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Financial Conduct Authority
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Dear Anne,

AFM Response to Consultation Paper CP15/15 (FCA), *Changes to the approved persons regime for insurers not subject to Solvency 2*

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 specific implications for our members, where we consider the consultation has not taken proper account of differences in business model.
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 employ nearly 38,000 staff¹.
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.

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

4. At the end of 2013, almost a quarter of AFM members had assets of less than £25 million. They therefore represent a relatively small proportion of the total non-directives audience, which PRA estimates to be around 100 in their equivalent consultation. Most non-directive firms though are very small in size, with very limited financial and human resources. Compliance costs therefore represent a significant proportion of total management expenses and have contributed to the rapid contraction of small insurers in recent years.
5. The key driver for the creation of the Senior Managers' Regime was the failings of large banks that led to the banking crisis. This persuaded the Parliamentary Commission on Banking Standards to call for a new regime. When PRA and FCA first consulted on the SMR, their thinking was very much laid out as relevant to deposit-takers. It has been accepted, albeit with some alterations, that similar standards should be applied to large insurers, but it is a real stretch to assume that regulators can simply extend the SMR to small, non-directive insurers, drawing almost entirely for justification on feedback to the original and more narrowly focused PCBS recommendation and initial consultation. In effect, non-directives are expected to pick up the direction of the play half-way through the final act and to try to make sense of how they got there.
6. Non-directives have the added disadvantage of knowing that the rulebooks change significantly with the advent of Solvency 2, but that wider consultation on the non-directive regime has not yet begun. This means timescales are extremely tight for anything but superficial change, and it is difficult to judge the overall impact of this consultation without sight of the remainder of the proposed regime for non-directives.
7. We are replying separately to the PRA on the proposals in their consultation. All our consultation responses are available to download via the AFM website, and we would be happy to provide a copy of the PRA response if necessary.
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 with the proposed scope of our SIF regime for NDFs?

Paragraph 1.11 of the consultation explains that FCA is adopting the regime proposed for Solvency 2 firms as a starting point, and then applying it in a proportionate way. Paragraphs 2.7 and 2.12 then go on to confirm the roles FCA will require pre-approval for.

The overall effect of the proposed SIF regime is that most of the proportionality claimed by the PRA for simplifying the regime for NDFs is negated by the FCA retaining approval for those functions. This is not to say that the FCA is wrong, but it does indicate the difficulty in assessing the new regime in a piecemeal fashion: each regulator has claimed proportionality is being exercised consistent with the small scale of NDF firms, but the combined effect of their approach does not properly demonstrate that.

The proportionality in the FCA approach is by no means apparent in the consultation: presumably supervisors will have some discretion, but as small firms have no direct supervisor the extent to which NDFs can rely on this as providing proportionality is negligible. FCA has set out a limited cost benefit case, though the value of this is limited as it still expects to consult again on parts of the approvals regime. So whilst the CBA asks whether the costs provided are an 'accurate assessment' of those faced, the absence of any factual analysis makes this exercise difficult, and not one that we would wish to rely on as properly supporting these proposals.

In our view, FCA has applied logic in a top down approach- from banking, to large insurers, to non-directives, whereas a bottom up approach, focused on what is needed to ensure a firm meets FCA's regulatory expectations, would have been more likely to achieve a proportionate approach.

Q2. Do you agree with our proposals for allocating responsibility for apportionment of responsibilities?

This is consistent with the approach being taken for directive firms.

Q3. Do you agree with our proposals for requiring firms to submit and maintain information on the scope of SIF holders' responsibilities?

We think it would be helpful, both for the firm and their supervisor, for a firm to prepare a scope of responsibilities document when an individual takes on a role, but to maintain records of changes for 10 years appears to be an unnecessary burden on small firms. FCA confirms that EIOPA does not require this for

directive firms, so the contention that it is more straightforward and therefore proportionate for a non-directive is not evident.

Q4. Do you agree that these are the right Conduct Rules for the FCA to apply to approved persons in NDFs?

The Conduct Rules are appropriate for all firms. The key test for NDFs will be how they are applied by supervisors. Unfortunately, as this consultation precedes the consultation about the wider FCA rulebook, it is difficult to establish how supervisors will act.

Q5. Does the proposed guidance attached at Appendix 1 give helpful clarity on the behaviours the FCA expects under each of the Conduct Rules?

In the proposed amendments to SUP 10A.4.4, the CF1 role is intended to fit firms of the following type: 'FCA governing function functions* (Solvency II firms and non-directive firms under £25m only)'. This appears to indicate the only exceptions are firms that are outside the scope of Solvency 2, and with assets over £25 million.

FCA uses the definition of assets below £25 million to define a non-directive, in the text of the consultation and in the rules. However this is not consistent with the Solvency 2 directive. The directive states that firms are in the scope of Solvency 2 if they have technical provisions above 25 million euro or premium income over five million euro. The definition is therefore different to the directive, and to the PRA: in theory a firm could be:

- a non-directive according to the FCA because it has assets of less than £25 million, but be a Solvency 2 firm according to the PRA because it has premium income in excess of their threshold;
- a non-directive according to the FCA because it has assets of £20 million, but exceeds the EIOPA guidelines definition because this equates to more than 25 million euro;
- a directive insurer according to the FCA because it has assets of over £25 million, but because its technical provisions (a measure of liability) are below 25 million euros, this would be below EIOPA's threshold.

With the weakness of the currency at present, this ambiguity of definition is exacerbated. It also means in relation to this consultation that in some firms classified as in Solvency 2 by PRA but outside by FCA, that individuals may be subject to both the SIMR and the FCA SIF.