

14th November 2012

By electronic submission to cp12_19@fsa.gov.uk

Mr. Jason Pope
Conduct Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Response of AFME to FSA CP 12/19 – Restrictions on the retail distribution of unregulated collective investment schemes and close substitutes

Dear Sir,

The Association for Financial Markets in Europe (“AFME”)¹ welcomes the opportunity to provide comments on the FSA Consultation Paper 12/19 (“CP12/19” or the “CP”) entitled “*Restrictions on the retail distribution of unregulated collective investment schemes and close substitutes*”.

This letter focuses on concerns raised by members of AFME’s securitisation division (formerly European Securitisation Forum) with these proposals.

We understand the intention in the CP and have no objection in principle to the proposals of the FSA to restrict the marketing and promotion of certain types of UCIS and close substitutes to ordinary retail investors because of concerns by the FSA that such marketing fails to comply with relevant regulation and exposes ordinary retail investors to detriment.

We are however particularly concerned that the proposed definition of “*Non-mainstream Pooled Investment*” in the draft rules includes most securities issued by special purpose vehicles under mainstream securitisation structures and proposes to restrict those from being marketed to ordinary retail investors.

We do not know whether this was intended but if it was then we have a number of concerns which we set out in Annex II below. If this was not intended, then a method should be found in the draft rules to distinguish UCIS and close substitutes which the FSA wishes to restrict from mainstream securitised structures.

We have proposed in section 8 of Annex II below an alternative definition of “*Non-mainstream Pooled Investment*” which would achieve the required objectives of the FSA whilst preventing the marketing of mainstream securitised investments from being restricted.

Unless otherwise specified, each reference to a numbered paragraph refers to a paragraph of the CP.

Unless otherwise stated, this response should be read as answering Questions 3 and 9 in the response form to the CP: (3) “*Are there any investments caught by the non-mainstream pooled*

¹ See Annex I

investment definition in the draft rules that you believe should not be? and (9) "Do you have any comments or suggested improvements for our approach to SPV-issued securities, including structured products".

Conclusion

We have no objection in principle to the proposals in the CP if they are limited to restricting ordinary retail investors investing in UCIS and close substitutes which are backed by or linked to risky or speculative assets specifically identified by the FSA.

However, the current proposals in the CP are far too wide, catching all mainstream securitised investments where we expect that this was not intended. We would have expected that most mainstream securitised investments should be able to be sold to ordinary retail investors if the providers comply with all necessary marketing and promotional regulations.

Improving the health of the securitisation market, including that for UK securitised investments, and encouraging more retail investors to increase their participation in it, will be crucial to the financial stability and funding capabilities of our banking sector in providing much needed finance to the real economy.

We would therefore welcome urgent clarification and reconsideration of the proposals in the CP covering mainstream securitised investments.

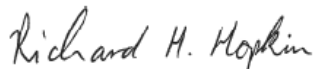
We would be pleased to attend a meeting with the FSA and other interested entities to discuss our concerns on the CP and suggest alternative strategies.

Yours sincerely

Christopher Oakley



Managing Director



Richard Hopkin
Managing Director

Association for Financial
Markets in Europe

Annex I

AFME represents a broad array of European and global participants in the wholesale financial markets, and its 197 members comprise all pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME was formed on 1 November 2009 by the merger of the London Investment Banking Association and the European operations of the Securities Industry and Financial Markets Association.

AFME provides members with an effective and influential voice through which to communicate the industry standpoint on issues affecting the international, European, and UK capital markets. AFME is the European regional member of the Global Financial Markets Association (GFMA) and is an affiliate of the U.S. Securities Industry and Financial Markets Association (SIFMA) and the Asian Securities Industry and Financial Markets Association (ASIFMA). For more information, visit the AFME website, www.afme.eu.

