DG Financial Stability, Financial Services and Capital Markets Union
Unit B2 – Economic analysis and evaluation
European Commission
SPA2 06/070
1049 Brussels
Belgium

29th January 2016

Dear Sir/Madam

Call for Evidence on the EU regulatory framework for financial services

The UK's Financial Conduct Authority (FCA) Practitioner Panel (the Panel) is a statutory Panel created by the FCA with the key remit of representing the interests of practitioners of larger firms, and providing input to the FCA from the industry in order to help it in meeting its statutory and operational objectives in an effective manner. Further details of the Panel are available on its website at https://www.fca-pp.org.uk/.

The Panel has raised with the FCA its concerns about the overall effects of regulatory and legislative policy on the efficiency and effectiveness of the financial services industry and its ability to serve consumers. This applies as much at EU level as it does domestically. We have also raised with the FCA the issue of increasing costs as a result of regulation.

The Panel carries out an annual survey of regulated firms in the UK. The most recent survey was carried out in the first quarter of 2015, with around 4,000 firms taking part. A summary of the findings is available at https://www.fca-pp.org.uk/fcapp-publications/surveys-research .

The latest Survey indicates that nine out of ten of the largest regulated firms stated they have had to increase resource as a result of regulation over the past year (2014-15). More than a third have stated that regulation has increased the cost of a product or caused them to withdraw a product or service. Within smaller firms the impact is not so great but almost half have increased resources dealing with regulation.

The view of the industry is that regulation has a measurable impact on cost and that this will continue to increase. Regulators and legislators should be mindful of their cost-benefit calculations when making policy decisions, as these will ultimately be reflected in the cost and availability of products and services to consumers.

The overlap between the various layers of regulation and the timelines for their implementation can be an area of significant challenge for firms. The scale of change required and the complexity of the regulations can often require the formation of dedicated project teams for each initiative, which may have the impact of diverting experienced resource away from developing the business and enhancing service for customers. Frequent redrafting of legislation and delays in implementation can also adversely affect planning and resourcing, often requiring significant amendments to policies and procedures and potentially leading to confusion and misunderstandings

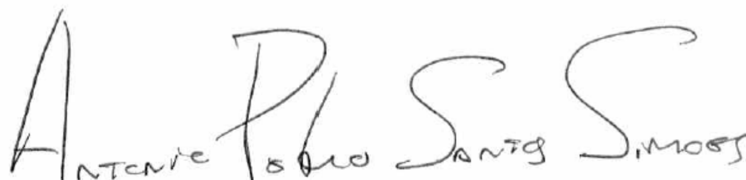
within the business. Embedding and constantly amending the firms operating model to cumulatively integrate what can be at times competing changes required from each piece of legislation can therefore be seen as challenging and also expensive. For one of the Panel members' firms, the current estimated project cost for the five formal Regulatory projects currently underway is in excess of £5.3 million but this does not include business as usual costings. For example, for the MiFID II project where project cost is estimated to be in the region of £656,000, the actual total costs are estimated to be in the region of £2 million.

Firms are working very hard to enhance the customer experience and to constantly raise standards and are in certain cases participating in major industry initiatives for change such as the FCA market study into asset management. The requirement to embed multiple layers of regulation on an ongoing basis alongside these key industry drivers may place an operational and financial strain on some firms. There are also differences in the needs of different sectors. The role of an Asset Manager as an agent and fiduciary with a focus on conduct and customer outcomes does not always sit comfortably alongside prudential driven regulation which is more closely aligned to the specific requirements of the Banking industry.

In the latest Panel Survey 10% of firms surveyed gave issues relating to EU legislation as one of their main concerns about regulatory policy. Many voiced their concern that EU-wide legislation and regulation was ill-suited to the UK financial industry and that the FCA was unable to optimise the requirements to match the particular circumstances found in the UK. While some indicated that their worry over European legislation was due to the failure of the EU to confidently communicate the legislation to firms, others felt that the legislation itself was the problem. We have highlighted a number of specific examples of inconsistencies in our response.

