

Financial Conduct Authority (FCA)

Discussion paper DP25/3

Expanding Consumer Access to
Investments

RESPONSE FROM:

United Kingdom Shareholders' Association



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Discussion paper DP25/3 Expanding Consumer Access to Investments

To: Consumer Investment Distribution Policy, Financial Conduct Authority (FCA)

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Discussion

Introduction

1. DP 25-3 proposes a way forward by tweaking an existing system but also encourages a broader view of the whole process. We have some thoughts for immediate action but our main emphasis in this response is on the broader view.

Conflicts of interest

2. There is emphasis in the DP on consumer responsibility. But there is limited reference to the need to help the consumer in that respect. As the paper notes: *'some consumers are not confident about investing and financial literacy is low'*.
3. If the consumer needs help there must be trust. But to create trust there must be honesty. And the conflict of interest between an industry trying to sell services as expensively as possible and consumers who do not understand the issues, and know that they do not, is not addressed in the paper. Nor is the conflict between an industry trying to extract money from customers and a regulator staffed by many who may see their future careers in that industry.
4. The consumer needs help; but the consumer needs to be able to trust its helpers.

The regulatory dance

5. Conventional regulation offers rules of conduct for different types of product and situations. Occasionally there is distinction between different classes of consumer but generally there is not.
6. The consumer is deemed to be protected by regulating the activities of producers and service providers. Lip service is paid to the concept of consumer responsibility but there are no measures to enable the consumer to assume it. The result is a sort of innovation dance in which the industry tries to invent new products and forms of advice to circumvent the rules, while the regulators try to keep up.

Education

7. The most effective way to help consumers is to help them help themselves, i.e. help them to learn. As the DP comments: *'Our 5-year strategy sets out our ambition to help consumers navigate their financial lives'*.
8. The structure of having central financial learning the responsibility of a single body – the Money and Pensions Service (MaPS) branded as MoneyHelper – insulated by its legal restriction to being the 'Single Financial Guidance Body' and restricted by its statutory need to consider the wishes of the government, the industry and the regulator – is a recipe for paralysis. It is a recipe for treading ground instead of moving forward. It is also a recipe for not putting the consumer first.
9. The consequences can be seen in the MoneyHelper website where honest attempts to present good material are scuppered by:-
 - complete silence on the subject of product costs – one of the two most important issues behind successful saving,
 - complete silence on the issue of trust, and
 - deferring to the FCA in its InvestSmart website on matters of investment.
10. **One size is not going to fit all. UKSA is in discussion with MaPS about ways of developing a financial learning facility that confronts the trust issue and caters for the enormous diversity of the audience in both inclination and competence.**

A new vision

Financial Learning

11. UKSA supports the principle of consumer responsibility, but it is never going to work so long as the consumer is not given the tools to exercise that responsibility, and that means guidance relevant to each individual's needs and aptitude.
12. We propose that a department should be given the resources to build an online facility for financial learning that recognizes the enormous consumer diversity in knowledge, understanding, ability and learning over a lifetime. There would need to be multiple learning paths.
13. We refer to it as MoneyHelper2.
14. Such a facility would make a tremendous contribution to consumer understanding. But it would do more: it would offer a new and different avenue for the protection of consumers.

Providers' responsibilities

15. Currently the weight of regulation falls on the provider, following complicated and expensive rules covering the definition of products and the way they are sold. MoneyHelper2 will not eliminate this entirely but will enable some shifting of the protection responsibility from the provider to the consumer.
16. We propose that the responsibility of the provider could become to ensure that the customer is aware of the MoneyHelper2 process and knows how to follow it. The customer could obtain the protection of regulation by signifying to a central register that they have gone through the specified MoneyHelper2 learning process.
17. The cost of regulation to the producer reduces considerably. The cost of running and maintaining MoneyHelper2 would be relatively small when recovered by a levy on all producers.
18. It would also help if the regulators and regulation made consumer interests their top priority. Part of enabling consumers to take more responsibility is regulation ensuring they have understandable and as complete as possible information about products on which to base their decisions (i.e. transparency).

Proposal: A new MaPS

19. Eventually MaPS should be given new terms of reference:
 - with responsibility to consumers only,
 - with accountability to a department without connection to the finance industries of product or advice supply,
 - without any explicit requirement to respect the interests of the finance industries, and
 - with an overarching objective of supporting effective personal money management at all levels of understanding.
20. This department would be allowed – indeed encouraged – to explain the conflicts of interest that are an unavoidable factor in all commercial relationships. And with respect to particular products or situations, to explain what consumers need to consider to manage their money properly.

Answers to your numbered questions

Question 1: To what extent does our regulatory framework – including using the Duty - mitigate the risks associated with DEPs (Digital Engagement Practices) while supporting their positive use?

21. No comment. Note that the framework as described above should apply to *all* products and practices, not just DEPs.

Question 2: Are there other frictions or factors shaping retail investing consumer journeys which our regulations do not sufficiently take into account?

22. Conflicts of interest.
23. Variable consumer circumstances.
24. Variable consumer understanding.
25. Consideration of counterparty risk. Note that *nearly all* investment products involve some changes in counterparty risk as compared with direct investment in the underlying assets and this is rarely explained.
26. Costs and compounding.

