<table>
<tr><td colspan="2" align="center">Comments Template on
Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved</td><td align="center">Deadline
28 April 2017
18:00 CET</td></tr>
<tr><td>Name of Company:</td><td colspan="2">Association of Financial Mutuals (AFM)</td></tr>
<tr><td>Disclosure of comments:</td><td>EIOPA will make all comments available on its website, except where respondents specifically request that their comments remain confidential.

Please indicate if your comments on this CP should be treated as confidential, by deleting the word Public in the column to the right and by inserting the word Confidential.</td><td>Public</td></tr>
<tr><td></td><td colspan="2">Please follow the following instructions for filling in the template:

⇨ <u>Do not change the numbering</u> in the column “reference”; if you change numbering, your comment cannot be processed by our IT tool

⇨ Leave the last column <u>empty</u>.

⇨ Please fill in your comment in the relevant row. If you have <u>no comment</u> on a paragraph or a cell, keep the row <u>empty</u>.

⇨ Our IT tool does not allow processing of comments which do not refer to the specific numbers below.

Please send the completed template, <u>in Word Format</u>, to <u>CP-17-001@eiopa.europa.eu</u>.

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The numbering of the questions refers to the Consultation Paper on the proposal for Guidelines under the Insurance Distribution Directive on insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved</td></tr>
<tr><td>Reference</td><td colspan="2" align="center">Comment</td></tr>
<tr><td>General Comments</td><td>The Association of Financial Mutuals (AFM) represents insurance and healthcare providers that are owned by their customers, or which are established to serve a</td><td></td></tr>
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	defined community (on a not for profit basis). Between them, mutual insurers manage the savings, pensions, protection and healthcare needs of over 30 million people in the UK and Ireland, collect annual premium income of £16.4 billion, and employ nearly 30,000 staff. We consider that the guidelines provided in the consultation provide very useful and clear direction, to firms and to national supervisors, in how to interpret EIOPA's general views on complexity in insurance-based investment products. We believe the proposals set out are generally reasonable and practical, and help ensure products can be distributed in the most appropriate manner, taking account of their relative risk and complexity. We urge national supervisors to adopt a similarly realistic approach. We are concerned that the nature of the langugage in the consultation leaves a great deal of the meaning open to interpretation, and it is important that national competent bodies recognise the spirit of the proposals, for example by exploring the examples provided in the text in an open-minded way, and in extrapolating to prducts in their jurisdiction. We recognise the route to implementation of IDD has not been smooth, and are concerned that uncertainty of EIOPA's final interpretation means that in the UK- and other states- final rules for IDD will not be made until a short time before the currently planned implementation date.	
Question 1	To properly understand the consequences of the options set out, and the costs and benefits associated, it will be necessary to see a detailed list from the NCAs of which insurance products are deemed complex and which are not. The costs to industry may be very high, if products that historically have been capable of being sold on an execution-only basis, are deemed complex and might therefore only be sold with advice. The costs include higher selling costs, but also reduced volumes that will increase marginal adminstrative costs.	

	Likewise, the withdrawal of products which historically have been purchased without advice may be detrimental to consumers if in the future they are deemed complex, and there is no significant supply of advice. For example, if the product attracts low levels of premium, the levels of commission payable to advisers, or fees that can be levied will be low ; an example from amongst AFM members is the Tax Exempt Savings Plan (TESP), which is a form of tax-advantaged plan offered only by UK mutuals, which has a maximum monthly contributon of £25 and which most intermediaries consider too low to generate sufficient income.	
Question 2	Ultimately, we would be concerned if providers were willing to continue distributing products, either directly or through intermediaries, if those products did not meet the demands and needs of the customer.	
Question 3	In the UK we are expecting the Financial Conduct Authority to consult on this in its second IDD consultation in July, and will have a better view then of how EIOPA's guidelines will be interpretted for the UK market. We generally take from the EIOPA consultation that the key to recognising complexity is whether the product is likely to be understood by the customer. The guidelines and examples provided by the consultation recognise that it is the general terms and conditions of the product- and the implications of its features- that are key in defining complexity. Hence EIOPA appears to conclude most with-profits products are likely to be non-complex, where there might be guarantees, clearly defined bonuses, and where they avoid investment in complex, structured derivatives, and clear charging structures. We are satisifed that the with-profits products offered by most AFM members, such as Tax Exempt Savings Plans and Holloway Income Protection meet these criteria (Holloway contracts are Income Protecction products which provide pay bonuses sourced from unused premiums which are only available from a small number of UK friendly societies). This is because they invest in a combination of cash, bonds and equities, but exclude complex debt instruments and structured deposits.	

