

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Our ref: CP 06/20***KW

23 February 2007

Dear Jason

Consumer Panel Response to CP 06/20***

The Consumer Panel welcomes this opportunity to comment on the proposals set out in CP 06/20 for changes to the current COB 3 regime covering communications and financial promotions for the investment sector. The Panel sees this as a particularly important consultation as it marks the start of the FSA's move to a more principles-based regime.

In its earlier response to the MiFID based consultation questions, the Panel stated that it felt there is a general need for a uniformity of regulation at the interface between consumers and firms. The consumer experience should be the same whether the investments being considered fall within the scope of MiFID or not. However there will be occasions where the FSA's regulatory regime provides consumers with better protection and where the Panel would like to see these requirements remain in place. MiFID requirements are being put in place to mitigate identified consumer risks, and any approach which does not adopt these requirements across all firms is flawed. The Panel would prefer to see a level playing field for firms, except where FSA rules provide a higher degree of consumer protection.

Whilst the Panel understands that many commentators believe COB 3 is in need of a thorough overhaul, it believes the proposal to remove a significant number of rules and detailed guidance is a step too far. In general terms, the Panel lacks confidence in the FSA's strategy for dealing with breaches of financial promotions rules. The Panel is also sceptical of the FSA's ability to implement and properly enforce a more

principles-based regime in relation to financial promotions. Over the past year the Panel has been in detailed correspondence with the FSA regarding its general approach to the regulation of marketing material. The Panel's own research conducted in February 2006 and the FSA research published XXXX both show worryingly low levels of compliance with financial promotions rules across all three regulated market sectors. Indeed the FSA's own research indicated that the majority of financial promotions from even the large general insurance firms, failed to comply. Whilst insurance is not the subject of this consultation, the Panel is of the view that the regulation of advertising is one area which may not lend itself well to a less prescriptive regime. The Panel is sceptical that the changes to financial promotions rules outlined in this consultation will improve the situation.

The Panel also feels that any desire to increase the financial capability of consumers will face an immediate hurdle if half the financial services industry fails to get its promotions right first time.

4MQ.1: Do you agree with our proposals relating to all information in NEWCOB for non-MiFID scope business?

In principle NEWCOB 4 is welcome in its approach to increasing the standards required in all client communications. However, standards that have been adopted for MiFID business should be applied equally for non-MiFID business. MiFID has been drafted with the aim of setting a quality and standard in financial markets, it therefore seems at odds with this standard to hold other financial services business to a lower threshold. This will not increase consumer confidence, may cause confusion to consumers who receive differing standards of communication from firms dependent on the business and will not support the drive to "raise the bar" generally within the UK's financial market. The Panel also believes it will create confusion within the industry itself, especially among smaller firms which may not have the same level of compliance resource available to them as do large firms. Where firms must determine what aspects of their business are covered by different sets of rules, the Panel believes this will increase compliance costs rather than reduce them. The Panel therefore supports a 'level playing field' approach except where FSA standards would impose a higher degree of consumer protection.

4MQ.2: At present firms must take reasonable steps to communicate in a way which is clear, fair and not misleading. Do you agree with our proposal that all firms should ensure that all information they address to consumers in relation to relevant business IS clear, fair and not misleading?

The Panel fully supports this approach as it raises the standard all firms will be expected to reach.

4MQ.3: Do you agree with the way in which we have applied financial promotion provisions to non-MiFID scope business in NEWCOB 5?

The Panel does not support this approach. The reasons for this are given above in the answer to 4MQ.1.

4MQ.4: Do you agree with our new approach to direct offer financial promotions?

The Panel feels that the removal of rules relating to direct offer financial promotions is ill advised. The FSA's own research (Consumer Research 47: *Levels of Financial*

Capability in the UK: Results of a Baseline Survey) suggests the opposite is necessary; that more appropriate and better information should be made available to the consumer.

In CP06/20 at paragraph 4.32 it is stated as follows:

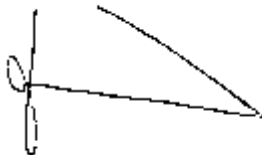
“From our research on the levels of financial capability in the United Kingdom, we have concluded that people are generally poor at choosing financial products. Consumers are potentially more vulnerable in the direct sales marketing context than in face-to-face sales as they are largely unable to ask questions to clarify meaning and must rely mainly on the paperwork.”

This research clearly indicates that consumers are more at risk where direct marketing is used and there does not appear to be any evidence presented that this risk will diminish by removing the detailed rules on direct offer financial promotions. FSA research strongly suggests that more appropriate and better information is essential and not less.

4MQ.5: Do you have any other comments on issues raised by this CP?

The Panel is concerned that the Consultation Paper does not raise any questions over the FSA strategy as a whole in this regard, including a lack of reference to a strategy for implementation internally. The Panel has concerns over the FSA's ability to properly enforce a new more principles-based regime in relation to financial promotions.

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

Financial Services Consumer Panel