Annex II

1. Introduction

- 1.1 The FSA published its Consultation Paper CP12/19 (the “CP”) in August in which it proposes to change current legislation to restrict the marketing to certain categories of retail investors of certain types of unregulated collective investment schemes (UCIS) and close substitutes (defined in the CP together as “*Non-mainstream Pooled Investments*”).
- 1.2 It is proposed in the CP that the close substitutes referred to will include securities issued by a special purpose vehicle except where such securities are issued by an investment trust, are a covered bond or are linked to shares or bonds admitted to or dealt on a regulated market (such securities, “excepted securities”).
- 1.3 If implemented these proposals will prevent securities issued under most securitisation structures by special purpose vehicles from being marketed to ordinary retail investors. We are concerned about this for the reasons set out below.

2. Executive Summary of our Key Concerns with the proposals in the CP

As described in more detail in section 5 below, our key concerns with the proposals in the CP are that:

- the policy behind the restriction appears to be somewhat inconsistent with UK and EU policy initiatives which seek to encourage broader investment by non-bank investors in real economy assets.
- they convey a negative image for Mainstream Securitised Investments (see definition in section 3.1 below) to be included in the definition of “*Non-mainstream Pooled Investment*”.
- they will unnecessarily restrict the marketing and promotion of Mainstream Securitised Investments to ordinary retail investors where it has not been shown by the FSA that such a restriction is necessary.
- they restrict the marketing and promotion of securities by the identification of “structures” rather than the identification of “assets”.

- they except from the marketing restriction securities linked to listed shares or bonds but there is no explanation of why this specific exception has been made.
- they use the methodology of “everything is prohibited unless permitted” to effect the restriction which is contrary to the usual principle of regulation in the UK;
- it is not clear if it was intended that the definition of “*Non-mainstream Pooled Investment*” should include every type of security where issued by an SPV including all Mainstream Securitised Investments other than excepted securities or whether this is an unintended consequence of the drafting of the above definition.

3. Effect of the CP on the mainstream securitisation market

3.1 The securities whose marketing will be restricted under the proposals in the CP will include, according to the definition in the CP, most types of mainstream securitised investments which are backed by UK and other European assets and which are usually investment grade securities in the form of Asset-Backed Securities (ABS) (typically backed by credit card receivables, auto loans and receivables, auto and equipment leases and corporate loans (including loans to SMEs)) and Residential Mortgage-Backed Securities (RMBS) (typically backed by residential or buy-to-let mortgage loans) (together, “*Mainstream Securitised Investments*”).

3.2 These two categories of “*Mainstream Securitised Investments*” comprise a very significant portion of such securities sold to institutional investors as shown in the charts on pages A3:8 and A3:9 of the CP.

3.3 The vast majority of issues of Mainstream Securitised Investments backed by UK and other European assets have a high credit rating and are of high quality with excellent credit performance. The introduction of the Prime Collateralised Securities (“*PCS*”)² labelling project enables high quality securitisation issues to be identified. The PCS was formally launched today, 14th November 2012 and an AFME press release gives details of high-level board members appointed³. There is no reason why, from a policy perspective, issues of Mainstream Securitised Investments, with or without the PCS label, should not be appropriately marketed to ordinary retail investors. The proposals in the CP as currently positioned would prevent that.

4. Securities issued by special purpose vehicles covered by the proposed restrictions

² <http://www.afme.eu/Securitisation/>

³ <http://www.afme.eu/Documents/Press-Releases.-Comment-Letters.-and-Open-Letters.aspx>

- 4.1 The securities which the CP proposes will be included in the marketing and promotion restrictions are: “unregulated collective investment schemes”, “qualified investor schemes”, “securities issued by special purpose vehicles”, “traded life policy investments” and “any rights to or interests in any of the above investments”.
- 4.2 This letter is only concerned with the restrictions on the marketing and promotion of securities issued by special purpose vehicles and focuses on the proposed definition of “a security issued by a special purpose vehicle” which is set out in the glossary of definitions in Annex A of Appendix 1 of the CP.

