

Danish Shareholders Association

European Commission
DG MARKT – G4

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Need for a Coherent Approach to Product Transparency and Distribution Requirements for “Substitute” Retail Investment Products?

MiFID has only been working a short period. We have not been able to register any changes yet, but it might come.

The main challenges are:

Consumers are not aware of their own needs, financial capacity and limitations.
Consumers are not trying in a serious way to compare different products with their each other and with their own needs.
Consumers need financial education and easy-to-use tools.

The average consumer in Denmark needs a financial advisor.

Some consumers know everything and are able to operate on the internet buying domestic and foreign products.

Financial firms (both producers and distributors) are in business to earn money.
Financial firms do not see disclosure as a natural obligation.
Some products give better profit than other products.
The front-line people in the financial sector need education so that they really know the products and are able to explain them to the customers.
Productivity based earnings for the front-line people can distort their ideas about whom they shall serve.

Financial firms and the people working there know their own products better than the products from the neighbour. They know very little about products from other countries.

***Question 1:** Do you see that different regulatory treatment of substitute products gives rise to significant problems? Please explain why you consider this to be the case.*

Yes, we see that. The pre-sales information given to retail investors differs in quality. That makes it difficult for investors to make a well-considered investment decision.

Question 2: Do you regard the perceived concerns relating to different levels of product transparency and intermediary regulation as a significant threat to the further development of EU markets for retail investment products?

strongly agree somewhat agree no opinion somewhat disagree strongly disagree

Question 3: Is it appropriate to regard different retail investment products as substitutable – regardless of the legal form in which they are placed on the market? Which of the products listed below should be considered as substitute investment products?

- UCITS funds	<input type="checkbox"/> yes	<input type="checkbox"/> no
- nationally regulated retail funds	<input type="checkbox"/> yes	<input type="checkbox"/> no
- exchange traded or listed funds	<input type="checkbox"/> yes	<input type="checkbox"/> no
- unit-linked life insurance (especially which mortality risk level is small or nil)	<input type="checkbox"/> yes	<input type="checkbox"/> no
- retail tranches of structured notes	<input type="checkbox"/> yes	<input type="checkbox"/> no
- some annuities;	<input type="checkbox"/> yes	<input type="checkbox"/> no
- some bank term deposits (e.g. with embedded optionality or structured deposits)	<input type="checkbox"/> yes	<input type="checkbox"/> no
- others ... (please list and describe)	<input type="checkbox"/> yes	<input type="checkbox"/> no

What are the features/functionalities (holding period, exposure to financial/other risk, capital protection, diversification) that lead you to regard them as interchangeable? Have you encountered any legal or other definition which would encompass the range of 'substitute investment products'?

All retail investment products are substitutable. One of the problems is that retail investors often have an extremely vague idea about their needs. Consumers invest in securities, a residence, a pension scheme, a tax reduction or tax postponement etc. The tax advantage or the possible gain will often be the decisive factor as explained by the sales person in the commercial bank acting as an advisor.

To the list of products could be added:

- Residence
- Securities (shares, bonds)
- Bank managed investment schemes (wrapped investment in UCITS or other funds)

Question 4: Which factors in your opinion drive the promotion and sales of particular investment products? Please use the table to rank these factors in terms of importance (very significant; significant; no opinion; insignificant) for each of the different products. In addition to completing the table, we would welcome further explanation of your view as to which factors are particularly important for each product.

	UCITS	Non-harmonised funds	Unit-linked life insurance products	Retail structured products	Annuities	(Structured) Term deposits	Others
Taxation							
Financial innovation							
Cultural preferences							
Distribution models							
Regulatory treatment							
Others							

In Denmark is the number of independent investment advisors even more limited than the number of insurance advisors.

The promotion and sales of particular investment products is driven by the economic expectations of the producers and distributors. They will promote and try to sell what is most attractive to them. This goes for the firms as well as for the employees. Many consumers will follow this so-called advice.

Consumers are very different. Ranging from the experienced consumer searching the Internet for investment possibilities to the innocent consumer who is totally unaware of his own economy and possibilities and is placing money as he is advised to do.

The typical consumer in Denmark owns his residence and a high proportion of his economic possibilities are tied to the financing of the residence and to the development in property prices. He has a mandatory pension scheme related to his employment. He might have a life insurance. In addition to this he might have a pension scheme with his bank, made attractive by the taxation. If he has extra liquidity he will invest in securities or UCITS.

The most important investment decisions are the financing of the residence and the mandatory pension scheme.

When buying the residence the consumer is focussing on the residence. What shall be done? Will it be the right place for the family? The financing is arranged as the real estate agent and the bank people propose.

