

Consumer Panel response to the Commission's Green Paper the Enhancement of the EU Framework for Investment Funds

Introduction

The Consumer Panel was established under the Financial Services and Markets Act 2000 by the Financial Services Authority to represent the interests of consumers. The Panel is independent of the FSA. The main function of the Panel is to provide advice to the FSA, but it also looks at the impact on consumers of activities outside the FSA's remit. The Panel represents the interests of all groups of consumers.

Overview

This is the Panel's response to the Commission's Green Paper on the Enhancement of the EU Framework for Investment Funds. We have chosen to focus on key issues for consumers rather than provide a response to all the questions raised in the Paper.

The Panel agrees that there is a need to ensure that the current legislative framework is in place and working effectively before consideration is given to further legislation. We support the overall approach set out in the Paper.

The Paper correctly states that there have not been “notable financial scandals involving UCITS.” There is no room for complacency however. Consumers are not a single homogeneous group. Their skills and understanding vary widely and few would be able to understand the complexities and risks of the existing and possible new retail investment products discussed in the paper. It is vital that the objective of developing a single market in asset management is not taken forward at the cost of effective consumer protection. In particular we see an urgent need for a revision of the simplified prospectus.

Distribution and Disclosure

In the Panel's view the simplified prospectus does not meet consumer needs and should be improved. We believe both regulators and policy-makers must recognise the need to test all disclosure documents such as the prospectus on real consumers active in the financial markets. The level of understanding of the recipients of these documents is the true indicator of their effectiveness and we would suggest that the simplified prospectus falls short of what is required.

Efficient distribution channels are essential if consumers are to have access to and choose the right investment product for them. This means that products must be marketed in a fair and balanced way, with the responsibilities of intermediaries

clearly stated. Charges and fees must be disclosed in a readily understandable format. Consumers will then be in a position to shop around on an informed basis.

There are risks to consumers too in the changes introduced in UCITS III, where there is a real possibility of confusion. Amongst consumers of investment products the UCITS term is becoming known and understood and this something that could be built on now. But we do feel that there is a need to distinguish between pre-and post-UCITS III products, where the risks could be significantly different.

Substitute Products and Alternative Investment Markets

The Green paper raises the issue of the different regulatory regimes applied to UCITS and substitute products such as unit-linked insurance. We believe it is a matter for national regulators to close these gaps. In addition equities and bonds that are compliant with the Prospectus Directive are able to be sold throughout the EU. This does we believe present a risk to retail consumers and this is an area we would like to see addressed in the Commission's further work.

Consumer protection is also an issue if the retail mass market is to be opened up to investments such as hedge funds. It is generally accepted that products of this type tend to be complex and opaque, making risk assessment more difficult for consumers and even for their advisers. We urge the Commission to keep an open mind on how to ensure effective consumer protection in this area. The suggested common private placement regime is a small part of this much wider issue and there is a great deal more research that should be done before proposals can be formulated.

Consumer Involvement in Policy-Making

Earlier this month the Panel organised a Conference for Consumer Groups in the EU. Conference delegates agreed a Resolution, which has now been submitted to the Commission, setting out the steps which should be taken to ensure more effective engagement in EU policy making by groups representing consumers of financial services. Many of the current and longer-term issues raised in this Green Paper are important for consumers and there needs to be active consumer involvement in the development of these proposals across the piece.

Financial Services Consumer Panel

29 November 2005