



## Sesión 2

# **PROTECCION DEL INVERSOR**



# **Protección de los inversores en el asesoramiento financiero**

Niamh Moloney

Profesora en el London School of Economics

# Regulating Investment Advice: the new EU framework and the UK experience

CNMV

International Seminar on the Latest Developments  
on the New Securities Markets Regulations

Professor Niamh Moloney, LSE Law

September 20 2016

# Consumer Financial Protection Regulation

- What is the aim of consumer protection regulation in financial services?
- Many, many ways of answering this
- Two recent responses:
  - ‘The standard economic justification for investor protection regulation is that some public commitment to fight marketplace abuses is necessary to *offset fear of exploitation and instil investor confidence*. But where that sweet spot [of perfectly balanced regulation] is, no one knows.’
    - Donald Langevoort, *Selling Hope, Selling Risk* (2016)
  - ‘Consumer regulators *seek to restore the choices that consumers would make if they were rational and well-informed*’ + ‘When households lack the intellectual capacity to manage their financial decisions, they *make mistakes that lower their own welfare and can also have broader consequences for the economy*’
    - John Campbell, ‘Restoring Rational Choice: The Challenge of Consumer Financial Regulation’ (2016, *American Economic Review*)

# Financial Stability and Consumer Financial Protection

- + Increasingly, *financial stability implications*
  - Mis-selling and effect on provisioning
  - Cost of Conduct research (Conduct Costs Project Report, 2016)
  - 20 of world's largest banks; conduct costs (settlements; damages; penalties)
  - Conduct costs for 2011-2015: £252 billion
  - 4.1% increase on 2010-2014
  - 27.6% increase on 2008-2012
- New emphasis in *global financial governance* on addressing misconduct, including mis-selling
  - Financial Stability Board over 2015 and 2016 on misconduct and enforcement
    - FSB Chairman Letter to G20 Leaders, November 2015
    - FSB, Measures to Reduce Misconduct Risk (2015) + the conduct costs problem; recent progress report

# Regulation, Investment Advice, and the Consumer

- Benefits for consumers of intermediation through investment advice
- But.....
  - **Foundational principal/agent risk**
  - Principal (consumer) + agent (firm)
  - Difficulties in the principal monitoring the agent, given informational imbalances + decision-making weaknesses
  - + Consumers rarely in a position to monitor effectively
  - + highly complex product market + limited consumer learning and experience + the over-reliance problem

# Regulation, Investment Advice, and the Consumer

- Most significant difficulties from *conflict of interest risks*
  - Mis-aligned agent incentives; not incentivized to act in principal's best interests
  - Proprietary product sales + commissions
    - Ex: Decision Technology, Consumer Decision Making in Retail Investment Services (2010) (for EU Commission)
- But difficult to address
  - Ex: documented evidence of consumer aversion to fees
    - Inderst and Ottoviani (Journal of Financial Economics, 2012)
  - Ex: commission can mean support of only viable means of advice
    - Some evidence that commission-based advisers more receptive to retail investors who might initially be unprofitable

# Regulation, Investment Advice, and the Consumer

- Long experience with rule design internationally - *but* repeated cycles of mis-selling + reform + mis-selling
- Why is regulation so difficult? Why does mis-selling persist?
  - Disclosure and consumer financial literacy
    - Turning the super-tanker.....
  - Cost of regulation, client aversion to fees, and the related “advice gap”
  - Shifting regulatory boundaries
    - “Regulated Investment advice”? “Robo-advisers”?  
Websites...?

# Regulation, Investment Advice, and the Consumer

- How to address?
- The traditional 'recipe':
  - Fair treatment rules: act in best interests of client
  - + Suitability/know-your-client rules (assess client objectives; financial situation; experience)
  - + Conflict of interest rules
    - General: identify, manage, disclose conflicts
    - Specific: rules on commissions/inducements/payment structures
  - + Disclosure/information requirements (products, services, conflicts of interest)

