

30 April 2003

Ms Louise Evans
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Dear Louise

FSA CP170 – Informing Consumers: Product Disclosure at the point of sale

The IMA is the trade body representing the UK asset management industry. IMA Members include independent fund managers, the asset management arms of banks, life insurers and investment banks, and occupational pension scheme managers. They are responsible for the management of about £2 trillion of funds (based in the UK, Europe and elsewhere), including investment companies and investment trusts, authorised investment funds, institutional funds (e.g. pension and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members manage 99% of UK-authorised investment funds.

We welcome the opportunity to comment on the above consultation paper. Our response, utilising the questions raised within your paper is as follows.

Q1: Do you agree with our proposals to emphasise the importance of early delivery of product information?

We are concerned that the FSA has decided to move from clear guidance (i.e. "five working days) to a rather imprecise "without delay". It is essential for the FSA to clarify exactly what is meant by "without delay".

Q2: Do you agree with our proposal not to change the scope of the current key features regime, in terms of the products caught?

We are of the view that if investment products are dressed up to look like deposit products, this could be particularly misleading to investors and therefore a detailed and appropriate disclosure regime should apply. We support the FSA intent to look further at this area.

Q3: Do you agree with our proposals to require information to be offered in relation to all execution only transactions?

Many IMA Members writing execution only business tend to ask on the telephone if the investor has seen, or would like a copy of, the current Key Features Document. Therefore the FSA proposition should not cause a problem, and is any case required by UCITS III.

Q4: Do you agree with the proposed extent to which the regime will be different for life and non-life products?

At this stage, we are inclined to agree with the FSA proposition. However, we will give further consideration to this question when we have seen the supplementary consultation paper which will deal specifically with issues relating to non-life products.

Q5: Do you understand and accept the distinction we draw between product disclosure and consumer information at the point of sale?

Q6: Do you think that this distinction will lead to consumer detriment?

Q7: Do you think that this approach will cause problems for firms and the way they design their marketing literature?

We note that in the case of non-life products, the FSA indicates that because of UCITS III it has slightly less flexibility in prescribing the disclosure regime, than it has in the case of life products. The Directive expects only two disclosure documents, the Simplified Prospectus and the Full Prospectus. We note that the FSA intends to give guidance to encourage firms to limit the degree of detail given in the Simplified Prospectus in favour of signposting detail in the Full Prospectus. We await this guidance with interest, and will comment further.

In the meantime there are a number of points to make.

First, the Simplified Prospectus ought to be the document which the investor reads, if he or she so desires, and which contains all the information necessary for that investor to decide whether or not to buy. The Simplified Prospectus can signpost the existence of the full prospectus but, IMA Members will want to guard against leaving investors with the feeling that they must ask for the Full Prospectus because some of the detail is being held back. This would be costly for firms to comply with if they had to send weighty documents to the majority of investors.

Second, firms want certainty that the Simplified Prospectus is the disclosure document, and that in prescribing the content and approach there can be no scope for the FSA to state at a later stage that the investor has not been given all the information and therefore there is a compliance problem. (Obviously, errors and omissions caused by a firm would be a different matter).

In addition, we feel that there should be no prescription of the content and presentation quality of "Supplementary" documents.

We therefore urge the FSA to give clear rules and guidance with which firms can endeavour to comply and in return for which there is certainty that they will not be subject to any form of regulatory discipline for failing fully to inform consumers. There is always a danger, when the FSA attempts to regulate on the basis of open-

ended rules and guidance, that they are interpreted by individuals who have no experience of the market which they regulate and that Members will be taken to task unfairly.

Q8: Do you agree that the new product information document should focus on suitability issues?

We do not object to the document being written in such a way that the investor will be able to take an informed view about whether the product is suitable for his or her needs.

On the other hand there must be no implication in the mind of the investor, or indeed the FSA, that an investor is receiving individual advice about the suitability of a particular product for him or her, when this is clearly not the case.

Q9: Do you agree with our proposed approach to the disclosure of risk?

