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Dear Marjorie

**Financial Services Authority response to the Competition Commission's public consultation on the Draft Payment Protection Insurance Market Investigation Order 2009**

The FSA welcomes the opportunity to respond formally to the public consultation on the draft PPI Order. We have previously responded to the informal consultation on previous iterations of the draft Order and are happy to note that many of our previous comments have been taken on board and are reflected in the current draft of the Order. We have no significant concerns regarding the drafting of the Order as it currently reads. However, there are some issues that we wish to draw to the Commission's attention as it works to finalise the Order. These are detailed below.

*Definition of Short-term Income Protection*

Some market participants have expressed a concern that the definition of short-term Income Protection in the Order may inadvertently capture products not intended by the CC, in particular long-term contracts of insurance.

Article 3 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 provides that a "contract of long-term insurance" means any contract falling within Part II of Schedule 1 of the Order. It appears that the class of long-term insurance that the insurers may be referring to is Class IV Permanent Health, also known as long-term income protection (long-term IP).

Permanent Health Insurance (PHI or Long-term IP) is defined as:

Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that:

(a) are expressed to be in effect (written) for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time; and

(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.

Whilst the CC definition of short-term IP should be mindful of not capturing true long-term contracts of insurance such as long-term IP also known as PHI, it should also be mindful that any firms wishing to pass-off short-term IP as long-term IP in order to avoid the remedies may be in a position to meet conditions (a) and (b) set out above easily if the CC removes completely all reference to how long the benefits of the policy are payable for in its definition of short-term IP. This means that they would be able to avoid the remedies even though they would effectively be in substance PPI/ "short-term" IP policies

We recognise that the CC is alive to the issue of arbitrage, and note its approach – outlined in Article 9.3 of the draft Order: “If before or after commencement of this Order a Consumer enters into an arrangement which has the same effect as a PPI policy and the sole or dominant or substantial purpose of that arrangement was to avoid the operation of this Order, that arrangement shall be deemed to be a PPI policy and this Order shall apply”.

Nevertheless, there are longer-term products sold outside the context of credit which offer certain benefits for a shorter period of time, which could potentially be included within the scope of the Order as currently drafted. With these difficult considerations in mind, we would welcome the opportunity to discuss further with the CC the best way to capture only those product types that display the characteristics which the CC remedies are targeted at, while at the same time preventing work-around of the remedies by firms.

#### *Definition of Marketing Material*

We invite the CC to consider the current definition of marketing material in the Order and propose the following as an alternative:

“means a Written or Oral Communication containing an invitation or inducement to purchase PPI or a promotional message encouraging the purchase of PPI, and includes Direct and Indirect Marketing Material.”

#### *Definition of ICOBS*

The definition of ICOBS should read Insurance: Conduct of Business Sourcebook.

*Schedule 4: Personal PPI Quote*

Where premiums are reviewable this should be drawn to the customer's attention by clearly indicating this on the quote. Otherwise there is the potential for some firms to quote low annual or monthly premiums and then significantly increase the price after conclusion of the contract. We have recently seen some providers increasing premiums by around 30–40% for existing MPPI customers.

*Schedule 5c: Specifications of Mystery Shopping Exercise*

The current specification of the methodology for the mystery shopping exercise as set out in the draft Order allows firms a lot of freedom as to how to undertake the exercise which may yield results which may not be sufficiently robust as reliable indicators of compliance.

We are aware of past instances where firms have conducted their own mystery shopping exercises, which the firms themselves have found to be satisfactory, *but where our consumer protection objectives still have not been met*. In this context, it is important that the Order places emphasis on the right outcomes for consumers. The process should not entail such a high level of flexibility in the design and conduct of the surveys so as to increase the potential for the mystery shopping process to be based on flawed methodology, or to concentrate on issues that do not deliver the right outcomes.

We would be happy to put you and our colleagues at the OFT in touch with relevant teams within the FSA who have worked with the design and delivery of mystery shopping exercises in the PPI market.

We look forward to continuing dialogue on these issues at working level meetings as necessary.

Yours sincerely

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