

# Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Telephone: 020 7066 9346  
Local fax: 020 7066 9728  
Email: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)

Sue Bailey  
MiFID Implementation Office  
Financial Services Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

Our ref: Responses

1 August 2007

Dear Sue

## **Consultation Paper CP 07/09\*\* Conduct of Business regime: non-MiFID deferred matters**

This is the Financial Services Consumer Panel's response to CP 07/09\*\* non-MiFID deferred matters.

### **Overview**

As we have said in our responses to CP06/19\*\*\* and CP06/20\*\*\*, we believe there is a general need for consistency of regulation at the interface between customers and firms. Generally the consumer experience should be the same whether the investments being considered fall within the scope of MiFID or not. Consequently we support in principle the FSA's basic approach of applying MiFID requirements and standards to non-MiFID business. There will be occasions however where the FSA's regulatory regime provides better protection for consumers and where we would have liked those requirements to remain in place if possible. The area of projections is a case in point and if the proposed read across of MiFID requirements goes ahead, we would like to see this part of the retail market being monitored from the outset and any irregularities dealt with swiftly.

We would like to emphasise once more the importance of the NEWCOB post-implementation review and we would like to see early publication of the terms of that review, including a comprehensive set of measures; objectives; and timescale for completion.

We have set out below our comments on the proposals in the Paper that have most relevance to retail consumers.

### **Non-financial spread betting**

We agree that financial and non-financial spread betting is an area where it is sensible for MiFID requirements to be applied across the piece. As we said in our earlier response, we would like the FSA to think about what can be done to help firms put across particular risks under the high level MiFID requirements. In this

particular area we have in mind the significant losses that can be suffered. We have no objection to the application of the MiFID appropriateness test to non-financial spread betting.

### **Depositories**

We support the FSA's approach in this area, which seems entirely appropriate.

### **Collective investment scheme operators**

We have no objection to the proposals contained in the Paper. However we would not like to see the cost of implementing the best execution requirements being passed on in its entirety to consumers. This is an area we would like to see monitored over time to identify any rising trend in charges to investors.

### **Occupational Pension Scheme Firms**

Again, while we do not oppose the proposals in themselves we would not wish consumers to bear the cost of the changes.

### **Investment companies with variable capital**

We support the FSA's plan to maintain the current regime.

### **Best execution, order handling and client order record keeping**

This is another area where consistency across the board is desirable. We have no objection to the FSA's proposals.

### **Investment research**

We support the FSA's approach.

### **Client categorisation**

We support the proposal to apply MiFID client categorisation standards to non-MiFID non-retail business, but in view of the potential confusion here we would like to emphasise the need for clarity both in communications on this issue from the FSA and within firms themselves.

### **Non-MiFID projections and charges information for packaged products**

In our response to CP06/19\*\*\* we made it clear that we thought the MiFID requirements give scope for firms to produce 'bespoke' projections which could make it more difficult for consumers to compare products and/or for them to be misled. Our concerns remain. Consequently we believe it vital that a swift and effective post implementation review be undertaken in this area if the decision is taken to read the requirements across to non-MiFID products. We expect the FSA to respond quickly to evidence of market failure/mis-selling as a result of the new requirements.

As regards charges, we are pleased that the 'effect of changes table' and 'reduction in yield figure' will remain.

## **Financial promotion**

Although we do not object to the proposed changes we see this as another area where there is a real need for clarity if confusion and error are to be avoided.

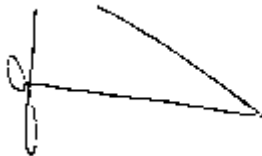
## **Section 150 of the Financial Services and Markets Act 2000**

We support the proposal that section 150 rights should apply to all the rules in NEWCOB. More broadly we understand that the FSA's view is that section 150 cannot be applied to breaches of FSA principles. We are not convinced that this approach is appropriate, particularly in view of the FSA's strategic decision to move to a more principles-based regime. The principles, which are instructions to firms about how authorised businesses are to be conducted and where non-compliance can lead to disciplinary action, appear to be rules in all but name. We would be interested in exploring this further with the FSA.

## **Telephone recording**

We have no objection to these proposals. A minimum retention period of 3 years seems appropriate.

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 of the horizontal line.

John Howard  
Chairman  
Financial Services Consumer Panel