# Regulation, Investment Advice, and the Consumer

- The new ‘recipe’:
  - The UK’s current position? *Retail Distribution Review* – in force
    - Heavily interventionist: commission ban for most advice
    - No advice is better than potentially conflicted advice
    - Focus on re-shaping advice market structure
  - The EU’s current position? *MiFID II* – in force January 2018
    - Large-scale, post-crisis regulatory reform
    - Driven by
      - Mis-selling episodes over the crisis + reflection of ‘financialization’ of households
      - + Sharper focus on retail market conduct risks in the final phase of the crisis-era reform agenda
    - Does not completely prohibit commission – lighter in touch than the UK regime
      - Differentiation between ‘independent’ advice v. other distribution channels

# The MiFID II Approach

## ■ MIFID I

- Rules on fair treatment, disclosure, suitability/appropriateness, and general conflict of interest rules

## ■ MiFID II

- **Similar rules:** fair treatment (Article 24(1)); disclosure (Article 24(3)-(5)); suitability/appropriateness (Article 25); and conflict of interest (Article 23)
- **+ But also:**
  - Specific conflict of interest rules on ‘**independent advice**’
  - Specific rules on **inducements**
    - Particularly relevant for the proprietary advice/sales channel
- **+ MiFID II, Delegated Regulation 25 April + Delegated Directive 7 April 2016** (apply: January 2018)
  - Delegated Directive (inducements) – ‘no objection’ by Council and Parliament
  - Delegated Regulation (independent advice) – ‘no objection’ by Council; Parliament scrutiny?

# The MiFID II Approach

- Nature of new MiFID II advice regime
  - Much more interventionist and more likely to impact on market structure than MiFID I
  - Dives deep into firms' processes and business models
  - Highly detailed
  - But, still heavy dependence on disclosure to clients
  - Additional ESMA Guidance + FAQ likely
  - Subject to review (inducements/quality enhancement rules) by March 2020

# The MiFID II Approach: Scope

- **MiFID II Scope:** as MiFID I, but:
  - Deposit-based structured products now included (MiFID II, Article 4(1)(43))
  - ‘Execution of orders’ clarified as including conclusion of agreements to sell financial instruments issued by a credit institution or investment firm at the moment of their issuance (MiFID II, Article 4(1)(5))

# MiFID II Approach: Independent Investment Advice

- **MiFID II Investment-advice-specific rules**
  - **Investment advice:** Provision of personal recommendation to a client, either on its request or at the initiative of the firm, in respect of one or more transactions relating to MiFID II financial instruments (Article 4(1)(4))
  - **Personal recommendation:** Delegated Regulation (25 April 2016), Article 9
    - Made to a person in capacity as an investor or potential investor
    - Presented as suitable, or based on a consideration of the circumstances of that person

# Independent Investment Advice

- MiFID II Article 24(4): As for MiFID I, identified appropriate information must be provided to client, in good time before investment advice is provided on the firm and the services, **but new information requirement:**
  - Whether or not the investment advice is provided on an **independent basis; and**
  - Whether the advice is based on a **broad or more restricted analysis** of different types of financial instruments and, in particular, whether the range is limited to financial instruments issued or provided by entities having close links with the investment firm or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided; and
  - Whether the firm will provide client with a periodic assessment of the suitability of instruments recommended

# Independent Investment Advice

- Article 24 (7): if the firm discloses that the **advice is independent**, then firm must
  - **Assess a sufficient range of financial instruments** available on the market which must be **sufficiently diverse**, with regard to their type and issuers or product providers, to ensure that the client's investment objectives can be suitably met, **and must not be limited** to financial instruments issued or provided by:
    - The investment firm itself or entities having close links with the firm
    - Other entities with which the investment firm has such close legal or economic relationships, such as contractual relationships, as to pose a risk of impairing the independent basis of the advice

# Independent Investment Advice

- + also: can **not accept and retain fees, commissions, or any monetary or non-monetary benefit** paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to clients.
- **Minor non-monetary benefits** that are capable of **enhancing the quality of the service provided**, and are of a scale and nature such that they **could not be judged to impair compliance with the firm's duty to act in the best interest of the client** must be clearly disclosed (and are excluded from the prohibition)
- The prohibition also applies to portfolio management (Article 24(8))

# Independent Investment Advice

- Expansion in the Delegated Acts
  - April 7 2016, Commission MiFID II Delegated Directive, including on fees/commission ban, and monetary/non-monetary benefits
  - April 25 2016, Commission MiFID II Delegated Regulation, on disclosures + nature of independent investment advice
  - Broadly reflect ESMA's Technical Advice
    - December 2014
  - Commission notes a 'broad consensus' on the measures
    - But contestation during the development process

