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Dear Nisha

With Profits Governance, the Role of Actuaries in Life Insurers, and Certification of Insurance Returns

I am responding on behalf of the Financial Services Consumer Panel to CP167; I apologise for the delay in so doing.

Defining Principles and Practices of Financial Management

We note the proposals to improve the governance of with-profits business. We believe that it will be a good discipline for firms to define and prepare a document outlining the Principles and Practices of Financial Management (PPFM) that they propose to apply in their management of with-profits funds. A PPFM will, we believe, be useful both as a management tool and as a guide for sales forces. However, it seems likely that the PPFM will be a lengthy document and one that will not necessarily be useful in the hands of consumers generally. Until we see what a typical PPFM might look like, we would like to reserve judgement as to its usefulness to consumers. At this stage, our feeling is that a shorter summary (perhaps no more than a page) of the information contained in the full PPFM would be more appropriate for consumers.

We will comment further on the information needs of consumers in this area in the light of the two further consultation papers that the FSA plans to publish on the information provided to consumers at and after the point of sale. However, we do not think that making even a shorter version of the PPFM available to consumers provides sufficient protection. A robust with-profits committee (or an independent actuary - see our comments in respect of small firms below) needs to carry out that function and be accountable for so doing.

Governance arrangements for with-profits business

Turning to the governance arrangements for with-profits business, we note the three high-level rules in section 2.2 of Annex G of the CP. We also note the proposal to give guidance that a firm should comply with the rules in a way that is appropriate to the scale and complexity of its with-profits business. We support the suggestion that one way in which firms could comply with the proposed new rules would be to set up a With-profits Committee (WPC). However, as we said in our response to Issues Paper 5, we favour a Committee that is separate from the Board. In our view, the role of such a Committee should be to ask difficult questions and to act as a forum in which Boards have to be accountable to policyholders for their decisions. We think that, if Directors (even non-executive Directors) are allowed to sit on the WPC, this will only succeed in transferring the conflict between the interests of shareholders and policyholders from Board to WPC level, notwithstanding any involvement from 'external non directors'.

In our response to Issues Paper 5, we put forward the suggestion that there should be a standing 'panel' of individuals, including policyholders, retired financial service practitioners, academics and other people with relevant skills. We thought that such a panel should be trained and equipped to fulfil the role of challenging Boards in the exercise of their discretion in decisions relating to with-profits policies. For any given with-profits fund a group of people could be selected from the panel to take evidence and to consider whether the principles and practices had been met. We envisaged a group considering each fund once a year at least and reporting thereon to policyholders; but it could also be called in where controversial matters had arisen in the intervening period.

We had in mind the model of the members of the Competition Commission. Panel members would have to be independent of the fund they were considering and would need to bring to the job skills that complemented those of Board members. We think that a panel - set up and appointed by the FSA - from which groups could be chosen to consider each fund would be more efficient and cost effective than setting up a committee for each individual fund and would allow better use of expertise.

The future role of actuaries in the governance of life insurers

We note the FSA's proposal to replace the role currently undertaken by the appointed actuary with two new advisory functions – the actuarial function (applicable to all life firms) and the with-profits actuary function (applicable only to with-profits firms). We also note that, under the proposals, the person performing the with-profits actuary function cannot be the Chief Executive of the firm or hold another post that would give rise to conflicts of interest. However, we believe that conflicts of interest are inevitable if the with-profits actuary is also a member of the board. Where the interests of shareholders are different from those of policyholders, the duty of the actuary to act in the best interests of policyholders would always conflict with his/her duty as a director to act in the best interests of shareholders. We think that the rules should go as far as precluding the with-profits actuary from also being a member of the board, but allowing him/her to sit in on board meetings as part of

the actuarial function. This would enable the actuary to maintain a good understanding of the complete range of business activities of the firm.

At the very least, we think that the with-profits actuary should be required to sign off the Annual Report to confirm that the board had followed the firm's PPFM, thus giving the actuary some leverage where there is any doubt about the proper exercise of discretion. We also suggest that those performing actuarial functions should be subject to regular rotation and to an appointment system along the lines of the Nolan procedures applicable to public appointments.

Small Firms

We note that, under the proposed guidance, small firms would not be expected to set up a With-profits Committee (WPC). They could decide to comply with the high-level requirements in this way, but equally they could identify other means of complying, "possibly by asking an independent non-executive director or an external non-director to report to the governing body on the firm's compliance with the PPFM". We would prefer there to be a With-profits Committee for all firms as we have doubts about the ability of a single person - even an external non-director - to challenge a board on whether a firm's business has been conducted in accordance with its PPFM. If it is not practical for small firms to have a WPC, then we think it all the more important for the with-profits actuary to be completely independent of the firm.

Yours sincerely,



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Chairman

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