

Consumer Panel response to the Commission's Green Paper on Retail Financial Services in the Single Market

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.

This is the Panel's response to the Commission's Green Paper on Retail Financial Services in the Single Market. We have only commented on those areas that are most directly relevant to the Panel's remit.

Overview

The Panel strongly supports many of the proposals set out in the Green Paper, which we believe is correctly focused on the most important issues in retail financial services markets. We support too the idea of a single market with consumers and firms able to engage in cross-border business with confidence, but we are concerned that from a consumer protection perspective the current market and regulatory infrastructure is fundamentally flawed.

It appears to us that the Commission's approach to cross border trade to date is to make cross border trade easier for firms, rather than more attractive to consumers. We believe that now is the time to attach the same importance to the interests of consumers. The whole structure of home/host regulation and redress appears to have been created to make life easier for firms to the disadvantage of consumers. At present a consumer is faced with understanding any one of 27 different regulatory regimes and systems of redress, while firms wishing to operate across border only need to worry about their own. We believe the Commission will only succeed in increasing cross border trade if consumers are relieved of the need to understand the complexities of regulation in other Member States and can rely on their own national regulation. What the Panel would advocate is no mobility without responsibility. In other words we would call on the EU to develop appropriate arrangements whereby consumers do not need to understand the regulations in every firm's home State and require that firms can only sell cross border if they subscribe to the consumer's home redress scheme, so that consumers can get effective redress through their home ADR scheme.

It is the Panel's view that progress towards an integrated and accessible retail market has been swifter than progress towards an equally integrated and accessible alternative dispute resolution system. We congratulate the Commission on the

establishment of FIN-NET and support its objectives, but in reality the quality – or even existence – of ADR procedures across Member States is patchy at best. Despite the excellent work that has been and continues to be undertaken to facilitate cross-border business we believe that little progress will be made in encouraging consumers to take advantage of the market until there is a simple, understandable and accessible dispute resolution service available. Ideally we would like to see firms subscribing to the ADR scheme of the Member States in which they wish to operate. Second best will be having an ADR process in place in each state with consumers having access through their own ADR service. Financial products are complex and it is clear from research that, generally, consumer understanding is low amongst all but the most sophisticated of investors. Consumers will continue to hold back from exploring cross border business until they are confident that there is viable redress should it be needed.

More generally we believe there is a fairly difficult balance to be struck in the use of different mechanisms in taking forward policy initiatives. Overall we feel that the degree of diversity in consumer profile and market practice within the EU calls for an approach based more on consistent standards and common procedures in areas such as product disclosure, rather than on maximum harmonisation. Nevertheless proposals should always be evidence-based and should include an analysis of how markets operate in different Member States.

We are looking forward to engaging still further with policy-makers within the Commission, as well as with consumer representatives in other Member States, on issues affecting consumers of financial services. We would like to see the Commission taking what steps it can to encourage and facilitate engagement in financial services issues by consumer representatives at national level.

Detailed Questions

Question 1: Do you agree with the objectives and priorities set out in this paper?

Broadly speaking, we agree with the objectives and priorities set out in the Green Paper. The Commission has adopted a suitably robust and pragmatic approach. In particular we strongly support an evidence-based approach to policy-making which should include an analysis of what is actually happening in the retail market for consumers. In particular we welcome price comparisons between Member States; action on competition; review of why some products are available in some Member States and not others; why consumers do not (and in future may still not) shop cross-border; the report on barriers to switching; and gaps in redress. Generally speaking, however, the Panel would not support follow-up legislative proposals unless there are clear benefits to consumers. Given the diversity of markets and consumers within the EU we would not be inclined to support maximum harmonisation in principle unless it could be fully justified from the consumer perspective.

Question 2: Are there issues that are not covered in this Green Paper, which are important for the integration of retail financial markets and to which the Commission's attention should be drawn? For example, are consumers in their everyday life confronted with requirements or limitations from either financial services providers or other stakeholders (employers, social security, administrations,

businesses etc) which restrict their ability to use cross border financial services (such as an obligation to have a bank account or insurance policy in one specific country etc).

The retail financial services market is substantial and in many areas, quite complex. We believe that there are dangers in attempting to cover the full range of issues arising in this market and that the Commission's attention is rightly focused on the key areas set out in the Green Paper.

Consumer confidence in financial services is vital to developing the single market. We do have some serious concerns about the effectiveness of passporting arrangements. Where a company has been refused authorisation, or has had authorisation withdrawn, by its Home State, that information should immediately be shared between regulators. This would help prevent the same individuals being granted authorisation elsewhere, enabling the firm to passport back into its original Home State where the powers of the Home regulator would be relatively ineffective.