Overall, we would highlight the importance of sound cost/benefit assessments in respect of EU regulatory initiatives, at an early stage.

Yours faithfully,



António Simões
Chair, FCA Practitioner Panel

Formatting note – the response was submitted via an online form in a prescribed format. The cover letter was submitted as a single document and the individual examples below separately in response to Issue 12 'Overlaps, duplications and inconsistencies'.

Issue 12 - Overlaps, duplications and inconsistencies

Example 1 – PRIIPs/UCITS/MiFID

Please provide us with an executive/succinct summary of your example:

There is potential inconsistency between the UCITS rules and disclosure requirements for packaged retail and insurance-based investment products (PRIIPs).

Please provide us with supporting relevant and verifiable empirical evidence for your example

The PRIIPs rules will require all packaged retail investment and insurance-based products to provide a Key Information Document at the point of sale from 3 January 2017. The PRIIPs legislation gives a three year transitional to funds which use the UCITS KIID i.e. the provision of a UCITS KIID would, according to the PRIIPs legislation, be sufficient. But the interpretation of the PRIIPs KID requirements in detailed rules in terms of how risks, returns and costs are to be shown will mean that, unless the Regulatory Technical Standards are changed, fund providers will need to produce two sets of customer-facing documents. This is because a PRIIPs manufacturer will wrap their product (unit-linked life products are an example) around a fund and look to the provider to provide the information in the PRIIPs format rather than the UCITS KIID format – and the UCITS requirements require a KIID to be provided but there is no option to switch to the PRIIPs KID. Such duplication could lead to confusion for customers and unnecessary extra use of resources for providers.

On the implementation of Key Investor Information Document for UCITS products (UCITS KIID) in July 2012, the European Commission issued its "Proposal for a Regulation on key information documents for investment products" (PRIIP KID) immediately following the UCITS proposal resulting in a further review of the preparation, management, distribution and governance of documentation to be provided to investors without the benefit of assessing the success of the UCITS KIID.

The misalignment of the disclosure requirements and reporting to clients also continues with the MiFID II and PRIIPs regimes, with initially the draft MiFID II regulation front running the PRIIP regime yet having a dependence on being able to fulfil PRIIP requirements for the distribution of the investment products, without having detailed requirements for the PRIIP regime. In particular the call for the calculation of transaction costs to be consistent remains unclear e.g. on the precise presentation under MiFID II aggregated costs versus granular costs under PRIIPS there are competing data requirements and clarity on meaningful disclosures to investors remain outstanding.

If you have suggestions to remedy the issue(s) raised in your example, please make them here.

Issue 12 - Overlaps, duplications and inconsistencies

Example 2 – UCITS/AIFMD/CRD remuneration requirements

Please provide us with an executive/succinct summary of your example:

We are concerned about inconsistency of rules on remuneration following on from the development of different legislative initiatives.

Please provide us with supporting relevant and verifiable empirical evidence for your example

The area of remuneration is an example of a sector where historical developments have led to differing regimes emerging in similar and competing sectors, without a holistic view of the overall effect. Although it is desirable that remuneration rules are proportionate and appropriate to the industry to which they apply, we are concerned about the lack of consistency in application. This cannot be in consumers' interests, or in the interests of fair competition within the industry, if the applicable rules are based not on the business models, risk profiles or governance structures of the firm, but on an arbitrary basis depending on the relevant regulatory regime. Individuals responsible for managing similar risk types across different organisations should be subject to similar rules.

As a specific example, the embedding of the AIFMD Remuneration provisions across Europe and also those other jurisdictions with a European AIFM touch point has been challenging. Different interpretation of the rules by local regulators in relation to areas such as proportionality and minimum financial thresholds has resulted in an inconsistent application of the rules. This may result in situations where staff performing similar roles for firms operating in different jurisdictions being rewarded on a different basis. Overall, for the 2015 remuneration cycle within certain firms offering a range of products and services, the remuneration arrangements for colleagues who were categorised as identified staff for AIFMD purposes were different to colleagues performing similar roles, for example, in relation to UCITS funds. Anomalies in treatment may also give rise to conflicts in situations where colleagues are required to apportion time against specific vehicles / funds for remuneration purposes. Situations may arise where individuals may be subject, for example, to four different codes (AIFMD, UCITS V, CRD IV and MiFID II) in performing their roles which may have differing characteristics and implementation dates.

