

# Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Our ref: CP06/19 & 20 (MiFID)

28 November 2006

Dear Mr Stobo

## **Consultation Papers CP 06/19\*\*\* and CP06/20\*\*\* Reforming Conduct of Business Regulation**

This is the first of the Financial Services Consumer Panel's two responses to Consultation Papers CP06/19\*\*\* Reforming Conduct of Business Regulation and CP06/20\*\*\* Financial promotion and other communications. This response deals only with the proposals arising directly from the implementation of the Markets in Financial Instruments Directive (MiFID). We fully understand that the timescale for responding is not of the FSA's own choosing, but the short consultation period has restricted the Panel's own consideration of the issues. Rather than submitting a comprehensive response therefore we have focused only on material retail matters as they affect consumers.

### **Panel Overview**

In our view there is a general need for a uniformity of regulation at the interface between consumers and firms – in most cases 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 we would like to see these requirements remain in place.

We have of course had lengthy discussions with the FSA on the proposal not to seek Article 4 approval to retain the "most suitable" requirement. Your argument was that given the rules that remain in the Handbook there would be no change to the substance of the obligation of firms to recommend the most suitable product to the client. Our particular concern was the signal being given to a vast number of firms by this decision that standards were now different. We have accepted your assurance that nothing should change under the rules and that you would take appropriate action to make this clear to industry and to monitor what happens in practice.

Reference is made in the Papers to a post implementation review of the effectiveness of the new Conduct of Business Sourcebook. Such a review should recognise the scale and significance of the changes that are being made and we

would like to see early publication of the terms of the post-implementation review, including a comprehensive set of measures, objectives and timescale for completion.

### **CP06/20\*\*\***

There are two particular points we would like to make in response to CP06/20\*\*\* at this stage. As regards the standard presentation of past performance, this information has been particularly valuable to consumers in enabling them to make comparisons between products fairly easily. It is disappointing that these requirements are to disappear. Similarly the present form of the past performance risk notice is both helpful and effective for consumers. We note that the FSA believes that it should be possible to prevent most of the potential consumer detriment arising from the removal of current requirements by use of the MiFID rules and guidance. We would like the FSA to monitor developments in these areas carefully and be ready to respond to any failure by firms to meet both the detailed MiFID rules and the broader requirements of the FSA's principles for business.

### **CP06/19\*\*\***

#### **General Approach**

*Q1: Do you have any general comments on the way in which we propose to transpose the relevant requirements of MiFID?*

The FSA's general approach seems sensible and appropriate.

*Q4: Do you have any comments on our general approach to using Article 4 to retain parts of our existing conduct of business regime?*

We agree that there is little scope for 'super equivalence' in the areas covered by the Directive. We also acknowledge that the criteria which would have to be met in order for an Article 4 application to be successful are themselves narrowly drawn. The Panel strongly supports the areas the FSA has identified as appropriate for an Article 4 application and would like the FSA to continue to bear in mind the possibility of further Article 4 applications being made if areas of detriment are identified at a later date, for example in the course of the post implementation review.

#### **Conduct of Business Obligations**

*Q7: Do you agree with our proposed implementation of MiFID Articles 19(1) and (3)?*

We agree with the FSA's proposed implementation of MiFID Articles 19(1) and 19(3). These high level requirements reflect in broad terms the standards of conduct consumers are entitled to expect from industry and, as the Paper acknowledges, there is in any event significant overlap between the Articles and the FSA's existing Principles for Business. We support the extension of these behavioural standards to non-MiFID business and in particular we agree that the requirement for a firm to act in accordance with the best interests of its clients should apply equally to MiFID and non-MiFID business. We agree that the requirement in Article 19(3) for firms to provide information to consumers on investments and proposed investment

strategies in relation to derivatives, warrants and stock lending activity should be extended to non-MiFID business.

*Q9: Do you agree with our proposed approach to implementing the MiFID inducement provisions?*

The Panel generally supports the full disclosure to consumers of all inducements, including fees and commissions. We would like consumers receiving the summary form disclosure to be advised specifically that further information is available on request. The Paper suggests that "relatively few" clients will require further information. It is fair to say that the sheer volume of information provided to clients in the course of their relationship with an authorised firm can be overwhelming to some. We would like the FSA to take steps in its post-implementation review to establish the reason for any widespread reluctance to take-up the offer of additional information – that a positive choice is made, rather than simply a reaction to 'information overload' or poorly written summaries which do not make clear the availability of further information.

*Q12: Do you agree that COB 2.3 should be retained to allow MiFID firms to rely on information provided by non-MiFID firms?*

We agree that this seems to be a sensible approach.