Question 3: What risks do you see retail consumers taking on when investing in fractional investments?

27. Consumers need to understand the changes in counterparty risk (including risk of market failure).
28. This should include changes in ownership rights (governance) since the interests of those who control the company are fundamental to the company's objectives for the future. This factor will be affected by the current investigation into dematerialising paper share certificates in listed companies. This is planned to result in a fully intermediated securities chain, which may restore shareholder/member/ownership rights to intermediated investors or underlying beneficial owners (UBOs). If UBOs do not have 'shareholder on register' rights they cannot as owners hold their companies and their management to account - a principle that underpins good corporate governance.

Question 4: How do you think fractional investments should be treated under our rules?

29. As a general principle, in whatever way is considered suitable for investment via a third party (e.g. a broker/platform). Note the answer to Q3, which does not currently apply to brokers/platforms.

Question 5: Do you think it is important to make the regulatory treatment of MPS (Model Portfolio Services) more consistent with managed products? What are the costs and benefits to firms and consumers of creating consistency?

30. We understand that different products are likely to be subject to different regulatory rules. However, different products which exhibit the same characteristics and have the same risk/reward profile when viewed through the consumer lens should be subject to similar disclosure requirements. We support attempts to make MPS more accessible, and suggest that our proposals on financial learning are an appropriate route to help investors achieve appropriate levels of financial literacy to enable them to participate in this sector.

Question 6: Are there other examples where our regulations make it difficult to compare similar investments, what harm does this cause and what changes to our regulatory approach do you think we should make?

31. No comment.

Question 7: We have highlighted where speculative products pose similar risks to consumers. How should we approach consistently treating these products in our regulatory framework?

32. Move towards consistency of process. Refer 'A New Vision'.

Question 8: Should we replace our product-centred approach to regulating speculative products with an approach that is more risk and return centred and product agnostic? If so, do you have views on how such an approach could work?

33. Yes. Refer 'A New Vision'.

Question 9: Are there regulatory interventions which would enhance consumer confidence in the P2P (peer to peer) market and/or make our regulatory approach more consistent with other high-risk products? Alternatively, are there specific barriers in our requirements that are limiting appropriate consumer access to P2P products?

34. No 'regulatory interventions' will help so long as the 'trust' issue (refer 'Conflicts of Interest') remains un-addressed.

Question 10: Are there other inconsistencies and complexities in our regulatory framework not discussed in the previous chapter which are creating barriers to consumers taking informed investment risk?

35. No additional comment.

Question 11: Are there ways we could better help consumers understand the protections and limits to the protections available to them when investing?

36. Refer 'A New Vision'.

Question 12: What do you see as the most significant priorities for how we approach the next steps of reforming the retail investing regulatory framework?

37. Establish consumer trust in the independence of the regulatory and financial learning systems.

Question 13: Are our financial promotion marketing categories consistently classifying investments based on their risk profiles? Please provide examples of where you see inconsistencies.

38. No comment.

Question 14: To what extent do our financial promotion rules achieve their aim of enabling informed risk-taking and mitigating harm? Are there ways they could be improved?

39. Refer 'A New Vision'.

Question 15: Are there other ways our regulations on how firms communicate with consumers could be improved?

40. Refer 'A New Vision'.

Question 16: Does the appropriateness test effectively help ensure non-advised consumers can access appropriate investments? Are there ways in which it could be improved?

41. Refer 'A New Vision'. One possibility is to categorize by 'understanding' instead of by 'wealth', using a process underwritten by MoneyHelper2?

Question 17: Are there ways we can streamline and/or clarify how our financial promotion and distribution rules interact with the Duty?

42. We don't know enough about the Duty to comment. But refer 'A New Vision'.

Question 18: Given the FPO (Financial Promotion Order) exemptions are a matter for the Treasury, are there other interventions the FCA can make to protect consumers from harm caused by unauthorised financial promotions?

43. Refer 'A New Vision'.

About UKSA (United Kingdom Shareholders' Association)

44. UKSA is the oldest shareholder campaigning organisation in the UK, with 11,000 members. We are a not-for-profit company that represents and supports shareholders who invest in the stock market.
45. There are many agents and intermediaries active in financial markets. Unlike them, we are an organisation solely representing people who are investing their own money.
46. UKSA was formed to provide individual shareholders with a voice, influence and an opportunity to meet like-minded fellow investors. It is structured as a non-profit making company with annual subscriptions. An elected Chairman and Board of Directors (all volunteers and individuals with a wide range of backgrounds and experience) monitor a regional organisation. Each region benefits from oversight by an elected regional Chairman and Committee.
47. We build relations with regulators, politicians and the media to ensure that the voice of individual shareholders is reflected in the development of law, regulation, and other forms of public policy. See www.uksa.org.uk

Contact

48. To engage bilaterally or to discuss or clarify the points made in our response, please contact John Hunter, Director and Co-Head of Financial Learning, 07764 615726 / 01689 856691, john.hunter@uksa.org.uk.