Elizabeth Richards
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

15 May 2015

Dear Elizabeth,

AFM Response to Consultation Paper FCA CP15/4, PRA 6/15, *Whistleblowing*

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 proposals; and
   - Highlight the need for a proportionate approach that avoids a one-size-fits-all approach.

2. The Association of Financial Mutuals (AFM) represents 50 member companies, and in most of our member companies, customers present and future are the owners of the business. Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of £15.9 billion, and have nearly 38,000 employees[1].

3. The nature of their ownership and the consequently lower prices, higher returns or better service that typically results, make mutuals accessible and attractive to consumers, and have been recognised by Parliament as worthy of continued support and promotion. In particular, FCA and PRA are required to analyse whether new rules impose any significantly different consequences for mutual businesses.

4. AFM fully supports the development of an effective whistleblowing regime across the financial services industry. Not only is this of critical importance in providing early warning of inappropriate behaviours within organisations, it also gives assurance to individuals that they will

[1] ICMIF, http://www.icmif.org/global-mutual-market-share-2013

be properly protected if they raise a concern. This in turn will help to restore and maintain trust in the industry.

5. AFM was pleased to attend the FCA whistleblowing awareness event in March. This reinforced the importance that the regulators attach to this issue. It also provides some useful context to the reporting regime already in place: in 2014 FCA recorded 1,376 whistleblowing reports, of which 893 had recorded outcomes. Twenty reports contributed directly to enforcement action, and this should be seen as a significant achievement, though the vast majority (703) had no, or no immediate, value.

6. Perhaps surprisingly it was not banks that dominated the source of disclosures, but financial advisers (277 reports). Of the reports received, the smallest identified sector, with four reports (0.3%) was friendly societies. This reinforces that the incidence of whistleblowing is not uniform across the financial services industry, and the approach should therefore be more proportionate to the size of firms and the level of risk they infer, rather than the one-size-fits-all approach proposed.

7. We would encourage both regulators to report this data more widely, as it acts as a helpful demonstration of the impact of the regime, the importance of whistleblowing, and to make more people aware.

8. Our comments on specific questions are attached. We would be pleased to discuss further any of the issues raised by our response.

Yours sincerely,

Chief Executive
Association of Financial Mutuals

Answers to specific questions

Q1: Do you agree that the requirements should apply to these firms? What are the benefits and challenges of extending the requirements to a) branches of overseas banks, and b) other sectors regulated solely by the FCA such as non-PRA-designated investment firms?

We agree that most deposit-takers, investment firms and insurers should be included in the requirements.

In the same way that FCA and PRA have extended the recommendations of the PCBS from banking into other areas, we think that the principle of whistleblowing should be extended, including to branches of overseas banks, and other sectors, in a proportionate way. This reflects the current sources of disclosure reports, where solo-regulated firms are prominent.

On a practical basis, we suggest that the requirements are phased, so that new rules are imposed first on the sectors included in this consultation before they are translated to other sectors. Phasing the regime will enable FCA and PRA to adopt rules where there is greatest need, and given experience of FSA's original whistleblowing system- where regulatory data was incomplete- this will allow FCA and PRA to maintain systems effectively.

We agree with the decision to exclude small credit unions, with assets of less than £25 million from the requirements. We think a similar threshold should apply elsewhere. For example, around a quarter of AFM members have assets less than £25 million, and are duly outside the scope of Solvency 2. **We recommend non-directive insurers are not required to implement these rules**, as otherwise the requirements will be disproportionately onerous. In the past FCA and PRA have accepted that small mutuals insurers have the same resource limitation as small credit unions: in particular by accepting our case that they should pay the minimum regulatory levy.

Q2: Do you agree that all UK-based employees of relevant firms should be informed about the whistleblowing services run by the PRA and the FCA?

We agree. It should be left to each firm to determine the most appropriate method of communication- though we would expect that as part of their oversight of the areas included in paragraph 2.9, audit should satisfy that the communication process has been appropriate and effective.

Q3: Do you agree that firms' whistleblowing arrangements should cover all types of disclosure, not just those related to regulatory matters or protected disclosures under PIDA?

We agree.

Q4: Do you agree firms' whistleblowing arrangements should be available to all individuals, and that protections should apply to all individuals making disclosures, not just employees or those who benefit from protections under PIDA?

We agree.

Q5: Do you agree that settlement agreements and employment contracts reached by a firm with a UK worker must contain a passage clarifying that nothing in that agreement prevents the worker from making a protected disclosure? Should firms be required to impose the same requirement on agencies that provide them with staff?

We agree.

Q6: Do you agree with the FCA's proposed treatment of whistleblowing arrangements for staff of appointed representatives and agents?

We agree, though where the arrangements are extended to other sectors this should be reviewed.

Q7: Do you agree with these proposals for the role of whistleblowers' champion?

We agree with the concept of a Whistleblowers' champion, but are not convinced that the role of whistleblowers' champion should naturally be given to a NED.

This might be appropriate in a smaller organisation, where the Board is accessible, but for large/ multi-site/ multinational organisations this would present an obstacle more than a solution. The proposal could provide a potential conflict with the responsibilities of executive management, and risks blurring reporting lines and undermining accountabilities. The proposed approach might also impose significant additional costs to firms, where one or more NEDs is expected to take on a wider role and more routine involvement in day-to-day decision making in the firm.

In mutual organisations in particular, many NEDs are also members of the organisation, and as a customer, there is a potential conflict of interest between their key NED responsibilities and that of whistleblowers' champion.

Q8: Do you agree that the whistleblowers' champion should prepare an annual report to the firm's senior governance committee, which is available to regulators on request, but not made public?

It is not clear, for the vast majority of regulated firms, what value this report would provide. FCA reported receiving 1,376 disclosures in 2014, of which 25% were reported internally first. The cost benefit case does not provide an estimate of the way the number of disclosures is expected to increase as a result of the new regime.

According to this analysis, this means the vast majority of firms will be reporting nil returns. Most of those that do, will be prompted by feedback from the PRA or FCA,

and in these circumstances we would expect the company to report this activity to the board via normal compliance reporting.

It is not clear therefore to what extent annual reporting provides value.

In paragraph 3.10, the consultation states that the content of the annual report to shareholders is set out in the Companies Act. This is only correct for some mutual organisations: friendly societies for example have their own legislation and do not comply with the companies act; and mutuals do not have shareholders. This is a regrettably simplistic and misleading statement, and whilst it does not alter the core issue about reporting, it does highlight the need for regulators to undertake more thorough analysis, and to be more accurate in their language.

Q9: Do you agree with our proposed treatment of the role of the whistleblowers' champion in financial groups?

We make no comment.

Q10: Do you agree the FCA should require firms to inform it of cases where an employment tribunal finds in favour of a whistleblower?

We agree.

Q11: Do you agree that the FCA and the PRA should not place a requirement on employees to speak up when they see wrongdoing?

We think this should be a matter for the individual. However we would encourage FCA and PRA to continue to stress the obligation on individuals to act where they see wrongdoing- and the sanctions regime in place for some individuals in firms acts as an incentive for people to act with principles and ethics in reporting inappropriate behaviours within their employer.

Q12: Do you have any other comments on the proposals in this consultation paper?

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

The limited information in the cost benefit analysis makes an informed view difficult, particular from our sector, where FCA recorded four whistleblower reports in 2014. We are concerned though that the expected costs represent a disproportionately high burden on smaller firms.