Question 3: the Commission has undertaken several initiatives to improve consultation with consumers and to secure their input into its policy making. Should further steps be taken and, if so, what steps?

We strongly support the establishment and work of both the Financial Services Consumer Group and FINUSE. There remains a gap in consumer representation however at national level where consumer organisations are often under-resourced and lacking in financial services expertise. Although funding of consumer organisations is a matter for Member States, there is a strong case for facilitating more effective consultation by providing resources for more consumer-led research on financial services issues at the EU level.

As the Commission will be aware, independent financial services consumer panels exist in the UK and Ireland and are being considered in some other Member States. It would be helpful if the Commission could consider ways of bringing together regulators and independent panels to increase awareness and understanding, and to promote best practice. An initiative could perhaps be followed up with a Commission recommendation that all Member States put in place independent financial services consumer panels, together with some guidance about what constitutes independence.

Question 4: Is consumer choice unnecessarily limited by restrictions on the providers and channels through which they access retail financial services? What are, in your experience, these restrictions?

A more fundamental limitation is the cost of independent financial advice for consumers. An individual consumer's capacity to save from income, or an available capital sum, might be too modest to justify the scale of expenditure in terms of fees or commission that would be necessary to obtain such advice. The presence of banks on every High Street, their visibility and relatively easy access for consumers mean that significant numbers of consumers make use of what is generally a more limited (and probably not independent) advice service.

Question 5: Despite efforts, in particular the creation of FIN-NET, the handling of cross-border complaints in the field of financial services still remains problematic. The Commission would welcome input as to the ways to improve the current situation. For example, should Member States be obliged to ensure that alternative dispute resolution (ADR) schemes are in place? Should providers be obliged to adhere to an ADR scheme? Should they be contractually obliged to offer ADR mechanisms to their client?

We strongly support ADR and participation in an ADR scheme should be a precondition for cross-border trading. It is important to ensure that ADR schemes conform to the standards set out in the EU recommendation on ADR. We recognise that this cannot be imposed as a mandatory requirement at the moment, but could be made a statutory requirement at a later date. Any ADR scheme should, we believe, have the same jurisdiction and operating principles as the UK's Financial Ombudsman Scheme, in particular that the Ombudsman's decision should be based on an assessment of what is fair in all the circumstances. We would also like all firms to be compelled to comply with ADR findings and for failure to comply to be behaviour liable to result in disciplinary action. We would welcome further initiatives to promote best practice in ADR in financial services.

We think it would be helpful if the Commission were to undertake some research to assess levels of satisfaction among those who have had complaints referred through FIN-NET, to identify any areas for concern.

Question 8: The Commission believes that it has an important role to play in developing a competitive, open and effective market for long-term savings, retirement and pension schemes that meet consumers' needs. Do stakeholders agree and how could the Commission contribute? Could an optional legal EU-wide regime ("28th regime") for savings and/or 3rd pillar pension products be envisaged?

A key barrier to the development of a market that meets consumers' needs is the difficulties consumers would encounter in pursuing a complaint against a business incorporated in another Member State. It is imperative that this issue is tackled urgently. In our view consumers will continue to be reluctant to participate in cross border business unless they can be confident that, should the need arise, there is a simple and accessible dispute resolution procedure in place. If the 28th regime could be shown to be a viable option we would give further consideration to the benefits that this might provide. Currently we believe there is insufficient clarity about regulation and enforcement in such a regime.

Question 9: Do you think there could be benefits for both banks and consumers if banks would have the opportunity to offer an optional simplified standardised product, which would have a good level of consumer protection, would be easy to understand, and could be offered across borders without the need to be modified to fit local rules?

In principle we would support such a move. We would also like the Commission to consider further the possibility of accredited certification of service standards – and possibly product profile – through European and international standards across all Member States.

Question 10: The Commission believes that more could be done to improve consumers' financial literacy and capability. Possible measures include developing guidelines or promoting best practices. The Commission would welcome input on how this policy should be further developed at the European level.

We agree with the Commission that this is primarily a matter for Member States, but we see a constructive role for the Commission in continuing to bring people together who work in this field to exchange ideas. We do not however see the EU itself having a role in communicating directly with consumers to raise levels of financial capability.

Question 11: Do you think that, as they stand, the provisions on consumer information contained in financial services directives are adequate and consistent with one another? Were it not the case, how could the Commission ensure that information requirements are set at the right level, ensuring proper information but without creating any overload? Do you think that informing consumers is sufficient or that advice should also be provided? If yes, should that be compulsory or on request?

