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SHOULD HEDGE FUND PRODUCTS BE MARKETED TO RETAIL INVESTORS? A BALANCING ACT FOR REGULATORS

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WORKING PAPER SERIES NO. 10

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Should Hedge Fund Products be Marketed to Retail Investors?

A Balancing Act for Regulators

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SHOULD HEDGE FUND PRODUCTS BE MARKETED TO RETAIL INVESTORS? A BALANCING ACT FOR REGULATORS

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I. Introduction

In an ideal world all investment products, including hedge funds, would be marketable to all investors. In this ideal world, all investors would fully understand the nature of the products and would be able to make an informed choice whether` to invest. Of course the ideal world does not exist – the retail investment market is characterised by asymmetries of information. Product providers know most about the products on offer (or at least they should do). Investment advisers often know rather less than the provider but much more than their retail customers. Providers and intermediary advisers are understandably motivated by the desire to sell their products. There is therefore a risk that investment products will be mis-sold by investment advisers or mis-bought by ill-informed investors.

This asymmetry of information is dealt with in most countries through regulation. However, the regulatory response in different countries is not necessarily the same. There are various ways in which protections can be applied and it is important to understand that the cultural background and regulatory histories of countries flavours the way regulation has developed. This means (as will be explained in greater detail later) that some countries are better able than others to admit hedge funds to the retail sector.

Following this Introduction, Section II looks at some key background issues. Section III then looks at some important questions raised by the retail hedge fund issue. Many of these are questions of balance. Balance lies at the heart of regulation of course – regulation must always balance the needs of investors and with market efficiency. Understanding the "retail hedge fund" question requires particular attention to balance. Section IV then looks at the UK regime and how the FSA has answered the balance question. Section V offers some international perspectives. Section VI concludes.

It will be seen that there is no obviously right answer to the question whether hedge fund products should be marketed to retail investors. Each regulator in each jurisdiction needs to

[1] Ashley Kovas writes in a personal capacity. The views expressed herein are those of the author, and do not necessarily reflect the views of the Financial Services Authority. This document does not constitute guidance for the purposes of section 157 of the Financial Services and Markets Act 2000.

make up its own mind on how to deal with the various issues and balances. It is evident, however, that internationally there is a move towards a greater variety of retail funds. There is nothing wrong with that, provided the regulators and the retail customers they protect, understand sufficiently what sort of protection is, or is not, being offered in the regulatory regime.

II. Background

A. FSA scope and powers

The Financial Services Authority (FSA) is the single financial regulator for the UK. The FSA takes its regulatory powers from the Financial Services and Markets Act 2000. Although enacted in 2000, the Act came into force at midnight on 30 November 2001. The Act drew into one regulator the regulatory functions formerly carried out by ten previous regulators and creates four statutory objectives for the FSA:[2]

- *Maintaining market confidence* – which means maintaining confidence in the financial system in the UK.
- *Promoting public awareness* – In particular, this includes promoting awareness of the benefits and risks associated with different kinds of investment or other financial dealing and also the provision of appropriate information and advice.
- *Protecting consumers* – Securing the appropriate degree of protection for consumers. This must have regard to (a) differing degrees of risk inherent in different investments; (b) the differing degree of experience/expertise of different consumers; (c) the needs consumers may have for advice and accurate information; (d) the general principle that consumers should take responsibility for their decisions.
- *Reducing financial crime* – Reducing the extent to which it is possible for financial crime to be carried on by a regulated person or in contravention of the general prohibition.[3] The FSA must have regard to the desirability of: (a) regulated persons being aware of the risk of their business being used in connection with financial crime; (b) regulated persons taking appropriate measures to prevent financial crime; (c) regulated persons devoting adequate resources to fighting financial crime.

The Act also provides that the FSA must abide by a series of "principles of good regulation":[4]

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[2] Financial Services and Markets Act 2000, section 2(2).

[3] The "general prohibition" is contained in section 19 of the Financial Services and Markets Act 2000. It states that a person may not carry on a "regulated activity" (i.e. an activity to which the Act relates) without either authorisation or exemption from authorisation.

[4] Section 2(3).

- *Efficiency and economy* – This deals with the way the FSA uses its resources. When dealing with a specific risk, the FSA aims to select the regulatory options which are most efficient and economic.

- *The role of management* – This principle has two aspects to it.[5] First, it means that the FSA must guard against being too intrusive into firms' affairs. In this interpretation, the FSA must, in effect, hold back and allow regulated firms to run themselves. Second, and as a consequence, it also means that the FSA must hold senior management responsible for risk management and controls within the firm.

- *Proportionality* – Restrictions applied to firms through FSA rules should be proportionate to the expected benefits for consumers and the industry. The FSA takes into account the costs incurred by firms and consumers. The Act requires the FSA to undertake and publish a cost benefit analysis of any proposed regulatory requirements.[6] An example of proportionality in action can be seen in the way in which the FSA regulates the "wholesale" and "retail" markets differently. More detailed rules as to standards are applied to firms dealing with retail customers than are applied where the customer is "wholesale" – essentially where the customer is himself acting in the market by way of business.

- *Innovation* – The FSA should facilitate innovation, e.g. by avoiding unreasonable barriers to entry or restrictions on existing market participants who launch new financial products and services.

- *International character of financial services and markets and the desirability of maintaining the competitive position of the UK* – The FSA will consider the impact on the UK markets and consumers of economic, industry and regulatory situations overseas. The FSA must consider the international mobility of much financial services business. The FSA will co-operate with overseas regulators, to agree international standards and also to monitor global firms and markets effectively.

The FSA must therefore carefully consider whether actions it proposes to take, including the making of rules, is consistent with these statutory objectives. It is required to act consistently with its statutory objectives.[7]

Section 19 of the Financial Services and Markets Act provides that a person commits a criminal offence if he carries on, or purports to carry on, a 'regulated activity' unless he is authorised by the FSA or exempt from the need to seek authorisation. The regulated activities

[5] See *A New Regulator for the New Millennium*, Financial Services Authority, January 2000, page10.

[6] Section 155(2)(a) and (10).

