

RESPONSE TO CP10-29

ea Consulting Group (eacg) welcomes this opportunity to respond to the various questions posed in the above consultation paper. This follows our earlier submission to DP10/2 'Platforms: delivering the RDR and other issues for discussion.

We anticipate that the platform market will continue to grow. Whilst providing a discrete customer service through a variety of business models, it is vital that platforms be permitted to prosper on the basis of a level regulatory playing field with the rules fully reinforcing the general principles promoted by the RDR for the retail investment sector.

Our formal responses to the questions raised in CP10/29 are to be found in the appendix but it is appropriate at this stage to highlight some more general points concerning the regulation of platforms and their integration with the RDR proposals. Overall, the FSA is to be commended for the quality of the consultation paper and its objective treatment of the various issues raised. The temptation to create a separate regulatory regime for platforms has been avoided in the proposals. This would undoubtedly have stifled innovation. In our opinion, the rules applying to retail investments in general should also read across directly to platforms (eg independent advice) although we accept the arguments put forward regarding the continued bundling of charges. The interests of the consumer have been protected through increased transparency although the overarching TCF principle provides a sound basis for the operation of any platform.

Originally, it was thought that platform developments might negate many of the RDR proposals to eliminate adviser and/or product bias. This is no longer the case. eacg is fully supportive of moves to ban cash rebates as these could undermine adviser charging and influence undesirable behaviours (eg bias, churning). Similarly, we support the proposal that will make re-registration compulsory with effect from the end of 2012. A platform's ability or inability to offer re-registration should be a key selection criterion for any adviser.

The crux of the great platform debate is over whether platforms are providing administration services to fund managers or simply providing a distribution mechanism for different funds. The FSA has decided, on balance and we believe correctly, that the former is most accurate. As the recipient of these benefits, the fund manager should pay with "shelf space" fees and other charges based on the cost of delivering these administration services. It is not known if this conclusion is similar to that of the European Commission. As it is central to many proposals, confirmation should be sought from Brussels to guarantee a common pan-European approach to platform regulation.

eacg remains concerned that in the regulation of the retail investment sector the UK will become out of step with Europe. Although we note the confirmation of the compatibility of the new rules in CP10/29 with MiFID this does, of course, refer to MiFID1. A review of the latest consultations from Commission Services affirms that Europe is looking to adopt a horizontal approach to regulation looking at the function of a product not at its legal form or who might have sold it. We will apparently see more common regimes all adopting MiFID sales standards with UCITS IV style pre-contract disclosure documentation. It is very important that the definition of a packaged product in the UK reflects that finally adopted for a PRIIP. Changes to the existing IMD (for insurance PRIIPs) and MiFID regimes are expected in 2014 with new text to be published this summer. It is very important to recognize that

MiFID2 and IMD2 are being promoted as maximum harmonization directives leaving little room for national variation. To avoid duplication of “similar” regulation it does seem sensible at this stage to consider a delay in RDR implementation. Synchronisation with the European timetable, aligning all RDR proposals (including those covering platforms) with any European equivalent, might yield significant cost benefits. Ultimately, of course, it will be the European rules that will apply. If consumer detriment is identified then more immediate action can, of course, be taken.

As requested, we have reviewed the various proposals in light of potential equality issues. We share the conclusion of the FSA that from our understanding of the legislation the proposals should not give rise to any discrimination. A timely reminder of the requirements of the new Equality Act 2010 is given in CP10/29 section 1.20.

RESPONSES TO QUESTIONS RAISED IN CP10/29:**Q1: Do you have any comments to make with regard to our definition of a platform service and platform service provider (contained in Appendix 1)?**

We note the proposal to remove the defined term 'funds supermarket service' from the Handbook and to replace it with the two new terms of 'platform service' and 'platform service provider'.

As recognized in section 2.2, a platform is generally thought of as a funds supermarket or wrap platform dealing directly with consumers or through their financial advisers. Essentially, a platform provides access to a diversity of investments whilst offering the benefits of consolidated administration.

Platform service- a service which:

- (a) Involves arranging and safeguarding and administering assets; and
- (b) Is provided in relation to retail investment products which are offered to retail clients by more than one product provider; but is neither
- (c) Solely paid for by adviser charges; nor
- (d) Ancillary to the activity of managing investments for the retail client.

