



**Smaller Businesses  
Practitioner Panel**

Financial Services Authority

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**RESPONSE TO FSA CONSULTATION PAPER**

**‘THE FCA’S USE OF TEMPORARY PRODUCT INTERVENTION RULES’  
DECEMBER 2012**

**04 FEBRUARY 2013**

## **Introduction**

The Smaller Businesses Practitioner Panel welcomes the FSA's consultation on how the FCA proposes to utilise the new power granted to it under the Financial Services Act, to create Temporary Product Intervention Rules (TPIRs). The Panel supports aspects of the proposed approach, including the intention to use the power rarely and always to seek industry-led solutions in the first instance, but has some concerns regarding how to avoid undesirable outcomes when the power is used. Our feedback on the paper is outlined below.

### **1. The Panel welcomes aspects of the proposed approach....**

Although we recognise and support the rationale behind the FCA having a power to intervene quickly in cases of significant consumer or market detriment, we strongly support the FSA's intention for the FCA to use this power rarely. Wherever possible, it is key for the regulator to consult industry as to policy proposals, and to have the time to conduct a full cost-benefit analysis. Wherever these are not conducted, the regulator runs the risk of mis-estimating the impact of its intervention on the market, and the resultant outcome for consumers and firms. As a result, we agree with the paper that TPIRs should only be created in cases where waiting would have unacceptable consequences.

We also strongly support the intention to consult with the Panels prior to using TPIRs whenever possible.

### **2. ...although we do have some concerns regarding unintended consequences and how mistakes would be detected and rectified.**

TPIRs, by nature, would be used quickly, without a full cost-benefit analysis and without industry and consumer consultation. This increases the risks that regulatory intervention will be detrimental.

#### *Impact on existing customers / overall market*

A possible example of negative market effects from rapid regulatory action might be taken from the FSA's intervention in the case of traded life policy investments, also known as 'death bonds'. Rapid regulator intervention was based on concerns that these products were generally unsuitable for the mass retail market. Regulatory action, through the publishing of strong statements in the form of guidance, caused much of this market to collapse. Whilst this may have been an acceptable consequence the Regulator should be cognisant of the impact on existing policy holders/investors as well as to the potential of mis-selling to future new investors.

A similar case study can be found regarding recent regulatory statements on the selling of interest-only mortgages. This aimed to clarify regulatory expectations around the correct customer base for these products, but has had (a perhaps unintended) impact through a large number of providers subsequently exiting the market.

The FSA needs to ensure it has learned from these past interventions when it considers how best to stage future ones, and in developing plans for rapid intervention through creating TPIRs in particular. In our view, past experience should suggest that as is the regulator's future intention, the FCA should take the time to consult and do a full Cost-Benefit Analysis wherever possible.

Similarly, we would like the regulator to be aware of unintended market consequences, such as the potential interest of Claims Management Companies relating to the ban on a product. It is possible to envisage cases whereby products are banned and CMCs subsequently start to target existing product customers. The Smaller Businesses Panel has previously raised concerns regarding the regulation and accountability of CMCs, and their potential to cause detriment to both firms and consumers.

#### *Process to create TPIRs*

In addition, where the TPIR power does need to be used because of time pressures, it is key that the regulator has a process in place to try to mitigate the risks identified above as far as possible. CP 12/35 does not provide details around how the regulator would ensure appropriate checks and balances internally, or what criteria it would use in determining whether levels of potential detriment from a product will be unacceptable. The Panel would be interested to hear more about any planning currently ongoing in the FSA regarding this process.

We would also like greater detail around the timing of creating TPIRs, and around communications. In addition to publishing the information on the regulator's web-site, we believe it is vital to as far as possible ensure that all firms affected are informed, including relevant product providers, and that sufficient time is provided so as to ensure the impact on existing customers can be considered.

### **3. We also have concerns regarding the specific scenarios outlined by the regulator, where TPIRs may be used.**

The Panel appreciates that the scenarios outlined by the regulator are possible scenarios only, and examples of situations where the regulator envisages utilising TPIRs in the future. Nonetheless, we believe some of the intended scenarios of interventions need greater qualification.

For example, we have concerns regarding the statement that TPIRs may be used in 'markets where firms restrict their product range or access to their product range in ways designed to increase profitability by restricting consumer choice...'. The Panel are strong supporters of the regulator's new competition powers, but are concerned that the regulator does not intervene in firms' decisions regarding to whom they wish to offer their products. The regulator does not currently, and should not in the future, have the ability to mandate firms to supply products to groups that are unprofitable or carry disproportionate risk.

Further, we would welcome greater clarification around the statement that the FCA may use temporary product intervention rules where it identifies an urgent need for action in the area

of value for money of financial products. The Panel understands that the regulator may act where product pricing is unclear or opaque, or where consumers are misled as to the nature of the product. However, the FCA should not create TPIRs merely on the basis that a product has a higher price or is “too profitable”. The Financial Conduct Authority was not intended to become a price regulator, and it should be wary about perceptions in the market that it may move in this direction.

### **Conclusion**

The Panel recognises that there may be instances where the regulator feels it needs to act quickly, and as such is supportive of the rationale of the FCA having the power to create TPIRs. However, we agree with the FSA that this power should only be used rarely and when the absence of invoking this power would lead to unacceptable outcomes. We would encourage the regulator to provide more details, however, regarding what level of detriment it would regard as unacceptable, as well as greater transparency around the internal decision making process it will follow when creating such rules.