[7] Section 2(1) of the Act requires the FSA to act, so far as is reasonably possible, in a way which is compatible with its statutory objectives. Furthermore, it is required to act in a way which it considers most appropriate for meeting those objectives.

are set out in secondary legislation[8], and include, so far as is immediately relevant to hedge funds:

- Managing investments
- Establishing etc. a collective investment scheme
- Advising on investments
- Agreeing to carry on specified kinds of activity[9]

The regulated activities only trigger the need for authorisation if the activity is carried on with respect to a 'specified investment'. These are also set out in the Regulated Activities Order, and comprise:

- Deposits
- Contracts of insurance
- Shares etc
- Instruments creating or acknowledging indebtedness
- Government and public securities
- Instruments giving entitlement to investments
- Certificates representing certain securities
- Units in a collective investment scheme
- Rights under a stakeholder pension scheme
- Options
- Futures
- Contracts for differences
- Lloyd's syndicate capacity and syndicate membership
- Funeral plan contracts
- Regulated mortgage contracts
- Rights to or interests in investments

In addition to the authorisation of firms, the FSA also authorises individuals working within authorised firms – this is known as the 'approved person' regime. This requirement for individual authorisation does not extend to all staff working for firms, but only to those who carry on 'controlled functions'. People who perform merely administrative functions would not be included, but those whose work provides them with scope to affect a firm's customers in a significant way would be included, for example a firm's fund managers. Firms are required to take appropriate steps to ensure that persons who are appointed to carry out controlled functions are fit and proper to do so. This includes a requirement that the person has completed or will complete certain training requirements.

[8] The Financial Services and Markets Act 2000 (Regulated Activities) 2001 (SI/2001/544), available on the government publisher's website: www.hmso.gov.uk.

[9] The specified activities involved are taken from the list of regulated activities.

B. What is a hedge fund?

The first hedge fund is reckoned to have been a fund established by Alfred Winslow Jones in the late 1940s.[10] Jones had been struck by the idea that it was not possible to predict with any degree of accuracy the future direction of the stock market. Instead he sought to remove market risk altogether through short selling. So, for example, if he bought $10,000 of stocks, and sold short $5,000 of stocks, his total exposure in the market would be $15,000. He might finance this portfolio with $10,000 cash investment, and $5,000 borrowing. His total market involvement is therefore $15,000. However, his net market exposure is $5,000. The long portfolio is partially hedged by the shorts – market risk is reduced through the hedging. What becomes important, having hedged the portfolio, is the selection of individual stocks.

Although 'hedge fund' techniques were first used more than half a century ago, the industry has only seen significant growth in recent years. Reliable statistics on the hedge fund industry are sometimes regarded as hard to find. However, many commentators estimate that assets under management world-wide could amount to as much as $600 billion.[11] The TASS database suggests that hedge fund assets under management have increased more than five-fold between 1994 and 2001.

Although the above description suggests that there is some meaning in the term 'hedge fund', there is in fact no generally accepted definition of a 'hedge fund'. Some commentators consider the term positively misleading, particularly in view of the fact that some hedge funds do not even hedge their positions. Most industry commentators would point to a number of distinguishing features of a 'hedge fund', for example, the following may appear as characteristics:

- It will not be authorised by the FSA
- Use of a wide variety of trading strategies involving position-taking in a range of markets
- Employment of an assortment of trading techniques and instruments, often including short-selling, derivatives and leverage
- Payment of performance fees to the hedge fund manager

Devising a definition for regulatory purposes from these characteristics is likely to prove impossible. In practice, the issue really revolves around the extent to which retail fund managers should be able to make use of the full range of portfolio management techniques, including short-selling and leverage. It is use of those techniques which most distinguishes a hedge fund

[10] See *Hedge Funds, the Courtesans of Capitalism* by Peter Temple, John Wiley and Sons Ltd (2001), pp 7 – 10.

[11] See *Short Sellers are People, Too!* Wall Street Journal Europe, January 30 2003. It is suggested that hedge fund assets under management have grown from $67 billion to $600 billion in a decade.

from a 'conventional' fund.[12] That point is important in deciding what the issues are that are being raised in the "retail hedge fund" debate.

Because the 'definition' of a hedge fund is a reference to portfolio trading strategy, it is not possible to limit the debate to any particular product structure. A 'hedge fund' can be structured in as many ways as there are product structures, though tax treatment is usually a limiting factor as to which structures are used in practice. In the UK, hedge funds could be created as investment companies or as collective investment schemes. These are structures which have previously been used as methods of pooled investment vehicles, enabling investors of limited means to get access to a balanced portfolio of assets which is itself subject to professional management, although as will be argued in section C, hedge funds are very different from what the UK has historically taken to be 'investment entities'.

Because the term 'hedge fund' is incapable of definition, the term will be used here to refer to funds which *call themselves* hedge funds[13] and perhaps other presently unregulated funds. It cannot of course refer to all unregulated funds. As will become apparent later, adoption of hedge funds into the UK retail product market would potentially create three types of fund available to varying degrees to the UK retail investor:

- Existing regulated investment funds;
- Partially regulated funds, including but because of the definitional difficulty not limited to 'hedge funds';
- Unregulated (or even-less-regulated) funds

C. Are hedge funds *trading* or *investment* entities?

In the UK, both the investment company and authorised scheme regimes were established with the objective of facilitating the holding of a portfolio of underlying securities. Two advantages are provided for investors into such pooled investment vehicles. First, there is a cost benefit – the pooled vehicle enables a smaller investor to get exposure to an underlying diversified portfolio of shares which he could not hope to create for himself from his limited means. Second, there is an advantage provided through the professional management of the underlying

[12] Of course there could be other differences – for example in an unregulated fund the nature of the property permitted may include, for example, commodities, land or precious metals.

[13] Interestingly, there is academic opinion to support the view that investors are 'irrationally' affected by a fund's name. See P Raghavendra Rau *et al*, *Changing names with style: Mutual fund name changes and their effects on fund flows*, available on the Purdue University Website, www.purdue.edu (an unpublished Working Paper).

assets – the investor is saved the trouble of deciding what securities to hold, the investment decisions are made by an expert.[14]

Hedge funds offer something different to mere access to an underlying pool of investments – use of the additional portfolio management techniques means they are trading strategies in their own right. In many ways, hedge funds occupy an uncomfortable position between true trading companies – such as a pharmaceuticals company or an oil company – and an investment entity, such as an investment company or a collective investment scheme. For example, transparency has always been perceived as a problem for hedge funds – the funds have been frequently criticised for not revealing their underlying positions or strategies. The funds themselves have argued back that they cannot do this. As soon as they reveal the details of their strategy they open themselves up either to attack from their rivals (who may wish to take advantage from the vulnerabilities inherent in speculative positions) or alternatively they may copy the strategy (making it immediately less valuable). In arguing for trade secrecy, the hedge funds are aligning themselves with trading companies which are allowed a degree of confidentiality in their operations as a concession to their entrepreneurial nature.

