



May 2008

Reviewing the adequacy of EU rules on product disclosures and distribution

In anticipation of the industry workshop organised by the European Commission (the "Commission") on 22nd May 2008 in Brussels, the "Fédération Européenne des Conseils et Intermédiaires Financiers" ("FECIF") which represents nearly 300,000 registered individuals thru 46 national associations and 12 pan European commercial networks has some general comments to make on the various issues raised by the Commission.

INTRODUCTION

We are in full agreement with the simple definitions used by the Commission to identify the parties involved rightly described as 'manufacturer' and 'intermediary'.

We agree also with the set of generic investor protection principles or 'benchmarks' described in the Commission paper, which should be respected by manufacturers and intermediaries when investment products of all types are sold to retail investors.

Accordingly, such basic principles should be capable of application not only to the full spectrum of retail investment products, irrespective of their legal form, but also to all distribution channels through which such products are sold. Equality of treatment (and rules applicable) between intermediaries and manufacturers must apply fully.

However, the Commission should remember that the cost to apply regulation may represent 3% of the total administrative expenses of a manufacturer against up to 30% for a small intermediary firm!

The application of such basic principles in our opinion should be monitored thru a system of co-regulation by the representatives of the industry and the representatives of the consumers.

Our industry represents 4,500,000 European citizens servicing 90,000,000 European consumers.

According to statistics, more than one third of them will rely more easily on the assistance of an intermediary than buying directly from a manufacturer a product or a service.

Let us make sure at this stage that new regulation, over-regulation; gold or even platinum plating would not push out of business 600,000 intermediaries with whom millions of consumers feel confident to deal with!

Incidentally, there is an estimate to indicate that 20% of the administrative work force of the financial services industry i.e. 500,000 men and women in Europe are exclusively devoting their time at managing compliance issues of various nature (AML legislation,

etc.) which means that gold plating is at least creating jobs if not creating any added value to the business...

Voltaire said “Le mieux est l’ennemi du bien” (The perfect is the enemy of the good). Principles (such as the benchmarks defined by the Commission) should be the rule and regulation the exception.

1. Approaches to investor protection

It should be clear that investor protection may be an objective, but the final responsibility for the selection of an investment must lie with the consumer.

The manufacturer and the intermediary have a duty of information, but no responsibility in the final decision process to buy or not to buy a product and/or a service.

We must assume that the European Union is populated by adult and responsible citizens.

Some basic teaching of economy, saving management, etc. should probably be organised at school level but this is the duty of the governments, not the role of the manufacturers or the intermediaries.

We may be able to help (and some of our members national associations are working on it) but this is a project which must be supported with public funding.

We cannot believe at FECIF that some representative of the consumers would like to create a category of irresponsible consumers which would rely exclusively on the government to guide the selection of their saving policy: this would lead to the most anti-democratic expression of society.

2. Product disclosures

Few basic principles:

- Transparency and simplicity should be the rule
Regulation limits the efficiency of transparency and simplicity
- Intermediary must understand the products it distributes and must accept responsibility for the documentation it will present to the consumer
- It means that beside the “KYC” (Know-Your-Client) principle, there is a “KYM” (Know-Your-Manufacturer) duty also on the side of the intermediary
- Term sheet, etc. should be adapted also to the type of consumer targeted by the manufacturer and/or the intermediary

Accordingly, there is another obligation for the manufacturer – this is a proper “KYI” (Know-Your-Intermediary) process: unfortunately, so far, most manufacturers are

focusing exclusively on compliance issues (checking on licensing, application of AML procedures, etc.) and very little on the quality of service to the consumer. Very often, the true interests of consumers are neglected to concentrate on costly and time consuming compliance procedures.

This is the negative effect of the excess of regulation penalising the industry today.

Inflation of information could have another negative effect on consumers: exclusion of consumers not enjoying accurate or sophisticated financial literacy level. The people being most at risk of being excluded from financial services could be aging persons, persons with no university level degree, etc.

3. Marketing / advertising

Trust in institutions is low because they are seen as “product pushers”. There is a general lack of trust in the objectivity and competence of bankers or insurers.

This is why such a large number (more than one-third) of consumers feel the need to refer to intermediaries or alternatively to a friend, an uncle, etc. as they view their bank manager or insurance agent as a salesman who lacks sufficient expertise to offer valuable independent advice.

4. Conduct of business

Some of the problems/solution identified so far are:

- The need for a higher training and prudential standards for intermediaries subject it does not increase the level of compliance requirement, etc.
- A reduction in commission based selling but this seems extremely difficult to achieve taking into account the reluctance of consumers to pay for advice
- The option to offer full in-depth advice only to consumers able to pay a fee, and elementary advice only for those unable to and who would otherwise be financially excluded

In order to enable consumers to have sufficient confidence in the retail financial products market and to use it more often, there is a need for changes of the landscape. The UK regulator is working on certain proposals suggesting:

- The development of a class of advisers, who must be independent so that investors can easily distinguish between sales and advice. This envisages the elimination of tied advice which would create problems in certain member states such as Italy or Germany
- Clear definition of the role of the salesman, who do not give advice as you cannot properly advise an investor without going fully into their needs and demands

- The development of a concept of “Money Guidance”, sort of generic advice intended to address current levels of financial awareness amongst consumers

Distributors of investment products – whether product manufacturers themselves or intermediaries – should treat retail investors honestly, fairly and professionally Irrespective of the distribution channel employed (including distance marketing and internet-based sales) or the legal form of the product sold.

5. Conflicts of interest

It is obvious that intermediaries selling products must be labelled “sales people” rather than advisers.

Those offering advice would have to recommend products from the whole market (as rightly and clearly spelled out in the Insurance Mediation Directive) – and may be paid by commission determined by manufacturer subject the consumer is informed and has approved this mean of remuneration better than payment of a fee to the intermediary.