# Independent Investment Advice: Disclosure

- MiFID II Delegated Regulation: **Article 52 - disclosures**
  - Firm must provide a clear and concise explanation of whether/why advice qualifies as independent/non-independent, and of the type of restrictions that apply (including on inducements where independence advice given)
  - Where advice is offered/provided to the same client on an independent and a non-independent basis, the firm must explain the scope of both services - to allow investors to understand the differences between the services - and must not present itself as an independent investment adviser for the whole advice activity
  - Firms must not give undue prominence to independent advice over non-on their communications with clients
  - Whether independent or non-independent, firm must explain to client the range of financial instruments that may be recommended, including relationship with issuers/providers of instruments

# Independent Investment Advice: Disclosure

- Firm must provide description of types of financial instruments considered; the range of instruments and providers analyzed per each type (according to scope of services); and:
  - Independent investment advice: disclosure on how service meets the relevant conditions for independent advice, and the factors taken into account in the selection process used to recommend certain financial instruments (such as risk, cost, and complexity of instruments)
- Where proprietary instruments, or instruments issued/provided by entities with close links/other close legal/economic relationships with firm, are included in the range assessed by the firm providing independent investment advice, as well as instruments which are not so linked to the firm, the firm must distinguish, by type, the range of instruments which have no link with the firm

# Independent Investment Advice: Process

- MiFID II Delegated Regulation: **Article 53 - selection process**
  - Firms providing independent investment advice must define and implement a **selection process** to assess and compare a sufficient range of financial instruments available on the market, in accordance with Article 24(7). The selection process must include consideration of whether:
    - Number and variety of instruments is proportionate to the scope of the advice services offered;
    - Number and variety is adequately representative of the instruments available on the market;
    - Quantity of proprietary/linked instruments is proportionate to total amount of instruments considered; and
    - Criteria for selection must include all relevant aspects including risks, costs, and complexity, as well as the characteristics of the firm's clients and must ensure the selection of instruments that may be recommended is not biased
  - Where comparison is not possible due to business model or scope of services, the firm cannot present itself as independent

# Independent Investment Advice: Process

- Where a firm provides independent advice and focuses on certain categories/specified range of instruments it must
  - Market itself in a way that is intended only to attract clients with a preference for those categories/ranges
  - Require clients to indicate they are only interested in investing in such category/range
  - Ensure that its service is appropriate for each new client on the basis that its business model matches the client's needs and objectives, and that the range of instruments is suitable for the client. If not – services cannot be provided
  - Purpose? Ex: Green/ethical specialities

# Independent Investment Advice: Process

- Where independent and non-independent advice provided the firm must
  - Inform clients before service provision of the basis on which the advice is provided
  - Adequate organizational requirements and controls to ensure that both types of advice services and advisers are clearly separated, and clients not likely to be confused as to the type of advice they are receiving and which is appropriate for them
  - A natural person in the firm cannot provide both independent and non-independent advice

# Independent Investment Advice: Commission Ban

- MiFID II Delegated Directive: **Article 12 - the commission ban**
  - Firm providing independent advice must return to clients any fees, commissions, or monetary benefits paid/provided by third party in relation to the services to the client as soon as reasonably possible after receipt, and transferred in full.
    - Firm policy required to ensure that such payments are allocated and transferred to clients; and disclosure must be made to clients about such transfers (through periodic reporting)
  - + Non-monetary payments which do not qualify as acceptable '**minor non-monetary benefits**' cannot be accepted.
  - List of the acceptable minor non-monetary benefits:
    - Generic information/documentation relating to an instrument or service (can be personalized to reflect circumstances of an individual client)
    - Written material from a third party, commissioned/paid for by a corporate issuer/potential issuers to promote a new issuance/ongoing information, as long as issuer/third party arrangement is disclosed and material is at the same time made available to any investment firm or the general public

# Independent Investment Advice: Commission Ban

- Participation in conferences and similar events on benefits and features of a specific instrument/services
- Hospitality of reasonable de minimis nature.....
- Other minor non-monetary benefits which a Member State deems capable of enhancing the quality of the services provided and, having regard to the total level of benefits provided by 1 entity or a group of entities, are of a scale and nature unlikely to impair compliance with duty to act in best interests of client
  - → Some discretion provided
- All such payments must be reasonable and proportionate and of such a scale that unlikely to influence the firm's behaviour in any way that is detrimental to interests of the relevant client
- Disclosures made prior to the provision of the service; can be made in a generic manner
- Heavily contested at ESMA stage – concern at ESMA's exhaustive approach
  - But broadly retained by the Commission
  - ESMA Guidelines?

