

# Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Our ref: PR8/MT

Dear Ashley

## **DP05/3: Wider- range Retail Investment Products – Consumer Protection in a rapidly changing world**

Before responding to the questions posed by the discussion paper the Panel would like to make some general points. The Panel welcomes the clarity with which the Paper analyses a complex set of connected issues. However, although the questions posed in the Paper appear to be straight forward, it is actually very difficult to give black and white answers to them.

The Panel's view is that it does not wish to prevent consumers who may understand the wider range products from buying them although we believe that regulation should prevent them from being marketed to mass audiences. The aim should be to allow those who have researched in the specialist press or who have taken advice, to buy, protected by warnings in the product literature. We think that either by guidance or rule making where possible, firms should be prevented from marketing the products to mass audiences. We think they might otherwise (unwisely) take the fact that the products are widely advertised as giving some security and they should, in any case, probably only buy these products with advice. We do not believe that it is possible to segment the market in the ways suggested. If firms are not allowed to market to a broadly unsophisticated audience, there is no need to do so.

Here are our detailed comments:

### *Q1. Should we pursue the idea of distinguishing 'wider range' from other retail products?*

The Panel would be supportive of such an approach to provide clarity on which products could be actively marketed to the mass market and which should have marketing restrictions placed on them. Given the wide degree of consumer understanding of UCITS products and consequent acceptance of the inherent risks of these products, it is important to maintain and build on this 'brand' awareness.

*Q2. Would a high degree of volatility, liquidity and complexity (from the consumer's perspective) provide markers we could use to distinguish between 'wider range' retail investment products and other products or be a basis for disclosure requirements for consumers?*

The Panel agrees that the proposed features could provide markers that could be used by the FSA to distinguish between wider range retail products and other products and be the basis for disclosure requirements and marketing restrictions to consumers.

*Q3. Do you agree that the risk that some fund managers operating UCITS III funds may not implement appropriate risk management systems and controls is a significant risk?*

Yes, we believe that this issue will have to be addressed by the FSA.

*Q4. (a) Notwithstanding the risks highlighted, and given that unregulated CIS do have some retail penetration already (particularly under advice), and given the wide range of funds now possible under UCITS III, should the FSA consider allowing a wider range of unregulated collective investment schemes to be marketed to retail consumers?*

The Panel suggests that the FSA should not permit the wider range of unregulated collective schemes to be actively marketed to consumers. Instead we suggest that these funds should only be sold via advisors or covered in the specialist press not mass media.

*(b) Are there any safeguards that would be necessary to apply to such funds (such as those set out in this paper)?*

See our comments on marketing restrictions above. Additionally given the potentially higher risk nature of these products it would be essential for clear and comprehensive product information to be available to potential investors.

*Q5. Would it be necessary or desirable for product providers to accept a greater degree of responsibility for distributing wider range products? What sort of responsibility should they bear?*

The Panel welcomes the suggestion that product providers could accept a greater degree of responsibility for distribution of wider range products. The Panel believes that at the very least product providers should be able to show that clear comprehensive information on the structure and operation of products was supplied to advisers. However we see real benefits in going further and placing responsibility on product providers for ensuring that distributors were able to sell the products properly. In addition we suggest that advisers should be required to obtain a specialist qualification before being allowed to sell these products.

*Q6. Would it be necessary or desirable for retail investors to sign an explicit acceptance of risk statement, which would place the onus for purchase of more risky products more firmly upon them? Would such an approach be feasible given the general levels of consumer understanding that exist in the retail market?*

We do not believe it would be feasible for retail investors to sign an explicit acceptance of risk statement. Whilst we recognise that there is a small group of sophisticated retail investors who would fully appreciate the risks in purchasing these

products, it has to be acknowledged that the vast majority of consumers would not and such a statement would be virtually worthless in such cases.

*Q7. What form of product regulation, if any, should be applied to wider range investment products?*

At this early stage, it is unclear how wider range products will develop. The claims made about the products by the asset management industry will have to be examined against what consumers realistically need. UCITS products have been robust and successful, avoiding problems attached to other mass market products. So product regulation has been a clear success. It is premature to rule it out at this stage. Furthermore it is clear that any opening of the market to a wider range of products will be in the context of a European single market. Given the poor record of mature sensible co-operation between European regulators on UCITS until very recently, it is simply not enough to develop a legislative text for European wider range products. One would need to see alongside clear and convincing commitments from regulators to supervise esoteric products effectively within and across borders.

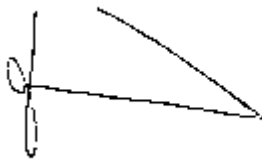
In any event the principles of treating customers fairly should be complied with so that these products are designed to be fair to consumers.

*Q8. (a) Which of the following consumer segmentation methods, if any, are appropriate safeguards to prevent inappropriate investment in wider range investment products: (i) sophistication; (ii) investor net worth; (iii) minimum investment threshold?*

*(b) Are there any other plausible segmentation methods which have not been mentioned?*

None of the suggested consumer segmentation methods are appropriate, as they are either too broad or too difficult to use for marketing purposes. Nor do we believe that further consumer segmentation is necessary if these products are not to be widely advertised.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Howard'. The signature is written in a cursive style with a large, sweeping initial 'J' and a long horizontal stroke extending to the right.

John Howard  
Chairman, FS Consumer Panel