Although they resemble trading companies in their freedoms, hedge funds are similar to investment companies in that they produce no goods and services of their own. However, they do seek to make profits for their shareholders. The request for a greater retail presence therefore is a plea by the hedge funds to be able to present themselves as an investment entity to the world at large. However, there is a risk that retail investors may not understand that the funds are not managed long-only portfolios – which has historically been the hallmark of an 'investment entity'.

Investment entities are therefore perceived by retail investors as nothing more than "baskets of shares" by retail investors. Retail investors may also perceive them to be relatively safe places to leave a substantial portion of their savings – to take advantage of the professional management which the product offers. This does not necessarily mean that the retail investor believes that he is taking no investment risk in making the investment. However, such retail

[14] Both these advantages were noted for unit trusts as early as 1936 in *Fixed Trusts, Report of the Departmental Committee Appointed by the Board of Trade*, Cmd. 5259, July 1936, see paragraph 17. The same report also suggests that wealthier investors were willing to invest in securities via unit trusts even though they could afford to create a direct share portfolio at lower cost. Such investors were "willing to pay the higher price for the saving of worry and trouble".

investments often involve effectively a delegation by the investor of both the individual stock selection and to varying degrees the asset allocation decision.[15]

D. Hedge funds can be marketed to the retail investor in the UK in limited ways

Hedge funds may be sold either with or without investment advice. Where no advice is given, the marketing regime applied depends directly on the nature of the underlying product structure of the fund.

(i) Hedge funds structured as investment companies. If the fund is structured as a corporate vehicle, its marketing is governed by Company Law. The marketing of company securities by the company itself through the production of a prospectus (or through Listing Particulars if the company is listed) is treated differently to other types of financial promotion.[16] The overriding regulatory concern for both prospectus and Listing Particulars is on the truthfulness of the document in the way in which it provides certain required information. If it accurately explains the nature of the investment opportunity being presented, it is permitted.

The regime for the promotion of unlisted securities is outside the regulatory scope of the FSA, although the FSA can regulate the promotion of such securities where it is carried on by authorised persons. The FSA is, however, the UK's Listing Authority and therefore has greater control over companies which seek a UK listing.[17] The Listing Rules effectively prevent a hedge fund from establishing as an investment company. A fund of hedge funds can, however, be listed. Investment companies are required to invest "with the object of spreading investment risk and managing its portfolio…".[18] The requirement for spreading investment risk is interpreted to mean that the company must hold a 'conventional long-only' portfolio.[19] A fund of hedge funds does exactly that – it buys the underlying investments on a long-only basis.[20]

(ii) Hedge funds structured as collective investment schemes. If a fund is structured as a collective investment scheme,[21] it cannot be marketed to the general public unless it is authorised.[22] An authorised person can market unregulated schemes to limited classes of

[15] In the UK many investment entities provide retail investors with the opportunity to make some asset allocation. For example, a Korean Technology Fund provides a highly focussed investment portfolio both as to geographical and industrial sector.

[16] Article 73 of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2001 (SI 2001/3591) exempts from the 'financial promotion' regime in the Act material which forms part of a prospectus for the public offer of unlisted securities. Article 71 of the same Order performs the same function for Listing Particulars.

[17] The UK Listing Rules are published by the FSA and are available on the FSA website.

[18] Listing Rules, paragraph 21.1(f), where "investment company" is defined.

[19] FSA Discussion Paper 16, *Hedge Funds and the FSA*, paragraphs 4.15-4.16.

[20] In fact there are other ways of mimicking a fund of funds portfolio that might not involve holding the underlying funds.

[21] See section 235 of the Financial Services and Markets Act 2000 for the definition. The definition is very wide, including for example, structures based on English Trust Law and also partnerships. The definition is however limited by the exclusions listed in the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 (SI/2001/1062).

[22] Section 238(5) of the Financial Services and Markets Act 2000.

investors, including[23] (a) a person who has been a previous participant in such a scheme within the last 30 months; or (b) a person for whom the investment has been considered suitable by an authorised person, but only where the person is an established or newly accepted customer of the firm concerned.

In addition, authorised persons are permitted to market unregulated schemes within the exclusions set out in the Financial Promotions Collective Investment Schemes Exemptions Order.[24] This allows for marketing *inter alia* to "sophisticated investors".[25]

Giving investment advice is an activity which usually requires FSA authorisation. Authorised investment advisers are able to recommend hedge fund investment to their customers. However, in order to do so, they must ensure that the investment is suitable for the customer. In order to establish suitability the adviser must review the customer's existing financial portfolio and attitude to risk. Retail investment advisers do not, however, commonly recommend hedge fund investment to their retail customers. This may be due to the absence of 'retail sized' investment products for hedge fund investment (typically hedge funds require investment of at least $100,000 which is prohibitive for most retail investors). Also, advisers seem themselves to be cautious of hedge funds. This is due perhaps to the need for the adviser to become familiar himself with products which are very different from the available retail products. A significant research effort is needed for the adviser to be fully confident to recommend hedge funds to his retail customers. Advisers are happier recommending authorised schemes, perhaps relying on the fact that the FSA will have authorised the product as being suitable for retail investors.[26]

III. Questions of balance

A. Introduction

The issues which a regulator needs to address in deciding whether hedge fund products should be offered to retail investors in its jurisdiction are complex. A number of the issues overlap to some extent. Section III seeks to separate out the major issues, and notes that many of them amount to

[23] For the full list and details see the FSA's Handbook of Rules and Guidance, Conduct of Business Sourcebook, COB 3, Annex 5.

[24] Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001 (SI 2001/1060).

[25] The Financial Promotion Order (SI 2001/1335) disapplies the financial promotion restriction set out in section 21 of the 2000 Act for *inter alia* sophisticated investors (see Article 50 of the Order). The Order applies to situations where the financial promotion restriction applies. The marketing of unregulated collective investment schemes is, however, governed by section 238 of the Act.

[26] This reliance on the hallmark of authorisation may be an example of 'moral hazard'. Advisers and investors may attach more weight to the hallmark than is reasonable – in other words they may think that greater protections are provided by the authorisation than is in fact the case.

questions of balance. This in turn suggests that there is no obviously right answer to the degree of retail marketing which hedge funds should be allowed – accepting that some restriction is necessary to meet the information asymmetry concern referred to above in Section I.