# MiFID II Approach: Inducements

- MiFID II and Conflict of Interests/Inducements
  - Particularly important for advice in relation to proprietary products (non-independent advice)
  - Article 23(1): firms to take ‘all appropriate steps’ to identify, to prevent and to manage conflicts, **including those caused by the receipt of inducements from third parties or by the firm’s own remuneration and other incentive structures** and
  - Article 16(3): adopt organizational and administrative arrangements with a view to taking ‘all reasonable steps’ to prevent conflicts of interests from adversely affecting client interests; and
  - Article 23(2): if these arrangements are not sufficient to ensure ‘with reasonable confidence’ that risk of damage to client interests will be prevented, the firm must clearly disclose the general nature and/or sources of the conflict to the client

# Inducements

- + Article 24(10): the new remuneration regime
  - A firm must not remunerate or assess the performance of staff in a way that conflicts with its duty to act in the best interests of clients
  - A firm must not make any arrangement by way of remuneration, sales targets or otherwise that could incentivize its staff to recommend a particular instrument to a retail client where the firm could offer a different instrument that would better meet the client's need

# Inducements

- + Article 24(9): the expanded MiFID I inducements regime
  - General prohibition on inducements - unless they meet the conditions
  - Similar to MiFID I regime but significantly expanded
  - Applies to firm paying/being paid any fee, commission, or provides/are provided with non-monetary benefit in connection with the provision of investment services
  - → Similar in effect de facto to the Article 24(7) prohibition on commissions in independent investment advice – but not formal prohibition
    - Concerns to ensure proprietary distribution had similar restrictions
    - But also concerns to ensure this channel not adversely affected given investor resistance to paying a fee and the need to avoid a de facto ban on inducements/reduction of investor access to advice

# Inducements

- Effect of Article 24(9): Firm will be regarded as not meeting the MiFID II Article 23 conflict of interest requirements and the Article 24(1) fair treatment requirements unless inducement is:
  - Designed to **enhance the quality** of the relevant service provided; and
  - Does not impair compliance with the firm's duty to act honestly, fairly, and professionally in accordance with the best interests of its clients

# Inducements: Conditions

- MiFID II Delegated Directive, Article 11 - **conditions for meeting the quality enhancement test** (all conditions must be met at all times)
  - (1) Justified by the provision of an **additional or higher level service** to the client, proportional to the level of inducements received
    - Such as: provision of non-independent advice on/access to a wide range of suitable financial instruments, including an appropriate number from third party product providers with no close links to the firm;
    - Provision of non-independent investment advice with either: an offer to assess continuing suitability, at least annually; or another ongoing service likely to be of value to the client, such as advice on optimal asset allocation;
    - Access at competitive price to wide range of financial instruments likely to meet client needs (including third party instruments), together with value-added assessment tools or periodic reports
    - → Non exhaustive
    - → In effect, allows commission-based non-independent investment advice
    - ESMA: designed to encourage provision of/client access to high quality, non-independent advice

# Inducements: Conditions

- (2) Does not directly benefit the recipient firm, its shareholders or employees, without tangible benefit to the relevant client; and
- (3) Is justified by the provision of an ongoing benefit to the relevant client in relation to an ongoing inducement
- And: fee, commission, or non-monetary benefit will not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result
- Disclosure requirements apply
- ESMA Guidelines?