5. Details of our Key Concerns with this proposal in the CP

CP proposals appear somewhat inconsistent with UK and EU policy initiatives

- 5.1 The UK Government and the EU Commission are both currently involved in policy initiatives to investigate potential new sources of non-bank finance for the real economy. These initiatives are driven by the identification at a policy level of the need to encourage growth in the real economy in the UK and the EU.
- 5.2 Both the UK Government and the EU Commission have identified that retail investors will increasingly have a part to play in providing additional finance for the real economy. It would be unfortunate if at the same time, the FSA were to implement new rules which prevented Mainstream Securitised Investments of proven quality from being properly and appropriately marketed to ordinary retail investors.
- 5.3 We set out below brief details of some of the policy initiatives which have recently taken place which all identify the role that retail investors may have to provide additional finance to the real economy in the future. We would be pleased to provide copies of any of the publications mentioned to the FSA upon request.
- 5.4 As regards the above policy initiatives in relation to the UK, the FSA will be aware of the “*Breedon Report*” published in March 2012 and of the positive response to that report by HM Treasury in its paper of 20th March.
- 5.5 We would note in particular, the suggestion set out in Part 5 to establish an aggregation agency, the “*Agency for Business Lending*” which would aggregate and finance loans to SMEs and finance these activities by “*issuing securities on the public bond markets to institutional and retail investors*”. The FSA will also be aware of Recommendation 3 in

the Breedon Report that AFME should carry out a feasibility study to explore the establishment of such an aggregation agency. In that regard, we would refer the FSA to the AFME report of 8th October 2012 entitled “*An Agency for Business Lending – “ABLE” – Improving access to finance for small and medium-sized enterprises*”⁴.

- 5.6 The FSA will also be aware of Recommendation 5 in the Breedon Report that the “*appetite of UK retail investors to invest in corporate bonds should be increased*”.
- 5.7 As regards the above policy initiatives in relation to the EU, the FSA will be aware of the open letter from Jonathan Faull, Director General of Internal Market and Services DG of 26th September 2012 to the European Insurance and Occupational Pensions Authority which refers to the EU Commission plan to issue a Green Paper in December 2012 focussing on ideas to encourage long-term finance in the EU. The letter specifically refers to the “long-term financing of the real economy through securitisation of debt serving ... infrastructure financing, ...SME financing... and...social business financing...”⁵.
- 5.8 The FSA will also be aware of the paper entitled “*The Economic Benefits of High Quality Securitisation to the EU Economy*”⁶ published by AFME in September 2012. This paper sets out the necessity of a healthy securitisation market for the present and future funding of the real economy in the EU, particularly for the funding of SMEs which account for 99% of the number of enterprises in the EU.
- 5.9 We note that, although the proposals in the CP will not affect the marketing of directly issued corporate bonds *per se* to ordinary retail investors, if the CP proposals are implemented in their current form, ordinary retail investors will not be able to invest in securities issued by an agency such as the “*Agency for Business Lending*” or by any other special purpose vehicle where the securities issued are backed by real economy assets. For most retail investors however, investing in securities which are backed by a spread of corporate debt is likely to be more attractive than investing in a security issued by a single corporate entity. This form of investment through a securitisation structure involving a special purpose vehicle should not be hindered by government policy.
- 5.10 From an economic perspective it would seem detrimental and, from a policy perspective, rather contradictory if, on the one hand, HM Treasury and the EU Commission were to be promoting retail investment in securities backed by corporate or infrastructure debt (including in securitised form) and, on the other hand, the FSA

⁴ <http://www.afme.eu/Documents/Statistics-and-Reports.aspx>

⁵ http://ec.europa.eu/internal_market/insurance/docs/solvency/20120926-letter-faull_en.pdf

⁶ <http://www.afme.eu/Funding-Economy/>

were, actively proposing to prevent such retail investment through the proposals in the CP.