B. Balancing the statutory objectives

The FSA's statutory objectives were described in detail in Section II.A. The Act clearly requires the FSA to strike a balance between promoting innovation and protecting customers. Indeed, the Act's description of the 'protection of customers' objective itself recognises that different customers have differing needs for protection. It is also explicit that there is a "general principle that consumers should take responsibility for their decisions".[27]

C. Balance in the use of regulatory tools

The FSA is able to affect a firm's involvement with the production, marketing and selling of investment products in various different rules-based ways. These include rules concerned with:

> *(i) Marketability restrictions*: Marketability restrictions are concerned with the extent to which a product can be freely marketed or advertised.
>
> *(ii) The selling process*: Rules governing the selling process include requirements applied to those who advise customers on the merits of buying or selling investment products. The FSA has rules which set standards for investment advisers in the way they advise their customers. For example, there is a requirement for 'know your customer'[28] which obliges the adviser to seek certain information from the customer as to his financial status before recommending any investment products to him. This is designed to ensure that the adviser is aware of the customer's financial needs and desires. When giving his advice the adviser is required to observe 'Suitability'[29] requirements – recommending the product which most closely matches the customer's needs and wishes.
>
> *(iii) Disclosure*: Disclosure requirements could be considered as a part of the selling process standards referred to in (*ii*) – where the disclosure is to be made as part of the selling process (i.e. where the sale is intermediated by a financial adviser). However, disclosure as a tool also applies where no advice is given. In such cases, the requirements apply to the product provider or distributor.
>
> *(iv) Product regulation:* Product regulation concerns rules applied to the structure of the product itself. For example, the UCITS Directive[30] imposes requirements on the structure and investment policy of undertakings for collective investment in transferable securities, but these only apply to products which are to be opened to cross-border marketing in the EEA, as provided for in the Directive.

[27] Financial Services and Markets Act 2000, section 5.

[28] See the FSA's Handbook of Rules and Guidance, Conduct of Business Sourcebook, Chapter 5.2 ("COB 5.2").

[29] *Ibid.* COB 5.3

[30] Council Directive 85/611 of 20 December 1985, OJ L375, 31.12.85.

These various regulatory tools can be combined in different and flexible ways.[31] The FSA, in light of its statutory requirements to act efficiently and proportionately must consider carefully the balance between use of these regulatory tools. As will be argued later, the way in which regulation has developed in the UK and the EU means that the present balance relies heavily on product regulation.

An example of a shifting balance between these regulatory tools can be seen in the *Sandler Report*.[32] In July 2002 Mr Ron Sandler published a report on the UK's retail investment industry which had been commissioned by HM Treasury. Mr Sandler was much struck by research findings which indicated that the UK population is under-saving by a substantial margin. This failure to make long-term provision for themselves suggests that, taken with demographic changes, the tax burden from the UK's ageing population may grow to alarming proportions.[33]

Mr Sandler concluded also that firms' regulatory costs, essentially deriving from rules applied to the selling process are growing and making it increasingly uneconomic for product firms to service customers of less-than-average means.[34]

Mr Sandler recommended:

> "… the introduction of a suite of simple and comprehensible products. The features of these would be sufficiently tightly regulated to ensure that, with certain additional safeguards, a consumer could be sold these products safely without regulated advice."[35]

In respect of these products, provisionally called 'stakeholder' products the financial adviser becomes a salesman instead of an adviser as such. Product regulation is increased, meaning that regulation applied to the selling process can be reduced.

D. The likely success of an authorised product and *moral hazard*

The fact that the regulator is willing to authorise an investment product sends a message to potential investors that the product is somehow safer (or at least different in quality) from a

[31] These tools do not represent the full armoury of tools available to the FSA. For a fuller list see *A New Regulator for the New Millenium*, FSA, January 2000, Chapter 3.

[32] *Medium and Long-Term Retail Savings in the UK, A Review* (July 2002), can be found on the Treasury website, www.hm-treasury.gov.uk.

[33] A report by Oliver, Wyman and Company indicates that the 'savings gap' in the UK is £27 billion per year, requiring a 54% increase in annual total savings to correct, though the accuracy of the figures has been criticised by some.

[34] Mr Sandler's finding is that firms find it uneconomic to service customers who cannot afford to save more than £70 per month or make an £8,500 lump sum investment, see paragraph 5.11 of the *Sandler Report*.

[35] *Sandler Report*, paragraph 10.12.

product which does not have authorisation. It is possible that investors will be more willing to commit themselves to investment in an authorised investment product when compared to the same product in an unauthorised state.

E. Predominantly 'top down' or 'bottom up'? A fundamental structural balance for product regulation

The regimes for listing and authorisation of investment funds in the UK may be defined as predominantly 'top down' in nature. This description refers to the fact that both regimes, to different degrees, rely on regulatory prescription of desirable products. Both regimes presently exclude hedge funds. Authorised collective investment schemes must comply with very strict rules about what the scheme can invest in and how it is structured. Many of these restrictions derive from European legislation through the UCITS Directive.[36]

The regime for investment companies is less 'top down' than that for schemes. However, there is still the requirement that the fund must be diversified which effectively excludes hedge funds.

Some other countries have 'bottom up' funds regimes. This approach is similar to the way in which the UK regime treats the listing of trading companies. In a 'bottom up' regime, the product rules set by the regulator are less prescriptive. Greater reliance is instead placed on the provider of the product to describe accurately his business proposition in the company's prospectus. A 'bottom up' regime is therefore a disclosure based regime. A much wider range of business propositions is of course possible in a 'bottom up' regime than can be accommodated in a 'top down' regime.

By way of example, Australia has a bottom up regime for its mutual funds. A very wide range of retail funds is possible, including hedge funds, along with other exotic funds such as 'raptor' funds, investing in ostrich farms and the like.

A disclosure-based 'bottom up' regime allows for a greater range of funds. However, it also places much more responsibility on the customer to assess whether the fund is suitable for him – indeed the customer must try to understand what the risks are in the fund and whether he wishes to run those risks. In a 'top down' regime, the regulator takes on much of the assessment of the fund. As will be explained in Section IV, a regulator operating a 'bottom up' regime for authorised funds also must accept that some authorised products will fail, and that retail investors will lose the whole of their investment into such products.

[36] Council Directive 85/611/EEC of 20 December 1985, O.J. L365, 31.12.85, as amended.

Note though that a predominantly 'bottom up' regime may still have regulatory controls attached to it. The listing regime does not allow every viable business entity to be listed for admission to official trading on the London Stock Exchange. Rather than opposite concepts, the descriptors 'top down' and 'bottom up' refer to points on a scale.

