Financial Conduct Authority

MS15/2.2: Annex 2

Market Study

Asset Management Market Study

Interim Report: Annex 2 – Recent regulatory developments

November 2016

Annex 2: Recent regulatory developments

Introduction

1. There has been a range of relevant regulatory developments in the asset management sector over the past year. This annex, while not an exhaustive list, identifies key pieces of recent policy work in the asset management regulatory landscape.

2. When developing our remedies we will consider the extent to which forthcoming regulatory developments complement and support the remedies we are designing. Our work on the market study will continue alongside other FCA work. In addition, we will ensure that we take account of regulatory developments and minimise any duplication. We will liaise with other relevant authorities as necessary.

Improving disclosure for investors

3. We launched the Smarter Consumer Communications initiative in June 2015[1] to bring about a change in the way information is both communicated and delivered to consumers. In October 2016, we published a Feedback Statement where we discussed our next steps.

4. The Feedback Statement[2] reports on key themes arising from responses we received and sets out our follow-up planned work on a diverse range of issues that includes terms and conditions, the complexity of information provided to consumers at retirement, terminology in insurance communications, explanations of compensation cover, disclosures around the scope and cost of investment services, and customer communication in the asset management sector.

5. In October 2015, we consulted on proposals to remove ineffective disclosure requirements from our Handbook.[3] This Policy Statement[4] summarises the feedback we received about the proposed changes to our rules. Based on the feedback we received, we have decided to proceed with our proposals to remove the rules or guidance around the ineffective disclosures, including short reports.

PRIIPS

6. The European Commission announced last week that the application date of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation will be delayed by a year to 1 January 2018.

7. In a consultation paper[5] published in July 2016, in order to reflect the directly applicable PRIIPs Regulation, we set out proposals to amend disclosure requirements

[1] We launched this with the publication of the Discussion Paper DP15/5 *Smarter consumer communications* (June 2015)

[2] See our Feedback Statement on the DP15/5 above: FS16/10: Smarter Consumer Communications

[3] These were half-yearly, disclosure reports produced for investors in retail authorised funds showing information about the fund's performance and activities during the year or half-year under review.

[4] PS16/23 *Smarter Consumer Communications: Removing ineffective disclosure requirements in our Handbook* (October20

[5] See CP16/18: *Changes to Handbook disclosure rules to reflect the direct application of PRIIPs Regulation* (July 2016)

in the FCA Handbook that apply to firms that manufacture, give advice on or sell products that will be PRIIPs.

8. As the application of the PRIIPs Regulation will be delayed, we will also delay publishing our proposed PRIIPs policy statement (which will set out the final rules that reflect the PRIIPs Regulation). We plan to take more time to consider the legal scope of the regulation, and the revised related Regulatory Technical Standards (when available). We expect to publish the PRIIPs policy statement during the first half of 2017.

Increasing investor protection

Social investments

9. Last year the FCA sought views on how regulation impacts the social investment market.[6] We asked a number of questions and sought input from firms involved in the social investment sector, and views about the potential risks to consumers investing in this sector.

10. In our Feedback Statement, we proposed that we should maintain our current regulatory approach. Given the complex nature of the risks inherent in these types of investments, firms offering such investments should only promote them to certain types of investor.

Capital resources requirements for personal investment firms and SIPP operators

11. Personal investment firms (PIFs) provide financial advice to retail consumers on investment products, generally without holding client money. This includes, but is not restricted to: pension planning, investment product selection, and income and estate protection. On 30 June 2016 we implemented new capital resources requirements for these firms.

12. In September 2016, our new capital rules for Self-Invested Personal Pension (SIPP) operators came into force. SIPPs are generally personal pensions where the consumer has a wider breadth of choice around the investment options than with a normal personal pension.

13. As a result of these rules, some firms had to raise additional capital.

Improving governance

Senior Managers and Certification Regime

14. The Senior Managers and Certification Regime (SM&CR) commenced in March 2016. It increased individual accountability of the most senior individuals in firms who hold key roles. It applied to firms that accept deposits and also to the largest investment firms that are regulated by the Prudential Regulatory Authority (PRA).