Negative image and unnecessary restriction of Mainstream Securitised Investments

- 5.11 We are of the view that it is inappropriate that the definition of “*Non-mainstream Pooled Investment*” in the CP should include all Mainstream Securitised Investments other than excepted securities. This suggests, incorrectly, that the market for Mainstream Securitised Investments is not a major, mainstream and high quality component of the capital markets in the UK and perpetuates a negative image of a high quality product that will do nothing to assist the recovery of the market in Mainstream Securitised Investments and the real economy.
- 5.12 In addition, this proposal will unnecessarily restrict the marketing and promotion of Mainstream Securitised Investments to ordinary retail investors where it has not been shown by the FSA that such a restriction is necessary. Although the CP focuses on investments backed by assets which the FSA regard as unusual or risky (see Part 1, paragraph 1.13), the definition of “*Non-mainstream Pooled Investment*” also includes all Mainstream Securitised Investments. We therefore suggest that some other method of differentiating these two very different types of investments should be made.
- 5.13 Mainstream Securitised Investments are frequently issued in tranches with the most senior tranche usually benefiting from a high credit rating (often of AAA) from credit rating agencies. These types of highly rated investments backed by UK and other European assets have generally proved to perform extremely well, even during the current financial crisis, with a long proven track record of very low or zero default rates for the most senior tranches. This can easily be verified from the AFME paper referred to in section 5.8 above.
- 5.14 The marketing and promotion of Mainstream Securitised Investments in the UK is currently very much to an institutional investor market. We are concerned however that if, in the future, arrangers and promoters of Mainstream Securitised Investments would seek to broaden the investor base and include some types of retail investors as part of their marketing strategy for Mainstream Securitised Investments this proposed legislation would prevent them from doing so. If the FSA intend to restrict the marketing and promotion of Mainstream Securitised Investments to retail investors, then we would expect a significantly higher level of economic analysis and consultation with the UK securitisation industry as to why this is necessary before any such restriction is proposed.

- 5.15 It is possible that once this definition and this approach are introduced into legislation, it may be used in the future by the FSA to impose further unnecessary restrictions on the marketing of Mainstream Securitised Products.

Focus on structures rather than asset types is inappropriate

- 5.16 We are of the view that the focus by the FSA on “structures” is inappropriate. The delivery method of an asset-backed investment should not be relevant in determining to whom it can be marketed and promoted.
- 5.17 The definition of “*Non-mainstream Pooled Investment*” focuses on the structures used to deliver an investment to determine to which categories of investors such securities can be marketed. It would be preferable if the marketing restrictions applicable to ordinary retail investors for investment instruments backed by certain types of non-mainstream assets should be the same whether such an investment instrument is issued in the form of a unit in an UCIS, a unit in a qualified investor scheme, a security issued by a special purpose vehicle or a covered bond (an “*investment instrument*”).
- 5.18 We are of the view that this focus on structures is not an appropriate way of restricting the marketing and promotion of asset-backed securities to ordinary retail investors as this approach does not focus on the real risk in these transactions which is the type and quality of the underlying assets. To regulate the marketing and promotion of these types of securities based on different types of structures of investment instruments also provides a means for issuers to arbitrage between different types of structures to obtain the best marketing treatment. This is a concern already expressed in the CP and with which we agree.
- 5.19 If the FSA do wish to restrict the marketing of investment instruments “backed by” or “linked to” certain types of assets to certain categories of investor, then we are of the view that the FSA should be explicit about what those asset types are and who those investors are.
- 5.20 An alternative approach would require identification by the FSA from time to time of those types of asset which could back investment instruments which the FSA regards as “inappropriate” or “speculative” and which they regarded as unsuitable to back investments to be sold to ordinary retail investors. Any marketing restrictions proposed by the FSA in relation to investment instruments would then be determined by reference to particular types of “inappropriate” or “speculative” assets. This would

result in the marketing restrictions being identical for any "investment instrument" of whatever type, if backed by or linked to an identified "inappropriate" or "speculative" type of asset.