Platform service provider-

A firm providing a platform service.

The proposed definition of 'platform service' rightly excludes the more general service offered to their clients by discretionary investment managers and the life assurer platforms used for the distribution of their funds (eg life assurance bonds). The definition will appropriately identify firms that are true fund supermarkets and wrap platforms whose primary function is the provision to retail clients of centralized administration and a consolidated view of their investments.

The importance of the proposed definition is that it will bring into scope firms that only offer platform services in relation to investment trusts, exchange-traded funds and other CIS (collective investment schemes) rather than just packaged products.

Overall, in support of the primary RDR objectives, eacg believes that this definition is necessary as it will create a level playing field for the benefit of all consumers.

Q2: Do you agree with our proposal to read across our rules on product providers to platforms in relation to facilitation of payment of adviser charges?

In our earlier response to DP10/2, we indicated our belief that platforms could help to facilitate payment of adviser charges under the then new RDR proposals. Cash accounts on a platform offered a simple mechanism for such payments. Inevitably, this would encourage more retail investment business to be transacted through platforms.

Under the latest proposals, as outlined in the draft rules, we too recognise that when adviser charges are facilitated by a platform it is very important that the same requirements are placed on the platform as would be placed on any product provider (ie the RDR rules contained in PS10/06). A level playing field must be a primary objective.

The platform provider must:

- Obtain and validate instructions from a customer to pay an adviser charge.
- Ensure all adviser charges taken from a customer's account match payments then made to their adviser firm.
- Permit the customer to stop the payment of ongoing fees to an adviser firm.

Rightly, the FSA is not proposing to mandate how an adviser charge should be paid. We note the requirement for an adviser to take account of a client's circumstances when agreeing how they will be paid (eg CGT issues).

We, of course, understand that the rules for adviser charging introduced by the RDR in PS10/6 would already ban payments from platforms to adviser firms where personal recommendations are involved. Guidance to this effect should rightly appear in COBS as proposed.

Q3: Do you agree with the rules and guidance we have proposed in relation to the standards we expect from an adviser when using a platform and providing advice?

Since the publication of DP07/01 and DP07/02, eacg has consistently argued that independent advice should be a 'whole of market' offer covering the widest range of retail investment products. We also remain to be convinced that the consumer at large will understand the regulatory meaning of the word 'restricted'. Our preferred nomenclature is that adopted post-depolarisation (eg tied, multi-tied and independent advice). It is also interesting to note the developments in the European Commission with the recent consultations on PRIIPs, MiFID2 and IMD2 containing their interpretation on the definition of 'independent'.

We are fully supportive of the move to introduce specific rules for adviser firms using a platform but have some disagreement on their content. Like many across the industry, eacg has difficulty in accepting that independent advice might be available on a 'one-size fits all basis' reaching a sufficiently wide range of retail investment products through the use of just one platform. We have yet to see a homogenous client base as no two clients' financial circumstances are ever exactly the same. Screening at a high level is possible but variation will undoubtedly exist on closer investigation (eg existing portfolios).

The FSA states in section 2.11 that "*an independent adviser that wishes to use a single platform for the majority of its clients should be required to select a platform that in turn bases its selection of retail investment products on a comprehensive, fair and unbiased analysis of the relevant market.*" The term 'relevant market' is important as for many scenarios this will cover all retail investment products. No single platform currently has such access.

On balance, we believe that further thought is required concerning the consumer requiring and anticipating truly independent advice through a platform. A 'whole of market' offer infers the availability of a wider selection of such platforms or access to off-platform products.

It should go without saying that "when a platform is dealing directly with a retail client that it ensures it presents its products in a way that is clear, fair and not misleading and not based on which products pay the highest rebate or fee."

Q4: Do you have any comments on the proposed guidance, on the user of platforms and the independence rule, in Annex 5?

See our response to Q3.

