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# The new UK Retail Disclosure Regime

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*In December 2022, HM Treasury published a consultation on PRIIPs and UK Retail Disclosure. The FCA have also issued a Discussion Paper DP22/26 on the Future Disclosure Framework.*

*Whilst all agree that the prescriptive UCITS KIIDs and PRIIPs have not worked well, the challenge of course, as always, is how you invent a new system which is better. If you think back, the UK has long struggled with this issue prior to the UCITS and PRIIPs KIDs, with UK point of sale disclosure regulation going back to the early 1990s. None has been seen to be entirely satisfactory!*

*In this Briefing Paper, we look at the background, the Government's desired direction of travel and the FCA's current thoughts.*

There is a clear statement in the introduction to the December Consultation Paper that the Government regards the PRIIPs Regulation which the UK inherited from the EU as not fit for purpose. The working assumption is that the regime fails to deliver on its original goals of helping retail investors compare different products and improve their understanding of the investment opportunities available to them.

The proposal is that the prescriptive PRIIPs Regulation will be removed and, under the new UK regime, the FCA will be charged with determining the format and presentation requirements for disclosure. Whilst information should be standardised to a "significant degree", it will be for the FCA to set out this in detail.

Following the repeal of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, the new framework for retail disclosure will, it is asserted, work more effectively with the UK's dynamic capital markets and foster more informed retail investor participation.

Comparability between different types of products will cease to be relevant. Instead the focus will be on ensuring the retail investor "*understands the nature of the product that they are purchasing to a sufficient degree to enable an informed choice.*"

## Approach in the HM Treasury Consultation

To achieve delivery, this will come under the new regulatory framework pursuant to the Future Regulatory Framework Review, on which we comment in our separate **Briefing Paper: The Edinburgh reforms and the Future Regulatory Framework for asset management**, with, in this instance, the relevant financial services regulator setting out the detail being the FCA.

The FCA will keep responsibility over retail disclosure, including how to deal with the UCITS KIID. The FCA can therefore integrate UCITS and PRIIPs disclosures into a coherent UK retail disclosure framework before the 2026 exemption end date. (UCITS were intended to transition to providing the PRIIPs KID but have been temporarily exempted from doing so. When the Government extended this exemption from its initial end date of 31 December 2021 to the current end date of 31 December 2026, it noted that clarity would be provided on the future disclosure regime for UCITS at a later date.)

As the Treasury paper expresses it, "*it will be for the FCA to deliver a new retail disclosure regime that upholds investor protection while supporting investment choice for retail investors and reducing burdens for firms.*"

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**If the new regime can improve the quality of disclosure and reduce the burdens for firms in producing the documents, that will be a win on two fronts.**

There are some interesting comments in the HM Treasury paper about scope and use of the regulator's powers:

- The PRIIPs Regulation currently applies to authorised and unauthorised persons – some manufacturers and sellers are unauthorised such as managers within the small registered alternative investment fund manager (AIFM) regime, appointed representatives and others. But the view is that the FCA's powers should be sufficient nonetheless. There may though be some areas where additional powers are required such as in relation to overseas funds marketed to retail investors under the new overseas fund regime. Responses are invited on this area.
- A comment is made that "*a key ambition ... will be to continue improving choice of investment products for retail investors*". It is indicated that this is particularly with respect to popular international investment products such as US based ETFs.

Our concern though should likely be wider than that, which is that individual investors are currently restricted from accessing much long term product and private market product due to the FCA's insistence on the strict limitations on availability of non-mainstream pooled investments, including unregulated collective investment schemes. This is a concern which may potentially be exacerbated by the recent changes on the distribution of high risk investments: For further information on these changes, please see our [Briefing Paper on Promotion of High Risk Investments](#).

**HM Treasury ask for respondents' views on what other initiatives the Government could take to ensure that the retail investors in the UK are able to access a wide ranging set of investment products from different jurisdictions – but we think there is a wider issue which is how they are able to access a wide ranging set of investment products, including a wider range of product from the UK.** This is a growing problem as pension schemes cease to be the defined benefit model and most individuals are now responsible for their own long term savings, both within pension wrappers and directly, for individuals

managing their own retirement and other long term savings.

- An interesting discussion within the Consultation Paper concerns how disclosures are made and the possibility of greater innovation with regard to format and presentation – views are to be welcomed for example on digitised disclosure formats.

In order that the laudable aims and ambitions set out for the new regime come to fruition, it will be important for the industry to engage in the detailed consultations, and in particular FCA Discussion Paper DP22/26.

## The FCA's proposals for the future disclosure framework

The Government, as explained above, intends to revoke the PRIIPs Regulation and to remove the UCITS disclosure requirements. In future, the FCA is to be responsible for establishing the relevant disclosure regime. The FCA Discussion Paper DP22/26 on the future disclosure framework topic came out in December and we set out below the key points it raises.

