Response to FCA Discussion Paper 22/6 - Future disclosure framework

No.	Question	Response
1	What are the benefits or drawbacks of the timing of disclosure being prescribed by the FCA? Or should it be left to firms to find the right time for their target consumer?	The timing of disclosure should be capable of being determined on a gradual basis during the advice process. For example, an advisory firm will know the basis on which its own costs are calculated and it should therefore be possible for them to disclose these at an early stage in the advice process, even before advice has been provided. Similarly, platform costs should typically be known in advance of the investor opening an account with the platform provider as they are not dependent on the specific advice given. The complaint procedure (if against the advice provider) can also be addressed at this stage as again, it is not dependent on the recommendations made. As the advice process progresses, the details of the anticipated solution will become clearer and therefore the costs and risks of that solution will be able to be communicated more clearly. By the time the written recommendations are issued, the key parameters relating to the advice (the amount to be invested, the degree of risk to be taken, the details of the specific recommended investments etc.) will be known and therefore a more precise indication of the expected costs will be available.
2	Will a durable medium requirement constrain your ability to deliver innovative disclosure? Are there any other rules that may constrain the medium in which information can be provided?	A requirement to use a durable medium would seem to preclude the use of, for example, an online live calculator. However, this would likely only be relevant for firms employing a wholly online proposition, under which the disclosure could be provided as part of that online process as otherwise there would be no way to prove that the consumer had access to the information at the appropriate points in the process.
3	Do you agree that we should future proof the disclosure requirements? How else can we do this? Do you have any views or evidence on the merits and drawbacks of different approaches to future-proofing?	Future-proofing would be helpful but if the rules are sufficiently well thought through that they do not change subsequently and the responsibility for meeting them lies with the element of the supply chain that is closest to the consumer as suggested below, it should be possible to accommodate evolution in the mechanism of delivery relatively easily.
4	How do you envision the distribution of retail disclosure changing over the next 5-10 years?	It would be welcome if the requirements were to remain consistent to allow firms to find ways to present them in more effective ways. If the regulations are limited to ensuring that the necessary information about potential downsides is provided and that any other information provided is clear, fair and not misleading, firms' consumer duty obligations can be used to ensure compliance.
5	Who should have responsibility for producing retail disclosure?	The element of the supply chain which is closest to the end user. For advised investors, this should be the advising entity. For non-advised, the entity (whether product provider or platform) which is engaging with the investor.
6	How should it be determined that a product is suitable for the retail market and therefore that regulated disclosure should be produced? Does this need to be balanced with choice for retail investors?	The current regime using the MIFiD target market template appears to be adequate for this purpose as it addresses the principal areas which determine the broad suitability for retail customers. Those few experienced and well-informed retail investors who wish to be able to access less mainstream investments can continue to be be addressed via the existing arrangements for such customers.
7	Do you agree with these principles for effective disclosure design? Are there any other principles we should assess?	To our mind the regulatory mandated disclosure should focus on the potential downsides for the end user. These are typically in terms of costs, risks and potential inflexibility around access. Costs are widely recognised in the literature to have a relationship to adverse outcomes, with studies showing high-cost products having poorer net returns, e.g. https://www.morningstar.com/articles/691300/the-clear-link-between-fees-and-performance. Since a significant proportion of consumers appears to struggle with identifying expensive investments, this is clearly an important aspect of disclosure. However, if the information provided is to be of any use, it is essential that it covers all the costs that can reasonably be quantified and this is a task best

