Research into the financial services industry in the UK and the USA

Financial Services industry in the UK

Regulation

The Financial Conduct Authority (FCA) is responsible for regulating the financial services industry in the UK and has similar regulatory responsibilities as ASIC and APRA. They require a fit and proper person test to obtain approval to operate as a financial adviser/planner and publish a Statement of Principles and Code of Practice which approved financial advisers/planners must abide by.

Designation

The FCA have overriding jurisdiction of Financial Planners/Advisers in the UK, and require all Financial Planners to designate themselves as either Independent or Restricted, as follows:

- *Independent* advisors provide advice which considers all retail investment products and can work with any individual. The advice of an independent advisor is not limited by external factors or strategic decision.

- *Restricted* advisors provide advice which is limited in nature. This could be for a number of reasons, including (but not limited to):
    - They may work for a specific company which manufactures financial products and can only recommend that company's products;
    - Due to an agreement between the planner and an investment platform; or
    - Because they only work in a specific field or with a certain target market, such as pensioners.

Fee mechanism

Prior to 2013, Financial Planners could elect to charge on a fee-for-service basis or to receive income via commissions. However, since 2013, the Retail Division Review (RDR) outlawed commissions on advice relating to pensions, investments or retirement income products. The RDR is similar in structure and timing to Australia's Future of Financial Advice (*FoFA*) reforms, and, like *FoFA*, did not include reforms for mortgage or insurance brokerage commissions.

Adviser charging rules

Advisers need to provide their clients with a clear charging structure and clear information on their charges.

FCA does not set rules for what the charging structure should look like. Examples of charging methods include hourly rates, a fixed fee, percentage charges or a combination of these. The Adviser should not charge different rates for different providers that could both be suitable for the client's needs.

In Australia, there is a requirement '*To act in the Best Interests of the Client*'. In the UK, there is a very similar requirement for '*Fair treatment of customers*'

Disclosure of charges

The charging structure should be clear and disclosed to a client upfront, and in writing, so they have the information in good time before the advice process starts. The Adviser must also agree and disclose the total charges the client will pay as soon as this is known.

Ongoing charges

There can be an ongoing charge only in the case of providing an ongoing service - for example regularly reviewing the performance of a client's investments - or for regular payment products.

If there is an ongoing charge for an ongoing service, the Adviser must confirm the details of the service, its charges and how the client can cancel the service.

Professional Bodies

- *Chartered Insurance Institute [CII]*

  CII issue the *Chartered Financial Planner* title, which requires a minimum of a diploma qualification, five years' industry experience, and a CII Advanced Diploma of Financial Planning

  A Chartered Financial Planner must abide by the CII's Code of Ethics, and CII requires a fit and proper person test.

- *Chartered Institute for Securities & Investments [CISI] Certified Financial Planner*

  CISI issue the worldwide Certified Financial Planner title in the UK. Also issued in Australia by the Financial Planning Association of Australia, the CFP title requires a diploma of Financial Planning through CISI, as well as one year of supervised experience (or three years' unsupervised experience).

  The CFP certification does not require members to be fee-only. CFPs must abide by CISI's Code of Conduct.

Financial Services industry in the USA

The Financial Planners/Advisers in the US operates under either a fee-for-service or a commission-based structure, or a combination of both. There are a number of different types of advisors who belong to one or more professional bodies.

Regulation

The Securities and Exchange Commission (the "Commission" or "SEC") regulates investment advisers, primarily under the Investment Advisers Act of 1940 (the "Advisers Act"), and the rules adopted under that statute (the "rules"). One of the central elements of the regulatory program is the requirement that a person or firm meeting the definition of "investment adviser" under the Advisers Act register with the Commission, unless exempt or prohibited from registration.

Generally, only larger advisers that have $25 million or more of assets under management or that provide advice to investment company clients are permitted to register with the Commission. Smaller advisers register under state law with state securities authorities.

Although state-registered advisers are governed primarily by state law, several provisions of the Advisers Act and Commission (SEC) rules apply to such advisers.

Fee mechanism

Unlike Australia and the UK, the US has not specifically banned commissions for investments. Financial planners are therefore able to utilise a fee-for-service model, a commission-based model, or some form of hybrid if they so choose. However, there are certain professional bodies, notably the National Association of Personal Financial Planners (NAPFA, see below), who do require their members to be fee-only.

Disclosure

A specific form [*Form ADV*] is a required submission to the Securities and Exchange Commission (SEC), by a professional investment advisor, which specifies the investment style, assets under management (AUM), and key officers of an advisory firm. Form ADV must be updated annually and made available as public record for companies, managing in excess of $25 million.

Form ADV serves as a registration document that must be submitted to the SEC and to state securities authorities. The North American Securities Administrators Association (NASAA) reviews and approves changes made to the document, and it is supported by the Financial Industry Regulatory Authority (FINRA).

Potential and current clients of an investment advisor should always review the Form ADV on file, as it provides transparent evidence of the asset mix within the firm, as well as the professional background of key personnel.

Most advisors will offer a current Form ADV to any potential client early in the marketing process; in fact, investors should be immediately cautious of an advisor that does not freely offer the form upon request.

In addition, each client should receive all the information about the services and fees that are applicable to that client.

Performance Fees

Section 205(a)(1) of the Advisers Act prohibits an investment adviser (whether SEC-registered or not, unless exempt from registration under Section 203(b)) from receiving any type of advisory fee calculated as a percentage of capital gains or appreciation in the client's account ("performance fee arrangement"). The Advisers Act contains exceptions from this prohibition for contracts such as (1) registered investment companies and clients having more than $1 million in managed assets, if specific conditions are met; (2) private investment companies excepted from the Investment Company Act under Section 3(c)(7) of that Act; and (3) clients that are not U.S. residents.

In addition, Rule 205-3 under the Advisers Act permits investment advisers to charge performance fees to certain 'qualified clients' such as (1) clients with at least $1,000,000 under management with the adviser or more than $2,000,000 of net worth; (2) clients who are "qualified purchasers" under section 2(a)(51)(A) of the Investment Company Act; and (3) certain knowledgeable employees of the investment adviser.

Professional Bodies

- *CFP Board:* The Certified Financial Planners Board certify financial planners and require them to abide by a code of ethics. However, they do not require their planners to be fee-only. The CFP Board has certain requirements for CFPs representing themselves as fee-only or fee-based, however, does not have a specific disclosure requirement for commissions-based planners. Therefore, unless a CFP chooses to advertise themselves as fee-only, they may accept commissions.

  The CFP Board requires further studies, minimum experience levels, and continuous professional development.

- *National Association of Personal Financial Advisors [NAPFA]:* NAPFA is an association of CFPs, who require their members to be fee-only, and to act as a fiduciary for their clients. *[Fiduciary = A fiduciary is a professional entrusted to manage assets or wealth while putting the client's best interests first at all times. Financial professionals who follow a fiduciary standard must disclose any conflict, or potential conflict, to their clients, prior to and throughout the advisory engagement].* Fee-Only financial advisors may be paid hourly, as a retainer, as a percentage of assets (AUM), or as a flat fee, depending upon the planner. NAPFA have an ethical standard to act solely in the best interest of their client, have CPD requirements, and require members to submit a comprehensive financial plan to demonstrate competency.