

Telephone: 020 7066 9346
Email: enquiries@fs-cp.org.uk

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By email: POATR@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to FCA consultation on the Public Offer Platform – Engagement Paper 5

The Financial Services Consumer Panel (the Panel) welcome the opportunity to respond to this consultation on Public Offer Platforms. The key themes that underpin our response to the more detailed questions within this consultation are:

- the need to ensure that consumer protection and benefits to consumers are used to prioritise regulatory change. For example, the requirement to apply the Consumer Duty should not be balanced against the ability of firms to raise capital;
- the need for consumer testing to determine which approaches are most effective in supporting consumers in making decisions about their investment options;
- the need to use standardisation for key elements of disclosure to help consumers make good decisions, and where possible ensure that there is a consistent approach across the consumer investment landscape, rather than purely in the context of public offer platforms;
- the importance of strong onboarding procedures for customers (not just products), with effective processes to assess product suitability for individual customers; and
- the need to consider how Environmental, Social and Governance (ESG) disclosure will operate in this sector.

In general the Panel considers it important that the overarching regulatory regime governing retail investments provides a coherent approach to setting regulation that meets consumers' needs. Our response should be considered in the context of our vision for how the market should function, which is set out in our [response to the FCA's call for input on consumer investments](#). The foundation of this vision is a correctly implemented and supervised Consumer Duty¹. This would make the firm responsible for consumers' overall suitability for and understanding of the products which they invest in. This would create a market where:

- more of the population with investible assets, and where the decision is right for them, make an active and informed choice to invest, so maximising their own returns and supporting the real economy;
- the information disclosed to potential investors is designed in a way that will allow them to make effective decisions, and to compare the risks, rewards and

¹ For our comments on the FCA's proposed new Consumer Duty, please see here: https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_cp21-36_a_new_consumer_duty_20220214.pdf

sustainability not only of different options for a given product type, but also of different products;

- it is not possible to use regulatory arbitrage to circumvent rules designed to protect consumers;
- information, education, guidance and advice is readily available and tailored to the consumer to ensure they are supported in taking decisions both pre-investment and on an ongoing basis. This will require the re-engineering of current thinking to better integrate these aspects and blend them throughout the customer's investment life-cycle. Only in this way will trust be established;
- the use of guidance or advice should be the gateway to anything other than a range of default-based, simple, tax-efficient investments;
- the use of client self-certification is removed;
- products must be better designed, labelled and described to enable consumers to better understand fully the opportunities, risks and costs involved and easily compare these across options; and
- when harm does occur, there must be easily accessible and efficient redress and compensation solutions.

Our responses to the questions posed in the consultation are included at Annex A below.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex A – responses to questions

Q1: Do you agree with our analysis of potential harm and the key outcomes we identify as a focus for regulation in this area? Is there anything else we should consider or prioritise?

The Panel agrees with the potential consumer harms identified, namely:

- potential exposure to scams and fraud;
- failure to receive adequate or timely information;
- loss, and failure to understand the risks involved; and
- being unable to sell investments and recover their investments.

The Panel considers that there are three additional risks of consumer harm that should also be considered, namely that:

- the functioning of the consumer investment market as a whole would lead to bias in consumers' investment decisions. This might arise if consumers were unable to compare effectively features such as risks, costs and charges, regulatory protections and Environmental, Social and Governance (ESG) credentials across product types. Thought therefore needs to be given as to how any rules on issues such as disclosure will sit with the wider market;
- consumers will end up buying products that are unsuitable for them. A particular source of risk here is self-certification, which the Panel considers should be banned. However, there may be broader risks around the assessment of suitability undertaken by Public Offer Platforms; and
- consumer onboarding procedures may be inadequate, particularly where a platform offers multiple product types. In this case, the suitability of products may vary for a given client, creating risks if the platform does not use the individual client's suitability assessment to guide their consumer journey.

Q2: Do you agree with the outcomes we are proposing for operators of the Public Offer Platform, including linking the Public Offer Platform with the work on consumer investments? Are there any other outcomes that we should consider as part of this work?