We believe the focus should be on any research-backed evidence that different requirements cause difficulty for industry and consumers in practice. We would be reluctant to endorse requirements for a common set of standards or criteria for disclosure, except to the extent that it was necessary to facilitate 'shopping around' or product comparison. The Simplified Prospectus is a case in point. Our views are set out in the Panel's response to the recent CESR questionnaire, a copy of which is attached.

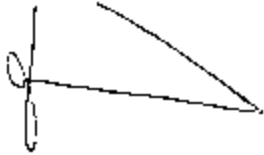
Question 12: Measures to improve lenders' access to credit data will be discussed in the context of the forthcoming White Paper on Mortgage Credit. The Commission believes that more could be done to promote the accessibility of credit data, in particular on a cross-border basis. Who should be able to access consumer credit data? How could the cross-border transferability of consumer credit data be improved, ensuring in particular that mobile credit data follows increasingly mobile consumers? Could a memorandum of understanding, ensuring smooth data circulation between credit bureaus, be a workable solution?

We agree that in theory this would seem to be a sensible and practical approach. However we do have concerns about the rights of consumers to access their credit data and this is an area that we would like to see addressed in the forthcoming White Paper.

Question 14: Customer mobility and competition are closely associated. The Commission would welcome input as to how customer mobility could be enhanced. In particular, in the field of bank accounts, and as a follow-up to the Expert Group's work, would stakeholders see merits in, for example, having EU wide account switching arrangements? Will SEPA have an impact on customer mobility?

We strongly support the principle of consumers being able to switch without difficulty, but we would need to consider further any detailed proposals or suggestions. In our

view this issue is closely linked to the review of the consumer aquis, particularly in relation to the directive on unfair terms in consumer contracts.

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John Howard
Chairman
Financial Services Consumer Panel

16 July 2007

Consumer Panel response to CESR questionnaire on the simplified prospectus for retail investors

The Financial Services 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.

This is the Panel's response to CESR's questionnaire on the Simplified Prospectus for retail consumers. We welcome the opportunity to engage in this important debate.

We thought that the questions asked by CESR tackled many of the key issues relating to the Simplified Prospectus. We have set out our answers below. We would like to emphasise at this stage the importance of the SP or its successor document being concise, consistent, relevant, written in plain language and timely. The resources allocated to the review of the SP by numerous bodies across the EU could potentially be wasted if the final document is too long and complex - potential investors will simply not read it. The Panel believes strongly that the information needed to draw up options for a revised SP must be based on authoritative research into consumer needs and experience. We also fully support consumer testing as a means of validating the final recommendations.

Q1: What information should be included?

The Panel's view is that the primary purpose of the Simplified Prospectus (SP) is to provide consumers with sufficient information on which to base an investment decision, having used it to compare products if necessary. Consequently the SP should focus on a limited amount of important information and be driven by consumer needs rather than strictly contractual considerations. The information that should be included can best be identified by way of consumer research – in some markets there is a great deal of research already available, although further work might be required. Subject to consumer testing, we would like to see information relating to issues such as complaints bodies limited to links or contact details, rather than more extensive information being included in an appendix or supplementary pages. If consumers are to be encouraged to read and understand the SP the information it contains must be important and worded in a consistent and readily understandable way. Consequently the finished document will be focused and concise.

Q2: What substantive UCITS features do consumers need to know about?

The range of consumer diversity is such that we believe there is no such thing as the "average consumer". Consumers buying UCITS products will enjoy different levels of knowledge and capability – the UCITS 'brand' is becoming more well known and inspires some comfort and confidence - so we believe the approach should be to identify key information and present it in plain language, rather than attempting to establish the profile and average financial ability of the target market. The range of information that investors would need can probably be best identified through consumer research. However, we would expect this to include basic information about the objectives of the fund; its strategy; risk profile; past performance; costs; tax regime and a link or reference to where further information can be found. We provide further views on these aspects in the following answers.

Q3: What information should be provided about risks and rewards?

The provision of information about risk is vitally important, but remains problematic. Research undertaken on behalf of the Panel this year¹ showed that consumers would like to have a consistent approach to explaining the risk to their money when buying or investing in financial products. This qualitative research also showed that generally, many consumers do not understand the potential impact of risk or how they need to factor it into their financial decisions. There are of course many types of risk –inflation, performance, prudential (regulatory) and political for example – but we think that any attempt to encapsulate all these risks could lead to confusion. Our view is that the information provided should be limited to the risk profile of the particular investment. The Panel is actively involved in discussions with industry and other bodies in the UK about possible scenarios for a common 'language' for risk at the moment and consequently we are not in a position to suggest a structure for this. We would however expect any narrative to include the lack of suitability of the equity product for anyone likely to wish to withdraw their money after, say, twelve months, or alternatively a minimum recommended holding period.

