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AFM Response to HM Treasury consultation on Regulatory Framework for Approval of Financial Promotions

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:
 - Comment on the proposals and reinforce the need to protect consumers by ensuring all financial promotions are appropriate.
2. The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a defined community (on a not for profit basis). 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 £19.6 billion, and employ nearly 30,000 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 businesses² and to take account of corporate diversity³.

¹ ICMIF, <https://www.icmif.org/publications/market-insights/market-insights-uk-2016>

² Financial Services Act 2012, section 138 K: <http://www.legislation.gov.uk/ukpga/2012/21/section/24/enacted>

³ <http://www.legislation.gov.uk/ukpga/2016/14/section/20/enacted>

4. The protection of consumers from inappropriate financial promotions is vital. The consultation is therefore an important way of safeguarding that position, by considering steps to better enforce standards for the use of promotional material by unauthorised firms. The consultation makes it clear that the current legislative powers open to FCA appear to be insufficient, and we think it is vital to ensure FCA has the appropriate range of tools available to tackling both inappropriate sales and unauthorised persons marketing unsuitable products, or appropriate products in a misleading way.
5. The scale of problems that the FSCS is now responsible for helping to resolve help to illustrate the limited regulatory scrutiny available in some cases. This also places a significant burden on all regulated firms, part of which could be avoided where FCA has the right tools available, and is employing them fully.
6. The proposals take a blanket approach to the term 'unauthorised representative'. We would like to have seen evidence that the Government has considered whether different approaches are relevant for different types of unauthorised representative. Many AFM members work with introducers, which are defined under SUP12.2 and in the FCA glossary as representatives who are appointed by an authorised firm. Their scope is limited to "*effecting introductions and distributing non-real time promotions*".
7. In these cases therefore, the introducer does not produce their own promotional material. Whilst paragraph 6.2 of the consultation confirms that "*the government does not intend this new gateway to apply... to the approval of authorised firms' own promotions for communication by unauthorised persons*", it would be helpful if the Government and FCA can reinforce that the arrangements do not extend to an introducer appointed representative, as they do not present the same risk.
8. We have only limited responses to the questions raised in the consultation, as follows:
 - a. We agree that a gateway process via FCA, to assess firms before they are permitted to approve the financial promotions of unauthorised persons, is appropriate.
 - b. We agree that Option 1 is a more proportionate response, and that this places the bulk of extra compliance work on a small number of organisations who choose to make use of a gateway, and thereby to review material produced by unauthorised firms.

9. We would welcome the opportunity to discuss further the issues raised by our response.

Yours sincerely,



Martin Shaw
Chief Executive
Association of Financial Mutuals