F. Responsibilities concerning advice – product providers versus financial advisers

As mentioned, a category of retail funds to include hedge funds would create a substantial diversity of funds when compared to the present range of authorised retail funds. Each fund would, to some extent, offer novel features. Indeed, the managers of hedge funds market themselves on the basis of their own particular and individual skills. Such differentiated products offer considerable challenges to the financial advisers who advise retail customers on them. They must rely to a large degree on the information which is provided by the product provider. On some occasions, the product may have entirely unique features offered by no other product in the market. The product provider obviously has an incentive to market the product to the adviser, so as to achieve the maximum volume of sales through him.

The UK financial regime places the responsibility for financial advice squarely on the financial adviser. There is therefore a possibility that the product provider may have an incentive to underplay the downsides of the investment when marketing the product to the retail adviser. He may have no reason to care that the adviser may go on to mis-describe the fund's characteristics to his customers. Of course, if the sophistication of the adviser market means that the adviser would be able to spot such economies, no harm is done. However, even where the adviser market is genuinely sophisticated, an information asymmetry may still exist between provider and adviser where the product in question is unique – the provider may be the only party who truly understands the nature of the product.

It may be necessary therefore to place responsibilities on the product provider. This need not, indeed should not, go so far as to make the provider bear responsibility for or to second-guess the retail adviser's advice. It could however require the provider to provide fully balanced and comprehensive informational literature to the retail financial advisers who sell its product. More confrontationally, the provider could be obliged not to accept deals via an adviser unless the provider is satisfied on reasonable grounds that the adviser is competent to advise on the product in question. Neither of these obligations applies to UK product providers at present. If introduced, they could be applied to product providers in respect of all products. Alternatively, they could be applied only to 'wider range' products which would include hedge funds, if such products were authorised.

G. Transparency and performance

During the discussion above on whether hedge funds are trading or investment entities, it was mentioned that hedge funds behave like trading entities in seeking to reserve to themselves their 'trade secrets'. If these are made public, the manager may not be able to perform as well. So, there may be a trade off between the level of expected transparency and the level of performance which might be expected from a hedge fund.

H. Protection – does this mean keeping hedge funds away from retail investors or does it actually mean the reverse?

This is, in many ways, the key question in the 'retail hedge fund' debate. The hedge fund industry claims that denying retail investors access to hedge funds denies them access to something of value to them. Two reasons are put forward for this:

> *(i)* *Reduction of risk.* This argument accepts that hedge funds reduce risk in a portfolio because they are an uncorrelated asset class. This suggests that a retail customer should hold a proportion of hedge funds alongside other investments.
>
> *(ii)* *Portfolio management techniques.* The true distinction between hedge funds and 'conventional' funds is that managers of the former have access to a fuller range of portfolio management techniques including relatively unrestrained use of derivatives and the ability to sell short and leverage the portfolio. Because of these additional tools, hedge funds are theoretically able to make positive investment returns even in falling markets.

Argument (*ii*) is the more fundamental point, indicating that the protection argument is not just that funds called 'hedge funds' should be marketable more easily to retail investors – the argument at its widest is that all retail fund managers should have access to varying degrees to the full range of available portfolio management tools. The degree of access to these additional tools would be a matter for the fund's constitution and in turn for disclosure to the fund's investors.

This calls into question the nature of consumer protection and shows that there is a balance to be found. Does protection require that hedge funds be limited in their marketability to retail investors, or does protection actually demand that the products be made available to retail investors?

I. Hedge funds or funds of hedge funds?

Whether or not hedge funds are to be permitted greater retail marketing possibilities to the retail sector, the question arises whether funds of hedge funds should be given such access. A fund of hedge funds is a product established for the purpose of investing in hedge funds. There are

various ways to structure such a product to provide exposure to an underlying selection of hedge funds. However, there is no necessity for a fund of hedge funds to be given access itself to the full range of portfolio management techniques. It need not itself be a trading entity as described above. A fund of funds may amount to no more than a long-only investment strategy, similar to a conventional retail fund. Interestingly, a fund of hedge funds of this type is more similar to an existing retail fund, rather than an existing retail fund of funds – retail funds invest in trading entities, and funds of hedge funds do the same, if it is accepted that hedge funds are akin in some ways to trading companies (see Section II.C, above).

A fund of hedge funds seems intuitively more acceptable as a retail vehicle than a single manager hedge fund. First, as already mentioned, the vehicle appears to be an 'investment entity' as the concept has been traditionally understood in the UK, so the product would provide a spread of risk by investing in a selection of underlying funds.

Second, the selection of the underlying funds is done by a sophisticated investor, the fund manager. The UK regime is already comfortable with intermediated hedge fund investment – institutional investors are not generally speaking restricted by regulation from investing into hedge funds, though some may be restricted by their fund constitutions, or by actuarial concerns from making investments into unauthorised schemes. Also, retail financial advisers are able to intermediate to recommend hedge fund investment to retail customers, where the adviser believes that the investment is suitable to the needs, wants and risk tolerance of the customer. It is certainly arguable that a fund of hedge funds product is no more than another intermediated vehicle, offering the same safeguards.

The conclusion that a fund of hedge funds amounts to an investment entity may not, in fact, be completely accurate. The funds included in the portfolio of the fund of funds may themselves carry some (or indeed many) identical investment positions, resulting in increased risk at the fund of funds level. Alternatively and in a similar way, trades done by different underlying funds may cancel each other out – fund A might sell a share short, whilst fund B might buy it long. The result for the fund of funds investor in such a case would be transaction charges to no benefit.[37] A portfolio of trading companies (an 'investment entity') could provide greater diversification than a portfolio of hedge funds.

A fund of hedge funds would itself need to invest into unauthorised investments, unless there were already a mechanism for authorising hedge funds themselves. It has already been mentioned that the FSA does admit funds of hedge funds to official listing, when they are

structured as companies. This is consistent with the fact that existing investment companies are unconstrained by regulation from investing freely into unlisted companies or unauthorised collective investment schemes.[38] This in turn is consistent with the investment company regime's more 'bottom up' nature. However, funds of hedge funds are not presently permitted as authorised retail collective investment schemes. And individual hedge funds are not able to list or to be authorised as collective investment schemes. This is consistent with the fact that existing retail fund of funds schemes are only in practice able to invest to any great extent into other authorised collective investment schemes. A retail scheme with ability to invest substantially into unregulated schemes and into companies which are not listed in the UK would therefore be a novelty.

