

UK Retail Disclosure

Consultation Response

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Chapter 1

Introduction

1.1 The Chancellor's Edinburgh Reforms, announced on 9 December 2022, set out a package of changes to drive growth and competitiveness in the financial services sector.

1.2 As part of these reforms the government published a policy statement on the approach to repealing retained EU law (REUL)¹ on financial services in order to deliver a Smarter Regulatory Framework tailored to the UK. Retained EU law will be repealed and replaced with rules set by our independent and expert regulators, operating within a framework set by government and parliament.

1.3 The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation is retained EU law which was designed to provide greater transparency and standardise disclosure for retail investors. Recognising significant problems with the disclosure regime, the government announced its intention to repeal the PRIIPs Regulation as a matter of priority as it delivers the SRF.

1.4 As part of the Edinburgh Reforms, between 9 December 2022 to 3 March 2023, the government consulted² on the proposed revocation of the PRIIPs Regulation and an alternative framework for a new UK retail disclosure regime.

1.5 In parallel, the FCA also published a discussion paper³ which explored how to draft proportionate rules to ensure the delivery, presentation and content of retail disclosure is fit for purpose and enhances consumer understanding while also allowing firms to tailor information.

1.6 This publication briefly sets out the proposals in the HMT consultation and summarises the responses received. It also sets out the government's vision for the new retail disclosure framework and further detail about next steps to deliver this reform.

¹ <https://www.gov.uk/government/publications/building-a-smarter-financial-services-framework-for-the-uk>

² <https://www.gov.uk/government/consultations/priips-and-uk-retail-disclosure>

³ <https://www.fca.org.uk/publication/discussion/dp22-6.pdf>

Chapter 2

The PRIIPs Regulation

Background

2.1 The PRIIPs Regulation was first introduced in January 2018 with the aims of providing greater transparency and standardising disclosure. It applies across a wide variety of financial instruments which are sold to UK retail investors, where the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or the performance of one or more assets that are not directly purchased by the investor.

2.2 Following the UK's exit from the European Union, the government transposed the body of EU legislation that applied directly in the UK, to provide stability and continuity for business. The government is now repealing retained EU law (REUL) on financial services in order to deliver a Smarter Regulatory Framework tailored to the UK. This includes the PRIIPs Regulation. Given that there are fundamental issues with the current PRIIPs regime, as set out in the consultation, the government has prioritised reform of this regulation.

2.3 In particular, the existing PRIIPs regime has issues in the following areas:

- Prescriptive format requirements have not led to improved consumer understanding, and are overly burdensome for firms to produce
- The objective of comparability across such a wide variety of products has led to misleading information being presented to retail investors e.g. on risks and costs
- Some feedback suggested that the compliance costs associated with the PRIIPs Regulation has dissuaded some firms from making their products available to UK retail investors, reducing consumer choice

Summary of Responses

2.4 There was strong agreement from all respondents with the description of the problems with the current PRIIPs Regulation as set out in the consultation (**Question 1**) and stakeholders welcomed the government's consultation.

2.5 In particular, respondents highlighted their concerns with the misleading nature of some information – specifically relating to cost

and risk disclosure – contained within the PRIIPs Key Information Document (KID). More broadly, many respondents called for the government to reform the cost and charges disclosure requirements established under the Markets in Financial Instruments Directive (MiFID II), to improve how costs are presented to retail investors under the new regime.

2.6 Some respondents also suggested that as well as reducing consumer choice, the PRIIPs Regulation may have contributed to distortion within the market for some products, notably in relation to cost disclosure methodologies artificially increasing the costs of certain products. Therefore, several respondents suggested the government should review the scope of the regime, with a view to removing certain categories of products from disclosure requirements.

2.7 A minority of stakeholders proposed that the government should undertake a more holistic review of disclosure requirements alongside the focused review of the PRIIPs regime.

Chapter 3

Framework for the New Regime

Summary of Responses

3.1 The consultation set out a vision for the new retail disclosure regime which will address the significant issues with the current PRIIPs Regulation and will ensure firms can provide more useful disclosure to UK retail investors. Accordingly, the government outlined the key guiding principles they envisage for the new regime and welcomed feedback (**Question 2**).

Box 3.A Government Principles for the New UK Retail Disclosure Regime

- To ensure that retail investors have access to clear and useful information to make evidence-based decisions for their prospective investments
- To ensure that the disclosure that retail investors receive is proportionate to the risk that they are taking in purchasing an investment product and the complexity of the decision that they are making
- To provide additional choice for retail investors, and to reduce burdens for firms

3.2 The majority of stakeholders agreed with the government's proposed principles for the new regime, highlighting in particular the importance of ensuring retail investors have access to clear and useful information. However, several respondents called for the government to provide greater clarity on how a 'proportionate' burden could be defined, noting that what is proportionate may differ depending on the type of investment product.

