

3rd March 2023

Retail Disclosure Consultation
Financial Services
HM Treasury
1 Horse Guards Road
SW1A 2HQ

Submitted by e-mail to: retail.disclosure@hmtreasury.gov.uk

Dear PRIIPs and UK Retail Disclosure Team,

CFA UK and CFA Institute Joint response to the HM Treasury's consultation: PRIIPs and UK Retail Disclosure

The CFA Society of the UK (CFA UK) and CFA Institute are pleased to respond jointly on this topic. Investor disclosures, transparency and information fairness are by definition core parts of the CFA Institute investment ethos and the organisation's Code of Ethics and Standards of Professional Conduct. In addition, CFA Institute continues to develop and promote the highest industry standard in the area of performance presentation, the Global Investment Performance Standards (GIPS), which sets a high bar on how firms and investment professionals are expected to calculate and present performance to prospective clients.

We have consistently taken an active part in regulatory consultative work in this field, including the most recent consultation by the FCA on the UK PRIIPs regime in 2021¹. We make references to this work in our responses to HMT's consultation questions in Appendix II.

We are largely in agreement with the high-level principles which HMT have presented to explain their reasoning and objectives in the creation of a UK-specific regulatory framework for investor disclosures.

Our reservations, as expressed in the main body of our answers, relate to the balance to be reached between the sought flexibility and the level of prescription to retain in this new framework. Although we agree with the shortcomings of the PRIIPs regime, we also believe some level of standardisation and comparability should be maintained. This is so that investors can make investment decisions with a sufficient level of common information and have the capacity to evaluate and discriminate between various options based on key characteristics. We do not believe that this requires a mandated form of disclosure, but rather that certain information should be required to enable meaningful comparability.

¹ Joint CFA Institute and CFA UK response to FCA CP21-23 (September 2021): <https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cp21-23-priip-proposed-scope-rules.pdf>

As part of our explanation, we express how maintaining sufficient coherence between different international frameworks for investor disclosures continues to be an important part of the debate, both for investors' interests and for the practicality of making regulation more effective in a highly internationalised and cross-border industry.

Given our historical interest in these aspects of investment management regulation, we would be glad to offer HMT the possibility of holding discussions between our expert staffs on this subject. We would be happy to offer our technical expertise on investor disclosures.

We appreciate the opportunity to respond to this consultation and thank HMT for this initiative.

Yours sincerely,



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and the oversight of the [Professionalism Steering Committee](#).

APPENDIX I: About CFA UK and CFA Institute

CFA UK serves nearly twelve thousand leading members of the UK investment profession. Many of our members work with pension funds, either managing investment portfolios, advising on investments, or as in-house employees responsible for pension investment oversight.

The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.

Founded in 1955, CFA UK is one of the largest member societies of CFA Institute and provides continuing education, advocacy, information and career support on behalf of its members.

Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.

For more information, visit www.cfauk.org or follow us on Twitter @cfauk and on LinkedIn.com/company/cfa-uk/.

CFA Institute is the global association for investment professionals that sets the standard for professional excellence and credentials.

The organisation is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.

It awards the Chartered Financial Analyst® (CFA) and Certificate in Investment Performance Measurement® (CIPM) designations worldwide, publishes research, conducts professional development programs, and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.

CFA Institute has members in 162 markets, of which more than 170,000 hold the Chartered Financial Analyst® (CFA) designation. CFA Institute has nine offices worldwide and there are 158 local member societies.

For more information, visit www.cfainstitute.org.

APPENDIX II: Responses to questions

Chapter 2 – The PRIIPs Regulation

Q1a: Do you agree with the description of the various problems with the PRIIPs Regulation as stated above? Are there any other aspects of the regulation that you would like to raise as the government moves beyond PRIIPs into a new retail disclosure regime?

We agree with the way HMT describes the various issues faced by the PRIIPs regulation. In essence, it was trying to be too many things to too many users. A one-size-fits-all approach was by definition going to be difficult to realise efficiently, given the diversity and complexity of investment management services. Focusing on desired outcomes is a better approach.

The subject of investor information and disclosures is critical to the purpose and focus of the work performed by CFA Institute and its member societies. We have long been involved in these discussions, both at UK and EU levels.