	In the past the UK conduct supervisor has indicated they consider with-profits as at least partly opaque, due to their charging structure and the nature of performance, and have suggested this would be sufficient for them to be deemed complex under the terms of the IDD. We do not see evidence of this in EIOPA's paper, and will be keen to see the Financial Conduct Authroity take this fully into account in its future implementation.	
Question 4	We agree with the approach taken in Guideline 1. As the consultation indicates, with-profits products leave some discretion for the insurer, but essentially invest in the same investments as lower risk unit-linked and index-linked contracts. We have undertaken analysis of with-profits contracts provided by mutual organisations in the UK, and compared that to: all with-profits insurers; with-profits provided by non-mutual insurers; 'balanged managed'/ 'mixed 40-85%' unit-linked funds; and 90-day deposit accounts. Through our analysis we can see that : - There is a direct correlation between the investment performance cycle of with-profits and unitised products, which is as you would expect given the similarity of their underlying investment content ; - With-profits products smooth investment returns, meaning that part of the return is held back in good years to boost bonus rates in years where the return on underlying investments in low or negative, but over the long-term there is little or no effective difference in raw performance; - Ownership of the insurer though does have a significant impact on investment return: even though mutuals tend to take a more conservative approach to investment, the average return over 25 years to 2015 was 21% higher for a mutual than for a PLC insurer. Comparable data for 2014 (the last date this data was pubslished), showed a mutual with-profits fund outperformed the average 40-85% unit-linked fund by 17% over the long-term, and the average 90-day deposit account by 53%.	

	(For more detail, see: http://www.financialmutuals.org/resources/mutually-yours-newsletter/with-profits-performance-review-2014.) These are therefore long-term trends and evidence that reinforce our view that where a customer invests in a with-profits product, they are not exposed to great investment risk. The nature of guarantee, as well as life cover provided and the locking-in of bonuses as part of the contract, all contribute to reduced uncertainty. Whilst the performance of the investment is not directly related to the performance of the underlying investment in any one period, in the long-term this is the case; and whilst the absence of instant valuations reduces immediate transparency, the provider has a clear investment mandate to work to and can only deviate from this with prior agreement of policyholders. In short, with-profits works to simplify investments for customers, and we do not share the views of UK supervisors that they are more complex.	
Question 5	The Guidelines set out EIOPA's thinking clearly and establish some useful benchmarks for assessing complexity in a product. However, they do provide some elements that are potentially vague, or open to interpretation in different ways. For example, paragraph 2(a) suggests a contract may be deemed complex where it 'incorporates a clause, condition or trigger that allows the insurance undertaking to materially alter the nature, risk or pay our profile' of the IBIP. In the UK, some with-profits products sometimes carry a 'Market Value Adjuster' to reflect times where a policyholder seeks to withdraw funds in adverse conditions. Whilst MVAs involve a clause and trigger before they can be invoked, they can only be used in circumstances specified in the original contract, so they do not materially alter the nature of the product, and where they are intended to equalise the payout with general market conditions, it is not clear that this is unfair- given that unitised products would already reflect any fall in the value of the underlying investments. So we think it would be valuablefor EIOPA to define further what conditions in has in mind. In this respect, we share EIOPA's view that : « the existance of discretion on behalf of	

	the insurance undertaking, does not automatically result in the product being deemed compex» (paragraph 2.23). This concludes that it is the nature and boundaries of the discretion and whether and how this affects the maturity or surrender that determines whether the contract is complex.	
Question 6	We have no comments.	
Question 7	It is not clear whether some of the structure mentioned above, such as MVAs would exclude relevant products from being distributed via execution-only under IDD. In reality, whilst many contemporary sales still include MVAs, the volume of with-profits sales in the UK is now much diminished, so the view of EIOPA is has greatest impact in relation to existing products, and to top-ups to these contracts.	
Question 8	We consider the decisions trees provided are consistent with the guidelines and provide a useful basis for distributors to verify the circumstances involved in any particular sale. The generic examples provide a useful summary of the issued raised in the guidelines. We would welcome more clarity on 'the structures which make it difficult for the customer to understand', as we believe these statements will benefit from being consistently applied across Member States.	
Question 9	We have no other comments.	