Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Our ref:CP08/7

Dear Janet

CP08/7* Quarterly Consultation No 16 – Chapter 7

This is the Financial Services Consumer Panel's response to the proposals in Chapter 7 of CP08/7* Quarterly Consultation No 16.

As the Consultation Paper acknowledges, inaccurate or imprecise disclosure of their regulatory status by firms and by incoming EEA firms in particular can give the wrong impression to consumers. This is a cause for concern in a number of different respects. For example, consumers can be misled about the degree and nature of the FSA's involvement with and responsibility for these firms and consequently given the wrong impression about recourse to the Financial Ombudsman Scheme and Financial Services Compensation Scheme; misuse of the FSA logo and erroneous claims of FSA authorisation are bad for consumers and bad for the FSA; and any lack of clarity about regulatory standing can be detrimental to firms' interests in that some consumers will simply not be prepared to consider taking up a financial product or service where they do not understand whether a firm is regulated by the FSA.

We welcome this move by the FSA to tighten up the disclosure obligations of firms and on the whole we are supportive of the package of proposals – although we do have concerns about how effectively the proposals relating to the clarification of the basis on which firms do business in the UK could be enforced. In contrast we are pleased to see the FSA introducing a prescriptive rule preventing firms from indicating that they are authorised by the FSA where this is not the case. Given that there are already concerns about firms doing just that at the moment and the impact that such misleading statements have on consumers' interests, we believe that this is an area where the FSA should be taking a rigorous approach to any breaches at the outset and undertaking swift enforcement action.

In our view there is a clear need for the FSA to establish the effectiveness of the package of proposals as a whole and recommend that research or thematic work is

carried out at the first opportunity. The FSA needs to be ready to react swiftly to the findings of this work and be prepared to re-think its approach if necessary.

The proposals in Chapter 7 of the Paper do not deal directly with firms' relationships with the Ombudsman and Compensation Schemes, although we note that the FSA is proposing guidance to remind firms of their obligations in this area. We would like to see the FSA doing more here as this is an important issue for consumers. There should be a positive emphasis on the requirement on EEA firms to ensure that they state clearly that customers cannot have access to the Financial Ombudsman or Financial Services Compensation Schemes because they are not authorised by the FSA. We urge the FSA to monitor firms' compliance with all the new arrangements and to review actively the quality and effectiveness of firms' disclosure of their position in relation to the Ombudsman and Compensation Schemes. There may be a need for further action by the FSA if this work reveals continuing problems and/or lack of clarity in this area.

Finally, the FSA will be aware that the Panel has been calling for greater clarity of status disclosure and Ombudsman/Compensation Scheme accessibility for passporting firms on the FSA's register. Although the FSA has recently added an explanatory paragraph about complaints and compensation arrangements to the front page of the Register, we still remain concerned that people are not reminded of these aspects when they look up specific firms. We suggest that this is an area that could be reviewed in the light of firms' response to the revised disclosure requirements set out in this Paper and strongly recommend that the register entry for each relevant firm should include a factual statement that customers do not have access to the Ombudsman or to the Compensation Scheme as they are regulated by [named] regulator and not by the FSA.

Q13: Do you agree with our proposal to limit the use of the FSA logo to FSA-authorised firms and only in connection with a regulated activity carried on from an establishment in the UK for which the firm has received authorisation from the FSA?

We strongly support this proposal which is entirely appropriate. From a consumer perspective it is difficult to envisage any other circumstances where the use of the FSA logo could be acceptable.

Q14: Do you agree that the licence to use the FSA logo should be backed up by a rule?

We agree that the licence to use the logo should be backed by a rule and that the rule should be robustly enforced.

Q15: Do you agree with the proposed simplification of the letter disclosure rules to focus solely on authorisation?

We agree that this is a sensible approach.

Q16: Do you agree with our proposal to require incoming EEA firms which have a top-up permission to state the types of business for which they are authorised by the FSA in their letter disclosures?

Again, this seems entirely appropriate, although we would like to see examples of how firms with top-up permission deal with the new requirements in practice and how effective this is from a consumer perspective.

Q17: Do you agree that there should be specific prohibition on firms stating that they are authorised by the FSA where this is not the case?

We strongly support the introduction of such a prohibition which seems both appropriate and obvious. Any breaches of the prohibition should be relatively simple to identify and to prove and we would like to see the FSA taking enforcement action in this area.

Q18: Do you agree with our proposal to provide firms with greater flexibility to describe their regulatory relationships and to ensure the scope of this relationship is clear to consumers?

We are not persuaded that the approach proposed in the Paper would be easily enforceable – for example, a statement by a firm about its regulation by the FSA "should explain the limits of that statement in a way that is clear, fair and not misleading and is likely to be understood by the average member of the group to whom it is directed." Given the diversity of consumer knowledge and capability we foresee little prospect of anyone reaching a view on the capacity of "the average member of the group to whom it is directed" and whether a particular statement is in breach of the principle of communications being clear, fair and not misleading.

Q19: Do you agree with out proposal to require incoming EEA firms conducting deposit-taking business to implement our requirements within one month of us publishing the handbook Notice?

We agree with this proposal.

Q20: Do you agree with out proposal to provide a 12-month transition period for all other firms to implement our requirements following the publication of the handbook Notice?

We would like to see a shorter transition period but, in the absence of that the transition period should be no more than twelve months. During this time we would like the FSA to review actively the disclosure statements made by incoming firms and to react quickly to evidence of misleading statements.

Yours sincerely,

Adam Phillips
Vice Chairman
Financial Services Consumer Panel