We highlight the following statement from the preamble in our previous response to the FCA's consultation CP21/23 on PRIIPs – Proposed scope rules and amendments to Regulatory Technical Standards, completed in September 2021²:

“It has been clear for some time that elements of the current Packaged Retail and Insurance based Investment Products (“PRIIPs”) Key Investment Document (“KID”) detract from rather than assist investors’ understanding of many if not all PRIIPs offered in the market and that, as a consequence, retail investors often do not closely read the KID when they invest in a PRIIP.”

Q1b: Are there any other aspects of the regulation that you would like to raise as the government moves beyond PRIIPs into a new retail disclosure regime?

Whilst PRIIPs was born out of the EU's desire to create a single-market and the clear objective to promote standardisation and comparability, we also believe that an amount of comparability would be still an essential element of the new UK regime to replace the PRIIPs' KID.

We believe the UK should strive for the right balance between flexibility and standardisation. It is of course easier said than done, yet investors do benefit from the capacity to compare and contrast various investment options on key characteristics, when comparability is meaningful and pragmatic. We believe comparability should be an objective across products sharing similar characteristics, for example cash savings,

² Joint CFA Institute and CFA UK response to FCA CP21-23 (September 2021): <https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/2-advocacy/responses/cp21-23-priip-proposed-scope-rules.pdf>

investment funds, or household insurance. In each case, consumers are likely to benefit from being able to compare products which may meet their needs and specific objectives and so reach a more informed decision. The availability of certain key data, calculated in accordance with agreed methodologies, would also support third party comparison sites which may again lead to more informed purchasing decisions by consumers.

As regards investment products specifically, they should be comparable to different degrees at different levels. For example:

- at the highest level we would argue that all investment products should disclose their historic returns and fees in a standardised format; but
- more detailed performance or risk data, however, could be presented in a standard way relevant to the fund or trust's underlying assets – best disclosure should look different for a fixed income fund, an equities fund or a multi-asset fund, for example.

While we understand the need for the new regime (proposed by the HMT and eventually to be regulated by the FCA) to be adapted to the UK's specific circumstances, some degree of coherence with international regimes should continue to be sought. We have to recognise that investment management has developed over the years as a very internationalised industry. Funds and management firms often engage in cross-border services, whether it be to manage funds or market them. Investors and asset managers alike will benefit from documentation that remains sufficiently coherent across these various jurisdictions and service providers.

Chapter 3 – A new direction for retail disclosure

Q2: Do you agree with the principles set out in paragraph 3.2? If not, please explain.

We agree with the high-level purpose and principles of retail disclosure as presented by HMT. We would also add that we believe such disclosures should also be accurate, timely and complete.

CFA Institute is currently in the process of revising the organisation's Code of Ethics and Standards of Professional conduct³.

Of interest to HMT is our intention to add a new standard requiring disclosures relating to the nature of the services and costs and fees of those services. This new standard is part of the section dealing with communications with clients and prospective clients and will strengthen the expectation of members as to how they inform clients of their services and the associated costs and fees.

³ An explanation of our objectives and an exposure draft still under consultation with stakeholders are available at this URL: https://www.cfainstitute.org/en/ethics-standards/education/exposure-draft-code-ethics-standards-professional-conduct?s_cid=eml_Selections_AMER

We note the language used in our proposed standard quite clearly aligns with the principles and the objectives expressed by HMT in its own consultation. We would be happy to hold separate discussions with HMT on this crucial question of investor disclosures. We also would like to emphasise our belief that completeness in the disclosure of costs is essential, highlighting the following objective of the new proposed standard: “It would also strengthen the Code and Standards by extending required disclosure to go beyond the investment process and cover all non-investment-related professional services.”

Q3. Do you agree that retail disclosure should aim to ensure that an investor is empowered to make well-informed decisions related to the product that they are purchasing, rather than focusing on comparability? If not, please explain.

We believe the statement in this question may be contradictory, to some extent. This is because the premise for a decision to be well-informed includes, at least in certain circumstances, the ability to compare information between various options that may be suitable for a given objective.

Empowering investors to make well-informed decisions need not preclude comparability; in fact, we believe a degree of comparability to be necessary in order for a well-informed decision to be made. Both aims can work hand in hand, provided the right level of standardisation is agreed and achieved.

