

# Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Matteo Basso  
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Dear Matteo,

## **Consultation on UCITS V implementation**

This is the response of the Financial Services Consumer Panel to part I of FCA Consultation Paper 15/27 on UCITS V implementation. We broadly support the FCA's approach to transposition of the Directive as outlined in the paper. The new Handbook requirement for UCITS depositaries to act honestly, fairly, professionally and independently in the interest of the fund and its investors is particularly welcome.

The introduction of stricter requirements for remuneration of staff within UCITS Management Companies should ensure that the interests of investors are not jeopardised by inappropriate remuneration structures. We do, however, have concerns about the application of the proportionality principle as proposed by the FCA, as this does not appear to create a meaningful link between the activities of the Management Company and the application of the new rules.

We also want to underline again our recurring concerns about the proliferation of disclosure requirements without adequate (or any) consumer testing. The required inclusion of remuneration policy in the Key Investor Information Document and the prospectus is an example of this.

The Panel remains of the position that conflicts of interest should, wherever possible, be prevented rather than disclosed, as retail investors are unlikely to have the capability to draw meaningful conclusions from information on the way staff is remunerated.

In the context of the European Commission's call for evidence on the cumulative impact of EU financial services legislation, the Panel will be raising the need for consistent and consumer-tested disclosure requirements across related pieces of EU legislation (including UCITS V, MiFID II, the IDD and PRIIPs). We hope the FCA will do the same.

Yours sincerely,



Sue Lewis  
Chair  
Financial Services Consumer Panel

## **Consultation Questions**

### **Q4: Do you agree with our proposed approach to proportionality?**

The Panel has taken the position that conduct risk, from the consumer's perspective, is not related to the size or complexity of the firm as inappropriate remuneration structures could lead to such misconduct in a firm of any size.

Moreover, the envisaged waiver of the remuneration rules would be applied to individuals based on their personal remuneration package in a firm of *any* size or complexity. It is therefore not clear how the proposals create a meaningful link between the size, scope and complexity of the UCITS Management Company and whether the remuneration rules should apply. Rather, the proposal is built on the assumption that individuals have a lower risk of engaging in misconduct if they are paid less than £500,000 and less than 33% of their total remuneration is variable.

Although we accept this approach is in line with the approach taken under the AIFMD, UCITS funds account for 85% of retail investment in the EU, and so come with a much higher risk to consumers arising from inappropriate monetary incentives for staff managing their assets.<sup>1</sup> In our view, this justifies a stricter application of the new remuneration rules.

Accordingly, the Panel does not support the application of the proportionality principle as proposed by the FCA.

### **Q6: Do you agree with how we propose to transpose the investor disclosure requirements under UCITS V?**

While the Panel appreciates that the FCA has little discretion over the disclosure requirements related to the new rules on remuneration, we would question whether the inclusion of the details of the Management Company's remuneration policy in the prospectus will increase the retail investor's understanding of the risk profile of the fund and any potential conflicts of interest.

Mandatory disclosure is an important way of highlighting to (potential) investors the risks and costs associated with an investment, and to establish liability if investors have been misled. However, the market for financial services is based on fundamentally unequal relationship: products are sold by highly knowledgeable providers to consumers who often lack an understanding of the full nature of the product they are buying.

In light of this information asymmetry, disclosure requirements for financial products and services need to be thoroughly consumer-tested to ensure they are fit for purpose.

Simply increasing the amount of information that is disclosed could make consumers less likely to engage with the documentation they are given. As a result, disclosure by itself is unlikely to give consumers the tools they need to differentiate between firms, or to spot inappropriate remuneration structures and/or possible conflicts of interest.

However, we do accept that mandatory disclosure of this information could be useful for professional or institutional investors acting on behalf of consumers.

The Panel remains of the position that conflicts of interest should, wherever possible, be prevented rather than disclosed. This in turn would reduce the need for disclosure of such conflicts to retail investors. As a rule, disclosure should be used in a targeted way, using documentation which is based on consumer-testing to maximise effectiveness.

In the context of the European Commission's call for evidence on the cumulative impact of EU financial services legislation<sup>2</sup>, the Panel will be raising the need for consistent and consumer-tested disclosure requirements across relevant EU legislation (including UCITS, MiFID II, the IDD and PRIIPs). We hope the FCA will do the same.

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<sup>1</sup> Moreover, the European Commission estimates that "essentially 90% of the UCITS investor base is (directly or indirectly) made up of private households" (Impact Assessment accompanying the proposal amending Directive 2009/65/EC, SWD(2012)185).

<sup>2</sup> [http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index\\_en.htm](http://ec.europa.eu/finance/consultations/2015/financial-regulatory-framework-review/index_en.htm)