Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

12 November 2014

Response to the EIOPA consultation on conflicts of interest in the sale of investment-based insurance products

Q1: What would you estimate as the costs and benefits of the possible changes outlined in this Consultation? Where possible, please provide estimates of one-off and ongoing costs of change, in Euros and relative to your turnover as relevant. If you have evidence on potential benefits of the possible changes, please consider both the short and longer term. As far as possible, please link the costs and benefits you identify to the possible changes that would drive these.

No comment

Q2: Do you agree that general principles, similar to those set out in Article 21 of the MiFID Implementing Directive, should also be applied to insurance distribution activities, further specified through EIOPA guidelines?

The Panel agrees that the general principles to establish what may constitute a conflict of interest as defined in the MiFID Implementing Directive should be applied to insurance distribution activities.

However, we would prefer to see EIOPA include legally-binding provisions outlining situations which always present an unacceptable risk of conflict of interest, and should therefore be banned or restricted.

The regime as currently proposed is too lenient, and it will be exploited by some firms to place profit-seeking ahead of the best interests of their customers. The use of non-binding guidance to address this is unlikely to provide the deterrent effect required.

Q3: Do you agree with the adjustments proposed to adapt Article 21 to take into account the specificities of insurance distribution activities?

The Panel supports the extension of the scope to cover the development and management stages to ensure that conflicts of interest that arise on either side of the point of sale are not excluded from these rules.

This is particularly important because of the potential conflicts of interest already identified by EIOPA which can occur in the development and management phases. We are pleased that EIOPA proposes to include such circumstances within the general principles on identifying a conflict of interest.

Q4: Are there any additional adjustments to be made from your point of view?

No comment

Q5: Do you agree that general principles, similar to those set out in Article 22 of the MiFID Implementing Directive, should form the basis for the organisational requirements for insurance undertakings and insurance intermediaries on conflict of interest, further specified through EIOPA guidelines?

and

Q6: Do you share EIOPA's view that the situations addressed by the organisational requirements in Article 22(3) may also be relevant in the context of insurance undertakings and/or intermediaries in the course of their distribution activities?

The Panel welcomes the requirement for insurance firms and intermediaries to establish internal organisational processes to avoid and handle conflicts of interest. The general principles set out in the MiFID Implementing Directive are, in our view, appropriate for this purpose.

Q7: Do you agree that the amendments proposed in ESMA's Consultation Paper related to periodic reviews of the conflicts of interest policy and disclosure should be the basis for similar requirements for insurance undertakings and insurance intermediaries?

Although we accept that it is important that firms review their internal policies frequently to assess whether any changes are required, we do not believe that relying on the industry's ability to self-police is sufficient to ensure that conflict of interest policies remain fit for purpose.

The extent of self-regulation that will be required under these rules has not proven effective in the past. It is necessary for internal policies and practices to be reviewed by independent experts.

The Panel remains of the opinion that the rules for prevention and management of conflicts of interest as proposed leave too much scope for interpretation that will in practice allow firms to allow conflicts to persist, to the detriment of the consumer.

Q8: Do you agree with the proposal to address questions arising on the practical application of the proportionality principle through further guidance of EIOPA such as opinions or guidelines?

The Panel supports EIOPA in not enshrining a proportionality principle in the rules themselves, as in practice this may have been used as an exemption for smaller firms even though conflicts of interest may arise in businesses of all sizes.

Q9: Do you agree that the rules governing conflicts of interest resulting from inducements provided to distributors of insurance based investment products should be aligned with the rules under MiFID I for the sake of a level playing field?

And

Q10: Do you agree that a conflict of interest arising from inducements provided to distributors might be addressed where these inducements are used for the benefit of the customer?

The Panel believes that inducements frequently present a significant risk of conflicts of interest by incentivising an intermediary to pursue the sale of inappropriate products for their own benefit but to the detriment of the customer.

The prevention of inappropriate inducements that create conflicts of interest should be an overriding priority and thus the main focus of these proposed rules. Managing or disclosing inducements should not be options open to intermediaries if the payments in question by their nature impair the duty to act in accordance with the best interests of the customers. Instead, such an inducement should be prohibited from being made.

Accordingly, we believe the MiFID rules on inducements which EIOPA is proposing to adapt do not go far enough in preventing conflicts of interest. The 'quality enhancement' test in article 26 of the Implementing Directive is difficult to apply in practice and provides firms with significant room for manoeuvre to continue accepting commission that presents a real risk of mis-selling.

In this regard, we also wish to express our concern that the revised Insurance Mediation Directive currently under negotiation between the European Parliament and Council will not be in line with the 'quality enhancement' test used in MiFID 2, but instead oblige firms to ensure that commission does not cause detriment to the service provided. This is an even lower standard to test whether third-party payments present a conflict of interest.

Q11: From your perspective, which instances might be regarded as being for the benefit of the customer, including in the context of business models which are mostly or purely financed by third party payments?
Q12: In which instances do you think inducements would not be for the benefit of the customer?

We would argue that the principles on conflicts of interest resulting from inducements should be strengthened to include an explicit ban on certain types of third-party payments that could lead an intermediary to sell products that are unsuitable for their customers.

Many of the examples listed by EIOPA on page 17 of the discussion paper that preceded this consultation are clear examples of inducements that present an unacceptable risk of a conflict of interest. These include notably:

- Contingent commissions, profit shares, or volume over-riders;
- Soft commissions such as corporate hospitality and gifts;
- Remuneration linked to volume of sales;
- Minimum levels of sales being required by an insurer from an intermediary.

The Panel believes that inducements such as these are never acceptable and should be banned explicitly, rather than left to firms to decide whether they constitute a conflict of interest on a case-by-case basis.

Q13: Do you share the general observation that insurance undertakings and intermediaries are principally not involved in the production and dissemination of investment research?

No comment