The very concept of value for money involves a degree of comparability between options through a process that provides prospective clients the capacity to shop around to make up their mind.

We understand that HMT is attempting to simplify the framework and focus on the quality and meaningfulness of the information. We agree with this effort. However, we do not think ruling out comparability is either desirable or necessary.

Q4: Do you agree that disclosure requirements should be flexible, with prescriptive requirements for format and structure only when deemed necessary by the FCA? If not, please explain.

Yes, we agree with this premise.

However, reaching this stated balance between flexibility and prescription should involve a process of consultation between HMT, the FCA and the industry. It is important that the financial industry complex (providers, investor associations and regulators) collectively agrees on objectives, principles and rules. The aim should be to achieve an optimal level of disclosure rules, combined with the right amount of prescription on key characteristics (such as performance and fees) and according to the right sub-segments (such as product lines and product types), while not unnecessarily adding to the operational burden on firms. Excessive administrative burden tends to yield the opposite of the desired effect for clients as firms under pressure tend to focus on the letter of the rule and not the spirit of the desired outcome.

We will also respond to the FCA's discussion paper (DP22/6) on this subject.

Q5: Are you content with the decision to resolve the UCITS interaction through empowering the FCA to determine a future retail disclosure regime, as discussed above?

Yes, we agree this approach makes sense.

We have already argued that one unified common rulebook for investment products under scope is the right way forward.

Chapter 4 – A new direction: Delivery

Q6: Do you agree that there is no need to maintain any PRIIPs-related retail disclosure elements in legislation? If not, please explain.

Yes, we agree.

The FCA should be assigned responsibility for designing the rules that fit the principles set out by HMT, including its own consultative process. As outlined in our response to question 1b above, we believe disclosures of key characteristics like performance, risk and costs should allow comparability between similar investments.

Q7: Upon revocation of the PRIIPs Regulation, do you agree with the government's view that the FCA will not require any new additional powers to deliver a retail disclosure regime in line with the objectives stated in Chapter Three? If not, please explain.

We believe some coordination will need to be established to ensure proper transitioning to the new UK regime on retail disclosures, in order to avoid confusion and regulatory gaps, which could cause detriment to consumer experience and trust in the system.

We are of the view that once the UK PRIIPs regime is officially repealed, either a transition period is clearly laid-out, or the new regime should immediately come into force. This will require a clear implementation timeline to be communicated to manufacturers and distributors of investment products.

Specific attention should be given to the status of overseas funds which may still be marketed in the UK according to the provisions of the Temporary Marketing Permissions Regime (TMPR). The new Consumer Duty being implemented by the FCA clearly establishes that overseas funds need to comply with UK law and the prompt introduction of the Overseas Fund Regime to replace the current TMPR would support this and ensure that funds facing a dual regime are paying sufficient attention to and complying with the new UK disclosure framework in a timely fashion.

Q8: Are there any wider obstacles that prevent or discourage firms from offering investment products from different jurisdictions to UK retail investors, and what actions would you suggest that the government take on this issue?

Several dimensions need to be considered, when it comes to the issue of cross-border marketing of investment products:

- *Comparability of investor disclosure rules*

Going forward the EU and the UK will have two different regimes for investor disclosures, designed using different fundamental principles, including the notion of comparability.

Homogeneity between two financial jurisdictions that have been so tightly aligned for decades should not be so quickly jettisoned. A number of funds have historically been marketed across borders and a growing divergence between EU and UK disclosure standards will render such processes likely more complicated or costly, potentially leading to product withdrawals and less consumer choice. We would encourage the FCA to maintain an active dialogue with the EU, which itself recently updated PRIIPs disclosure requirements, so that if the two regimes do end up in costly misalignment, it will not have been for no good reason.

- *Inducements and distribution costs*

The UK has been applying a strict regime as regards inducements with the application of the Retail Distribution Review (RDR) standards and rules. Differing consideration on commission between the UK and EU is making cross-border marketing more complicated and administratively costly. We encourage the FCA to monitor discussions in the EU on the subject of inducements and whether they may lead to convergence or further divergence on share class administration and fee structures.