Q10: Do you think that it will deliver an appropriate level of consumer protection?

Provided firms are given clear guidance about the "risk factors" which need to be included, the approach would be acceptable. However, we note that further discussions are taking place, and that the question of risk will be dealt with further within the supplementary consultation paper.

However, we do not feel that the proposals will increase consumer protection. There will still be, as there is now, great reliance upon the consumer reading the document, understanding the risks and how these relate to his own attitude to risk, and then asking for further information where applicable.

This problem will only be overcome by extensive consumer education.

Q11: Do you think that our new approach will encourage consumers to read the information?

The use of short, colourful documentation which appears attractive to an investor might improve the likelihood of that investor reading it. But, as with the existing Key Features Document, there is no guarantee that the document will be read and understood however short, clear and concise it might be.

Q12: Do you agree that the proposed brand-style of the Key Facts Logo will be of value to consumers?

In test conditions it is always possible that if a logo and warning message is placed on the front of a document, and the right question is asked, the consumer will indicate that the documents on which these appear stands out. In actual conditions, there is no real guarantee that a document with the FSA brand on it will stand anymore chance of being read than a document which a firm has produced itself in its own style and image.

Q13: Do you agree that the incorporation of the FSA logo and regulatory message will be useful for consumers?

The document might convey the FSA intended message. However, there is no guarantee that the investor will go on to read the content of the document and regard him or herself as properly informed and able to make a decision. Unless investors are encouraged to take some responsibility for their actions, logos and warnings will not be of much help. "Caveat Emptor" is paramount.

We also have concerns that the FSA logo and regulatory message could be potentially misleading. There is a danger that consumers might conclude that the product is government backed/guaranteed.

Q14: Do you agree with our proposals in relation to the use and number of projections?

The amended table which will be used in the case of mutual funds still involves a projection even though there is no longer a column entitled what you might get back. The IMA does not consider that projections bear any relevance to mutual funds.

The proposed new column which shows projected growth after charges is still a projection. Further, the draft rules imply that returns should be shown at years one, two, three, four, five and ten. We feel that this is excessive for mutual funds and at the very best should be reduced to one, three, five and ten years.

We understand that the FSA will be consulting further about charge disclosure for mutual funds, following the end of further discussions within the EU. The IMA is firmly of the view that total expense ratio (TER) is a more appropriate measure for mutual funds.

Questions 15 – 23 deal with issues which are not for the IMA to address.

Q24: Do you agree with the revised timing and content requirements for the suitability letter?

We agree with the FSA proposals.

Q25: Post sale confirmation.

We agree with the FSA proposal.

Q26: Are our proposals in respect of the phased implementation of the new regime proportionate and practicable?

The IMA will not be able to answer this question fully until it has seen the supplementary consultation paper and is able to comment on the intended timings for implementing the content of that paper.

Q27: Do you agree with the proposed application provisions for the new regime?

We agree with these provisions.

Q28: Do you agree with our proposals concerning the overarching disclosure requirements for packaged products?

Q29: Do you agree with our approach to the implementation of the consumer information requirements of the Third Life Directive and the UCITS Directive?

It would be preferable for the disclosure regime for mutual funds to concentrate on the issue of a Simplified Prospectus with a signpost to the Full Prospectus. If there are other specifics which the FSA wants, but cannot have either because the UCITS Directive prohibits it, or it does not want the information to "clutter up" the Simplified Prospectus or Key Facts, it should say so.

We are concerned that the way in which the FSA has drafted its guidance would allow hindsight regulation and the open-ended interpretation which can be so detrimental to our Members.

Q30: Do you agree that Key Facts should not be combined with other material except in the exceptional circumstances described?

Q31: Do our rules on compendium documents offer sufficient flexibility without risk to consumer understanding?

In the case of question 30 we agree with the proposition, in the case of question 31 we believe that sufficient flexibility is offered and that there is no risk to consumer understanding.

Q32: Do you agree with our proposals concerning the circumstances in which a Key Facts Document must be provided?