Funds of hedge funds raise other issues. They may require some specific regulation of their own in addition to the denial of advanced investment management techniques such as short selling or leverage. For example, if there were no such regulation, it would be possible to create a fund of merger arbitrage funds (or a fund of funds restricted to any other investment strategy). Hedge fund strategies can perform very differently between themselves at any particular time. It may therefore be desirable to eliminate strategy risk at fund of funds level by requiring investment in a spread of strategies. On the other hand, it would be possible under existing rules to create for example a fund of Japanese smaller companies funds. These would also be likely to behave according to the performance of the Japanese smaller companies sector as a whole. However, funds of hedge funds which concentrate on one strategy may suffer particularly from the duplication or cancelling-out of positions in the underlying hedge funds.

Furthermore, the objectives of 'hedge funds' vary substantially between themselves. When discussing the definition of the term 'hedge fund' in Section II.B, it was observed that some commentators consider the term misleading in view of the fact that some so-called 'hedge funds' do not actually hedge their positions. So some of them are highly speculative risk-seeking funds, whilst others may genuinely employ hedging as a means of reducing risk. A fund of hedge funds could therefore itself turn out to be (as the sum of its parts) anywhere along the spectrum of risk from very low to very high. It would be very important for proper disclosure to be made of the investment objectives in risk terms of a retail fund of hedge funds. Otherwise, there is a serious risk that retail consumers may be fooled into thinking that the diversification benefit is the end of the story as far as risk is concerned in the fund of funds. A fund of funds

[37] See Francois-Serge Lhabitant, *Hedge Funds: Myths and Limits*, Wiley (2002), Chapter 16.
[38] The company's constitution will of course provide some investment limits.

may offer the same level of *investment risk* as many single-manager funds, although the *manager risk* is diversified.

Regulation may also be necessary to prevent 'multi-tiering' – arrangements where a fund of funds itself invests in other funds of funds. Management fees would be taken at each layer in the multi-tiered structure, and such duplication of management fees may not be in investors' interests.

It may also be necessary to make requirements to apply requirements to the fund of funds to restrict the eligible underlying investments. For example, liquidity is an issue for an open-ended vehicle. An open-ended investment entity can only meet investors' calls for redemption by either holding a cash sum to meet redemptions (which implies the vehicle is not as fully invested as it could be and hence will not perform as well as it might otherwise) or through liquidating some of the underlying investments. However, some hedge funds are highly illiquid, locking in their investors for a period of a year or more. There is a balance to be drawn in allowing the fund of funds itself to limit redemptions from its own investors and requiring the fund of funds only to invest into relatively liquid underlying funds. Investment entities in the UK are generally liquid vehicles from which retail investors can disinvest fairly readily. It is likely that most investors would require liquidity, although lock-ups for perhaps 1-3 months might be acceptable to some. Or perhaps if an investor required to make a quicker redemption he could be enabled to do so, subject to a reasonable withdrawal penalty – some deposit accounts in the UK already provide such arrangements.

J. Open or closed-ended

In the UK, listed investment companies are usually closed-ended vehicles. If an investor wishes to redeem his investment, he does so by selling it on a secondary market. The company whose shares he is selling is unaffected by the investor's actions. However, all collective investment schemes are, as defined in UK law, open-ended. Redemptions will affect the manager of the scheme if they are to be made through him. In order to obtain the funds to meet the redemption, the manager may need to sell some of the underlying property of the scheme.

This difference between open and closed-ended vehicles presents another regulatory choice. If hedge funds or funds of hedge funds are to be allowed, should the regulator allow them as closed-ended or open-ended vehicles, or both? The share prices of closed-ended vehicles are usually decided by the interaction of supply and demand for the shares. The share

price may therefore diverge from the value of the vehicle's underlying investment portfolio. On the other hand, open-ended vehicles may provide a more transparent pricing mechanism – however, the need to redeem the underlying property perhaps at short notice may make life difficult for the operator of the scheme.

IV. The UK's approach to the balance

The FSA recognises that hedge funds are of benefit to some retail investors. However, greater retail marketing of hedge funds would inevitably change the retail regime in fundamental ways. It would entail a shift towards a predominantly 'bottom up' authorisation process. This would allow for a wider variety of fund types in the retail sector, but in turn implies that the selection process (i.e. ensuring that the fund is suitable for the investor) is shifted from the regulator to the investor – though there would be regulatory requirements for disclosure and some backstop product regulation. In particular, the wider range of possible fund strategies increases the risk that any given fund will fail – at the moment, the protective nature of the UK's retail products regime means that it is relatively unlikely that a fund will fail with the loss of all or a significant part of its assets. Such events may occur in the event of fraud, in which case compensation arrangements are available for the affected investors. However, any regime which would encompass hedge funds would not offer any compensation mechanisms to cope with the crystallisation of pure investment risk – i.e. the failure, for non-fraudulent reasons, of the fund's chosen strategy.

The fate of the Eifuku Fund in January 2003 indicates how some hedge funds will fail, and illustrates that a major source of risk is found in the manager himself. Eifuku collapsed spectacularly over a period of one week, in calm trading conditions. It seems that the manager of the fund, John Koomen, had assets totalling at least $1.4 billion in very few positions.[39] Of course, the most famous (near) collapse of a hedge fund occurred in 1998 with the rescue of Long-Term Capital Management. Interestingly both Eifuku and LTCM seem to have succeeded in attracting very knowledgeable and sophisticated investors. It is said that George Soros was an Eifuku investor, along with several wealthy Kuwaiti families, institutional investors including UBS and executives based at foreign investment banks in Tokyo. It is also suggested that Mr Koomen was able to conceal certain information about his previous history as a fund manager which might have influenced investors.[40]

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[39] For a précis of the Eifuku collapse, see *A Betting Man and His Fund's Hard Fall*, The Wall Street Journal, April 11-13 2003, article by Henry Sender and Jason Singer.

[40] Henry Sender and Jason Singer, op cit.

These factors, combined with the fact that hedge funds can already be marketed to retail investors in limited circumstances has led the FSA not to make further changes to make hedge funds more marketable. However, the FSA states:

> "… we recognise that the regulatory status of presently unregulated schemes needs to be kept under review. We will continue to discuss the possibility of a new approach with market participants. This new approach would allow for a broader range of funds to be brought into the regime for retail investment products."[41]

However, it is clear that any broader retail funds regime would need to cater for the expectations of retail investors. Ultimately that is the key issue – what do retail investors want or expect from regulation? It is possible that the majority of retail investors currently want and expect a level of protection consistent with the existing regime. That expectation would not be consistent with bringing hedge funds into the retail sector. Retail investors generally wish to delegate the activity of security selection and asset allocation to professional managers – through investing in an investment entity. They thus seek a product which will provide them with one home for a substantial amount of their savings. Selecting hedge funds is an activity equivalent to selecting individual shares. This is a sophisticated activity which most retail investors are not expert in and do not wish to engage in.

