

Julia Hoggett  
Head of Investment Bank Supervision  
The Financial Conduct Authority  
25 The North Colonnade  
London  
E14 5HA

1 June 2015

Dear Julia Hoggett,

**Structured Products: Thematic Review of Product Development and Governance ("TR15/2")**

The Joint Associations Committee ("**JAC**"), on behalf of its members, welcomes the opportunity to respond to the matters raised in TR15/2 as part of its continued drive to work with the FCA to improve consumer outcomes in the structured product industry.

As the FCA is aware, many JAC members have provided detailed firm specific responses to the issues highlighted by the FCA in TR15/2. Therefore, the JAC has taken the view that, rather than provide a detailed response on each of the issues raised, its role should be to comment on certain high level issues which our members collectively think it would be helpful for the FCA to consider in the context of its thematic review and more broadly.

These are set out below as follows:

1. **Recognition of requirement for tailored solutions:** Each firm is unique in terms of the composition of its product universe; its geographical manufacturing and/or distribution presence and its assessment of risk in the context of consumer outcomes. As a result, we support the view that there should not be a one size fits all approach to compliance with the product governance regime. Associated to this is our view that any assessment of an individual firm's compliance with its product governance obligations must be viewed in light of the commercial, legal and regulatory environments which a firm is required to operate in.
2. **Coordination with global regulators:** The UK product governance regime applies whenever a product is manufactured in the UK and distributed to retail investors (regardless of the geographical location of the retail investor and including distributions which take place solely outside the UK).

Many of our members both manufacture and distribute their products globally and as such, face challenges in meeting the expectations of the FCA when faced with differing legal and regulatory obligations in jurisdictions outside the UK. The JAC would welcome international coordination between the FCA and other global regulators on this issue.

3. **Identifying the target market:** the FCA expects firms to define a clear target market at product design stage. It is up to each firm to define the target market in accordance with its own product universe.

Whilst recognising it is for the firm's themselves to define their own categories of target market, our members would welcome the regulator's support in achieving industry harmonisation as to the factors that firms should take into account in defining the target market. This is particularly necessary where both the manufacturer and the distributor of the product have responsibilities for taking their own independent views on the different categories of target market for which a product may be suitable. Further alignment between firms in this context would prevent a situation from arising where a manufacturer's target market categorisation is not directly aligned with a distributor's categorisation simply because both firms have used different metrics to perform the analysis.

4. **Proportionality:** In its guidance *The Responsibilities of Providers and Distributors for the Fair Treatment of Customers* ("**RPPD**"), the FCA draws a distinction between the obligations of product manufacturers when acting in a "pure" and / or "retail" capacity, with the product governance obligations applying proportionately depending on the firm's role.

This distinction has been an important acknowledgement for firms when considering compliance with their product governance obligations in light of the practical limitations of their role in certain manufacturing contexts. It has also allowed firms to adopt a risk based approach to their responsibilities when distributing products. For example, manufacturers are required to evidence how they match their generic target market expectations to their selection and approval of distributors. Manufacturers may place reliance on a distributor being a reputable private bank and rate them as "low risk". In such circumstances, a manufacturer is responsible for communicating their generic category of target market to the distributor and the distributor contracts with the manufacturer that it will only on sell the products to the intended target market. However, the distributor may separately exercise discretion, based on their superior knowledge of their client base, that a distribution outside the target market is appropriate. The manufacturer should not be liable for distributions in this context which are subsequently deemed inappropriate.

Separately, in a reverse enquiry context, an institutional counterparty may approach the firm to request a price for a pre-determined product which has been designed by that institutional counterparty on behalf of its clients. This product design may or may not be based on products originally proposed by the firm to that institutional counterparty.

5. **Read across to other products:** The governance arrangements of manufacturers of structured products have undergone considerable scrutiny in the UK. This is broadly supported by the industry. However, many of the findings and issues raised by FCA in *Retail Product Development and Governance – Structured Product Review* ("**FG12-09**") and TR15/2 are not unique to structured products but apply equally to other types of retail investment products. The JAC is therefore of the view that the obligations of structured product manufacturers intended to protect consumer outcomes should also be communicated to the wider market for retail investment products to ensure a level playing field and improved consumer outcomes.

Yours faithfully,



Mr. Alderman Timothy R Hailes, JP

**Timothy R Hailes**  
**Chairman, Joint Associations Committee**