# Inducements and research

- Inducements and research (MiFID II Delegated Directive, Article 13)
  - Research provided by brokers and conflict of interest risk
  - Highly contested by industry and by certain Member States, increasing cost of research + reduction in quality
  - ESMA/Commission approach similar
  - → Detailed rules governing the treatment of provision of research by third parties, and when such research can be regarded as not forming a MiFID II inducement
    - Based on separate research account model

# Inducements and research

- Article 13 - when is research not an inducement:
  - Directly paid for by investment firm
  - Paid for from a **separate research payment account**, controlled by the investment firm, as long as the research account is funded by a **specific research charge** to – and agreed with - the client; a **research budget** is set by the firm; the firm is responsible for the account; and the firm regularly assesses the quality of the research purchased, based on robust quality criteria and its ability to contribute to better investment decisions
  - If a research account model is used, disclosures prior to service provision to clients on the budgeted amount for research and estimated research charge; and annual information on total costs client has incurred for research

# Inducements and research

- On request by competent authority or clients, firm must provide a summary of providers paid, the total amount paid to them, the benefits and services received by the firm, and how total amount spent relates to the research budget set
- Research charge cannot be linked to the volume and/or value of transactions executed by the firm on behalf of clients and total amount of charges cannot exceed the research budget
- Firm must agree budget with clients and frequency of research charge deduction
- Budget must be based on reasonable assessment of need for third party research and subject to appropriate controls and senior management oversight, including audit trails
- Administration of the research payment account can be delegated to a third party
- Policy required governing the research payment account

# The UK Experience

- Retail Distribution Review (RDR) came into force end 2012
- Sought radical change to advice/product distribution landscape in the UK, given repeated cycles of mis-selling
  - Process launched in 2006
  - ‘A once in a generation chance to make retail investment markets work better for consumers’ (FCA, December 2014)
- Highly contested + extensive post implementation review, including
  - 2014: Financial Conduct Authority, Post Implementation Review of the Retail Distribution Review (December 2014)
  - 2016: Financial Conduct Authority + HM Treasury, Financial Advice Market Review, Final Report (March 2016)

# The UK Experience: Introduction

- What did the RDR do?
  - New qualification rules for in-scope advisers
  - New labelling rules on whether investment advice provided by in-scope advisers is ‘independent’ or ‘restricted’
  - Prohibition on in-scope advisers - whether independent or restricted - receiving a commission – ‘adviser charging’ required
- EU + RDR?
  - Additional to the core MiFID I harmonized rules on investment advice

# Background to the RDR

- Dominance in UK of 'IFAs' (independent financial advisers) but also advice through major banks
- Dominance of complex packaged products in UK market
- Commission from product providers (no fee for advice)
- Associated with
  - Lack of consumer understanding of commission + nature of advice provided
  - Mis-selling scandals
  - Repeated reform attempts (primarily disclosure based)
  - By 2007: UK regulator of view that 'symptoms arising from problems rather than the root cause' being addressed, and insufficient progress towards a market which delivered services needed by consumers

# The RDR Reforms

- **Adviser Charging Rules**
- Ban on commission
- How different to MiFID I?
  - Not covered in MiFID I
  - General conflict of interest rules+ fair treatment rules+ disclosure on fees
- How different to MiFID II?
  - All ‘personal recommendations’ – not just ‘independent investment advice’ as defined by MiFID II
  - + ‘retail investment products’ – wider than MiFID II (includes pensions)

# The RDR Reforms

- **Labelling: independent advice**
- Applies to MiFID I ‘personal recommendations’ and in relation to retail investment products
- Firms must disclose in writing, in good time before service provision, whether advice take the form of ‘independent’ advice or ‘restricted’ advice
  - Cannot hold out as independent unless personal recommendation based on ‘comprehensive and fair analysis’ of the ‘relevant market’
  - What is ‘relevant market’: all retail investment products which are capable of meeting the investment needs and objectives of a retail client
  - Can be limited by particular markets (ie ethically responsible/green investments); but nature of independence must be disclosed
  - Cannot be bound to a product provider
  - And also must consider other investments to retail investment products, such as cash deposits

# The RDR Reforms

- **Labelling:** restricted advice
- Advice which is not independent
- Disclosure must be made by firm of restrictions
- Typically: firm advises on a limited range of proprietary products (one product provider) or from several
  
- Restricted and Independent Advice
  - Qualification requirements
  - Adviser charging
  - MiFID I/II rules on conduct generally

