

Retail Disclosure Consultation

Financial Services
HM Treasury
1 Horse Guards Road
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By email: retail.disclosure@hmtreasury.gov.uk

10 January 2024

RE: Comments on draft Consumer Composite Investments (Designated Activities) Regulations 2024

We welcome the draft statutory instrument (SI) and accompanying policy note regarding the UK Retail Disclosure Framework, particularly the intention to repeal the relevant provisions in MiFID.

This process creates an important opportunity for the FCA to reshape the retail investment disclosure regime in a way that learns from the significant shortcomings of PRIIPS in particular, but also MiFID. What started as well-intentioned regulatory policy aimed at greater comparability and transparency ended with a set of complex requirements that have had damaging consequences for the coherence of cost disclosure and the provision of decision-useful information to retail investors and their advisers. In an environment in which cost is increasingly equated with value, these problems need to be addressed urgently. The IA has developed specific proposals in this area and, together with other industry groups, looks forward to further dialogue with the FCA to bring about meaningful change.

With respect to the draft SI, it is difficult to assess fully the implications of the definitions affecting the scope and designated activities specified without knowing the consequences of these definitions in the rules yet to be made by the FCA. With this in mind, we have observations in two specific areas where clarification could be helpful:

- The FCA has previously issued guidance (DISC 2.3) to resolve a point of interpretive ambiguity about what being 'made available' to retail investors means in practice and the steps required to demonstrate that a product is not being 'made available' to retail investors. Given the need for such guidance it would be helpful to avoid ambiguous terminology and consider using language consistent with other parts of the FCA rulebook such as those dealing with Consumer Duty and Product Governance. In this regard, the term 'made available' could be replaced with 'intended to be marketed or distributed'.
- We note the intention that FCA rules will provide further detail on excluded products. FCA has made rules (DISC 2.2) under powers granted by Art.4A(1) of the UK PRIIPs Regulation (inserted by s.38(2) of the Financial Services Act 2021) specifying the conditions that exclude certain debt securities from the definition of a PRIIP. There is no explicit equivalent power set out in the draft SI so it is unclear how the FCA will provide further detail on excluded products in future. Industry would benefit from certainty

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about the continuity of the FCA's existing rules in this respect, and their ability to respond to any market developments necessitating further rules to be made in future.

We would be happy to discuss these comments further.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Sherwin', with a stylized, cursive script.

Mark Sherwin
Senior Adviser, Financial Reporting