Our area of concern in Annex 5 'Using platform based investments and the independence rule (COBS 6.2.15R)' is the section headed 'Using one platform for all clients for all investments'. Although recognized as "very rare" (and only likely to arise where a firm screens out clients for whom the platform-based service would not be suitable) we do not believe in a marketplace of great and increasing complexity that a truly independent offer is possible on this basis. Identifying a single platform offering competitive charges and features on an ongoing basis is an almost impossible task.

eacg believes it appropriate to state that an independent adviser cannot solely use a single platform.

We note from the Annex 5 text that the FSA is rightly not seeking to provide an artificial spread of investments to meet the independence rule. It also recognizes that the 'whole of market rule' is harder to meet in relation to packaged products when using platforms. In practice, the contrary is of course true of CIS funds. There will always be a close interrelationship between the rules governing independence, suitability of advice and the best interests of the client. As previously stated, eacg continues to favour a tied, multi-tied or independent nomenclature for any advice offer. The independent adviser should cover the 'whole of market' in terms of the types of retail investment products available from an extensive range of product providers.

The examples given of good and bad practice in Annex 5 are sound. Inevitably, most firms will use products from outside a platform as their primary means of meeting the independence rule. As stated in the text, it will be important for firms to be very clear about the suitability of their offers for specific clients– the platform, the products, funds and adviser services – and to be equally demonstrative where not appropriate.

Q5: Do you agree with our proposals for platform remuneration? If not please explain why setting out the effects of our proposal and what should be done instead, and why.

YES – After full consideration of the many issues concerning the pros and cons of bundled charging, we believe it appropriate that platforms can still charge fund managers or other platform providers a fee for providing administration services.

This outcome is supported due to the proposal requiring platforms to inform clients how much they will receive in fees or commission. This increased transparency and the ban on firms that give advice from using a platform service that present retail investment products in a biased manner should provide suitable protection for the consumer. As recognized in the text, if payments were banned by fund managers to platforms while others were excluded from the ban (eg life companies) this would inevitably create bias towards financial services firms which deal with the fund manager as a principal.

In the final analysis, eacg considers that there is a real risk that many consumers will end up paying more if bundled charging was forbidden. We share the belief that the new visibility of these payments may well have a moderating effect on the level of fees and add a new level of competition to the marketplace.

Q6: Do you agree with our proposal to ban the rebating of product charges in cash to retail clients across all retail investment products when advice is being provided?

YES: It is clearly important that the principles behind the major RDR proposals are applied consistently across the retail investment marketplace. A cash rebate is undoubtedly quasi-commission and its payment here would undermine the overall effectiveness of Adviser Charging with advised sales. If permitted, advisers would inevitably set their charges based on the cash rebate available. It is fully appreciated that the ban on the rebating of product charges in cash from product providers to retail clients applies to all advised sales of retail investment products and not only to those sold through a platform.

As stated in the text, eacg too expects that AMCs will reduce as the client will now be paying the adviser separately and any discounts negotiated will, of course, be based on these lower AMCs.

Q7: Do you agree with our proposal to extend the scope of ensuring all firms acting as nominee companies offer re-registration in specie?

YES – The new proposals compelling all nominee companies, including platforms, to offer to re-register a customer's investments to another nominee company in specie by 31st December 2012 at the latest are sound and fully supported. Indeed, the future expansion of the platform industry (with inter-platform transfers) is very much dependent on this outcome with the successful mastery of the various legal issues. It is entirely appropriate that the new rules should apply to the whole range of firms that hold assets on behalf of clients via nominee companies. eacg notes that the FSA will rightly be reminding all adviser firms that

they must take into account a platforms' ability or inability to offer re-registration when selecting a platform.

Q8: Do you agree with our proposal that re-registration should be carried out in a reasonable time and do you have any feedback as to what might be reasonable for particular wrappers and assets?

YES – It is entirely appropriate that the new rules will compel all nominee companies, including platforms, to offer to re-register a customer's investments to another nominee company within a "reasonable amount of time". Consumers should rightly expect a 'timely transfer' although the actual time should reflect the type and complexity of the transfer (eg wraps).

With regard to precise timings we feel sure that the various trade bodies (eg TISA, IMA and APCIMS) are best placed to produce consolidated information for their members reflecting the confidentiality of the data.

Q9: Do you agree that the new definition 'intermediate unitholder' incorporates all relevant firms?