If a range of 'bottom up' funds were to be added to the UK retail regime, a number of issues would be raised. It would be very important for the funds to be distinguished from other authorised funds to avoid confusing investors as to the level of protection being provided. They could be given a different name, for example. They could be called 'speculative funds' or 'alternative funds' or 'partially regulated funds'.[42] Regulators would need also to decide whether investors in such funds should be required to sign a document stating that they accept that the fund may be high risk, and that the he, the investor, is making the decision to invest (or has taken advice from another person in making his decision). There is also a question over whether product providers should be allowed to accept investments from all investment advisers, or whether they should be limited to accepting deals only from advisers whom they reasonably believe to be competent to advise on the product.

On 21 May 2003 the FSA announced proposals for a significant revision to the regime for authorised collective investment schemes.[43] This includes a proposal for 'non retail' funds. At

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[41] *Hedge funds and the FSA: feedback statement on DP16* (March 2003), available on the FSA's website, see paragraph 4.15.

[42] See the interesting article by Jarkko Syyrila in [2003] JIBLR, pp 95-101.

[43] The proposals were set out in Consultation Paper 185, available from the FSA's website.

the moment, authorisation by the FSA allows any fund to be marketed to the general public as a whole. The FSA signalled through Consultation Paper 185 that it could authorise funds for more limited distribution. Some retail investors would be able to invest in such ‘non retail’ funds. However, such investors would need to be ‘sophisticated investors’. Retail investors may be classified as ‘expert private customers’ in accordance with the FSA’s rules[44] and such investors would be able to invest in the non-retail schemes. Classification as an ‘expert private customer’ requires that a person authorised by the FSA must consider that the investor meets a required level of “experience and understanding”. This must take into consideration the investor’s understanding of the markets and of the risks posed different financial instruments. The length of time the investor has been an active investor and also the extent to which he has previously relied on advice are relevant factors to the classification. The investor must be informed of the protections which he will lose if he is classified as an ‘expert private investor’.

The new regime for ‘non-retail’ funds will be capable of including funds of hedge funds. If investments are to be made by such a vehicle into other unregulated collective investment schemes, there are several criteria which the underlying investments must satisfy in order to be eligible investments. The unregulated scheme must: (a) be subject to an independent audit; (b) have its value verified by a person independent from its operator; (c) have (i) a mechanism to enable investors to redeem their investments within a reasonable time; or (ii) there must be an established and regularly operating market for trading the units of the scheme.

It is proposed that the non-retail funds (which would include funds of funds) will be able to borrow money, but the borrowing must not on any business day exceed 100% of the net value of the scheme’s property. Non-retail funds will be able to invest in derivatives but the global exposure relating to derivatives must not exceed the net asset value of the property.

The non-retail funds will not be restricted to funds of funds. It is conceivable that the regime may enable certain types of hedge fund strategy to be established as authorised non-retail funds – such funds are to be allowed to engage in short selling.

The new proposals are subject to a period of consultation which ends on 31 October 2003. It is likely that during the five-month consultation period many representations will be made to the FSA and it is quite possible that the proposed rules will be amended, perhaps substantially before they enter into force.

[44] See COB 4.1.9R (in the Conduct of Business Sourcebook).

The Consultation Paper recognises that the new regime for non-retail funds will be predominantly ‘bottom up’ in nature – the regime will permit the features of the new funds “…to be determined by the constitutive and other scheme documents rather than our rules”.[45] In addition, wide marketing of the funds will not be permitted.[46]

The new regime for non-retail funds is to be strictly restricted to sophisticated investors and hence does not provide any significantly greater marketing possibilities than are provided by unauthorised funds of funds (when structured as open-ended collective investment schemes) under the present rules. However, the importance of the proposals set out in Consultation Paper 185 should not be missed. If the proposals are implemented as suggested the FSA will, for the first time, be willing to authorise both funds of hedge funds and, perhaps, certain types of hedge fund. A willingness to apply a regulatory mark of approval to such products is a very significant change, even despite their limited marketability. It in turn may, in due course, make it more acceptable for the FSA to list single manager hedge funds for trading on the London Stock Exchange – though such companies would need to be clearly delineated from ‘investment entities’, which a retail investor might look to as a means of investing the bulk of his long-term savings.

V. European perspectives

The UCITS Directive[47] is also relevant to the retail hedge fund debate at European level. This Directive provides for a ‘product passport’ for funds which comply with the Directive, thus enabling those funds to be marketed throughout the EEA with the minimum of restriction. It is not possible to operate a hedge fund within the criteria set by the Directive. Any such product must therefore be subjected to the national requirements in each EEA State in order to be marketed there. Clearly the UCITS Directive shapes to some extent the retail funds regimes in all EU Member States. If retail funds are to be given greater scope to use strategies (such as leverage and short selling, along with wide use of derivatives) the UCITS Directive would ideally allow such funds to be marketable cross-border within the EEA with the minimum of hindrance.

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[45] Consultation Paper 185, paragraph 5.52.

[46] Ibid. paragraph 5.54.

[47] Council Directive 85/611/EEC of 20 December 1985, O.J. L365, 31.12.85, as amended.

The UCITS Directive is to be reviewed again by the Commission no later than 13 February 2005. The Commission must present a report to the European Parliament and Council by that date and that report is specifically required to:

> "Review the scope of the Directive in terms of how it applies to different types of products (e.g. institutional funds, real-estate funds, master-feeder funds and hedge funds); the study should in particular focus on the size of the market for such funds, the regulation, where applicable, of these funds in the Member States and an evaluation of the need for further harmonisation of these funds".[48]

It seems therefore that hedge funds will remain on the EU agenda.

VI. Some conclusions

A few conclusions can be extracted from the analysis given above. First, the definitional problem means that the nature of the debate needs to be refocused away from hedge funds. It seems that 'hedge funds' are no more than funds which call themselves hedge funds as a marketing strategy. No regulator seems to have attempted a definition of the term, and market participants differ between themselves on what constitutes a hedge fund. Some hedge funds do not hedge their positions, adding to the suspicion that the term is largely useless for regulatory debate.