- *Sustainability disclosures*

Sustainability is another area where the EU (with the Taxonomy/SFDR) and the UK (SDR and fund labels) look likely to start applying diverging investor disclosure standards. This situation is unlikely, in the short term, to improve the clarity of communication with investors. We await the anticipated publication of the FCA's Position Statement on the new SDR regulation in June with considerable interest.

- *Taxation*

The fiscal treatment of investments in funds is another area worth considering, as regards the ease or the difficulty for investors to access or be granted access to a variety of investment options. This subject goes beyond the framework of this

consultation, but we would like to draw HMT's attention to this subject, if cross-border marketing and choice for retail investors are critical objectives of the department.

- *Responsibility of the manufacturer as compared to that of the distributor*

This question is addressed by the FCA in its own discussion paper on the future disclosure framework. Yet, it could be that the UK framework may introduce some variation when compared to PRIIPs on the nature of the responsibility of the manufacturer and that assigned to the distributor. Such variations may further complicate cross-border marketing as firms will need to assess their legal/compliance responsibility according to different principles, and ultimately, different regulatory risks.

Q9: Do you have any views on digital disclosure, and in particular to what degree do you think a less prescriptive disclosure regime will facilitate innovative disclosure formats going forward?

Yes, we support the development of digital disclosure as a way to enhance investor experience and clarity of the messaging, through tailoring and flexibility. We also agree that flexibility in the disclosure framework should facilitate innovation in this field of regulatory compliance.

However, we would like to express a few caveats we believe are important to consider:

- The disclosure framework should continue to be accessible not only to technology-savvy individuals but also those either not so sophisticated with modern technology or who prefer to continue looking at disclosures in a traditional linear format.
- Innovation should always be encouraged, yet within limits, as innovation is not an objective in and of itself. Innovation should not lead to more confusion for investors.
- As we discuss in more depth in our answer to the FCA's discussion paper (DP22/6), the UK framework may introduce some flexibility between the responsibility of the manufacturer and that of the distributor. In this context, we need to better appreciate where innovation will be most felt, perhaps in the presentation of information more than the computation of key data points. Presentation may become a responsibility more directly assigned to the distributor as it is the distributor who ends up determining which pieces of information are most relevant to end-investors' situations.
- Innovation should not result in an elevated risk that manufacturers and/or distributors can alter the information or pre investment disclosures that have been previously provided to investors. Some guardrails are required for the sake of auditing, transparency and fair representation. In this context, digital

disclosures should also provide tracking and auditing capacity for the regulator or investors to verify the information that has been communicated in the past and in a saveable format for the client. This argument is about the durability of the information communicated, which is not to be underestimated if the framework is expected to lead to strong supervision and enforcement capacity on the part of the regulator.

Q10: Do you have views on other priorities for retail disclosure reform that the government and FCA should consider in future? Similarly, are there other challenges or trends in retail disclosure that regulators and policymakers should consider?

Below are potential ideas and issues we think would be worthy of consideration for the retail disclosure reform or its future state:

- In light of the FCA's own discussion paper on the disclosure framework (DP22/6), we think the debate which relates to prescription versus flexibility could be settled by agreeing on the high-level principles of the outcomes we collectively seek to obtain from this reform. We believe the framework should be as prescriptive as possible on the 'what' (the underlying calculation of specific information elements), but flexible on the 'how' (presentation choices), depending on the situation. This is the notion of modularity which we have sympathy for, as it would allow targeted and tailored reporting more suitable for consumers.
- The format of the information to be presented should not be forced from the top-down. A degree of layering would be welcome to ensure key information is systematically presented first. But an overall format should not be super-imposed.
- Modularity could also resolve the important question of whether or how to integrate non-financial information (SDR, sustainability disclosures). If formatting is modularised, then integration of ESG-related information can be adapted to the product or the situation depending on logic and appropriateness, using external links, or live information from other sources.
- The disclosure framework may need to adapt to new instruments, like cryptoassets, in link with the proposed regulation of the sector. We know cryptoassets have been driven largely by retail sectors, therefore, the disclosure framework should stay alert to such developments, and whether specific metrics would be required, for example.
- HMT and the FCA should keep an eye on the scope of application of the disclosure framework, which relates to the future-proofing of the regulation. New product types or structures may be developed; therefore, the framework should be sufficiently flexible or outcome-focused so as to not require extensive legislative effort if regulators believe the scope needs to capture certain new investment forms.