15. In September 2016 we published the findings of our supervisory work on how firms were implementing the SM&CR.[7] We found that, overall, most firms had invested a considerable amount of effort in preparing for and engaging with the SM&CR. We

[6] See *Call for Input: Regulatory Barriers to Social Investments* (December 2015)

[7] FS16/6 *Senior Managers and Certification Regime: Feedback for all UK banks, investment firms and building societies* (September 2016)

have also published our discussion paper seeking to clarify the legal function[8] currently captured under the SM&CR and to consider whether it should continue to be part of the regime.

16. As part of the SM&CR, the FCA introduced a new Remuneration Code last year which also applies to PRA-designated investment firms.[9]

17. HM Treasury has said that the SM&CR should be extended to all FSMA authorised firms from 2018. We plan to consult on our approach to the extension of the SM&CR during 2017.

UCITS

18. The UCITS V Directive 2016 came into force on 18 March 2016 and we made amendments to a number of modules of the FCA Handbook to transpose UCITS V.[10]

19. UCITS V aims to enhance the rules on the responsibilities of depositaries. It does so, amongst others, by introducing a requirement to appoint a single depositary for each UCITS, disallowing the appointment of multiple depositaries. It also harmonises the duties of a depositary to keep the assets of the UCITS safe, monitor cash movements to and from the fund, and oversee the fund manager's performance of its key functions. UCITS V further aims to ensure that all EU regulators responsible for the supervision of UCITS funds and their managers have a common minimum set of powers to investigate infringements of the UCITS Directives and to sanction any breaches. ESMA recently published Guidelines on the application of the remuneration rules, which will come into effect in the UK on 1 January 2017.

Improving transparency for investors

Transaction costs

20. The FCA is currently consulting on rules to improve transparency of transaction costs in workplace DC pensions.[11] To ensure that IGCs and trustees receive information about transaction costs, the FCA is proposing to place a duty on asset managers to disclose aggregate transaction costs to pension schemes that, directly or indirectly, invest in their funds. The proposed new rules[12] will deliver consistency in how transaction costs are reported and give governance bodies confidence that the information presented to them contains a comprehensive assessment of costs.

Meeting investor expectations

21. In April we published the findings of our thematic review[13] which assessed whether UK authorised investment funds and segregated mandates are operated in line with investors' expectations set out in investment mandates and marketing and disclosure material. We found most funds in our sample invested in line with their stated strategy and investors were not exposed to any undisclosed investment risks.

[8] In particular firms asked how the Senior Management Function 18 – Other Overall Responsibilities' (SMF18) applies to the legal function.

[9] This was in response to recommendations from the Parliamentary Commission on Banking Standards. See SYSC 19D. The AIFM Remuneration code can be found in SYSC 19B and UCITS Remuneration Code can be found at SYSC 19E.

[10] These included Senior Management Arrangements, Systems and Controls sourcebook (SYSC); Interim Prudential sourcebook for Investment Business (IPRU (INV)); Client Assets sourcebook (CASS); Supervision sourcebook (SUP); Collective Investment Schemes sourcebook (COLL); and Investment Funds sourcebook (FUND). Final rules came through PS16/2, published on 2 February 2016

[11] The scope of this consultation does not cover PRIIPs products and so the FCA consultation is not affected by the delay to PRIIPs.

[12] CP16/30: *Transaction cost disclosure in workplace pensions* (October 2016)

[13] TR16/3: *Meeting investors' expectations* (April 2016)

However, we did find some examples of unclear product descriptions and inadequate governance or oversight. Where this was the case we provided individual feedback to firms and followed up on identified issues through our routine supervision work.

MIFID

22. Over the past year, the FCA has consulted on a number of proposed rules changes to the FCA handbook to implement MiFID II which takes effect on 3 January 2018.

23. The FCA is currently consulting on the third set of implementation proposals for MiFID II which deal with conduct of business issues and product governance rules.[14] Key proposals include:

- New inducement and research rules to improve cost transparency and drive better competition
- Implementing requirements on full disclosure of costs and charges.
- Governance requirements on product providers to ensure they design products for an identified target market.
- Extending the requirement of telephone taping to financial advisers, with the aim of providing benefits to both firms and their clients in resolving disputes in a quick and cost effective manner. We are open to receiving and exploring suggestions on alternative proposals for smaller financial advisers.

24. The FCA is continuing to work on the implementation of MIFID II and a fourth consultation paper is likely to be published towards the end of this year or early next year.

[14] CP16/29: Markets in Financial Instruments Directive II implementation – Consultation Paper III (September 2016)

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