In Chapter 2 of their Discussion Paper, the FCA rehearse the history of disclosure documentation – including in its variety: the history of the PRIIPs Regulation and the UCITS IV framework for the Key Investor Information Document (KIID), plus the COBS 13 provisions for Key Features Document (KFD) and Key Features Illustration (KFI) for non-PRIIPs packaged products, cash deposit ISAs, cash only lifetime ISAs and cash deposit child trust funds. Aside from the variety of disclosure documentation, there is also a need to consider other pieces of on-shored EU legislation for retail investment disclosures, including MiFID II, the Insurance Distribution Directive (IDD) and the Distance Marketing Directive.

**Currently the FCA is only really focussing on the replacements for PRIIPs and UCITS disclosure but, in the longer term, it intends to ensure there is a cohesive disclosure regime across the entire financial services market place. Thought will also need to be given to disclosures for overseas funds marketed into UK retail investors – and whether the FCA needs further powers to govern the new regime in that connection.**

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Initial indications of the FCA's intended approach include the following:

- **link to strategic commitments**

**We have the benefit now of working from a blank sheet of paper: we can look at how best to provide "clear and useful information that supports consumers to make evidence-based investment decisions".**

Following on from its commitments in the Strategy within the FCA's 2022/23 Business Plan, the work on retail disclosure is expressed to support two of the commitments:

- **first, enabling consumers to help themselves:** by designing an effective disclosure regime that provides retail investors with the information they need to make informed decisions; and
- **by preparing financial services for the future:** implementing a bespoke disclosure regime that is tailored to the UK markets.

Also there is a third element which the FCA rightly identifies, which is that they had already had an initiative on Smarter Consumer Communications. If one removes all the PRIIPs and UCITS disclosure requirements from the EU perspective, this enables the FCA to free up the way in which communications are designed more broadly and enable firms to innovate in their approach to disclosure.

HM Treasury, as acknowledged by the FCA, also propose that disclosures should be proportionate to the risks that consumers are taking in purchasing an investment product and the complexity of the decision that they are making.

- **link to UK SDR requirements**

The FCA indicate they will continue to work on how UK Sustainable Disclosure Requirements (UK SDR requirements) will fit within this new wider disclosure framework, rather than as a discrete standalone document – which is what is initially proposed.

- **link to the wider Consumer Duty issues**

Not unexpectedly, the Consumer Duty is referenced by the FCA in its Discussion Paper on the first page of its text! Each regulatory initiative with a retail context

must be viewed within the context of the Consumer Duty and the requirements that imposes on firms. Note that the FCA state that the Consumer Duty "will require firms to provide their customers with useful information that equips them to make effective, timely and properly informed decisions." **The point stressed here is the emphasis on outcomes-based regulation with a view that the new disclosure regime should be similarly outcomes focussed.**

- **flexibility**

**The move away from a prescriptive regime and the consideration of a fundamental review of what is appropriate is welcome.**

One useful point which comes through from DP22/26 is the FCA's intention that the new regime will be flexible. This is a clear statement at paragraph 4.4 of the Discussion Paper that this review "is an opportunity to move away from overly prescriptive presentation requirements of existing disclosure requirements".

This should enable firms to write appropriate disclosures suitable for their product more easily than in the past. Equally though, it imposes on firms the obligation to try hard to make disclosures appropriate for the purpose.

Various topics are set out in DP22/26 for discussion:

- **delivery**

The first topic for discussion is when and how information should be communicated.

As is to be expected, whereas in the past there has been a focus on paper-based disclosures, given that the FCA assert that only 9% of UK adults are digitally excluded and with 65% of customers being happy to bank or invest online, the provision of a single PDF disclosure may not be the best way to engage with consumers at the point of sale.

Also, the FCA want to align delivery of information so it is provided when it will be useful to consumers, with the indication that often consumers tend to give more weight to information received earlier in the process. Their view is that it might be helpful for disclosures to be presented in a modular format so the most important information for decision making is disclosed

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to consumers earlier – rather than perhaps the old approach which was to market and then provide the detail before a customer signs up.

The FCA acknowledge that important information to be retained by consumers has to be storable but they assert there might currently be overreliance on PDF documents. Their aim going forwards is something that is technology neutral, enabling effective digital disclosure but also ensuring that investors receive supportive paper-based disclosure if they prefer that. Ideas put forward include looking at:

- interactive product pages so investors can filter material to find products that suit their aims;
- enabling the creation of comparison tools based on the prescriptive information included within disclosures;
- looking again at responsibilities of product manufacturers and distributors. It is acknowledged that distributors will have more interaction with the end purchaser and so may have a better understanding of how the intended target market will want to see information presented.