- 5.21 In this way the FSA would, in our view, properly focus on the real risks inherent in an investment instrument which is not the structure of the investment instrument used to deliver the investment but the type of assets underlying the investment instrument. These types of assets could then be defined as "*Non-mainstream assets*".
- 5.22 Thus, if the FSA decided it were desirable to restrict the marketing to ordinary retail investors of investment instruments backed by a certain type of asset as these were to be regarded as "inappropriate" or "speculative", the FSA would specify by regulation that any investment instrument backed by such asset could not be marketed to a particular category of ordinary retail investor or could only be marketed to a particular category of ordinary retail investor. We set out a suggested alternative definition of "*non-mainstream pooled investments*" and "*non-mainstream assets*" in section 9 below which would achieve this purpose.

Exceptions for securities backed by listed shares or bonds

- 5.23 We note that the proposal in the CP restricts every type of investment instrument issued by a special purpose vehicle to be sold to ordinary retail investors except those backed by listed shares and bonds. There is no explanation in the CP of why this exception has been made and we would welcome an explanation from the FSA as to why these particular types of securities have been chosen as exceptions to the restriction on marketing to ordinary retail investors. Perhaps it has been made because it is possible for ordinary retail investors to buy listed shares and bonds themselves and there is a very large market in this kind of investment. However, the exception seems somewhat illogical in that securitised investments backed by listed shares or bonds in unrated companies which may have a high degree of risk attached to them are to be permitted to be marketed to ordinary retail investors but highly rated Mainstream Securitised Investments are not.
- 5.24 It should be noted however that there has never been any market in the UK for securitised investments backed by listed shares as those kinds of assets which bear no kind of regular periodical return are just unsuitable as assets for such an investment. In addition, the market in the UK for investment in securities backed by listed bonds by any kind of investor has been very limited since the start of the current financial crisis.

Methodology of restriction contrary to ordinary principles of English law and regulation

- 5.25 We are not at all in favour in principle of this method of regulatory intervention. The usual principle of regulation in the UK is that “everything is permitted unless prohibited”. The CP proposes an “everything is prohibited unless permitted” methodology in that the marketing of all securities issued by SPVs will be prohibited to ordinary retail investors. We are of the view that this approach is excessive and unnecessary in the context of the policy intentions behind the proposals in the CP.

Confusion in proposals as to whether intended to include Mainstream Securitised Investments

- 5.26 It is not clear if it was intended that the definition of “*Non-mainstream Pooled Investment*” should include every type of security where issued by an SPV including all Mainstream Securitised Investments other than excepted securities or whether this is an unintended consequence of the drafting of the above definition.
- 5.27 We note the comment made in paragraph 2.14 of Part 2 (*Non-mainstream Pooled Investments*) where it is stated that “*mainstream structured products can or do take the legal form of securities issued by SPVs. The proposed rules are drafted to ensure that these products are not caught by the marketing restriction on non-mainstream pooled investments.*”
- 5.28 It is difficult to discern the intention of the FSA on this issue from the CP. There is some suggestion in the CP that the FSA views the market in UCIS and close substitutes as a different market from the market in Mainstream Securitised Investments which should be regulated differently. However, this is not clear and in any case the effect of the above definition is that it includes Mainstream Securitised Investments other than excepted securities. We request that the FSA clarifies its position on this issue.

Waiver mechanism unworkable in practice

- 5.29 The CP also proposes a waiver mechanism under which a provider can apply for a waiver of these marketing restrictions on a case by case basis if that provider wishes to market a structured product based on mainstream indices (other than listed shares or bonds) and the provider can show that the product marketed is not in effect a Non-mainstream Pooled Investment designed to circumvent the marketing restriction. We expect that such a waiver mechanism would be too time-consuming and burdensome to be a practical solution to the question of determining which investments retail investors are permitted to invest in.