The Panel considers that the application of the Consumer Duty should be central to the regulation of Public Offer Platforms. The Panel would not support watering down the Consumer Duty requirements in order to strike a "balance" with other considerations, such as the ability of firms to raise capital.

The Panel supports the proposal for Public Offer Platforms to need to treat investors and prospective investors as clients, rather than contacts.

The Panel would also like to see regulation being developed in a way that avoids a siloed approach to the regulation of consumer investments. It is important that consumers can compare the relative benefits and risks of different investment types, not just to be able to compare product offerings for a single type of investment.

Q3: What due diligence is currently conducted by crowdfunding platforms, and should we consider certain existing practices or other due diligence approaches to inform our rules?

No comment.

Q4: Do you agree with the scope of the due diligence requirements we are proposing? What estimates do you make on the costs of complying with these proposals?

The Panel endorses the importance of due diligence by platform operators as a way of reducing the potential for consumer harm. It considers that the list of due diligence requirements associated with potential product offers set out in paragraph 74 is sensible. However, it considers that it would also be helpful to include:

- a consideration of whether financial projections are credible, not just whether they exists;
- an assessment of a company's assets (both physical and intangible) and whether these are owned free and clear or, for example, have been used as a security against borrowing;
- an assessment of key person risk; and
- as assessment of any ESG credentials, where these are being used to attract potential investors.

The Panel has no specific comments on the costs associated with complying with the proposed due diligence requirements. However, it notes that the approach of setting baseline requirements would act to create a level playing field amongst platform operators. Operators would not be able to cut corners on due diligence to the detriment of consumers, in order to reduce costs and increase profits.

Q5: Are there any alternative approaches we could consider when designing due diligence requirements?

In addition to the due diligence associated with the products themselves, the FCA should also consider how platform operators should approach due diligence in relation to ensuring that products are right for their customers.

Q6: How do current platforms communicate the due diligence that has been undertaken? Are there any other ways in which the due diligence that has been undertaken could be communicated with investors?

No comment.

Q7: What risks do these different approaches to due diligence create?

The Panel supports the creation of a bespoke framework governing due diligence by platform operators. It also supports the creation of a common framework for reporting requirements. The due diligence conducted by platform operators will be a key component of a consumer's decision to invest. It will therefore be important that consumers will be able to use this to compare potential options, not just on a single platform, but also across platforms, and compared to other types of investment. A standardised approach to disclosing due diligence is more likely to be effective in achieving this. The Panel considers that it is important that any proposals on communication should be subject to robust consumer testing.

In relation to the choice between a detailed written report and a due diligence attestation as the preferred method of communication, the Panel considers that these two documents would be complements, rather than substitutes. In other words, a requirement to provide both these documents should be considered.

Q8: Do investors feel that they are currently getting the appropriate level of information around due diligence. What additional information do investors need around due diligence to make an informed decision?

The Panel has no comment on the adequacy of existing approaches to due diligence by platform operators, as it has not seen any research testing the impact of different options.

The Panel notes that one area that has not been raised is any due diligence in relation to ESG claims. The Panel notes that ESG considerations can play an important role in consumer decision making, and therefore considers that it would be helpful to consider how these will be incorporated into any due diligence regime.

Q9: Do you agree with our proposed approach to the disclosure of information under the Public Offer Platform regime? Are there further disclosures that investors would find useful?

The Consumer Panel strongly supports the proposal that there should be a consistent approach to disclosure across a range of similar products. It considers that standardisation of key components of disclosure, such as on risk and costs and charges, is important. The ability to make meaningful comparisons across investment options helps consumers end up with the investments that best match their needs and risk appetite.

While standardisation is helpful across product groups, it is particularly important within a given market. Consumers will struggle to be able to compare options if different platform operators were to: disclose different things; or use different calculation methodologies to assess things that consumers would interpret as the same (such as the degree of risk).

Q10: Do you agree with the categories of information that we have proposed including as part of the disclosure regime? Are there other pieces of information that investors would find useful?

Beyond the categories of information associated with individual investment opportunities, the Panel considers that it will also be helpful to have a standardised approach to key features of the platform itself, such as costs and charges for investing in a particular product. This will be particularly important where those features may differ, depending on the exact product being sold.