3.3 The consultation sought comments on the proposal that, unlike the current regime, ensuring an investor is empowered to make well-informed decisions about specific products, rather than focusing on comparability, should be the primary objective of disclosure (**Question 3**). This was supported by most respondents. However, around a third of responses also suggested that the new regime should facilitate

comparability across similar investment products. This was often based on the view that comparable information for similar products is an important tool to allow consumers to make well-informed investment decisions.

3.4 The consultation also asked for views related to disclosure requirements and whether these should be flexible, with prescriptive requirements for format and structure only when deemed necessary by the regulator (**Question 4**). There was strong agreement from most respondents with the proposed approach, with numerous responses recognising that the FCA should be able to tailor the regime as necessary, based on market specifics.

3.5 However, a significant proportion of responses also said that the FCA should require some standardisation for key information needed across all products, notably in relation to the methodologies used to calculate costs and risks.

3.6 As set out in the consultation, Undertakings for the Collective Investment in Transferable Securities (UCITS) are currently exempted from having to produce a PRIIPs KID, in favour of a separate disclosure regime. Given the similarities between products marketed to retail investors under both regimes, it is the government's intention to integrate both PRIIPs and UCITS disclosure in the future retail disclosure regime. The consultation asked for views on this proposal (**Question 5**).

3.7 Whilst many respondents did not comment on question 5, there was strong support for the government's proposal amongst stakeholders who were familiar with UCITS vehicles. They commented that this approach would provide greater certainty for businesses and align disclosure requirements across similar products to enable consumers to make well-informed decisions. A handful of respondents noted they would like to see further detail on how UCITS would be brought into the new regime, including proposed timings.

Government Response

3.8 The new UK retail disclosure regime is intended to deliver on the government's ambitions for a new, UK-specific regime that works effectively for the UK's dynamic capital markets and fosters informed retail investor participation in those markets.

3.9 Recognising stakeholder feedback, the government will ensure the FCA has all the tools it needs to design a new regime, and in particular one which carefully considers the concerns raised in relation to:

- products in scope of the new UK disclosure regime;
- accuracy of disclosure information, and;

- balances flexibility with comparability to ensure consumers are provided with the appropriate information to make effective investment choices

3.10 As set out in the consultation, the government believes the FCA has the right set of objectives and principles to appropriately consider the issues above as it makes rules relating to retail disclosure.

3.11 As indicated in the consultation, UCITS vehicles will be brought into scope of the new retail disclosure regime. The government and FCA will provide clarity on the transition period from current disclosure requirements (for both packaged products and UCITS) as further detail of the new regime is set out.

Chapter 4

Delivery

Summary of Responses

- 4.1 The detail of the future disclosure regime will be held in FCA rules.
- 4.2 The government has proposed entirely revoking all PRIIPs-related retail disclosure elements from legislation, on the basis that the FCA will deliver a new UK-specific retail disclosure regime, via its rules **(Question 6)**. There was near-universal support for this approach and no respondent noted specific elements of retail disclosure that should be retained in legislation.
- 4.3 A few respondents did note they would appreciate greater clarity about how the FCA will translate the government's principles, as set out above, into their new rules.
- 4.4 The consultation also suggested the FCA would likely not require any new additional powers to deliver the future regime and sought views on whether the FCA could meet the government's principles for the new regime without any additional powers **(Question 7)**.
- 4.5 Many respondents did not comment on this question, although those that did often agreed with the government's view. However, a few stakeholders did suggest the FCA may need additional powers to apply the new retail disclosure regime to overseas funds which are sold to UK retail investors.
- 4.6 A minority of responses also called for the FCA to be given powers to review MiFID II costs and charges disclosure, which is beyond the scope of this consultation.

Government Response

- 4.7 The government intends to proceed with its plan to entirely remove all PRIIPs firm facing retail disclosure requirements from legislation. The FCA will be able to deliver a new retail disclosure regime which is tailored and proportionate to the UK market. This will support UK businesses, whilst maintaining the appropriate disclosure for retail investors to make informed decisions.
- 4.8 In the consultation, the government originally suggested that the FCA would likely need no additional powers, beyond their existing powers under FSMA, for the new retail disclosure regime. However, further detailed analysis carried out by HMT and the FCA on the FCA's perimeter over the course of the consultation period has shown that, to

support effective implementation of the new regime, the FCA will require some additional tailored powers. These powers will ensure the new retail disclosure regime applies obligations to:

- a) **Certain unauthorised firms** – which make up a substantial part of the PRIIPs market and are currently subject to directly applicable obligations under the existing PRIIPs regime. These obligations will fall away when PRIIPs is repealed. The government is considering how best to preserve appropriate obligations over certain unauthorised firms under a new retail disclosure regime.
- b) **Overseas Funds** – Some respondents noted that the FCA should be able to apply disclosure standards to overseas funds to ensure there is a level playing field for UK funds and appropriate information for UK retail consumers. The government recognises the importance of overseas funds providing disclosure to UK retail investors and will ensure the new regime facilitates this.

