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Dear Zaglul

CP11/18* Chapter 8: Proposed amendments to the Perimeter Guidance Manual

This is the Financial Services Consumer Panel's response to the proposals in Chapter 8 of CP11/18* which sets out amendments to the Perimeter Guidance Manual (PERG).

The Panel is fully supportive of the change to the "by way of business test" for agreement providers entering into sale and rent back agreements, which will bring within FSA scope firms and individuals currently providing unregulated agreements. Given the high levels of actual and potential consumer detriment within the sale and rent back market it is important that PERG makes the extended boundary of authorised activity absolutely clear.

Generally we have no comments on the specific questions in the paper other than Q8.3 below. Our two principal concerns are, first, how members of the public, both those thinking of offering and those thinking of entering into a sale and rent back agreement and their advisers, will be made aware of the implications of this important change to the by way of business test; and second, how in practice the FSA intends to identify unauthorised transactions and take appropriate enforcement action.

On the first point we strongly recommend that the FSA (if possible alongside the Money Advice Service and other interested bodies) undertakes a comprehensive publicity campaign ahead of the changes to PERG. This should make it clear that there are now rules in place that both offer protection to consumers taking up a sale and rent back agreement, and also establish a framework of requirements and standards for those providing a sale and rent back service, including the need for authorisation.

On the second point, we see vigorous enforcement of the regime as one of the keys to its success. It is unclear to us how the FSA will be able to identify breaches of the perimeter given the particular nature of, for example, 'one off' type sale and rent back agreements. It is unlikely that this type of arrangement would involve advertising or any other obvious indication that sale and rent back business is being

undertaken. We can see that if a complaint were to be received about such a transaction the FSA would at least be able to respond, but of course at that stage significant detriment might already have been caused. We would like reassurance that the FSA has considered how it intends to ensure compliance and that arrangements are in place to take proactive action wherever possible.

Q8.3: Do you have any comments on the draft text of the proposed guidance on Q38 to Q38B of PERG 14.5?

We think the guidance would be much clearer if the sale and rent back question was addressed first, on the lines of the following:

“Entering into just one regulated sale and rent back agreement is enough to meet the business test because article 5 of the Business Order is wider than the business test in section 22 of the Act; it does not require any degree of continuity.

This is different to the carrying on the business test in articles 3B to 3D of the Business Order which is a narrower test etc...”

Yours sincerely

Adam Phillips
Chair
Financial Services Consumer Panel