



James Crump,
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

4 February 2013

Dear James,

AFM Response to CP12/35, Temporary product intervention powers

1. I am writing in response to this consultation paper, on behalf of the Association of Financial Mutuals. The objectives we seek from our response are to:
 - Respond to the consultation and seek further clarity on the Statement of Policy.
2. The Association of Financial Mutuals (AFM) represents 53 member companies, most of whom are owned by their customers, and who between them manage the savings, protection and healthcare needs of 20 million people, and have total funds under management of over £90 billion. The nature of their ownership and the consequently lower prices, higher returns or better service that typically result, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of additional consideration by the new regulators.
3. AFM responded in 2011 to the Discussion Paper in which the proposals in CP12/35 were first raised. Our response was broadly supportive and constructive, and we were pleased to be given the opportunity to comment on the emerging proposals in late 2012. Our view then, and remains: “that consumer protection warrants earlier and greater intervention in the product life cycle. We accept this: historically UK regulation has focused on the sales regime and given little regard to whether it was appropriate for products with features that might cause consumer detriment to enter the retail market.”
4. As a result we accept that the examples given in paragraphs 2.9 and 2.10 of circumstances in which temporary powers might be used, are all relevant and appropriate.
5. As the paper notes, where FCA feels compelled to use these powers, any announcements might generate significant media interest. Ensuring that there is an effective process for identifying problem products, for communicating with

both consumers and industry, and for providing more general confidence in the financial marketplace are therefore critical.

6. As such, we would stress that the FCA should make every effort to ensure that any proposed action is warranted and in the best interests of consumers in general. Hence we are assured that any proposal will be subject to FCA Board approval. The Statement of Policy also confirms PRA will be consulted where appropriate, but does not indicate how and when- it is important that for products such as with-profits, that have a prudential as well as a conduct impact, there is a clear commitment to engage early and to understand the wider consequences. For example, some AFM members provide a single, with-profits offering, and if they are indirectly affected by a product intervention decision, the company could become quasi-closed and financially unstable.
7. We do not agree that FCA should issue a product intervention decision without informing all firms affected. The Statement should give greater incentive to the FCA to maintain good market intelligence and to demonstrate that it has made every effort to inform firms and consumers affected by its decision. Having the ability to interrogate systems to identify what products firms offer should be a prerequisite to early intervention.
8. We also consider that the nature of the FCA's public communication should be approved by the FCA Board. Most product problems will only have an impact on a particular cohort of consumers, and this may not include some or all of those that have previously purchased the product. Hence it is important that the information provided is very clear about the potentially affected audience.
9. In our 2011 response, we indicated that our greatest concern was of providers based outside the UK and not subject to FCA jurisdiction, offering products to UK consumers that would incur the product intervention process had they originated here. As the paper reinforces, FCA has powers to act on UK based intermediaries, but is relying on the ESAs to develop rules on product intervention more broadly in Europe. We encourage FCA to engage constructively in these discussions to ensure swift resolution, and to prevent the risk of UK consumers mis-purchasing unsuitable products passported into the UK.
10. We would be pleased to discuss further any of the issues raised by our response.

Yours sincerely,



Chief Executive
Association of Financial Mutuals