# Response to the RDR

- Extensive empirical assessment carried out since
- Contested; ‘advice gap’; industry concern
- 2014 FCA, December 2014 Post Implementation Review
  - Generally positive
  - Removal of commission reduced product bias from adviser recommendations, reflected in a decline in sale of products which paid higher commission, pre RDR, and increase in sale of products which did not pay commissions
  - Product prices fallen at least by amounts paid in commission
  - Adviser charging has increased for some consumers
  - Most advisers now qualified to higher level and increase in those qualified above the minimum required
  - Market adjustment: segmentation and high net worth categories

# Response to RDR

- Costs?
  - Being disclosed more effectively by firms
  - But... consumer understanding still limited
- Major concern.....an 'advice gap'?
  - FCA acknowledges concern but little evidence advice availability has reduced significantly
  - Bank exits from advice, but independent of RDR
    - But: banks proficient at prompting the seeking of advice
  - True cost of advice, and value for money, clearer, so more discerning consumers
  - High Net Worth segmentation, but mass market consumers being addressed by other providers
  - Market seems relatively stable, with profitability and capital levels increasing

# Response to RDR

- **2016 HM Treasury/FCA Financial Advice Market Review (FAMR)**
  - RDR a success; move from commission improved transparency and ended conflicts of interest, but advice expensive and not always cost effective for clients with simpler needs
  - Advice Gap?
    - Range of factors means not economical for firms to serve consumers with lower amounts to invest/simpler needs
    - Drop in advisers from 40,000 to 30,000
    - Most exits from banks, but for a range of reasons, not only RDR
      - But some re-entering the advice market
    - Segmentation increasing: 2016 report: 69% of firms had turned away clients, mainly on affordability grounds + proportion of firms requiring portfolio of more than £100,000 has doubled since 2013 to 2015 (from 13 – 25%)
    - Regulatory barriers to low cost solutions

# Response to RDR

- Response?
  - Consider regulatory boundaries
  - Support technological innovation in delivery of affordable advice
  - Provide more certainty to firms on liability
- New FCA Chief Executive, Andrew Bailey, July 2016
  - RDR has achieved its objectives but has contributed to an advice cap for less well off and those in need of single-event type advice
  - Current initiatives include Advice Unit for firms developing low-cost automated solutions
- But clear commitment to RDR
- Lessons for MiFID II?

■ THANK YOU FOR YOUR ATTENTION

CNMV

COMISIÓN  
NACIONAL  
DEL MERCADO  
DE VALORES



## **MiFID/MiFIR: relación de esta normativa con PRIIPs**

Wijnand van de Beek  
Presidente Subcomité del Joint Committee  
sobre Protección al Consumidor

# Why consumers tend to end up with sub-optimal products

How MiFID II and PRIIPs strengthen consumer protection

Wijnand van de Beek  
Netherlands Authority for the Financial Markets (AFM)

# Topics for discussion

---



- Experience with Mass Damages in the Netherlands
- Disclosure and Consumer behaviour
- Interaction MiFID - PRIIPs
- Product Oversight and Governance

# Examples of mass damages in the Netherlands



- Securities leasing                      • 2001                      • Leveraged investment product
- World Online issue                      • 2001                      • Share issue, prospectus incomplete
- Unit linked insurance                      • 2006                      • Life Insurance investing for own risk
- Other issues
  - Credit protection                      • 2008                      • Consumer credit payment insurance
  - Overextension of mortgage credit                      • 2010                      • Negative equity for many homeowners due to decreasing house prices



- Large financial losses for households
- Reputational damage and loss of trust financial sector