YES: We understand that all the proposals are broadly in line with the draft Securities Law Directive. Essentially, the new rules will ensure that "*investors who access authorised funds through intermediate unitholders receive the same information as they would if they had invested directly.*"

The definition of '**intermediate unitholder**' is as follows:

A firm whose name is entered in the register of unitholders of a non-UCITS retail scheme or a UCITS scheme and which:

- (a) is not the beneficial owner of the relevant unit;*
- (b) does not manage investments on behalf of the relevant beneficial owner of the unit; and*
- (c) does not act as a depositary of a collective investment scheme or on behalf of such a depositary in connection with its role in holding scheme property.*

We believe that the above definition will incorporate all the relevant firms. As recognized in the text, there will be unauthorised nominees who will not be covered by the definition.

Q10: Do you agree with our proposal to introduce a requirement for intermediate unitholders to pass on information provided by authorised fund managers to end investors?

Overall, **YES** – Clearly, it is very important that investors are not denied access to information to which they are entitled.

The information to be provided free of direct charge is:-

- Interim and annual short form reports.
- Details of changes provided by the authorised fund manager in accordance with COLL 4.3.
- Notifications of unitholder meetings issued in accordance with COLL 4.4
- Notifications of suspension of dealing or winding up of a fund.

The above information must be provided to end investors on a timely basis. eacg firmly believes that, in order to reduce the carbon footprint and the generation of a huge paper mountain, such communication should be by electronic means personalized for the investor. Investors should have to 'opt-in' to receive hard copy by post but also have the right to expressly decline the receipt of such information.

Q11: Do you agree that we are allowing an appropriate level of flexibility by requiring intermediate unitholders to have appropriate systems and controls to either exercise voting rights on the instruction of investors, or to facilitate investors' exercising of rights?

YES – Allowing firms the flexibility to determine the best method for complying with this rule is entirely appropriate. Operating models and IT systems will vary greatly. We believe all will acknowledge that nominee firms should have systems and controls in place either to exercise voting rights or to facilitate exercising of voting rights.

Q12: Do you agree with our proposal to require intermediate unitholders to provide aggregate information when requested by authorised fund managers?

YES - It is clear that liquidity issues have arisen in the recent past and asset managers are increasingly concerned at their potential impact on their fund(s). We understand that authorized fund managers (AFMs) have informed the FSA that receiving information about the investor base could significantly improve their liquidity management. Hence, the new proposal requiring intermediate unitholders to provide such information when requested to do so by AFMs. As recognized in the text, it is likely to be the larger nominees offering the more widely-sold CIS who will be asked by AFMs to provide such information. Importantly, individual investors should not be identified. To be of value, the information requested might include the size of minimum and maximum holdings and details of the distribution channels and fund flows.

Q13: Do you have any comments on the cost benefit analysis?

Overall, the CBA appears a fair assessment of the likely costs involved with the proposals contained in CP10/29. We have read with interest Occasional Paper 40 'Regulating platform charges'.

In terms of the benefits, mandating re-registration in specie should lead to much improved market efficiency, enhanced customer service and greater competition. Whilst improved communication between the fund manager and end investor should lead to better outcomes and more knowledgeable consumers we must be mindful that financial capability is in its infancy in the United Kingdom. True understanding will require documents to be written in the vernacular rather than in legal-speak. Sadly, experience says that few readers will stray onto page two and a major review is required of all disclosure and other statutory documentation to aid consumer comprehension of financial matters in general. As identified in the text, the benefits associated with the clarification of capital requirements are likely to be minimal.

It is noted that in terms of the total compliance costs, approximately £70m of the one-off costs (totalling £127.0M) and £34m of the ongoing costs (totalling £47.6M) are attributable to the provision of information to fund managers and to end investors. As these figures are based on the distribution of paper copies it shows the importance of this proposal promoting fundamentally an electronic regime. Paper copies should be the exception. A further £25m of the one-off and £3m of ongoing costs are due to the disclosure of payments that platforms receive from fund managers and product providers. If these figures are accurate then the proposals on mandatory re-registration, at £7m one-off and £2m ongoing, appear low.

Roger Davies,
Principal Consultant,
UK and European Regulation,
ea Consulting Group.