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06 October 2023

By email: POATR@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to FCA Engagement Paper 3 – Protected forward looking statements

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's Engagement Paper on protected forward looking statements (PFLS).

The Panel would like the FCA to consider the following:

Consumer lens

The Panel would urge the FCA to ensure all policy changes, affecting upstream markets, or activities which nevertheless impact consumers, are considered through the lens of consumers in terms of the impact on consumers and the degree to which the policy changes either increase or reduce the possibility of harm. Whilst some policy changes within the new regime for public offers and admissions to trading may focus on wholesale products and activities, these will invariably end up, in some way, impacting consumers.

Consumer behaviour/understanding and communication of policy changes

The Panel notes that the Engagement Paper details no analysis of current investor (consumer) behaviour regarding the areas of policy change or evaluation of the importance investors place on PFLS and how it is communicated. The Panel would expect the FCA to research and understand consumer attitudes and behaviour before progressing to amend any policy.

The Panel advocates for consumers to be empowered to take financial decisions through the provision of information that they can understand and that enables them to make effective decisions.

The use of forward looking statements in, for example, financial promotions is regulated and supervised. It is important that such statements are clear, fair and not misleading, that they are easy to understand, that they have been compiled with significant due diligence and that all associated risks and considerations are given equal prominence, in the same space as the forward looking statement. The panel would expect the same controls, restrictions and reviews to apply to PFLS. In particular the Panel would expect the FCA to ensure that the use of tools and concepts of behavioural economics, such as the Fear of Missing Out, Positivity Bias etc, are not permitted in PFLS and the narrative around these.

Additionally, the Panel expects the FCA to fully understand, and take account of, the views (and any concerns) held by institutions that invest on behalf of consumers, such as pension funds.

Secondary International Competitiveness and Growth Objective (SICGO)

The Panel would remind the FCA that the SICGO is only a secondary objective. A key primary objective is to ensure an appropriate degree of protection for consumers exists. There should be no trade-off between primary and secondary objectives – that is, the secondary objective should only be pursued once the primary objective has been fully met and cannot be advanced on its own. The secondary objective might shape but does not dilute the primary objectives (see FCA Guidance¹ and statement by the FCA Chair at the FCA's Annual Public meeting 4.10.23)."

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

¹ <https://www.fca.org.uk/publication/corporate/secondary-international-competitiveness-growth-objective-statement.pdf>

Annex 1 – response to questions

Q1. What types of forward-looking statements should we allow as PFLS, and how should we define them (e.g. broadly or more specifically)?

As stated above, the Panel agree that PFLS could benefit retail investors (consumers).

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Q2. Should we set certain minimum criteria or expectations for how PFLS is produced?

The Panel are supportive of a minimum criteria/expectation for how PFLS is produced. This would help to ensure consistency for retail investors when making investment decisions. Minimum criteria would also help consumers compare and contrast when making such decisions. Providers should also design statements in such a way that is consistent with the principals under the Consumer Duty.

Q4. Should we consider including sustainability-related disclosures as PFLS and, if so, what types?

With the rise of consumers taking note and caring for sustainable investments, the Panel agree that the FCA should consider including sustainability-related disclosures as PFLS. This will allow consumers to make effective choices that reflect their priorities and

preferences around sustainability across their entire investment portfolio and ensure that the same risk is associated with the same regulatory outcome.

The Panel would encourage the FCA to consider (alongside the above), the points made within its response² to the FCA's consultation on Sustainability Disclosure Requirements (SDR) and investment labels where the Panel speaks to the different disclosures under SDR.

Q5. How should PFLS be presented or labelled within a prospectus document?

The Panel would encourage the FCA to consider the following:

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² https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_fca_-_sustainability_disclosure_requirements_cp22-20.pdf

³ https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_fca_-_sustainability_disclosure_requirements_cp22-20.pdf