When the consumer gets a new job he will be introduced to the pension scheme by someone in the HR-department, by a representative of the company producing the pension scheme or by an independent advisor. Normally the choices are limited. The possibility of choosing a unit-linked scheme is now common.

For other activities most consumers will ask their bank or get proposals from the bank.

Question 5: Product disclosures: Do pre-contractual product disclosures provide enough information to help investors understand the cost and possible outcomes of the proposed investment? Please use the attached tables to provide your evaluation of the adequacy of the information provided with regard to the following items for each category of investment product.

Nature of information provided	UCITS	Non-harmonised funds	Unit-linked life insurance products	Retail structured products	Annuities	(Structured) term deposits	Others
Product features							
Direct costs							
Indirect costs (or foregone performance)							
Risks							
Capital guarantee							
Likely performance							
Conflicts of interest							
Compensation or fee retrocession							

The crux of the question is not if product disclosures provide enough information but if product disclosures provide relevant information in a form that is understandable to consumers and can be used to compare different products.

In daily life are the documents showing product disclosures often provided at a late stage of the decision making process. The consumer will in many cases get the disclosure documents together with a copy of the signed agreement.

Question 6: Conduct of business rules: Do differences in conduct of business regulation result in tangible differences in the level of care that different types of intermediary (bank, insurance broker, investment advisor/firm) offer to their clients? For which conduct of business rules (know-your-customer, suitability, information/risk warnings) are differences the most pronounced and most likely to result in investor detriment?

	UCITS	Non-harmonised funds	Unit-linked life insurance products	Retail structured products	Annuities	(Structured) Term deposits	Others
Know your customer							
Suitability or appropriateness							
Risk warnings							
Examples - information							
Others							

Consumers have trust in the professionals who are guiding them when they make their economic decisions. Consumers expect the persons who know more about economy than the consumer and who often knows the economy of the consumer to give individual made-to-measure advice. Consumers do not expect the "advisor" to follow the "recommendation of the week".

Consumers are hardly aware of conduct of business rules and not at all of differences in the conduct of business rules.

It happens that conduct of business rules are not followed. This can not be changed by more and more demanding conduct of business rules but only by more supervision, higher risk of being caught and punished.

Question 7: Conflicts of interest: Are there effective rules in place to ensure effective management/disclosure of conflicts of interest (and/or compensation arrangements) by the different

categories of product originators and/or intermediaries for the different types of investment product? For which type of product do you see a regulatory gap in terms of the coverage of conflict of interest rules? Please explain.

The MiFID rules are fine, but we do not know yet if they are working as we hope.

Question 8: *Unfair marketing / misleading advertising:* *Is the risk of unfair marketing / misleading advertising more pronounced for some product types than for others? If so, why? Can you point to concrete examples of the mis-selling of the different types of investment product resulting from unfair marketing / misleading advertising?"*

The risk of unfair marketing, misleading advertising etc. is most pronounced for the products with the highest profit. The possibility of high profit develops greed and greed leads to negligent behaviour in relation to legislation, fairness and protection of customers.

Marketing of structured products by direct mail focussing on the possibility of a gain to customers who have informed the bank, that they do not want structured products.

Question 9: *Is a horizontal approach to product disclosures and/or to regulation of sale and distribution appropriate and proportionate to address the problems that you have identified? Can you specify how this objective of coherence between different frameworks would address the problems? What are the potential drawbacks of such an approach?*

A horizontal approach to product disclosures etc. would make the rules easy to understand. The approach should start with the consumer. The task is to give the consumer a fair chance to understand the products and the choice she is going to make. The regulation today is to a large extent working with the relationship between the supervisor and the financial firm. The regulation defines how the firms shall behave and if they do something wrong it is up to the supervisor to do something. A consumer seeking to redress errors made by a financial firm can find help in only few paragraphs.

Question 10: *Can market forces solve the problems that you identified (fully/partially)? Are there examples of successful self-regulatory initiatives in respect of investment disclosures or point of sale regulations? Are there any constraints to their effectiveness and/or enforceability? Are you aware of effective national approaches to tackle the issues identified in this call for evidence? Should it be left to national authorities to determine the best approach to tackling this problem in their jurisdiction? Is there a case for EU level involvement? Please explain.*

Market forces cannot solve the problems. We need a change of cultures. The financial firms (producers and distributors) need to show respect to their clients. They must train their personnel. They must disclose what is relevant and helpful to the consumer.

The consumer must learn to protect herself. She must learn to be if not suspicious then at least aware in contacts with the financial sales people. She must learn to define her needs and wishes, to ask for information, to compare the information received, and to reject proposals out of her sphere of interest.

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