As, in the case of mutual funds, the provision of Key Facts essentially follows the current route for providing Key Features, we agree with the proposition.

Q33: Do you agree with our proposals concerning product information to be provided in the course of telephone-based transactions?

Our understanding is that the oral explanation relates to situations when a firm is actually selling/recommending a product over the telephone. An oral explanation of the main features has to be given now, and this will continue. In the case of execution only telephone sales the customer does not have to be given any explanation whatsoever, he or she must merely be asked if they would like a copy of Key Facts.

If our interpretation is correct, this reflects the current situation and therefore we would agree with the FSA proposals.

Q34: Do you agree with our proposals concerning the front sheet or screen of the Key Facts Document?

A number of IMA Members have indicated their agreement to the proposals. On the other hand, others have pointed out that there are effectively four brands – provider, co-provider, Key Facts and FSA. This could be potentially confusing to the investor and is in conflict with CP166 where the overarching requirement is for the product/contract provider to be clear to the investor.

Q35: Do you agree with our proposal to limit the extent to which the Key Facts Document may show co-branding?

We have received no adverse comments from Members.

Q36: Do you agree with our proposals concerning the quality of presentation and language of Key Facts Documents?

We would point out that IMA Members strive to produce quality documents in language which a customer can understand, and which will persuade him or her to buy a product. In this context the FSA proposals are unobjectionable.

On the other hand guidance of the type intended will undoubtedly give rise to disputes between monitoring teams and regulated firms over matters of interpretation. These are to be avoided at all costs, it is therefore essential for the FSA to work with the industry to ensure that the regulator and the regulated are working to a common goal.

It has also been pointed out that the requirement for web based Key Facts documents to be prepared in the same format can give rise to problems for the following reasons: -

- HTML – the majority of websites are built in HTML/XML as this facilitates easy navigation around the site which will be needed for the signposting requirements in the Key Facts document. However, if all screens are converted to HTML this will compromise the functionality in that, due to size, it will slow considerably.
- PDF – a PDF file provides the greatest surety that when a document is printed, it appears in the way that it is meant to be viewed. Conversion of all PDF files to HTML could be to the detriment of customer understanding as they would have greater freedom to choose to print only that section of a web Key Facts document that appealed to them. Additionally, the navigation benefits are not available in PDF.
- Any ruling that web screens are built to eliminate horizontal scrolling will be unworkable, as firms are unable to legislate for every possible way for how consumers set their browsers.

Q37: Do you agree that the proposed "Quick Guide" will be useful tool for consumers?

We have concerns about this document. Bearing in mind that the FSA consumer research points to the fact that customers like brevity, it is difficult to see how adding this further document as a layer over and above Key Facts will be helpful.

Q38: Do you agree with other aspects of our proposed new structure of the Key Facts?

Bearing in mind that the structure will follow very much that in use for Key Features there is no basic objection.

Q39: Have we indicated the required content of the Key Facts Document with sufficient clarity and detail?

We can only answer this question fully once we have been able to analyse the content of the supplementary consultation paper.

Q40: Do you agree with our proposals in respect of the presentation of past performance in Key Facts Documents?

In the IMA response to CP132 we advocated the use of a bar chart of annual returns, so we do not object to the proposition. The additional line graph may well be overkill.

We will also respond more fully to this question once we have seen the further detail which will be contained in the supplementary consultation paper.

Q41: Do you agree with the proposals relating to the content of Key Facts Documents for specific types of products?

We have no specific comments at the present time, but we do await the publication of the supplementary consultation paper.

Q42: Do you agree with the proposed structure and content of the example?

We are disappointed that in the case of collective investment schemes, the FSA will continue with examples and projections. We favour TER as being the most relevant means of disclosing the effect of charges and expenses for a mutual fund, and we believe this to be in line with EU intentions.

We have no comments to offer on the remaining questions in CP170. We look forward to receipt of the supplementary consultation paper.

If anything in this response is not clear, please do not hesitate to get in touch.

Yours sincerely

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Consultant