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James Steer
Savings and Investments
HM Treasury
1 Horse Guards Road
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17 March 2011

Our ref: UCITS IV

Dear Mr Steer

Transposition of UCITS IV

This is the Financial Services Consumer Panel's response to the HMT/FSA consultation document on the transposition of UCITS IV.

The Panel is not in a position to respond to all of the detailed proposals in the consultation document and we have focused on the issues that impact directly on retail investors contained in Chapters 3 and 4 of the consultation paper.

We welcome the steps that HM Treasury and the Financial Services Authority are taking to implement the provisions of UCITS IV, particularly those that relate directly to complaints handling, access to compensation and redress and disclosure. We urge the FSA to undertake active monitoring of levels of compliance with the new requirements, including research into the effectiveness of the disclosure provisions from a retail investor perspective.

Management company passport

Q3.73: Do you agree with the proposed changes to DISP to implement the complaints-handling requirements of UCITS IV?

Retail investors should be in a position to exercise their right to complain, if circumstances demand it, whether the management company in question is a business based in the UK or not. We believe that the proposed changes should ensure that that is the case and we support implementation on this basis. Investors will however need access to information about the status (eg whether a passported business, or UK based) and location of the management company before proceeding with their complaint, and it is not clear to us whether this would always be available through the FSA register. If not, we would wish to see arrangements put in place to ensure that the information is easily accessible.

Q3.78: Do you agree that FOS referral rights should be available in respect of complaints by eligible complainants where the UCITS scheme is FSA

authorised, irrespective of the location of the management company or the type of passport it is using?

We support the approach proposed by HMT/FSA and the extension of the Financial Ombudsman Service compulsory jurisdiction to cover complaints against the operator of an FSA authorised scheme, wherever based. It remains to be seen whether the supervisory duties of co-operation will be sufficient to enforce future FOS awards, should the need arise. If not, we would expect HMT/FSA to explore other options to achieve this, as the 'theoretical' right to redress is of no real help to retail investors and would be potentially damaging to the UCITS regime.

Q3.80: Do you think FOS referral rights should continue to be available for complaints by eligible complainants against a UK management company operating an EEA UCITS authorised in another Member State via a cross-border services passport?

Yes, we support this approach.

Q3.82: Do you think FOS referral rights should be available for complaints by eligible complainants against a UK management company operating a UCITS authorised in another Member State via a branch passport?

Yes, we agree that FOS referral rights should be available in these circumstances. We are aware of the procedure for referring a complaint to another complaints scheme and would like to see EU policy makers take the opportunity presented by UCITS IV implementation to promote the development of alternative dispute resolution mechanisms in all Member States, covering all sectors of financial services. Our view is that all financial services companies operating cross-border should belong to a redress scheme meeting minimum EU requirements, which could be a scheme based in the host or the home State.

Q3.92: Do you agree with the proposal that the FSCS should provide compensation coverage where valid claims arise from the default of a management company (irrespective of its home State), if the claims relate to an FSA authorised UCITS scheme? If not, what do you think the scope of FSCS coverage should be?

We support FSCS coverage for UCITS collective portfolio management business in all cases where the UCITS scheme concerned is authorised by the FSA, and wherever the management company is based.

Investor disclosure

Q4.19: Do you agree with the proposed amendments to COLL? Are there any other matters related to producing KID on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

and

Q4.27: Do you agree with the proposed amendments to COBS and COLL? Are there any other matters related to providing the KID or marketing

communications on which the FSA should publish rules or guidance to ensure the Directive is transposed effectively?

The need for further rules or guidance should be identified as part of a programme of post implementation compliance monitoring and effectiveness research. We would like the regulator to be in a position to respond swiftly to shortcomings in the arrangements as currently proposed, should the need arise. We do think however that measures should be put in place to ensure that investors and potential investors are made aware of the differing levels of compensation available in different Member States. This ultimate 'safety net' can be an important consideration for consumers when choosing their investments.

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel