

Consumer Panel response to the Committee of European Securities Regulators Consultation Paper: CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments

Introduction

The Consumer Panel was established under the Financial Services and Markets Act 2000 by the Financial Services Authority to represent the interests of consumers. The Panel is independent of the FSA. The main function of the Panel is to provide advice to the FSA, but it also looks at the impact on consumers of activities outside the FSA's remit. The Panel represents the interests of all groups of consumers, including those who are particularly disadvantaged in the context of financial services and consumers who have little or no access to financial services.

This is the Panel's response to CESR's Consultation Paper on Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments. We have chosen to focus on one issue of particular importance to consumers – the possible inclusion of generic advice as a core investment service.

Generic Advice in the UK

The Panel, along with others, has been calling for a generic advice service for a number of years. This would be entirely separate from the sales process and from the regulated, product-specific advice given by authorised firms. We believe that such an independent service is absolutely essential. In our response to the Treasury Committee's enquiry into restoring confidence in long-term savings¹ we set out nine key messages, including the need for Government and the FSA to progress proposals to provide consumers with the generic advice they need. Research shows that consumers want and need advice in managing their money. According to the FSA, "two-thirds of consumers think that financial matters are too complicated for them and that they do not know enough to choose suitable financial products"². The Panel's own research has shown that "... few consumers are identifying or prioritising specific financial goals as part of an overall planning process ..."³

¹ "Financial Services Consumer Panel Submission to the Treasury Committee's Inquiry into Restoring Confidence in Long-Term Savings", January 2004

² "Towards a National Strategy for Financial Capability", FSA, November 2003

³ "Understanding Financial Needs" Research Report by ORC, for the Panel, Spring 2003

Anna Bradley, Director of Retail Themes Division at the FSA, is Chair of the Generic Advice Working Group which has been set up under the umbrella of the Financial Capability Initiative. In its paper on the role of advice⁴ the FSA sets out a working definition of "generic advice" as "services and tools that use information about individuals' circumstances to help them to identify and understand their financial needs and to plan their finances. Generic advice helps consumers to identify:

- Choices and possible priorities for action which are appropriate to their needs;
- How to take the next steps in addressing their priorities; and
- How to access other relevant sources of information and advice."

There are numerous potential channels for delivering generic advice, including firms that are already authorised by the FSA, employers and the existing network of voluntary agencies.

The Panel generally supports the Working Group's approach and will continue to participate actively in the development of the Group's ideas.

Possible Inclusion of Generic Advice as a Core Investment Service

Given the importance of an independent generic advice service for consumers (as defined by the Working Group), the Panel is concerned that the Consultation Paper's proposed definition of "investment advice" would have an adverse impact on the development of a generic advice service. If the widest definition was adopted, generic advice would be caught even though the advisor did not make a specific recommendation to purchase a specific financial product. It would therefore create an additional layer of regulation which could make the provision of such a service impractical and possibly too expensive for the consumers who need it most.

We have considered the extent of the scope of MiFID in terms of financial products and product/service providers. We understand that voluntary sector agencies, some employers and debt counsellors would be excluded or exempt from the requirements, but this is by no means clear. Similarly not all financial products are covered by MiFID. A partly-regulated generic advice service would be difficult to deliver in practice and would cause enormous confusion for consumers.

From a consumer protection perspective the Panel believes that there is no advantage in including generic advice within the definition of investment advice. Mis-selling inevitably involves the provision of regulated advice – ie advice to buy or sell a specific financial product; consumers of regulated advice already have recourse to the Financial Ombudsman Service and, if necessary, the Financial Services Compensation Scheme. The Panel does, however, strongly support the principle that those delivering a generic advice service should have adequate levels of Professional Indemnity Insurance as well as independent accreditation of standards of training and skills. There may be some value in setting up a dispute resolution

⁴ "Building Financial Capability in the UK: the Role of Advice" published by the FSA in July 2004

scheme within the accreditation body, but we do not believe that consumers of generic advice would need recourse to the full Ombudsman Service or Compensation Scheme or that the cost of providing access to these services – which would ultimately be borne by consumers – would be justified.

Conclusion

The Panel supports a definition of investment advice that does not include generic advice. The alternative, all-embracing definition suggested in the Consultation Paper would create uncertainty and additional regulatory cost to anyone offering a generic advice service. This could lead to such a service being denied to the very consumers who most need help in identifying their financial needs and seeking suitable solutions. Whatever the outcome of this consultation, the Panel believes that the scope of the requirements and all exemptions/exclusions must be made absolutely clear.

Financial Services Consumer Panel

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