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Financial Conduct Authority
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By email: cp20-08@fca.org.uk

Dear Mr Anderson

Financial Services Consumer Panel (the Panel's) Response to the 'High-risk investments: Marketing speculative illiquid securities (including speculative mini-bonds) to retail investors' Consultation

We welcome the opportunity to respond to this consultation as it is a topic of great importance to the Panel, and has been for some time.

Recent events have shown how high-risk investments, such as these, can be incorrectly constructed and promoted and therefore cause significant (sometimes life-changing) financial loss and harm.

Unscrupulous providers have used the mix of high, attention-grabbing, rates of return, the lack of appropriate risk warnings, and clarity regarding fees and charges (and the commissions paid from the investors' principal), combined with the use of 'FCA authorised type' wording to suggest legitimacy, and inappropriate and aggressive promotion to mass-market retail investors to mislead consumers.

As part of our wider research into digital marketing we have highlighted some of the more questionable practices used, and the resultant potential harms caused. This is documented in our recent digital marketing discussion paper.¹ Recent events in relation to the promotion of high risk investments support our wider concerns about the poor disclosure of regulatory information and risk warnings and underpin our call to improve the effectiveness of such disclosures. Our paper should be considered alongside this response to the consultation.

The temporary product intervention has largely stopped the promotion, and consumer use, of these types of products.

¹ The Panel's digital marketing paper can be found at https://www.fs-cp.org.uk/sites/default/files/fscp_final_digital_advertising_discussion_paper_20200630.pdf

We are therefore very supportive of this proposal not only to make this intervention permanent, but to also further close some emerging technical loopholes in the intervention and provide more clarification and rigour around the process for the promotion of other, allowable, products in this area.

Please see our responses to the consultation questions below.

Yours sincerely

Wanda Goldwag

Chair Financial Services Consumer Panel

Consultation Questions

Q1: Do you agree with our proposal to make the TPI requirements permanent? If not, please give reasons.

Yes, we agree with the proposal to make TPI requirements permanent.

The use of high, attention-grabbing, interest rates and the prominent use of 'FCA Authorised' wording (and other such nudges) in the promotional material of some of these high risk investments has created an uneven 'playing field' in which mass-market consumers having been presented with unsuitable retail investment products, have been misled into making a poor decision and therefore suffered financial loss and harm.

The current market conditions with record-low interest rates has made claims of an 8% return very appealing to consumers, who are drawn to such investments without fully grasping the risks they involve. (We note the FCAs research details that these high rates are not so high as to be viewed as being 'too good to be true' which would have warned-off likely investors.²)

When these high rates are combined with the lack of risk warnings, a lack of transparency around the costs deducted prior to 'investment' and the lack of transparency around the arrangements regarding the final use of the consumers' assets we believe these products do not treat customers fairly and have not been promoted in a clear, fair and not-misleading manner³ (as per Principles for Businesses 7). The Panel's own research⁴ showed poor disclosure of risk warnings and regulatory protections in some online financial adverts so we would encourage the FCA to continue reviewing the effectiveness of these online disclosures more broadly.

The combination of issues has been a key contributor to the harm and significant loss that consumers have suffered.

The TPI has been largely successful in stopping the promotion, and therefore consumer use, of these products and we therefore welcome the proposal to make these temporary requirements permanent.

² Figure 2, Page 37, Choosing wisely: preferences, comprehension and the effect of risk warnings on financial promotions for investment products; Maura Feddersen, Cameron Gilchrist, Lucy Hayes, Timothy L. Mullett, Helena Robertson, Laura Smart Neil Stewart, Jonathan Tittley

³ <https://www.handbook.fca.org.uk/handbook/PRIN/2/?view=chapter>

⁴ https://www.fs-cp.org.uk/sites/default/files/fscp_final_digital_advertising_discussion_paper_20200630.pdf

Q2: Do you agree with our proposal to expand the scope of the TPI rules to listed bonds with similar features to SISs which are not regularly traded? If not, please give reasons.

We agree with the proposal to expand the scope of the TPI rules to listed bonds with similar features to SISs which are not regularly traded.

These SISs potentially present the same risk and harm to consumers, indeed possibly greater harm as a listing may be used as an attempt to provide the appearance of legitimacy to the SIS in the decision-making process of a casual investor.

We also note that interventions of this kind (both temporary and permanent) often see the emergence of similar products that position themselves technically just outside the category that is being restricted. We therefore welcome the expansion in scope. We do, however, also ask the FCA to either maintain a watching brief on new products that may be developed in this area (which present the same issues, and potential harms, to consumers) but skirt around the new rules or create the new rules in a way that makes it unacceptable for providers to attempt to circumvent them.

Q3: Do you agree with our proposal to introduce an exclusion for SPV structures for single-company investments? If not, please give reasons.

We agree with the proposal on the assumption that the appropriate safe-guards (the use of risk warnings and clear narrative regarding the non-realizable nature of investments etc.) will be mandated to ensure retail investors do not invest in these products either unaware of the risks and complexities of the investment or by mistake, believing these to be simple investment products.

In addition, we would expect the promotion of these products to be limited only to consumers with the appropriate level of financial understanding to make informed investment decisions.

Finally, we would expect that any promotion of these SPV structures would not give undue prominence to the expected rate of return.

Q4: Do you agree with our proposed clarifications to the TPI rules? If not, please give reasons.

We agree with the proposed clarifications of the TPI rules.

Q5: Do you agree with our proposal to clarify how promotions are restricted for SISs and NMPIs? If not, please give reasons.

We agree with the proposal giving clarity to the promotion, and restrictions thereof, of SISs and NMPIs to consumers.

We see it as vitally important (and a potential failing of the past) that these products are only promoted to sophisticated investors, able to fully understand the risks and issues associated with these products and sustain the potential losses that the products may incur.

We would also draw attention to the fact that we are seeing an increase in generic promotional material with statements such as:

'UK residents wishing to participate in this promotion must fall into the category of sophisticated investor or high net worth individual as outlined by the Financial Conduct Authority'⁵

We believe this approach falls short of the requirements of both the current regulatory standards, and those presented in the Consultation Paper, by requiring the consumer to make the decision as to whether the advert is intended, or appropriate, for them. We are concerned that this type of approach is being used to circumvent regulation and also, potentially, create a sense of legitimacy of the promotional material.

We therefore welcome the clarification that the firm must assess investors first, assess their suitability and then, *and only then*, direct promotional material toward them.

⁵ 'Find ISA Rates Offering the Best Returns' email advert, 15th September 2020, issued by LeadWorld Online Generation Ltd, 6th Floor 5 Lapp's Quay – Cork (Ireland)