		carried out by the firm closest to the customer. For example, a firm may recommend a portfolio of a dozen funds across three different account types with two different custodians. The consumer is much more likely to understand the costs which they will pay if provided with a single consolidated calculation which shows the costs of the underlying funds, the product wrappers, the custody and the advice than if the provider of each component provides them with its own discrete data and they are expected to consolidate it themselves. By risks, we are principally focused on the potential for an investment to fail and for the investor's capital to be irrretrievably lost or for it to deliver a return that is substantially lower than expected over an appropriate time horizon for the asset class. There are established characteristics of such investments (such as being unquoted, smaller capitalisation holdings, having a restricted secondary market, being geared, being exposed to unhedged currency risk, being undiversified or having particular counterparty risks). Since these risks can have a substantial impact, those applicable should be identified and communicated. It is important, we believe, to distinguish between these risks and the widely used but flawed use of volatility measures such as standard deviation or variants thereof. Since the Authority correctly recognises (as have its predecessors) that past performance is not a reliable guide to future returns, it is incongruent to expect that using historic volatility (which is derived from historic returns) should provide any greater predictive power than the returns themselves. By inflexibility around access, we are concerned with the potential for an investor's ability to withdraw from investment to be altered retrospectively by the issuer. For example, a daily-priced fund which suspends trading due to issues with the liquidity of its underlying assets, such as a fund of physical property. Investors in such assets should be informed before they invest that this is a potential scenario a sit has occurred on multiple occasions in the past. The drawback of suspended trading is arguably greater than if a fund's spread is widened, as some investors may wish to take advantage of falling prices to rebalance their portfolio and increase their exposure to the more poorly performing asset. If a fund is suspended to prevent withdrawals, investors who wish to add capital to it are also penalised.
8	Do respondents have any evidence or consumer testing results on the merits or drawbacks of different forms of presentation?	Requiring the provision of multiple pages of text and numeric data is clearly not proving effective, as the DP itself points out in 1.3. For example, when being recommended to purchase a portfolio of several funds, an investor may receive multiple individual disclosure documents with a lot of similar content and it is unlikely that they will read more than one of these, if that. What is important with a portfolio is the aggregate of the portfolio as a whole, specifically the exposure to different asset classes, sectors and style factors and the overall costs of the portfolio. The only party who will have this data in aggregate form is the advising entity and it is therefore best placed to calculate these aggregate figures and provide them to the investor. Good firms will do this anyway to make it clear what they are recommending and why, so why not make the responsibility of providing disclosure that of the advising entity where that is the case? It is in the interests of such firms to provide such information in the most easily understood form and this should therefore encourage innovation in presentation methods, including condensing the important data into formats such as graphics which do not rely on high levels of numeracy on the part of consumers. In the author's own experience, having been doing it since before the RDR was implemented at the end of 2012, it is not onerous and makes it easier to produce recommendations which can be explained coherently to an investor and to demonstrate how they are likely to increase the chances of them achieving their specified objectives. The author has found that a graphical format, using a stacked bar chart, to be effective at displaying the costs of a

		recommended solution while also permitting comparison with other options including the customer's existing arrangements in a digestible way.
9	Evidence suggests that layering in retail disclosure can improve consumer understanding. Do you agree with this and can layering also reduce the burden on firms? Are there any challenges we should consider?	Yes. It should help to avoid overburdening consumers with data at each stage and ensure that the data that they do receive is less likely to need revision at a later stage in the process as the disclosure information is refined due to the advice narrowed down to the recommended solution.
10	Are there other interactive disclosure approaches we should evaluate?	No view on this issue.
11	How can disclosure requirements facilitate firms to use plain language to further consumer understanding while balancing accuracy, particularly with complex products?	It is not clear to us how disclosure requirements facilitate firms using clear language. Surely good firms would wish to use clear language because it would result in their customers being better informed and consequently more engaged with the firm. This is something which good firms would wish to do regardless of regulatory requirements because it enhances their customer relationships and builds loyalty as well as increasing the likelihood of existing customers referring other potential customers to the firm. Good firms do this (and many other things) not because regulators tell them to do so but because they believe that it is the right thing to do.
12	What do you consider the appropriate balance between flexibility and prescription in disclosure? Does comparison feature in this balance?	It should not be the role of regulation and disclosure to promote investing to customers – that function is better carried out by the regulated firms. Regulation should be to protect them from the harm done by poor practice (whether deliberate or accidental) misleading and therefore focus on the areas which those firms which are less good are more likely to cover inadequately. As noted elsewhere, these areas would typically be risk, costs and flexibility.
13	What information, if any, should be comparable? Do you have evidence to support or refute comparability between similar product types?	This is a complex issue, as many products are capable of being used for the same high-level purpose (such as retirement planning) but they can have wildly differing characteristics which affect their suitability. One product which might be unsuitable on its own (such as an emerging markets equity fund) might be entirely reasonable as part of a diversified portfolio. In some instances (one might hope, in most), a solution might employ multiple products according to their characteristics and the customer's circumstances. The best party to address this is probably the firm as it can tailor the advice and explanation to the situation; regulation should focus on the characteristics most likely to result in harm, such as risk, costs and flexibility.
14	What level of prescription should be involved in the calculation of costs to ensure clarity and consistency for consumers while also prioritising the need for accuracy?	Costs can most easily be separated into those which are initial and those which are ongoing, although occasionally there are exit charges. They may be calculated in either percentage or cash terms, although since the evidence suggests that consumers in general struggle to understand percentages, consolidating them into cash figures would be preferable. Consolidating them into a single format would help with clarity and consistency while accuracy is a matter of applying the cost calculation parameters to the value of the investment.
15	What are the pros and cons of presenting cost as single figure, with more detailed information layered in disclosure?	***Benefits*** Simplicity as it involves only a single number. ***Drawbacks*** Costs are specifically initial or recurring in nature. To combine the two therefore requires some assumptions to be made in order to merge them into a single figure. These may include a holding period for the investment and the difficulty is in identifying what this should be. It might be reasonable for this to vary between specific investments (for example, a very short maturity - i.e. less than one year - bond fund and an emerging markets small cap equity fund, even though both may be part of the same umbrella structure) as well as between advice firms and individual investors. The problem arises when there is an initial cost and it is amortised over that holding period – an initial charge of 5% will have a different impact on the annual cost if spread over five years (c.1%pa) compared to if over 10 years (c.0.5%pa). Even though the costs are the same, this would make products with different assumed holding periods appear to have different costs, which would require explanation (and thus more complexity).