### **Information about the firm, its services and remuneration**

*Q26: Do you agree with our proposals for implementing these additional disclosure requirements from MiFID?*

The Panel has no objection to these proposals. Although we believe that improvements need to be made to the Initial Disclosure Document and Menu we support their retention in current form pending further review.

*Q28: Do you have any comments on our approach to statutory status disclosure?*

The FSA's approach seems appropriate. As the Paper identifies, the only additional piece of information consumers are likely to receive under the MiFID requirements is the FSA's address. Although all consumers could benefit from this information, it is easily available from other sources and we do not think it essential that the requirement is extended to non-scope business.

### **Client Agreements**

*Q30: Do you agree with our proposal to copy-out MiFID client agreement proposals into NEWCOB and not add additional COB-based requirements?*

The Paper refers to the lack of evidence that the FSA's current prescriptive approach and signature requirements improve consumer understanding or confidence in the Client Agreements and Terms of Business documents. It is not clear whether the FSA has conducted specific research in this area, or whether it is simply that any consumer concern has not been drawn to the regulator's attention. Perhaps the current prescriptive approach is a reason for consumer satisfaction. The Panel

would like to see the effectiveness of the new requirements specifically covered in the post implementation review, or in a targeted piece of consumer research.

## **Investment Research**

*Q53: Do you agree with our proposed approach to implementing the MiFID requirements on research?*

We support this approach.

## **Preparing product information**

*Q56: Do you agree with the way we propose to implement the MiFID disclosure requirements?*

The Panel strongly supports the FSA's proposal to maintain the current requirement to provide a Key Features Document or Simplified Prospectus and the Article 4 application that will have to be made in order to achieve this. Product disclosure is a key issue for consumers and while there are a number of improvements that could be made to both the KFD and the Simplified Prospectus we do not believe that this is the appropriate point at which to make a significant change. In addition the Simplified Prospectus is already under review and it would be sensible to await the outcome of this before considering further amendment.

The additional measures proposed by the FSA to improve the current standard of KFDs are welcome. There have been too many examples of KFDs being of no use to consumers because of the way they have been produced by some individual firms. We are supportive of the FSA's engagement with trade bodies as a means of working with industry to encourage best practice. However the Panel believes that the involvement of consumer advocacy/representative bodies would maximise the chances of this exercise achieving real progress in this area.

The FSA has recognised in its Discussion Paper on FSA confirmation of industry guidance<sup>1</sup> the need to ensure that consumer interests are not undermined by industry guidance and the status afforded to it by FSA confirmation. We believe the FSA must be much more alive to the need to involve consumer bodies in discussions with trade bodies from the outset and this is an example of an area where a great deal more could be achieved by involving bodies such as the Panel at an early stage.

*Q57: Do you have any comments on our proposal to move from our current standardised approach to projections to the MiFID standards for MiFID business?*

The MiFID requirements for projections clearly give scope for firms to produce 'bespoke' projections which could make it more difficult for consumers to compare products. There is a potential for projections – or the way in which they are presented – to mislead. In its paper the FSA states that it intends to monitor closely the behaviour of firms in this area. This work is absolutely essential. We urge the FSA to begin this work as quickly as possible once the changes are in place and to react swiftly and effectively to areas of detriment or likely detriment.

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<sup>1</sup> DP06/5, published on [www.fsa.gov.uk](http://www.fsa.gov.uk)

## **Providing product information to clients**

*Q63: Do you agree with our proposal to copy-out MiFID rules on customer understanding of risk, and delete the existing rules and guidance?*

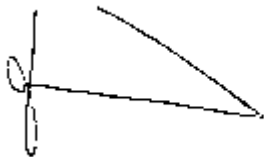
On the whole we have no objection to this proposal, but we urge the FSA to think about what it can do to help firms put across the risk of a particular product to their clients both accurately and effectively. The Panel has commissioned a study to gauge consumers' appetite for a simple standardised approach to communicating information in investment risk and whether in principle such an approach might be workable. We will be happy to share the results of that study with the FSA.

## **Training and Competence: making the sourcebook MiFID-compliant**

*Q89: Do respondents agree with our proposal to disapply all of the existing TC rules for inwardly passporting EEA MIFID firms and deal with any implications as part of the wider review?*

We agree with this approach.

Yours sincerely

A handwritten signature in black ink, consisting of a vertical line on the left, a horizontal line extending to the right, and a diagonal line crossing the horizontal one from the top right towards the middle.

John Howard  
Chairman  
Financial Services Consumer Panel