8. Alternative Definition of “Non-mainstream Pooled Investments”

8.1 We are of the view that it would be more appropriate if the FSA were to regulate the marketing and promotion of investment instruments to ordinary retail investors backed by or linked to assets which it regards as “risky” or “speculative” by reference to the type of assets backing such instruments rather than the structure of the instruments themselves. To enable this we set out below a proposal for an alternative definition of “Non-mainstream Pooled Investment”.

8.2 We would propose that the FSA adopt a different approach to the definition of “Non-mainstream Pooled Investment”. This would be an investment instrument of a variety of types of structure but where that investment instrument is backed by or linked to assets specifically identified by regulation as being “non-mainstream assets”. This alternative definition could be drafted as follows:

“Non-mainstream Pooled Investment” means any of the following investments:

(a) a unit in an unregulated collective investment scheme;

(b) a unit in a qualified investor scheme;

(c) a security issued by a special purpose vehicle; or

(d) any other right or investment,

where the issuer’s payment obligations to the investor under such an investment are backed by, secured on, collateralised by, linked to, contingent on, highly sensitive to or dependent on, the performance of or changes in the value of non-mainstream assets, whether or not such performance or changes in value are measured by reference to specific assets or via a market index or indices;”

8.3 We would then propose the adoption of an alternative definition of “non-mainstream assets” which could be drafted as follows:

“non-mainstream assets” means [], [], [] and [] or any other assets specified as such by [the FSA] in an [order made by the FSA under FSMA].”

8.4 We would propose that the FSA specify from time to time those assets they regard as “non-mainstream”. If the FSA were to adopt this alternative approach, it would be able to specify very clearly what assets it regarded as “inappropriate” or “speculative” in order to prevent investments backed by or linked to such assets being marketed or promoted to ordinary retail investors.

- 8.5 If this alternative approach were to be adopted, the marketing and promotion restrictions would properly be focused on the assets backing investment instruments which the FSA wish to restrict rather than structures for delivery.
- 8.6 This alternative approach would also prevent Mainstream Securitised Investments falling within the negative definition of “*Non-mainstream Pooled Investments*” which would be desirable and would avoid all of the issues detailed in Schedule 1 regarding the critique of high quality rated Mainstream Securitised Investments.
- 8.7 In order to accommodate our concerns that the definition of “Non-mainstream Pooled Investment” is too broad as it includes all Mainstream Securitised Investments, the FSA may be tempted to add to the exceptions of listed shares or bonds other types of “mainstream assets” used to back Mainstream Securitised Investments.
- 8.8 We are not particularly in favour of this latter approach because the onus would likely fall on the market to suggest the list of excepted asset types from time to time. Although it might be possible to develop a list of current types of assets which back Mainstream Securitised Investments, this approach might inhibit the development of new asset types for securitisation in the future as each new asset type would require recognition by the FSA.
- 8.9 We believe that our alternative definition suggested in section 8.2 above is the appropriate mechanism to achieve the objectives of the FSA and to prevent the marketing of Mainstream Securitised Investments from being unduly restricted as it puts the onus on the FSA to define the asset types which it wishes to restrict and thus is much more likely to be acceptable to the market.

9. Comments on some statements in the CP

We set out in Schedule 1 some comments on a number of the statements in the CP for consideration by the FSA.

SCHEDULE 1

We set out below some comments on a number of the statements in the CP which seem to suggest some confusion of treatment in the CP between the differing markets of “*Non-mainstream Pooled Investments*” and that of Mainstream Securitised Investments.

