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# Community Shares Unit: Draft position statement on FCA Consultation CP14/22

## Context

The FCA has been represented on the Steering Group of the Community Shares Unit (CSU) since its inception in 2012, and was also a member of the Steering Committee for the predecessor body, the Community Shares Programme, and action-research project funded by the Cabinet Office and DCLG (2009-11)

In 2012 the FCA established a Technical Committee to supervise the production of the Community Shares Handbook, with representation from the FCA policy and legal teams, HMT, DCLG, Charity Commission and HMRC, plus mutual society law expert Ian Snaith, Senior Lecturer in Law at University of Leicester.

## About community shares

Community shares is a term used to describe non-transferable withdrawable share capital, a type of share capital unique to societies registered under the Co-operative and Community Benefit Societies Acts 1965-2014. This type of share capital falls outside the scope of the Financial Services and Markets Act 2000, and its associated regulations.

Prior to the 2009, the number of societies promoting the sale of this type of share capital was very small. Between 2000 and 2009 there was an average of three new societies per annum offering withdrawable share capital. In the last five years over 500 new societies registered by the FCA with the intention of offering community shares; nearly 250 of these have successfully completed a share offer raising almost £50m from more than 50,000 people.

Most people buying community shares are low-net-worth, unsophisticated investors, who are motivated by the social purpose and community benefits of the society. Most will never before have directly invested in share capital of any type. Because community shares are unregulated, investors have no rights of complaint to the Financial Ombudsman Service or access to the Financial Services Compensation Scheme.

## Regulatory position

The Financial Services Act 2012 (Mutual Societies) Order 2013, Schedule 1 Paragraph 5(1) says “the FCA must maintain arrangements designed to enable it to determine whether persons are complying with requirements imposed on them by or under the legislation relating to mutual societies.” This imposes a duty on the FCA to ensure that societies act within mutual society law when making a community share offer.

The recent FCA consultation paper CP14/22, published September 2014, reviewing the FCA’s guidance on its registration function under the Co-operative and Community Benefit Societies Act 2014, says that the FCA may in the future require societies to submit share offers to the Mutuels Registration Team as part of its “routine monitoring of societies’ continued compliance with the condition for their registration.” (Paragraph 6.34)

The same consultation paper states that “societies issuing withdrawable share capital may wish to consider the appropriate guides to best practice” and gives, as an example “publications of the Community Shares Unit.” (Paragraph 6.58)



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Paragraph 139A (2) of the Financial Services Act 2012 states that “The FCA may give financial or other assistance to persons giving information or advice of a kind which the FCA could give under this section”, which includes the duties outlined in the Mutual Societies Order 2013 (see above).

#### Work of the CSU

The Community Shares Unit is in the process of developing the Community Shares Compliance Mark, which will be awarded to share offers that are independently assessed to meet good practice standards, as articulated in the Community Shares Handbook. This is a voluntary form of regulation, designed to be proportionate and low cost. It will introduce a code of conduct for societies issuing community shares and for practitioners promoting this type of offer. It will give the public a right to complain, with the ultimate sanction that the mark could be removed from a share offer.

Take up of the Compliance Mark will be greatly enhanced if the FCA is known to be providing financial or other assistance to the Community Shares Unit for the development of the Compliance Mark, and that it is overseeing this work via the Technical Committee, as part of its responsibility to determine whether societies are complying with requirements imposed on them by or under the legislation relating to mutual societies.

It is proposed that the FCA can more effectively deliver on its commitment to offer routine monitoring of societies through supporting the Community Shares Unit. By offering both financial and operational support, a partnership with the CSU will be an effective way of ensuring that societies comply with legislation and good practice when offering community shares to the public. It would obviate the need to develop costly statutory regulation, whilst significantly improving good practice and enhancing consumer protection.