

EU Proposals on Retail Investment Products
Views of the IRSG Working Group on Retail Investments -2 November 2012

Introduction

1. The International Regulatory Strategy Group of TheCityUK and the City of London Corporation has established a cross-sectoral Working Group of member firms and other stakeholders to review the European Commission's Proposals for a Regulation on Key Information Documents for investment products. This Working Group includes banks, insurance companies, asset management and securities firms. The present note sets out the preliminary views of the Working Group.

Restoring confidence in retail investment markets

2. We welcome the conclusion of the European Commission's review of the retail investment market and the publication of a formal legislative Proposal for a Regulation on Key Information Documents for investment products. Investor confidence in retail investment markets is a vital component of a well-functioning financial market. Restoring consumer confidence in financial markets is an important policy objective which will promote consumer engagement in financial markets thereby promoting renewed investment in the European corporate sector supporting economic recovery, jobs and growth.
3. We have a strong interest in promoting a high level of consumer engagement in financial markets and welcome the Commission's initiative. However we have a few concerns set out below regarding specific aspects of the proposals which could disrupt the proper functioning of the retail investment market. These aspects could be replaced by less disruptive measures which could achieve the same policy objectives.

Scope of the Proposals

4. The Commission has included in scope investment products and excluded from scope insurance protection products, bank deposits, securities, occupational pensions and pension products for which a financial contribution from the employer is required (Article 2, Proposal). We believe that the envisaged scope of investment products is broadly right. The key test here should be whether products compete in the same market. This means for example that asset linked and structured deposits should be within scope. The exact scope should be clarified in later versions of the Proposal including clarifying whether wrapped products such as ISAs in the UK market are included in scope.

Definitions

5. We are concerned that the definition of investment product manufacturer as currently drafted could lead to a number of intermediaries in the retail investment chain being defined as investment product manufacturers because of the costs associated with their services (Article 4 (b) (ii), Proposal). Although it is unlikely that this is what is intended, we believe that this should be clarified in later versions of the Proposal.

Sales rules for retail investment products

6. This Proposal is complementary to other Proposals which are currently under consideration by the European Parliament and Council of Ministers including the Proposals on MiFID II and the IMD II. These other Proposals concern the way investment products are sold to retail investors both by intermediaries and through direct sales by product manufacturers.
7. We are of the view that splitting sales rules for investment products between MiFID II and the IMD could lead to discrepancies arising in the rules for non-insurance investment products under MiFID II and insurance investment products under IMD II. Any such discrepancies could undermine the Commission's broader policy objectives of achieving consistency across products serving similar investment needs and lead to product bias.
8. We are of the view that a single sales regime for all investment products would have been preferable. In its absence, the Working Group invites the European Institutions to treat these Proposals as a single endeavour and to ensure complete read-across from MiFID II to IMD II. MiFID II is currently being finalised by the European Parliament and the IMD discussions are just beginning so there is ample scope to ensure complete consistency across these texts.

Form and content of Key Information Document

9. The Commission has proposed that the Key Information Document should be drawn up as a short document (Article 6, Proposed Regulation). There is provision for the inclusion of additional information which is necessary for the retail investor to take an informed decision (Article 8 (3)).
10. We are of the view that the document should remain short (2-3 pages) and that sign posting to other documents should be permitted. As a short document this cannot contain all the information needed on the investment product. Therefore liability should be limited (see further paragraph 13 below).
11. We welcome the inclusion of the title "What are the risks and what I might get back" (Article 8 (2) (e)). However we are concerned that a summary indicator is potentially misleading, unworkable in practice and likely to exclude non-market risks including liquidity and counterparty risk. The Working Group is of the view that risks to investors should be disclosed through an explanatory text on the key market and non-market risks to which the investment is exposed. This should also apply to the UCITS KIID.

Proposals on Legal Liability for the Key Information Document

12. The Commission has proposed a strict liability regime for product manufacturers (Article 11, Proposed Regulation).
13. We believe the proposed liability regime to be inappropriate, unworkable in practice and likely to create divergences in treatment of investors across the EU in the absence of a harmonised civil liability regime across the EU. We are of the view that the approach set out in the UCITS IV Directive

(Article 79(2)) providing for a limited liability regime should be followed in the PRIPs Regulation. Liability needs to be limited because this Key Information Document cannot include all the information needed on the investment product.

Provision of the Key Information Document to retail investors

14. The Commission has proposed that the KID shall be provided in good time before the conclusion of a transaction relating to an investment product (Article 12 (1), Proposed Regulation). In the case of distance communications such as where a retail investor instructs a broker over the phone or makes a purchase via an online platform the KID can be provided immediately after the conclusion of the transaction (Article 12 (2), Proposed Regulation).
15. We welcome the derogation contained in Article 12 (2) which should protect the efficiencies of execution only brokers and online platforms thereby facilitating purchases of retail investment products. This approach should apply to the UCITS Directive too.
16. The approach in the Proposal to only require the KID to be sent to retail investors should be followed in the UCITS Directive too.
17. For discretionary business, the discretionary manager- rather than the retail client – should be viewed as the recipient of the KID (as per the UCITS KIID).

Dispute resolution

18. We note that the provisions on ADR require the procedure to result in decisions which are not binding on the investment product manufacturer. We are concerned that this could represent a significant downgrading of investor protection.