

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

Lee Taylor
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

5 December 2012

Dear Lee

CP12/27* Chapter 8: changes to the Collective Investment Schemes sourcebook

This is the Financial Services Consumer Panel's response to Chapter 8 of CP12/27: changes to the Collective Investment Schemes sourcebook (COLL).

Our response focuses on question 3 of Chapter 8. We have no comments on the remaining proposals.

Q3: Do you agree with the provision of additional disclosures to investors when terms implying positive returns irrespective of market conditions are used?

Although we have no objection in principle to the additional disclosure requirements set out in the Consultation Paper, we are not persuaded that this is an adequate response to what is clearly a significant problem.

According to the FSA's 2012 Retail Conduct Risk Outlook, assets under management in Absolute Returns Funds reached around £20bn at the end of 2011, with a significant year-on-year increase of approximately 27%. More than half these funds lost money in 2011. According to the IMA, the number of Absolute Return Funds expanded from 17 in 2008 to 78 in 2011. The FSA says that "consumers could suffer significant unexpected financial loss if they are sold funds that fail to perform, and where the perception mentioned above continues to exist".

This follows a warning from the 2011 RCRO: "It is important to recognise that these products, although they may use the same sector name, use a wide range of different investment strategies to attempt to achieve a similar goal. Consumers (and sometimes their advisers too) may have difficulty distinguishing between products that are using complex investment strategies across multiple asset classes, or of assessing the level of risk that is being taken to achieve returns."

Taking all these factors into account we think this simply means that terms such as "absolute return fund" are misleading and should not be used. In particular they

cannot be “clarified” in what amounts to the small print in a disclosure document. We would have thought that enforcing firms’ obligations under Principles for Business 6 and 7 would address the use of this description and any similarly misleading terms in future.

We note there is also some dissent within the industry on the issue¹:

“Cazenove Capital Management head of investment funds Robin Minter-Kemp says ... It is fair to say there are more eclectic messages in the absolute return sector than any other long Investment Management Association sector. So I can understand why the regulator wants over the top transparency in this sector as there is scope for misinformation because of the complexity of the strategies.”

... But Seven Investment Management marketing director Justin Urquhart-Stewart says the proposal does not go far enough: the name absolute return serves only to confuse investors. They think it has an implied chance of more return and this is misleading. The actual name needs to be changed to give investors some idea of the level of risk in a way they can understand.”

If it is really impossible effectively to prevent the use of “absolute return fund” and the like for the time being – and we note that the FSA may be in the process of undertaking additional supervisory and/or enforcement work in this area, as mentioned in the 2012 RCRO - then the new disclosure requirements may be the best interim measure available. If that is indeed the case we would like to see the transitional period for the new requirements set at no more than three months and a firm commitment from the FSA to undertake mystery shopping and/or other research to ensure that the risk posed by these funds is being mitigated effectively.

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel

¹ www.fundweb.co.uk/fund- news on 11 October 2012