

Karen Northey
Asset Management and Funds Policy
Financial Conduct Authority
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Dear Karen,

FCA Practitioner Panel response to CP17/18: Consultation on implementing Asset Management Market Study remedies and changes to Handbook

We welcome the opportunity to provide feedback to the remedies outlined in this Consultation Paper and continue to support the objectives of the Asset Management Market Study.

We await with interest the continued consultations on the Asset Management Market Study and further work on the full value chain, including the Investment Platforms Market Study and the review of Retail Distribution Review in 2019.

Chapter 3: Measures to improve fund governance

Overall, it is helpful that the FCA have decided not to seek to apply fund governance models from elsewhere which would not sit comfortably with existing structures. Whilst the proposals on fund governance do not appear too onerous, they will still result in an increase in costs and therefore need to be justified in terms of material benefits for clients.

A new Value for Money rule (Q1-Q4)

Q1: Do you agree that we should introduce a specific rule requiring AFM boards to assess value for money?

We welcome the FCA's decision to list criteria which are used to determine whether value for money has been achieved. Also, it is helpful that the FCA have now published the Terms of Reference for the Investment Platforms Market Study. Consideration of that part of the market will have a bearing on aspects of CP17/18, particularly in relation to value for money.

Q2: Do you agree with the specific requirements of the assessment? If not, what additional or alternative elements should be included?

As nearly all of the proposed criteria relate to cost, the Panel is of the view that other components of the assessment need to be taken into account. Any judgement of value for money, seen from an investor's perspective, needs to take account of the whole value chain, including platforms and advisers.

In addition, considerations of value for money need to cover issues such as product design, performance and risk. The concept of value for money involves subjective judgements which do not easily lend themselves to prescriptive measures or frameworks. There must also be a role for advisers in considering whether or not their clients are getting value for money. The regulator needs to be clear that value for money does not just equate to the lowest cost and it should be judged in its broadest sense (including investor outcomes).

Regarding specifically economies of scale in funds, there are a range of issues which need to be considered, including how open ended funds fluctuate in size (but fluctuating charges may not be helpful to investors), how to achieve fairness between generations of investors, how managers manage capacity which, when it is scarce, may merit premium pricing, and how to ensure that barriers to entry are not inadvertently created. It will also be important to ensure that providing explanations as to why a manager may not have passed on savings to investors does not become overly bureaucratic or lead to information overload.

Q3: Do you agree with the planned implementation period of 12 months? If not, what alternative timeframe would you suggest?

The FCA should consider implementing the value for money assessment requirement after the arrival of the independent directors and not concurrently, as the independent directors would presumably want to have a say in how this exercise is conducted. Concretely, this could mean a 2-3 year implementation period.

Q4: Do you agree with the proposed requirement for the AFM to publish a report on the findings of the assessment and the steps taken?

We agree that a report should be published on the findings of the value for money assessment and the steps which have been taken, as with workplace pension funds. At the same time, as stated above, it will be important to ensure that providing explanations as to why a manager may not have passed on savings to investors does not become overly bureaucratic or lead to information overload rendering this requirement disproportionate.

Independent Directors (Q5-Q10)

Q5: Do you agree with our proposal to require AFMs to appoint independent directors to the board? If not, what alternative(s) would you propose?

We are supportive of proposed changes to the governance structure being aligned with the Senior Managers and Certification Regime (SM&CR).

Q6: Do you agree with the proposed proportion of independent directors (at least two and not less than 25% by number)?

FCA Practitioner Panel members have nothing to add.

Q7: Do you agree with our approach that independent directors may serve on more than one board, provided that they comply with existing rules? If not, do you think a ban on serving on more than one board is necessary?

We agree that independent directors should be able to serve on more than one board. Due to time constraints, there should be a limit on the number of boards which an independent director can serve on.

Q8: Do you agree with the proposed requirements for being an independent director? If not, what alternatives do you propose?

The proposals around requirements to appoint independent directors are sensible given the alternatives proposed in the interim report which included Independent Governance

Committees. We suggest that the FCA should consider whether there are any specific qualifications which should apply to an independent director, as with pension fund trustees.

Q9: Do you agree with an implementation period of 12 months? If not, how much time do you think AFMs will need to appoint suitable independent directors?

Considering the number of priority initiatives for asset managers at the moment, including Brexit and MiFID2, we suggest an implementation period of two years (or 12 months on a best endeavours basis).

Q10: Do you agree that it should be up to AFMs to decide whether to appoint an independent director or an executive director as chair?

Yes, we agree that this decision should be up to the AFMs. In addition, we note a discrepancy between CP17/18, which proposes allowing the AFM to determine whether the Chair is independent, and the SM&CR consultation (CP17/25), which requires the Chair to be independent.

Chapter 4: Moving fund investors to better value share classes

Q11: Do you agree with the proposed modification of FG14/4? If not, what alternatives would you propose?

We welcome the FCA's policy intent to modify the guidance regarding switching investors out of pre-RDR share classes and support the required conditions set out in 4.10.

The Panel understands that the current FCA expectations of multiple contacts with thousands of unitholders in order to proceed with a bulk switching are unfortunately retained in the revised guidance, which renders it unworkable. We recommend the ability to proceed with a bulk switching to a cheaper share class upon approval from the trustee / depositary, provided that the best interest and substantially same rights of the existing investors are retained.

Overall, it will be important to ensure that the requirements in terms of justification, communication to unitholders and record keeping are not too high. Switching from a more expensive share class to a cheaper one, with all other factors remaining constant, should mean that the necessary processes can be kept to a minimum.

Trail commission (Q12-Q14)

Where trail commission continues to be paid, there appears to be a disconnect between the call for information (in order to identify whether there is genuine evidence of harm) and the wording of Questions 12-14 which seem to presume that there is harm.

Chapter 5: Ensuring Fairer Treatment of Dealing Profits

Box profits (Q15-Q17)

FCA Practitioner Panel members have nothing to add.

Chapter 6: For discussion: extending the scope of our proposals to other retail investment products

Read-across (Q18-Q25)

Proposals to extend the scope of these requirements to other retail investment products such as unit-linked funds and with-profits business are disproportionate as these already have governance arrangements.

In relation to Independent Governance Committees, the degree of consumer protection that is required for individuals who have actively chosen to invest is different from the degree of consumer protection that is required on auto-enrolment business where individuals end up invested with little or no engagement. Independent Governance Committees on unit-linked and with-profits business, therefore, also feels disproportionate.

We do not feel that it would be appropriate or proportionate for the FCA to consider introducing similar rules to investment companies, as they already have fully independent boards and industry guidance (Association of Investment Companies) on how to evaluate the fund manager.

Yours sincerely,

Anne Richards
Chair, FCA Practitioner Panel