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By email: cp23-26@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to FCA consultation on Implementing the Overseas Funds Regime – CP23/26

We welcome the opportunity to respond to this consultation on the Overseas Funds Regime (OFR). We note that the FCA's list of organisations that this consultation will be of primary interest to does not include consumer groups. However, many of the questions within the consultation relate to either disclosure requirements, or consumers' rights to redress. It is therefore important that the outcomes of this consultation take proper account of the needs of consumers, not purely the needs of firms.

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;
- the need for consumer testing to determine which approaches are most effective in supporting consumers in making decisions about their investment options; and
- the need for more detailed information on options for redress for OFR schemes to be made available to consumers, such as whether they can use English, whether there are any fees or costs associated with claiming, and whether there are differences in the amount of redress they would be entitled to.

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 [response¹ to the FCA's call for input on consumer investments](#). The foundation of this vision is a correctly implemented and supervised Consumer Duty². 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:

¹https://www.fscp.org.uk/sites/default/files/final_fscp_response_consumer_investments_call_for_input_20201215.pdf

² 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

- 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 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 not 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: What, if anything, do you consider to be unintended consequences of our proposed intervention?

The Panel broadly supports the proposals set out in this consultation.

With regard to the proposal to publish details of OFR recognised schemes on the FCA's Register, the Panel notes that the Register can be difficult for consumers to navigate. It therefore considers that it is important to ensure the Register is accessible to consumers and easy to use (ease of use, ease of understanding), and supported by consumer testing.

In relation to proposals concerning the merger of OFR and UK schemes, the Panel considers that it will be important to avoid a situation where UK consumers lose access to redress in any decision.

Q2: Do you consider that proposals made in this consultation raise any particular environmental, social and governance considerations? Please provide further details below if so, including details of any suggested actions that we could take to address them.

The Panel considers that it will be important for any overseas funds operating in the UK to comply with the relevant UK sustainability disclosure requirements that apply to UK domiciled funds. This will ensure that UK consumers can properly consider environmental, social and governance issues when making a choice on where to invest.

Q3: Do you consider that proposals made in this consultation raise any particular diversity and equality issues? Please provide further details if so, including details of any suggested actions that we could take to address them.

The Panel notes that it is important to consider the needs of vulnerable customers, such as those who are partially sighted, when designing disclosure regimes.

Q4: Do you agree with the proposed set of data to be required from overseas schemes at the OFR recognition stage? If not, please explain why not and indicate what alternative approach you would suggest.

The Panel is broadly supportive of the proposed data collection.

However, in addition to the proposed data requirements set out in Chapter 3, the Panel thinks that it would be helpful for the FCA to also collect data on the risk profile of schemes (calculated in a standardised way). This would allow the FCA to better understand whether the proposed scheme is suitable for its target market.

Q5: Is there any data that you do not think would be appropriate for ETFs to submit as part of the OFR recognition process? If so, please provide examples and explain your answer.

The Panel considers that the disclosure requirements for Exchange Traded Funds (ETFs) should be designed with consumers in mind. Where there are differences, for example in access to redress, these should be made clear.

Q6: Do you have any comments on our approach to setting fee rates?

The Panel supports the FCA charging OFR recognised schemes appropriate fees that will create a level playing field for entry into the UK market between OFR recognised schemes and UK authorised schemes.

Q7: Do you agree with our proposal to be notified of ad-hoc changes to OFR recognised schemes, including ETFs? If not, please explain your reason.

The Panel supports the need for schemes to notify the FCA of any changes. In addition to the list set out in paragraph 4.10, the Panel considers it would be worth considering whether changes to a scheme's risk profile should also be notifiable. This would link to requirements around changes to a scheme's target investors, as it would inform any assessment of the suitability of the proposed approach.

Q8: Do you agree with our proposal for the timing of notifications? If not, please explain your reason.

The Panel agrees that in most cases the notification process should involve a delay between the FCA being notified of a proposed change and when any change can take place.

The Panel notes, however, that if (as the Panel has suggested) a measure of the risk of the scheme is also included in the FCA's list of requirements, then market conditions may cause a change in the risk profile that was not the intention of the scheme. There may therefore need to be a differentiation between scheme-driven changes versus market-driven changes, in relation to the timing of some notifications.

In relation to the notification of a suspension of dealing in the units or shares of a scheme, the FCA will need to judge whether in some instances consumers might be better protected if a suspension were to be implemented more quickly than the proposed 30 day advanced notice the FCA is seeking. This could prevent consumers from investing in a scheme that is subsequently suspended.

Q9: Do you agree that our rules for financial promotions for OFR recognised schemes should require a statement about the scope of the FOS and FSCS in relation to the scheme? If so, does the proposed disclosure contain the right information for investors? Please explain any alternative disclosure proposal.

The Panel agrees that it is very important that UK investors should be made aware of the consequences of any rights to make complaints or to receive redress. In relation to the proposed list of disclosure requirements set out in paragraph 5.12, the Panel considers that disclosure should probably also set out that investors may want to take legal (not just financial) advice.

Beyond the headline disclosures relating to FOS and FSCS eligibility, the Panel considers that additional information should be provided (over and above the FCA's proposals) that sets out the options for redress under a scheme's home rules and any process consumers would need to go through in order to claim. For example:

- Will they be able to make their complaint or request for redress in English, or would they need any documents to be translated?
- Are there any costs associated with seeking redress, i.e., is it free to consumers (as is the case for FOS) or are there fees involved?
- Would they be exposed to a requirement to pay costs, if their application for redress is turned down?
- Are the limits for any redress different from the limits set under UK rules?

