

Direct line: 020 7066 9346

Email: enquiries@fs-cp.org.uk

Ian Price
Retail Policy and Conduct Risk Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

Our ref: sale/rent back

1 May 2009

Dear Mr Price

Regulating Sale and Rent Back: an Interim Regime

This is the Financial Services Consumer Panel's response to CP09/6** Regulating sale and rent back: an interim regime.

The Panel strongly supports the proposals set out in this Consultation Paper for the introduction of an interim regulatory regime for sale and rent back (SRB). While SRB can be an entirely appropriate option for some consumers, this is an area of significant detriment for many others and we agree that the actual and potential impact of this detriment is substantial enough to justify this short term consumer protection measure. It is important that the FSA's planned communications strategy on SRB is an effective one as we see it as a core part of the interim regime as a whole.

We encourage the FSA to be robust in its assessment of applications for interim permission and Variations of Permission from existing authorised firms and to be proactive in assessing compliance within individual firms. We would like the FSA to undertake mystery shopping and post-sale consumer research during the interim regulatory phase. No doubt there will be lessons to be learned from the operation of the interim regime in targeting thematic and enforcement work ahead of the introduction of full regulation in 2010. Clearly the FSA's proposed regimes – interim and full – will be designed to mitigate the consumer risks identified by the OFT. Beyond this, however, we would like to see the FSA's intended specific consumer outputs in this area and a clearer view of how the market will look different from a consumer perspective, once it is being regulated by the FSA.

We have set out our answers to the specific, consumer focused questions posed in the consultation paper below.

Q3: Do you agree with our proposal to create a bespoke regulatory regime for SRB?

Yes. We strongly support this proposal as the only effective means of protecting consumers in this market.

Q4: Do you agree that the risks of the proposed interim regulatory approach are outweighed by the benefits of putting in place consumer protections as quickly as possible?

We agree. As the OFT study identified, considerable consumer detriment is occurring now. It is a level of detriment that has a life-long impact on individuals who are generally in a particularly vulnerable financial position and it is entirely appropriate that interim regulation is put in place as soon as possible. The FSA will need to make it clear to consumers what the regime means for them.

Q5: Do you have any comments on the proposed interim permissions regime?

We strongly endorse the proposed interim permissions regime. Ideally we would like the assessment of applications to be dealt with far more swiftly than the three month period would suggest. While it will no doubt take some time to undertake the checks the FSA intends to make, it is also true that a considerable amount of consumer detriment could be suffered on an individual basis during that application period and any action that could be taken to complete the process quicker would be welcome. We believe that a visit to each applicant firm is essential if the FSA is to gain a real understanding of how the applicant operates and, given the limited number of active participants in the market at the moment, this should be feasible. We would like to see applicants' business models scrutinised as part of the application process.

It is essential that the FSA's perimeter enforcement teams are sufficiently resourced to close down unauthorised SRB firms once the three month period has elapsed. We would like specific reassurance from the FSA on this point.

Q6: Do you have any comments on the proposed interim Variation of Permission regime?

We support the proposed approach.

Q7: Do you have any comments on the proposed status disclosure requirements?

The requirements seem entirely appropriate in theory, but we are not convinced that they will deliver the right result in practice. We believe it would be appropriate for the FSA to prescribe the wording of status disclosure. Alternatively, at the very least we would like the FSA to review examples of disclosure by applicant firms at an early stage to assess their effectiveness.

Q8: Do you have any comments on the proposed reporting requirements?

We support the approach in the Paper, but would prefer to see complaints included in the reporting requirements.

Q9: Do you have any comments on our proposed approach to supervision of SRB firms?

We understand the FSA's approach to the supervision of 'small firms'. However, given the accepted level and impact of consumer detriment in this area, we would like the FSA to undertake more on-site visits and direct supervision than would usually be the case and to put SRB compliance high up the supervisory agenda. We are not persuaded that all firms currently operating within this unregulated market will have the expertise or the business ethos to comply with the provisions of the interim regime without such an approach. If required proportionate but speedy use of enforcement action would clearly demonstrate FSA intentions.

Q10: Do you agree with our proposal to apply the Principles for Business to SRB?

Yes, this will be essential. In particular, we hope that the FSA will enforce compliance with the principle of "treating customers fairly" swiftly and robustly. Given that this is currently an unregulated market, we would like the FSA to prepare detailed guidance on the meaning of the Principles in terms of day-to-day business.

Q11: Do you agree with our proposal to apply part of SYSC 4, as well as SYSC 5 and SYSC 9?

We agree.

Q12: Do you agree with our proposals to apply the Training and Competence sourcebook to:

- ***Advising on SRB agreements; and***
- ***Overseeing non-advised sales of such agreements on a day to day basis***

But without imposing the appropriate examination requirements?

We support this approach. No doubt an appropriate professional qualification will be agreed shortly.

Q13: Do you agree with our proposals to apply only the high-level competence requirements to all other activities carried on by SRB firms?

Yes.

Q14: Do you agree with our proposal to apply the MCOB guidance on high-pressure sales?

We support this proposal. As already identified by the OFT, high pressure sales are an issue in this market and this is an area that must be addressed.

Q15: Do you agree with our proposal to apply rules requiring firms to protect consumers' interests?

We agree.

Q16: Do you agree with our proposal to apply a rule requiring independent valuation?

Yes. This is another important area for consumers and any other approach would be unacceptable.

Q17: Do you agree with our proposal to apply a rule on beneficial interest to safeguard consumers?

We agree.

Q18: Do you agree with our proposal to apply rules relating to financial promotions and communications?

Yes. We encourage the FSA to take a close interest in SRB promotions and communications. Advertisements are often the first step in encouraging consumers to consider an SRB and are likely to have a considerable impact on their decision processes.

Q19: Do you agree with our proposal to apply a rule on excessive charges?

Yes.

Q20: Do you agree with our proposal to apply a bespoke conduct of business rule on pre-sale disclosure for the interim regulatory regime?

We agree, but again we would like the FSA to review disclosure documents produced by applicant firms at an early stage. It is important that consumers are given every opportunity to understand the risks inherent in an SRB agreement, which can have such a devastating effect. We would like pre-sale disclosure to include a recommendation that the client takes independent advice before proceeding.

Q21: Do you agree with our proposal to apply most of our DISP rules to SRB firms?

We agree.

Q22: Do you agree with our proposal to bring SRB firms into the compulsory jurisdiction of the FOS?

We strongly support this proposal. The Financial Ombudsman Service is an important consumer protection measure and is clearly needed in this market.

Q23: Do you agree with our proposal to not bring SRB firms with an interim permission into the scope of the FSCS.

We would prefer to see interim SRB firms within scope, as this would not be a costly option which could in our view be easily accommodated. Bringing SRB firms into the scope of the FSCS would help promote a consistent consumer message about the merits and importance of FSA authorisation. If SRB firms do remain outside scope, it will be important that consumers understand that the FSCS safety net is not available to them.

Q24: Do you agree with our proposal that, for firms which have an interim VoP for SRB, the scope of the FSCS should apply only for advisers and arrangers, and not for providers and administrators?

We agree.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ade Pitt", with a long horizontal flourish extending to the right.

Acting Chairman
Financial Services Consumer Panel