

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Charlie McCreevy
Commissioner
Internal Market and Services
European Commission
B-1049
Brussels

6 January 2006

Dear Mr McCreevy

Markets in Financial Instruments Directive (MiFID)

I am writing on behalf of the UK's Financial Services Consumer Panel in response to the comments you made about the MiFID in your speech at the London Stock Exchange Christmas lunch on 16 December. As I believe you are aware, the Consumer Panel is a statutory body which the UK's Financial Services Authority (FSA) is required (by the Financial Services and Markets Act 2000) to establish and maintain to represent the interests of consumers. The Panel is independent and its main function is to provide advice to the FSA on its policies and practices as they affect consumers of financial services. However, we also keep under review and seek to influence developments in financial services more generally and, in this context, we have responded to a number of European consultations.

In your speech on 16 December, you said you wanted "to present the bulk of the MiFID measures in the form of a Regulation rather than a Directive" and that you intended "consumers to benefit from the same level of protection whether they choose a foreign investment services provider or a domestic one". The UK Financial Services Consumer Panel is extremely concerned by this as our interpretation of these statements is that important protections already afforded to UK consumers will have to be removed. You recognised that CESR's advice provided valuable input to the Commission's work on MiFID level 2 requirements and was the vehicle for much of the public consultation that has taken place. However, in its advice, CESR stated that it had proceeded "on the basis that Member States may impose additional requirements in relation to its subject matter". We have serious concerns that an attempt to set out a comprehensive European regulatory regime in measures that are based on only a partial consideration of existing requirements will fail to deliver an adequate degree of consumer protection. You said that you wished to "Fully protect investors and consumers", but this will not now be the case for UK consumers. Certainly, there are a number of important investor protection measures in the UK that were not considered in CESR's consultations or advice and that have also not been considered in the Commission's working documents on level 2 measures. Given the great breadth of MiFID, there are likely to be numerous examples where a ban on "gold plating", interpreted as extending to retention of relevant existing requirements, would have undesirable and unintended consequences for UK consumers. The following are just a few examples of UK consumer protection measures which we understand will disappear:

- The initial disclosure document and the menu, which are aimed at providing consumers with information on the services offered, and the fees charged, by firms in a manner that can easily be compared with the offerings of other firms. These measures also take account of the need for consumers to compare products such as

UCITS, which fall within the scope of MiFID, with products that fall outside of its scope (for example certain life insurance products).

- Requirements to disclose commission in cash terms and enhanced suitability standards, which reduce the risk of product bias where advisers are remunerated on a commission only basis.
- Requirements to disclose commission equivalent, which ensure a level playing field between the distribution channels of bancassurers, who can hide their remuneration in the fees charged by the product provider (a subject that MiFID does not address) and independent advisors who cannot.

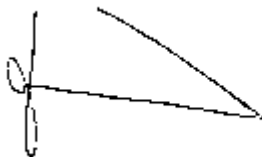
You also emphasised the need to get the "level 2" measures right in order to break down barriers to open markets. We agree with the proposition that more open and competitive markets are likely to assist in delivering a better result for consumers. However, this must go hand in hand with an adequate degree of consumer protection.

In any event, differing regulatory requirements do not seem to us to be the primary constraint on the development of a single market in retail financial services. Tax and social security codes, together with language and cultural factors have a major influence. So it seems unlikely that stripping conduct of business regulation down to a European minimum would bring significant single market benefits to consumers. Therefore, an unthinking removal of existing local investor protection measures would be doubly concerning.

Industry representatives have a natural advantage in commenting on highly technical proposals such as MiFID. However, as you recognised, it is important that the view point of the consumer is also taken into consideration in this debate. In the light of what you had to say on 16 December, we are very concerned about the potential effects of the MiFID from the consumer perspective. It seems to us that, if the Commission proceeds in the way you indicated, there will be a significant diminution in levels of consumer protection. Accordingly, the Panel urges you to think again before publishing your formal proposals – and, in particular, to consider the implications of your proposals for retail consumers.

I look forward to reviewing your formal proposals and to joining the public debate on them in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Howard', with a stylized flourish at the end.

John Howard
Chairman
Financial Services Consumer Panel