If the retail regime of any country is to embrace hedge funds, the range of funds on offer may well be wider than existing investment entities – if such entities are (as they are in the UK) no more than long-only diversified and managed baskets of shares. It will also be more likely that funds in a disclosure based, 'bottom up' regime will fail. Not all of them will of course, but a necessary consequence of the move to a predominantly 'bottom up' regime is that the retail investor will be faced with making the selection between good and bad funds, and *some of them will fail*. This will not be a matter for compensation for the investor, it would have to be accepted as a normal market event – much in the same way as some listed trading companies fail simply because their management makes the wrong strategic decisions for the business.

At the moment, a large amount of the product selection of funds for retail investors is often done by regulators through keeping 'unsuitable' funds out of the retail arena. A 'bottom up' regime shifts the due diligence obligation (the job of investigating the fund to see if it is worth investing in) towards the retail investor. Interestingly, this shift of responsibility is happening elsewhere – in the UK pensions arena there is a marked shift in the UK from 'defined benefit' schemes, where the investment risk is borne by the employing company to 'defined contribution'

[48] Parliament and Council Directive 2001/108/EC of 21 January 2002, O.J. L41, 13.2.2002.

schemes, where the employee is expected to take the investment risk for his pension savings. It is questionable whether retail investors, in the UK at least, have the level of sophistication to understand financial matters so as to select an investment in a hedge fund. In the case of the Eifuku fund, several prominent institutional investors seem to have been willing to invest significant amounts of money. Surely retail investors could not hope to spot an inherently bad hedge fund if the professionals cannot do so? It is likely therefore that retail investors rely to a significant extent on the regulatory protections provided by fund authorisation.

Funds of hedge funds may well provide a half-way house between existing investment entities which may be predominantly long-only, and a wider range of funds with the benefits offered by hedge funds. However, although such funds may have the appearance of long-only 'investment entities', there may be scope for the duplication or cancelling-out of positions in the underlying funds. Additional regulation may be necessary for such products which are to be saleable to retail investors.

Furthermore, culture plays an important part in devising appropriate regulation. There is no universally correct solution to whether hedge funds should be available to retail investors. Some countries including Australia and Hong Kong already permit hedge funds to be sold to retail investors. However, their funds regimes are already predominantly 'bottom up', relying on disclosure rather than on detailed product regulation. A shift of regulatory balances was not therefore necessary to allow for retail hedge funds in those countries.

European regulation is predominantly 'top down'. The UCITS Directive provides for very detailed product regulation and sets limits on the types of permitted investments in a UCITS fund. The UCITS Directive was amended in 2001 to allow for a broadening of investment limits.[49] However, it remains impossible to create a hedge fund or a fund of unregulated schemes as a UCITS fund. The fundamental purpose of the UCITS Directive is to enable compliant funds, which are authorised in one Member State to be marketed cross-border throughout the EEA with a minimum of restraint. Cross border marketing of hedge funds thus remains constrained. If hedge funds are to be able to be marketed widely across EEA borders, the UCITS Directive would require further amendment.

From what is written above, it seems that there is no right answer on whether retail hedge funds or funds of hedge funds[50] should be marketed to retail investors in any particular

[49] See European Parliament and Council Directive 2001/108/EC.

[50] For reasons given elsewhere in the paper, it is better to address the issue at the level of "unregulated schemes", given the problems inherent in trying to define the term 'hedge fund'.

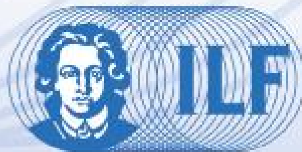
jurisdiction. The fundamental questions are first, what is *meant by* protection – does investor protection (the primary job of a regulator) mean keeping certain funds away from the investor? The answer is yes – there will probably always be some kinds of fund which are unsuitable for wide marketing. However, protection may nevertheless mean that some funds which are currently denied access to the retail marketplace should, in fact, have retail access – in the interests of creating an efficient market for funds. The second fundamental question is what do retail investors *expect* by way of protection – are they in fact willing to forego the benefits (and risks) of a more efficient market for funds in exchange for the security of knowing that a substantial fund failure is an unlikely event. It seems likely that, in the UK at least, retail investors want to have access to a range of funds to which they can delegate the selection of underlying securities. Many investors also want to delegate some or all of their asset allocation decisions.[51]

Finally, it is possible to reverse the question as to whether hedge fund products should be marketed to retail investors. In this form, the question then becomes: should the managers of retail funds have access to the full range of portfolio management techniques. That is the key distinction between so-called hedge funds and conventional schemes. Allowing all retail fund managers to have access to the full 'toolkit' would create the most efficient market for funds. Of course, within that market, not all funds would necessarily make use of the full range of tools. A fund may find a marketing niche as providing a long-only investment for example. But self-imposed limits are very different in their effects on the market to limits imposed by the regulator.

[51] Some investors may be willing to take on some of the asset allocation decisions, for example through investing in a sectoral fund – e.g. a Japanese Technology Fund.

WORKING PAPERS

1	Andreas Cahn	Verwaltungsbefugnisse der Bundesanstalt für Finanzdienstleistungsaufsicht im Übernahmerecht und Rechtsschutz Betroffener (publ. in: ZHR 167 [2003], 262 ff.)
2	Axel Nawrath	Rahmenbedingungen für den Finanzplatz Deutschland: Ziele und Aufgaben der Politik, insbesondere des Bundesministeriums der Finanzen
3	Michael Senger	Die Begrenzung von qualifizierten Beteiligungen nach § 12 Abs. 1 KWG
4	Georg Dreyling	Bedeutung internationaler Gremien für die Fortentwicklung des Finanzplatzes Deutschland
5	Matthias Berger	Das Vierte Finanzmarktförderungsgesetz – Schwerpunkt Börsen- und Wertpapierrecht
6	Felicitas Linden	Die europäische Wertpapierdienstleistungsrichtlinie-Herausforderungen bei der Gestaltung der Richtlinie
7	Michael Findeisen	Nationale und internationale Maßnahmen gegen die Geldwäsche und die Finanzierung des Terrorismus – ein Instrument zur Sicherstellung der Stabilität der Finanzmärkte
8	Regina Nößner	Kurs- und Marktpreismanipulation – Gratwanderung zwischen wirtschaftlich sinnvollem und strafrechtlich relevantem Verhalten
9	Franklin R. Edwards	The Regulation of Hedge Funds: Financial Stability and Investor Protection
10	Ashley Kovas	Should Hedge Fund Products be Marketed to Retail Investors? A Balancing Act for Regulators



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