Q11: How do current crowdfunding platforms approach ongoing disclosures?

No comment.

Q12: Do you agree with our analysis and preferred option?

The Panel would support initiatives to ensure that ongoing disclosure would be available to help investors obtain a clear and up-to-date picture of their investments.

Q13: Do investors feel that they are currently getting the correct level of information about the security they are purchasing or the company that they are investing in? What additional information do investors need to make an informed decision?

No comment.

Q14: What information is needed by investors to be able to make an informed investment decision? How should this be communicated to investors?

The Panel supports the introduction of a consistent approach to disclosure, rather than platform operators being able to take a bespoke approach to each individual security. In other words, the Panel would not support Option 1 (p23-24). In order to be able to make

informed decisions, consumers need to be able to compare options within and between product groups, as well as across different platforms.

The Panel considers that the choice between setting minimum requirements (Option II) or designing a bespoke disclosure document (Option III) should be informed by consumer testing.

The Panel supports standard calculation methodologies being introduced for some key features, such as in relation to the costs and risks of investing.

The Panel agrees with the types of information to be disclosed identified in paragraph 133. In addition it considers that it would be helpful to:

- add information on the number of years the company has been operating and the number of years it has been operating the business model that is the basis of its capital raising;
- differentiate risk information between information that is specific to the company and information that is specific to the asset type;
- add information on whether they have undertaken previous funding rounds of this nature, and whether they are meeting their obligations in relation to those.

Finally the Panel considers that the disclosure rules should be set in a way that will be flexible enough to cope with the different mediums that consumers might use to access it. Key information, particularly in relation to risk and costs, should form a prominent part of the early stages of the consumer journey, in order to ensure they have been properly understood.

Q15: What would be the anticipated cost of producing the disclosures outlined above? Are there any foreseeable problems in producing certain types of information?

No comment.

Q16: Do you have any comments on our approach to liability under the public offer platform regime?

The Panel considers that consumer protection should be the key focus when designing the FCA's approach to liability under the new regime.

Q17: Do you have any comments on our proposed initial approach to setting requirements in relation to liability and redress?"

The Panel considers that consumer protection should be the key focus when designing the FCA's approach to liability and redress under the new regime. Where consumers have relied on misleading statements when making investment decisions, they should be able to seek redress.

Q18: Do you agree that the activity of operating a Public Offer Platform should fall within the compulsory jurisdiction of the Financial Ombudsman Service?

Yes. The Panel strongly supports the option for consumers to complain to the FOS where things have gone wrong.

Q19: Do you agree that the scope of FSCS protections should be the same as apply in relation to current crowdfunding platforms?

The Panel notes that the FSCS protections associated with current investment-based crowd funding platforms are limited, and do not cover poor investment performance. The Panel would want the protections provided to be at least as good as those provided under the current regime, and would prefer to see protections improved where possible.

For the avoidance of doubt, the Panel would not support greater restrictions on the scope of the protection provided to consumers and the exclusion of activities that are currently included.

Q20: Do you agree with our approach or the alternative options that we set out, is there any other way in which these types of offers could be differentiated?

The Panel considers that the FCA's analysis identifies the main options for dealing with exempt and non-exempt offers that may be provided through a Public Offer Platform, namely:

- Option 1, show side-by-side, but with clear markings and disclosure to show how the regulatory treatment of the offers differ;
- Option 2, segmenting platforms, so that exempt and non-exempt offers are kept separate; and
- Option 3, treating offers outside the Public Offer Platform the same way, if facilitated by a firm with permission to operate a Public Offer Platform.

The Panel considers that a key factor driving any regulatory decision should be consumer understanding and the ability of consumers make informed decisions that match their preferences that are based on a clear understanding of the risks and protections provided. It therefore considers that a key component of any decision on this issue should be consumer testing. This testing should focus on consumer understanding and decision making, not whether they liked something, and should be undertaken in realistic conditions using mediums that match the likely sales process.

Finally the Panel notes that one of the consequences of the existing regime is a cluster of offers just under the relevant regulatory threshold. The Panel considers that the FCA should monitor the operation of any new system, and commit to reducing regulatory thresholds, if there is evidence of consumer harm.