approach to protection based business, we do not consider that likely to result in consumer detriment. Quite the contrary. Most advisory businesses will seek to maintain balanced business streams and we do not foresee a significant increase in the percentage of turnover generated from protection business. Protection business is substantially rate driven and there remains considerable competition, in a vibrant market. This factor, combined with improved morbidity and mortality, has resulted in a progressive reduction in premium rates over the past 20 years. Consumers are being well served and so far as we are aware, life assurance and income protection (when divorced from investment) are a source of few complaints against advisory businesses. **In terms of consumer detriment, we are far more concerned by the increasing tendency of insurers to rely on alleged nondisclosure of pre-existing conditions to avoid claims, even when disclosure of the conditions concerned would not have resulted in declinature and were not a contributory factor in the cause of claim. Non-disclosure of trivial incidents/conditions, often occurring many years before an application was made, are an increasing reason for the avoidance of claims**. In terms of advisory practices, our far greater concern is the incidence of adviser preference for critical illness cover (expensive) at the expense of adequate levels of life assurance or income protection (also expensive if cover level adequate). We do not believe that adviser remuneration structures are a factor in this – as they earn the same in either event. It is merely that critical illness is a more emotive and 'easier' sale, because the cover provided is more superficially attractive to customers.

Q20 If the RDR results in consumer clarity as to whether a particular adviser is independent or not, then it will have achieved a great deal in terms of 'costs and benefit'. Similarly, the emergence of an independent advisory sector that enjoys enhanced professional status and 10 reputation can only be welcomed. The removal of product providers as the principal determinants of the shape and scale of adviser remuneration might similarly be judged a success. Consumers may act with a greater degree of conviction that their adviser is acting in their best interests, rather than his/her own. This said, we consider that any concern otherwise has been hugely exaggerated as part of the justification for this review. We do not consider that implementation of the RDR will suddenly result in increased demand for advisory services. On the cost side, we consider access to advice will become further restricted, unless some

form of factoring of adviser charges is facilitated for those unable to meet the up-front costs. We are unconvinced by the proposed 'simplified advice' and 'basic advice' regimes, as we believe they will only cause confusion, without being of benefit to those they are intended to serve. The financial costs of the RDR to the advisory community have been grossly under-estimated given the amount of time that will be needed for syllabus study, if the examinations prescribed are to be completed by 31 December 2012.

Conclusion

In addition to the comments made in Q20 above, we are of the view that clarification and tidying of desirable practices is needed in the GPP sector, rather than wholesale reform. The importance of the employer/adviser/product provider relationship appears to have been recognised as paramount. Of greatest importance is a very clear distinction between the services/advice/consultancy that can be provided to employees within the employer/adviser matrix and the point at which the employee must be deemed an individual client of the advisory firm and treated as such. This is particularly important now that a revised adviser-charging regime is being introduced. It is essential that employers should be able to freely agree the structure of adviser remuneration with their advisers/employee benefit consultants and also to determine whether this is paid via deductions from employee pension funds/premiums (or commissions), or by fees invoiced by the advisory firm.

We have seen little evidence that advisers are at fault in the platform/fund supermarket area, but we fear misleading statements are being made, because many do not understand the underlying charges within the platforms they are recommending. The real underlying costs are opaque and therefore very difficult to compare. We consider such charges ought to be explicit, with any hidden benefits platform managers derive being fully disclosed (and preferably returned) to their customers.