# All market participants contribute to market failure

---



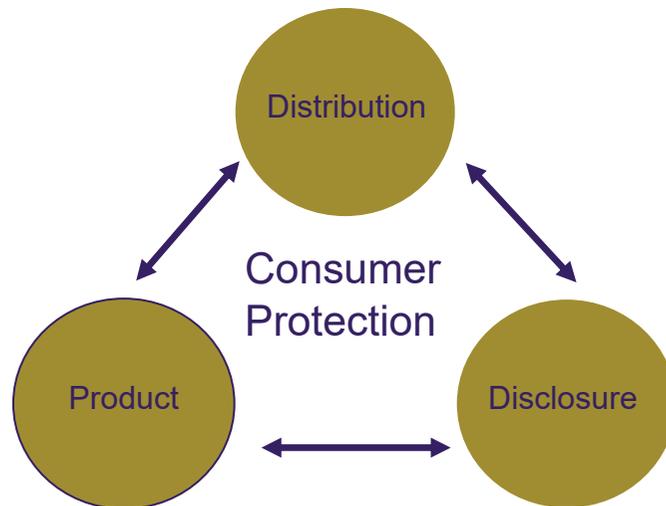
- Consumers
  - Bounded rationality  
Consumers are not homo economicus: their understanding of and interest in financial services is limited. Decisions are based on simplified assumptions
- Advisors
  - Conflict of interest: financial incentives for mis-selling. Remuneration of advisors is often based on commissions. This creates a financial incentive to put the advisors financial interest before that of the client
- Producers
  - Conflict of interest: short term vs long term. As consumers have a limited grasp of the quality of products and the quality of products often becomes evident only in the long term, commercial short term interests can prevail over long term customer service. Defective products can therefore be sold on a massive scale before correction takes place

# Disclosure needs to be tailored to consumers (and supported by POG and advice regulation)



## Why is disclosure popular?

- Regulation assumes informed consumer
- Policy makers regard disclosure as relatively 'safe' market intervention



## Why is disclosure alone not sufficient?

- Diversity of consumers
- Information often used to be based on incorrect assumptions on information processing by consumers
- Core characteristics of consumers cannot be changed

## Best effort:

- Information to consumers should have a behavioural purpose, be simple, layered and geared towards the personal situation

## MiFID and PRIIPs together address the three sides of consumer protection

---



- The PRIIPs KID will set the standard for cost and risk disclosure of investment products
- Aim: Information on costs throughout the distribution chain. Both manufacturers and advisers are required to disclose all costs.
- The KID risk classification should be an important tool for advisers in discussion risks with consumers
- This requires consistency between PRIIPs and MiFID II for (i) the calculation methodology of the costs, such as transaction costs; and (ii) the cost elements that should be taken into account.

# Products that are fit for purpose

---



## Product Governance obligations (cross sectoral)

### **Manufacturers**

must ensure that:

- financial instruments are designed to meet the needs of an identified target group of investors (including periodic review)
- distribution strategy is compatible with identified target market

### **Distributors**

must ensure that:

- financial instruments offered meet the needs of their target client group
- feedback loop to manufacturer of relevant information

# Conclusions

---



- Informing consumers effectively is not easy
- Managing conflicts of interest is key
- Transparency rules MiFID and PRIIPs should be complementary
- POG is a genuine next step in Consumer Protection



# **PRIIPs**

Timothy Shakesby  
EIOPA. Rapporteur del Subcomité del Subgrupo del  
Joint Committee sobre PRIIPs

# Regulatory Technical Standards on the Key Information Document for PRIIPs

Tim Shakesby  
13/09/2016

# Outline

1. Background
2. Risks: the Summary Risk Indicator
3. Rewards: Performance Scenarios
4. Costs

# Background

- Information disclosures
  - Necessary for informed decision making BUT not sufficient
  - Challenges for consumers
- Aim of RTS?
  - Better comparisons
  - Better comprehension
- How were RTS developed?



JOINT COMMITTEE OF THE EUROPEAN  
SUPERVISORY AUTHORITIES

# Risks

- Communicating risks
  - Many dimensions
  - Challenges for consumers – uncertainty of uncertainty ...
  - Making comparisons
- Single ‘Summary Risk Indicator’
  - Combines market and credit risk
  - Standardised method

# Rewards

- What will I get back?
  - Key question for consumers
  - BUT challenges understanding uncertainty
- Ensuring comparability
  - Objective method
  - Communicate: range of outcomes, accumulation effects, net of costs
  - Use of fourth scenario?

# Costs

- What are costs?
  - Explicit and implicit; direct and indirect
  - Fair values
  - % and €
  - Cumulative costs
- Comparing different cost structures
  - Different PRIIPs have different cost structures
  - Timing of costs
  - 'Reduction in Yield' ...

# Questions...



CNMV

COMISIÓN  
NACIONAL  
DEL MERCADO  
DE VALORES



# **Gobierno Corporativo en las Instituciones Financieras**

Jaime Caruana  
Director General del BIS (Bank for International  
Settlements)

CNMV

COMISIÓN  
NACIONAL  
DEL MERCADO  
DE VALORES