4.9 The government will set out further detail on the FCA's powers over certain unauthorised firms and overseas funds for the new regime in due course.

4.10 The government also notes the feedback provided on MiFID II cost and charges disclosure in responses to this consultation. Recognising the importance of this matter to business, the government will reflect on this feedback as it repeals and replaces the remainder of the MiFID II framework in due course.

Chapter 5

Wider Issues

Summary of Responses

5.1 The reforms proposed in this consultation will resolve the clear issues in the current PRIIPs Regulation. However, the government is also considering wider issues facing retail investment and disclosure, including future challenges, to ensure the UK's new regime is fully effective.

5.2 Accordingly, the consultation asked a series of broader questions regarding retail investment and disclosure.

5.3 First, it asked if there are other obstacles preventing or discouraging firms from different jurisdictions from offering investment products to UK retail investors (**Question 8**).

5.4 Many responses focused on the ways that PRIIPs retail disclosure requirements can act as a barrier to UK retail investors accessing certain overseas funds, for example US Exchange Traded Funds.

5.5 Some responses suggested that the government should ensure the new UK regime aligns with international standards for disclosure to ensure that the cost burden for producing disclosure is minimal for overseas firms. A small minority of respondents went further, proposing that the government accepts disclosure documents from other jurisdictions, in place of UK disclosure, to increase availability of international investment products.

5.6 Other issues raised included taxation and the need for more detailed guidance for overseas firms on how to comply with UK disclosure requirements.

5.7 The consultation also sought views on digital disclosure, noting that a more flexible approach to disclosure could facilitate innovative disclosure formats (**Question 9**). Respondents were widely supportive of a move to digital disclosure, recognising its opportunities for innovation, including:

- Enabling disclosure via novel formats, e.g. video, which would permit firms to layer data to enhance consumer understanding
- Providing opportunities to share disclosure at different points along the consumer journey to improve engagement with disclosure by retail investors
- Facilitating the personalisation of disclosure documents to suit individual consumers' circumstances

5.8 Some respondents thought that digital disclosure should be the default in the new regime whilst others cautioned that there is a need to ensure disclosure remains accessible to all. Several responses suggested the ‘durable medium’ requirement should be reviewed.

5.9 Finally, the consultation welcomed thoughts on other priorities for retail disclosure reform the government and FCA should consider **(Question 10)**. Many respondents used this question to reiterate their support for the government’s decision to review retail disclosure and highlight their responses to earlier questions.

5.10 Several stakeholders commented that the new regime needs to strike the right balance between the level of detail for retail investors and burden on firms to produce disclosure. Responses also highlighted the need to carefully align the regime with other reforms to disclosure, including the FCA’s Consumer Duty and new sustainability disclosure requirements.

Government Response

5.11 The government thanks respondents for their reflections on these wider issues and will carefully consider these responses as it considers the development of a new framework for retail disclosure.

5.12 The FCA will also consider these responses during the design of new rules related to retail disclosure.

5.13 In their December 2022 Discussion Paper, the FCA set out their view for a future-proofed, technology neutral regime, which would enable firms to balance digital developments with accessibility concerns. We expect the FCA to deliver policy based on this shared view of good disclosure, responses to this discussion paper, and under the obligation to consult on any proposed policy.

Chapter 6

Next Steps

6.1 The government welcomes the feedback to this consultation and the strong support from respondents for the proposed direction of the new UK retail disclosure regime.

6.2 Following the publication of this consultation response, the government will publish a draft Statutory Instrument by 2024 to enable the FCA to deliver the new retail disclosure regime, following the repeal of the PRIIPs Regulation (and related secondary legislation).

6.3 The FCA will also publish a consultation paper seeking industry feedback on their draft rules for the new retail disclosure regime, building on the principles discussed in this consultation and their December 2022 Discussion Paper.

6.4 To provide certainty to industry and support them as they adapt to the UK's new tailored retail disclosure regime, there will be a period of transition prior to the new FCA retail disclosure rules coming into force. The government and FCA will ensure that there is no gap between the old regime being removed and the new regime being put in place, to ensure certainty and minimal costs for firms.

6.5 Further detail about this transitional period, and the intended change in disclosure requirements for UCITS vehicles, will be communicated in due course.

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