		There is a material difference between the impact of initial and recurring costs on a product, although this may not be apparent to the average investor. In general, although obviously depending on the quantum of the figures involved, recurring costs have more impact on the final outcome due to compounding. Nevertheless, investors often focus more attention on initial costs than ongoing ones, which may not be challenged by industry participants if this also suits their own ends.
16	What level of flexibility should there be in the calculation and presentation of costs and risks?	As long as the required information is provided to consumers and meets the clear, fair and not misleading standard, it should be left up to firms to determine the most appropriate methodology. It would be helpful if the Authority were to provide examples of good and poor practice so as to assist firms in producing this but failure to do so could presumably be addressed using the consumer duty rules.
17	What is the purpose of performance disclosure?	It is assumed that the purpose of regulatory involvement is to ensure that historic performance is not misrepresented. As the Authority points out, it is not an appropriate guide for future performance. I would favour an approach whereby performance data itself is not mandated to be provided but that where it is provided, it must meet the 'clear, fair and not misleading' standard. In particular, providing consumers with data covering periods shorter than (at least) one year should not be provided unless accompanied by appropriate warnings that such data is unlikely to be representative of typical holding periods.
18	To what extent should the FCA prescribe the performance information to be provided to retail investors? Should the FCA categorise products for the purpose of performance disclosure?	Historic performance data is widely recognised as having no predictive power even though consumers are prone to over-reliance on it and therefore there seems to be no merit in prescribing other than that what is provided should be clear, fair and not misleading. It would be helpful to provide guidance on any more specific requirements.
19	Would tailoring or flexibility promote accuracy and enhance consumer engagement?	On the premise that the purpose of disclosure should be to ensure that consumers are warned about issues which product manufacturers, distributors or advisers might be less inclined to mention otherwise, it seems appropriate that the required disclosure of risks, costs and flexibility should be the same for all target markets. This would not preclude firms from providing more information which promotes the purported positive features of a product, whether specific to a particular target market or not.
20	Are there other content requirements that should be included in regulated disclosure? Should this content be disclosed alongside product information?	Content which is not specific to financial products should not be included in product disclosure. For example, the points listed under 5.27 do not relate to products but to the firm and this information should be disclosed separately at an early stage of the process as it is often not related to the specific advice given later. If there is any change (such as specific investments not being covered by the standard compensation arrangements), this should be disclosed later when the relevant details are known.

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