Accordingly, firms will have updated their policies and procedures and operating models to reflect the AIFMD provisions and a lengthy consultation exercise will have been undertaken with colleagues impacted as part of the embedding of these requirements. However, work is already underway to assess what amendments to these newly embedded procedures may be required to reflect any changes arising through UCITS V. It is anticipated that this will lead to a greater consistency of approach in relation to "Fund" based remuneration, but this will also require a fresh round of staff consultation and additional revisions to policies and procedures and operating models.

Certain firms are also assessing the impact on remuneration structures which may arise through the implementation of CRD IV. This work is being undertaken against a backdrop of uncertainty as to whether Asset Managers will continue to be captured as

part of this legislation. However, firms must ensure that they are appropriately positioned on the basis that they may continue to be captured. This in turn impacts on operating models and policies and procedures and associated expenditure in preparing to implement provisions which may not actually be required.

We would also highlight that such remuneration provisions are not replicated outside Europe and we do have concerns with respect to the competitiveness of financial services sector firms, in the long term, due to remuneration regulations.

If you have suggestions to remedy the issue(s) raised in your example, please make them here.

This example highlights the challenges for firms as they look to continually evolve a fair and transparent Remuneration Policy in an ever changing environment. We suggest the introduction of co-ordinated overarching sector based guidance and implementation standards for remuneration would assist in ensuring fairness and consistency at the same time as delivering the desired regulatory outcomes.

Issue 12 - Overlaps, duplications and inconsistencies

Example 3 – CRDIV

Please provide us with an executive/succinct summary of your example:

The application of the Capital Requirements Directive IV (CRD IV) differs between firms on a basis that could be considered arbitrary.

Please provide us with supporting relevant and verifiable empirical evidence for your example

It could be argued that the capital requirements of CRD IV are more suited to a banking business than to an asset management model. For example, Managers permitted to hold client assets or money in relation to their MiFID business, have to comply with the more onerous prudential requirements of CRD IV. Firms which are not allowed to hold client money are not defined as investment firms in the terms of CRD and accordingly CRD IV allows national supervisors to apply to those firms the less onerous CRD III capital requirements (that would already be followed under the BIPRU rules). However, asset managers are already required to keep client money and assets segregated from their own funds in order to protect clients.

Issue 12 - Overlaps, duplications and inconsistencies

Example 4 – Updates in regulatory initiatives – AIFMD/MIFID/UCITS

Please provide us with an executive/succinct summary of your example:

The ongoing updates in regulatory initiatives are not in all cases delivering the consistency the industry had anticipated.

Please provide us with supporting relevant and verifiable empirical evidence for your example

It was hoped that by developing MIFID II, the AIFM Directive and UCITS V triumvirate of truly consistent regulation covering financial advice, asset management and asset servicing would be formed. However, in reality the 'joined-up thinking' and consistency in approach has not always materialised.

As an example, the AIFM Regulation and the CESR 10-788 guidance details the calculation of leverage for AIFs and UCITS respectively. The specifics of the leverage calculation for AIFs and UCITS are however differently defined. For an AIF, borrowings are to be included in the leverage calculation unless they are only temporary in nature and fully covered by contractual capital commitments from investors. In contrast, borrowings must not be included in the leverage calculation of UCITS.

For AIFs, leverage is required to be expressed as the ratio between the exposure of an AIF and its net asset value e.g. ratio of 2. UCITS are shown in percentage terms. The derivative is converted into the market value of the equivalent position, divided by the NAV to work out a percentage and then added to the NAV e.g. 200%. This inconsistent approach has resulted in practical difficulties for the industry in both calculation methods and disclosures.