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Retail Advice and Regulation

**Mock Examination Notes**

*Recommended Time: 3 hours*

1. **Write brief notes on the following:**

* 1. **MiFID.**
  2. **The Financial Conduct Authority’s consumer and practitioner panels.**
  3. **The Pensions Regulator**

* + 1. **marks**

Generally, in a question where the available marks are not shown for any sub section, they will be broadly equal. Therefore, approximately 5 marks are available for each part. Given that relatively few marks are available for each part a brief but succinct explanation will suffice.

The Markets in Financial Instruments Directive (MiFID) is the framework of European Union (EU) legislation for:

• investment intermediaries that provide services to clients around shares, bonds, units in collective investment schemes and derivatives (collectively known as ‘financial instruments’) and

• the organised trading of financial instruments.

Financial Services Consumer Panel: monitors how far the FCA fulfils its statutory objectives in relation to consumers. It is independent and free to publish its views on the FCA’s work and to commission research on consumers’ views. Practitioner Panel: provides external and independent input to the FCA from the point of view of the industry as a whole. Members are chosen as senior level representatives of each of the major regulated sectors. There is a close relationship and some overlapping of membership with the Markets Panel. In addition, the Chairman of the Smaller Businesses Practitioner Panel is also a member of the Practitioner Panel.

TPR was originally set four objectives by the Pensions Act 2004, which were updated by the Pensions Act 2008. These remain:

• to protect the benefits of members of work-based pension schemes

• to promote good administration and improve understanding of work-based pension schemes

• to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (PPF)

• to maximise employer compliance with employer duties (including the requirement to automatically enrol eligible employees into a qualifying pension provision with a minimum contribution) and with certain employment safeguards.

(The relevant sections of the Study Manual are Part 1, Chapter 1.2, 1.5 and 2.2)

**15 marks**

1. **Outline the nature and features of a Will.**

**5 marks**

Answers should include a definition of a Will and the role of the Testator and Executor.

For a Will to be valid it must be in writing and should appoint someone to carry out the instructions, an Executor, to dispose of the individual’s possessions and any property. It must be signed by the individual making the Will, the Testator, or signed on the Testator’s behalf in his or her presence and by his or her direction. This must be done in the presence of two witnesses who then sign the Will in the presence of the Testator, the whole process being referred to as attestation.

The role of the Executor (also known as a personal representative or legal personal representative) is to ensure that the Will is carried out as specified. An Executor (sometimes called an Executrix if female) can be a person or company and there may be a maximum of four Executors. An Executor has to carry out certain tasks in order to legally fulfil the obligations of the task, these include administering the estate, collecting debts, paying any tax due and distributing the assets to the Beneficiaries listed in the Will.

(The relevant section of the Study Manual is Part 4, Chapter 5.1)

**5 marks**

1. **Briefly describe the main tax wrappers.**

**10 marks**

The main tax wrappers sought in this question are the following 5:

* + collective investments
  + Individual Savings Accounts
  + personal pensions
  + UK life assurance bonds
  + offshore life assurance bonds.

Therefore, approximately one mark will be provided for mentioning the tax wrapper and one for providing details of each.

(The relevant section of the Study Manual is Part 3, Chapter 3.2.3)

**10 marks**

1. **Your client aged 55 is due to emigrate to Australia with his family. He has no intention of returning to the UK and would therefore like his DC retirement benefits to be transferred. Having obtained the relevant research your recommendation is to transfer the benefits into an Australian ROPS. Reproduce your suitability report focusing on:**

* + **Relevant information that you collated as part of the fact-finding process (10 marks)**
  + **Suitability of a ROPS – you do not need to focus on the provider (5 marks)**
  + **Alternative solutions available (5 marks)**
  + **Advantage and disadvantages and other considerations to be aware (15 marks)**

**Candidates should be aware that marks are available for the format and clarity of the suitability report, therefore consideration should be given to the client’s taxation status, attitude to risk, the costs, and consequences of implementing the advice and the service levels to be expected from you as their financial adviser. (10 marks)**

**45 marks**

The question seeks an answer in the format of a suitability report; therefore, credit would be given for format and a small number of marks would be available. The suitability report should be split into introduction/personal circumstances, objectives, recommendations – including other options available, advantages and disadvantages to the client, associated risks, agreed service level and cost of advice.

(The relevant sections of the Study Manual are Part 2 Chapter 2 and in particular sections 2.2,

2.3, 2.4 and 2.6 and Part 5 Chapter 1 and in particular sections 1.4, 1.7)

**45 marks**

1. **Describe a financial services firm’s obligations in relation to the following financial crimes:**

* 1. **Fraud**
  2. **Data Security**
  3. **Bribery and Corruption.**

* + 1. **marks**

The marks for each sub section are approximately equal. Referring to relevant legislation and the Financial Conduct Authority (FCA) rules and what the FCA expects would provide a full answer. Any relevant examples would help to illustrate a full answer.

Firms have obligations under the Proceeds of Crime Act 2002, the Money Laundering Regulations 2007 (& subsequent updates and Directives) and FCA rules to:

• have appropriate systems and controls that identify, assess, monitor, and manage money laundering risk.

• appoint a suitable individual to oversee these systems and controls.

The FCA expects firms to put in place systems and controls that will minimise the risk that their operation and information assets might be exploited by criminals. Internal procedures such as IT controls and physical security measures should be designed to protect against unauthorised access to customer data.

Bribery, wherever it is committed, is a criminal offence under the Bribery Act 2010, which consolidates and replaces previous anti-bribery and corruption legislation. The Bribery Act also introduced a new offence for commercial organisations of failing to prevent bribery. However, if a firm can show it had adequate bribery- prevention procedures in place this can be used as a defence. The Ministry of Justice has published guidance on adequate anti-bribery procedures

(The relevant sections of the Study Manual are Part 1, Chapter 3.3.1, 3.3.2 and 3.3.3)

**15 marks**

1. **Explain the difference between the Financial Conduct Authority’s Skilled Persons Review and a Thematic Review**

**10 marks**

As only 10 marks are available only a brief explanation is required. An answer should cover each to explain the differences:

* + They are both new tools employed by the FCA’s slightly revised approach to supervision and regulation
  + There are two types of Skilled Person Review, and they are used to obtain information on firms’ activities where there is cause for concern. A Skilled Person is a person appointed to make reports required by FSMA for provision to the appropriate regulator and who must be a person:

• nominated, approved, or appointed by the appropriate regulator

• appearing to the appropriate regulator to have the skills necessary to make a report on the matter concerned.

* + Thematic Reviews are used to assess risks across products or firms. The FCA uses thematic reviews to assess a current or emerging risk relating to an issue or product across a number of firms within a sector or market. Such reviews can be focused on both discovering what is going on and on how the FCA suggest the issue is tackled. In its 2016/17 Business Plan, the FCA confirmed ongoing and new thematic and market reviews affecting the retail investment business area as follows:

• Fair Treatment of With Profit Holders

• Retirement Outcomes review

• Non-advised drawdown sales

• Assessing Suitability of advice follow-up

• Outcomes Testing on auto-advice

A full answer could also include current developments in this area.

(The relevant sections of the Study Manual are Part 1, Chapter 3.5.3 and 3.5.4)

**10 marks**