This information should be easily available for consumers and hence should be part of the mandated consumer disclosure requirements. However, the Panel acknowledges that too

much information all at once can make it hard for consumers to make a decision. Therefore, for example, the information on how to claim might be more effective via a “click here to learn more” option for those viewing a scheme’s details online. The Panel considers that this is an area where the FCA should undertake appropriate consumer testing, in order to ensure that the disclosure framework it is proposing will be effective.

Q10: Do you agree that the prospectus of an OFR recognised scheme should include statements about the scope of the FOS and FSCS in relation to the scheme, and the possible availability of alternative redress options? If so, does the proposed disclosure contain the right information for investors? Please explain any alternative disclosure proposal.

The Panel supports the inclusion of a statement about the scope of FOS and the FSCS for OFR schemes within prospectuses. The ability for consumers to understand their rights, and to compare those rights to alternative options, is an important factor enabling them to make good decisions. The Panel notes that the form that any disclosure takes can have a significant impact on whether it helps consumer decision-making or not, and considers that consumer testing of disclosure proposals that consumers are expected to rely on is important.

In addition to the FCA’s proposals set out in paragraph 5.16, the Panel considers that additional information should be provided that sets out the options for redress under a scheme’s home rules and any process consumers would need to go through in order to claim. For example:

- Will they be able to make their complaint or request for redress in English, or would they need any documents to be translated?
- Are there any costs associated with seeking redress, i.e., is it free to consumers (as is the case for FOS) or are there fees involved?
- Would they be exposed to a requirement to pay costs, if their application for redress is turned down?
- Are the limits for any redress different from the limits set under UK rules?

Q11: Do you agree that the supplementary UCITS information provided to retail investors at point of sale should provide the same information as the prospectus, concerning complaints and compensation rights? Please explain any alternative disclosure proposal.

The Panel supports the development of an overarching disclosure regime covering all retail investments products that will help consumers make effective decisions. The Panel considers that this disclosure should include key information about costs and charges and consumers’ access to redress. The Panel also notes that existing evidence suggests that such disclosure should include information such as a risk metric to allow consumers to compare risk. The Panel considers that consumer testing should be a key part of developing any such disclosure regime, and that the purpose for this testing should be to establish how to structure and present consumer disclosure, in order to support effective decision making.

Until the new disclosure regime is introduced, the Panel is supportive of FCA proposals to include information about access to redress in a supplementary document, provided the rules make clear that this is presented in a way that helps consumers. The Panel considers that it would be helpful for this disclosure to provide additional information (over and above the FCA’s proposals) that sets out the options for redress under a scheme’s home rules and any process consumers would need to go through in order to claim. For example:

- Will they be able to make their complaint or request for redress in English, or would they need any documents to be translated?

- Are there any costs associated with seeking redress, i.e., is it free to consumers (as is the case for FOS) or are there fees involved?
- Would they be exposed to a requirement to pay costs, if their application for redress is turned down?
- Are the limits for any redress different from the limits set under UK rules?

Q12: Do you agree that we should carry out further work to develop proposals for enhanced digital disclosure of redress arrangements for OFR recognised schemes? If so, do you have any views on the content and format of information to be communicated to investors and how the disclosure could be effectively integrated into digital interactions with consumers?

The Panel would support the FCA undertaking additional work to develop enhanced digital disclosure of redress arrangements for OFR recognised schemes. Disclosure should be about enabling and empowering consumers to make effective decisions, rather than simply a tick-box exercise. Ensuring that the disclosure requirements are adapted to recognise the impact of new sales channels (such as execution-only transactions through intermediaries such as platform providers) will clearly benefit consumers.

Q13: For firms that sell overseas schemes to retail investors, what would be the likely costs of developing these digital disclosures, and how long would you need to put them in place?

No comment.

Q14: Do you have any comments on our proposed changes to the Glossary, DEPP and EG?

No comment.

Q15: Do you have any comments on the rules and guidance explaining the operation of the OFR? Are there any similar matters we should address within the Handbook?

No comment.

Q16: Do you have any comments on our proposals for maintaining UK facilities for investors in OFR recognised schemes under the OFR? Do you agree that we should review the rules on providing UK facilities for schemes recognised under s.272?

The Panel considers that it is important to put consumers at the heart of any decision on whether to drop the requirement for an OFR recognised scheme to maintain UK facilities. If even one investor in an existing scheme finds having a UK facility helpful, then it should be maintained.

Q17: Do you agree that it should continue to be possible for a UK UCITS scheme to be merged with an EEA UCITS recognised under the OFR (if this is permitted) and under section 272?

The Panel agrees that it would not be appropriate for UK UCITS to be able to merge with EEA UCITS, or other OFR schemes, without a specific determination of equivalence undertaken by the UK Government. The Panel notes that such mergers create the possibility of UK consumers losing rights such as the right to redress under the rules

associated with the proposed new jurisdiction, following any schemes merger with an overseas scheme. Protecting consumers' rights and protections should be a key factor in any determination of whether mergers should be allowed.

Q18: Do you agree that a proposal for a scheme of arrangement with an OFR recognised scheme should set out the consequences for UK investors in relation to their rights to make complaints and receive redress?

The Panel agrees that it is very important that UK investors should be made aware of the consequences of any rights to make complaints or to receive redress. It considers that additional information should be provided as part of this requirement (over and above the FCA's proposals) that sets out the process consumers would need to go through. For example:

- Will they be able to make their complaint or request for redress in English, or would they need any documents to be translated?
- Are there any costs associated with seeking redress, i.e., is it free to consumers (as is the case for FOS) or are their fees involved?
- Would they be exposed to a requirement to pay costs, if their application for redress is turned down?
- Are the limits for any redress different from the limits set under UK rules?