As regards the potential gains, in principle we do not think that the SP is the most appropriate document for large amounts of comparative information or narrative on the nature of the relationship between risk and reward. This could make the SP too long and unwieldy and would discourage potential investors from reading it. If the SP contains the right information about the investment in a digestible form, consumers who wish to do so will make their own comparisons. We do agree that a balanced presentation of a reasonable set of projections would be helpful. Consumers would not be able to use this information for 'shopping around' throughout the EU unless it was consistent across all Member States both in terms of assumptions used in calculations and in levels of potential gain or loss – we recommend that any set of projections should include a nil and/or negative rate of return. We see a strong argument, therefore, for prescription in this area. We will be interested to see the results of research on this.

¹ "Investment risk rating – consumer attitudes towards risk" published on www.fs-cp.org.uk

Q4: What information should be provided about strategy and objectives?

We agree that a plain language statement of the strategy and objectives of the fund is essential. This would not necessarily include detailed information about the financial instruments used by the fund.

Q5: How should past performance information be presented, and for what time period?

This is a complex area. We understand that there is a real appetite amongst consumers for information on past performance, both of the fund itself and of the fund managers, although we accept that many consumers might not understand, or might be likely to misinterpret, the information provided. It is extremely important that options in this area are thoroughly researched and that presentation is standardised. A warning that past performance is no guarantee of future performance is essential. Information about suitable investment holding periods should be included elsewhere in the SP and we do not believe it would be appropriate to adjust the past performance information to indicate any recommended holding period. At this stage we support the use of simple returns and we believe a period of five years' individual annual returns would be appropriate. New funds that were set up within the previous five years should be required to use a zero figure for pre-trading years. We would, however, be interested to see the results of research in this area across the EU.

Q6: How should information about charges and fees be presented?

Concise and meaningful information about charges should be presented in the SP.

A great deal of useful information is already provided about charges and fees, although both the information itself and the figures/ratios used are often complex. The size of the charges to be applied and their impact on return are of course of particular interest to consumers. From the consumer perspective a table of figures in cash terms showing the effect of all charges on performance would probably be the most meaningful, although we agree that the total expenses ratio in particular is also helpful. The Retail Distribution Review being undertaken in the UK by the FSA is examining, amongst other things, alternatives to commission based remuneration. These include a cost and payment split between the production of the product and its distribution. This work might help to inform the debate on how best to present information about charges and fees.

Q7: How should the packaging of funds into different end-products be handled?

Our understanding of packaging is that this might affect the charges, tax position and ultimate purpose for which the consumer selected or was advised to purchase a particular investment. Mandatory integration of the key information relating to wrapped products could result in lengthy and complex SPs which would not necessarily achieve the objective of providing investors with clear and concise information. In these cases it might be necessary for more than one SP to be provided, with some kind of umbrella document covering all the investments within

the wrapper where possible. Again, these must be concise and easily understandable.

Q8: How far should the information be harmonised between firms and between EU members?

The Panel recognises the potential advantages of reducing fragmentation in the Single Market and the importance of easily comparable product information for consumers. Without detailed knowledge of the operation of retail markets across the EU, however, we find it difficult to comment on the level of harmonisation that would be appropriate, although the standardised or at least consistent presentation of information in the SP is important.

Q9: Would it be useful to specify how this information should be presented?

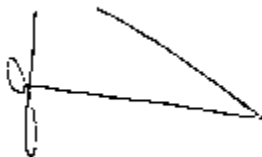
The key to successful presentation lies we believe in the use of plain language and the inclusion of key information only. As explained earlier in this response, there is a need for consistent information across Member States – suggesting a level of prescription – and the overall length of the document must not be too daunting or it will simply not be read. Although it may be difficult to stipulate the exact length, we feel the SP should be no longer than two sides of A4 and, hopefully, considerably shorter.

Q10: In what form should the information be delivered?

As indicated in the questionnaire, much depends on how the investment is purchased. Whatever the form of the information and however it is distributed, it should be readily identifiable as the SP/KII.

Q11: How should we ensure consumers get information in sufficient time for it to be useful for their investment decisions?

Again, the timing will to some extent depend on the channel through which the investment is to be purchased. It is important that the potential investor has time to consider the document and if necessary ask for clarification/further information, before committing themselves to the investment.

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Financial Services Consumer Panel

25 May 2007