The FCA is to look again at when a product is actually "made available" to retail investors following up on their [March 2022 Policy Statement](#).

- **Presentation**

The second area for discussion is to consider how information should be presented to the consumer – with a focus on new and interactive approaches to the design.

As you would expect, the FCA is looking at their consumer research suggesting that consumers retain information if it is presented in a way that is novel, simple and accessible.

From their Smarter Communications work, the FCA assert that the key principles for an effective disclosure design include:

- plain English,
- the prominent display of key information, and
- the inclusion of images and graphics.

The question is how they bring all of this history on their research findings into the new regime presentation requirements.

As an example of how the proposals will move away from the existing prescriptive requirements, there could be certain information up front with more granular information provided later. This the FCA refer to as "layering".

Some more complex products may require that there is flexibility so firms can decide on appropriate proportional disclosures.

Views are sought on how interactive approaches might assist. Obviously there is a risk here of interactive processes extending into the guidance/ advice areas but one assumes that that is not the intention. For example, it could be providing costs and charges information based on the amount the investor intends to invest rather than simply a nominal amount, or they could indicate the time period for which they wish to hold the investment.

Removal of jargon is of course a key topic for discussion. Terminology used will have to be explained, including phrases such as "volatility" and "liquidity risk".

- **Content**

The third area for discussion is the content of the information to be disclosed prior to an investor entering a contract.

The FCA acknowledge that they have heard some feedback that firms are best placed to know what information their customers want and need to make effective financial decisions. They acknowledge that flexibility will help in facilitating customer understanding because the information could be tailored more appropriately to the target market. On the other hand though, they also set out the view that there should be some standard to ensure consistency for consumers and effective competition. A prescriptive approach is likely only to help for comparison of similar products.

**The FCA is open to discussing how to achieve the right balance between flexibility and consistency in consumer disclosure.**

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Three areas identified in particular are:

- **costs and charges**

The FCA's current view is that there are some elements of disclosure, such as costs and charges, that are so essential to consumer investment choice that they should be more strictly prescribed. (Note that they indicate that this view is shared by HM Treasury, who note that such areas may require more prescriptive rules in their recent consultation on this matter.)

This topic is one that has been long thought important obviously and of course is part of the FCA's drive on value for money which we have seen in assessments of value for UK authorised funds which are already in place. It is not just a disclosure issue but also a wider one about "is the product providing value for money".

The FCA is inviting feedback on disclosing a single figure for one-off and ongoing costs upfront, with investors able to find further information about the component parts if they want to do so. Given the complications, say on authorised fund products and some costs not actually being manager costs, this is going to be a challenge. It is though a challenge which is long running and perhaps now is the opportunity to find a clear way of explaining matters to investors.

- **risk**

The risk profile of a product should help investors purchase products that suit their objectives and risk appetite. The problem though is that lengthy risk disclosures often do not help, and often in fact seem to encourage investors to take the riskiest product.

Now is the time to look at innovative ways of presenting risk, for example by use of graphics or graphs.

- **performance**

As is to be expected, performance is raised – with the question of how to disclose past performance, performance scenarios and narrative descriptions of performance.

Historically, the UK regulator was anti-reliance on disclosure of past performance but of course in reality that was never an appropriate way to proceed and of course, from the EU perspective, it became required.

The FCA remains concerned that retail investors attach too much weight to past performance to the detriment of other key indicators that might affect return (referring back to their favourite topic of costs), and inevitably there is the indication that past performance is not a guide to future performance.

What the FCA now say is that they "*want to better understand the role of the FCA in prescribing performance information*". *Perhaps they put it best in indicating that, while it is evident that requiring all products to present performance in the same way can result in misleading information being presented, this may also happen if the FCA "retire" prescriptive performance requirements.*

The FCA are open to considering allowing firms to tailor disclosures to their particular target market. They ask whether the FCA should categorise products for the purposes of performance disclosure.

## In conclusion:

The FCA assert that their Discussion Paper is the first step in developing a new regulatory retail investment framework which safeguards consumer interests through a proportionate and flexible disclosure regime.

It is vital for firms to participate in that discussion so that the proposals the FCA develop for consultation really do provide the opportunity for clear, fair and meaningful disclosures that will be understood by investors – but equally allow firms to innovate and have flexibility in the approach they take to best suit their purposes and their products.

There have been so many attempts to find the right approach. Now we have the first opportunity in recent years to start from a blank sheet of paper, it is important that firms participate in the discussion to formulate the new regime to ensure that it is truly fit for purpose.



**Kirstene Baillie**

Partner, Asset Management and Investment Funds

+44 (0)330 460 6522

[kirstene.baillie@fieldfisher.com](mailto:kirstene.baillie@fieldfisher.com)