1. It is unfortunate that in the CP, the term “*Non-mainstream Pooled Investments*” includes Mainstream Securitised Investments when issued as securities by SPVs. This has the result in the CP that comments made about the performance of some types of investments which are regarded by the FSA as risky or speculative are also made about Mainstream Securitised Investments backed by UK or other European assets whose performance has largely been excellent.
2. We note the statements in paragraph 2.3 of Part 2 (*Non-mainstream Pooled Investments*) where comment is made on the characteristics of all securities issued by SPVs. There it states that these types of investments “*are, or hold, inherently speculative, high-risk underlying assets*”.
3. We are of the view that this statement is inaccurate as these comments apply to all Mainstream Securitised Investments, including investment grade securities issued by SPVS backed by residential mortgage loans, car loans, credit card receivables and corporate loans. These are not speculative, high risk assets but highly performing assets, even during the last 5 years of the financial crisis, with very low default and delinquency levels. In addition, residential mortgage loans are an asset regulated by the FSA.
4. In paragraph 2.14 of Part 2 (*Non-mainstream Pooled Investments*) it is stated that “*mainstream structured products can or do take the legal form of securities issued by SPVs. The proposed rules are drafted to ensure that these products are not caught by the marketing restriction on non-mainstream pooled investments.*”
5. We see no evidence in the CP for how this statement is accurate: indeed, on the contrary, the CP proposes that all securities issued by SPVs (other than excepted securities) are caught by the definition of “*Non-mainstream Pooled Investments*”.
6. Paragraph 2.14 of Part 2 (*Non-mainstream Pooled Investments*) goes on to state: “*Some structured products should be caught. This is intentional; where a structured product’s risk profile or investment strategy is non-mainstream by virtue of their*

reference assets, they should be subject to the same restrictions and consumer safeguards as other non-mainstream pooled investments.”

7. We do not understand how this statement is actually reflected in the proposed marketing restrictions as these are based on a restriction by reference to the structure of an investment instrument and not by reference to the “reference assets” backing such instrument.
8. We note the statement in paragraph 3.24 of Part 3 (*Proposed changes to the marketing restriction*) where comment is made that:
“We have sought to develop a definition that only captures pooled investment SPVs that are functionally most similar to UCIS. As such, investment trusts and covered bonds, both of which can take the legal form of securities issued by SPVs, are specifically carved out from the scope of our proposed rules.”
9. We do not understand how this statement is accurate as all securities issued by SPVs (other than excepted securities) are proposed to be caught by the definition of “*Non-mainstream Pooled Investments*”.
10. Similarly, in paragraph 3.25 of Part 3 (*Proposed changes to the marketing restriction*) the CP states:
“We recognise that structured products encompass a wide range of instruments with varying levels of complexity and investment risk. The FSA has been working on improving standards in the structured products market and they are not the main subject of this consultation paper.”
11. Again, we do not understand how this statement is accurate as all securities issued by SPVs (other than excepted securities) are proposed to be caught by the definition of “*Non-mainstream Pooled Investments*”.
12. Also in paragraph 3.26 of Part 3 (*Proposed changes to the marketing restriction*) the CP states:
“We therefore propose that some structured products should be included in the scope of the rules on non-mainstream pooled investment. As noted above, we consider that where a structured product’s risk profile or investment strategy are in effect non-mainstream by virtue of their reference assets, they should be subject to the same restrictions and consumer safeguards as other non-mainstream pooled investments.”

13. Again, we do not understand how this statement is actually reflected in the proposed marketing restrictions as these are based on a restriction by reference to the structure of an investment instrument and not by reference to the “reference assets” backing such instrument.

14. We note in the proposed definition of “*Non-mainstream Pooled Investments*” that a “covered bond” is excluded from the term “security issued by a special purpose vehicle”. We wish to seek to clarify why this has been done. In the UK covered bond market a covered bond is not a security issued by a special purpose vehicle but a security issued by a credit institution and guaranteed by an SPV holding assets sold to it by the issuer.

Association for Financial Markets in Europe
St Michael's House
1 George Yard
London EC3V 9DH
Tel: + 44 (0)20 7743 9300
www.afme.eu