Written evidence submitted by The Investment & Saving Alliance (TISA) (FSMB05)

FINANCIAL SERVICES & MARKETS BILL 2022

A. <u>EXECUTIVE SUMMARY</u>

1. We believe that the move to a comprehensive FSMA model of financial services regulation, with the appropriate enhancements to ensure that the regime remains fit for the future, will support the UK's high standards of regulation and, with the proposed new growth and competitiveness objectives, will enable UK financial services to create jobs, support businesses, and power growth across all of the UK. Broadly, we therefore support the Government's objectives as set out in this Bill.

2. We welcome the proposal in the Bill that grants HM Treasury and the regulators a new express power to oversee third parties that provide critical services to authorised firms. We believe that taking into account the criticality of such services and the impact that failures can have on the stability and confidence in the UK financial market, HMT and the regulators should have powers over such providers. Whilst we do not expect authorised firms to be absolved of responsibility for outsourced services, the proposal will provide a better framework for regulated firms and service providers to work together with shared understanding and responsibility.

3. We recommend <u>**three**</u> additional proposals for inclusion into the Bill, which are expanded upon later in the Briefing:

    a. Permitting the provision of **regulated personalised guidance** by financial services firms, to ensure UK consumers, particularly the unadvised are given access to the help & support they need with their financial decision making.

    b. **Aligning pensions regulations** for contract and trust-based pension schemes.

    c. Inclusion of an additional Secondary Objective for Regulators to promote financial wellbeing of UK households.

B. <u>ABOUT TISA</u>

4. **TISA (The Investing and Saving Alliance)** is a consumer-focused financial services industry body. Our mission is to work with our industry members to improve **the financial wellbeing of all UK consumers** to **deliver practical solutions** and devise innovative, evidence-based strategic policy proposals for government, policymakers and regulators that address major consumer issues.

5. TISA membership is **representative of all sectors** of the financial services industry**:** We have **over 240-member firms** involved in the supply and distribution of savings, investment products and associated services, including the UK's major investment managers, retail banks, insurance companies, pension providers, online platforms, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

6. A pure consumer focus and our broad-based membership gives TISA a unique perspective on the issues facing firms delivering services to UK financial consumers.

C. <u>OUR COMMENTS ON THE BILL</u>

7. A secondary objective for the regulators to facilitate growth and competitiveness:

a) TISA recommended in its response to the first HM Treasury consultation on the *Financial Services Future Regulatory Framework* that "*We believe that a new competitiveness objective should be added"*, so we welcome the proposal to add this to the regulators' objectives.

b) We would like to know how the regulators will report on fulfilling this objective and what the measures of success will be.

c) We believe the regulators should be obliged to horizon scan and engage with the industry to identify opportunities to improve the UK's global competitiveness.

d) We also believe that the regulators ought to investigate and deal with the obstacles to UK global competitiveness arising in the financial services industry - one clear example is to explore why the UK is not the domicile of a flourishing market in Exchange Traded Funds ("ETFs") and why this £1tn market is domiciled in Luxembourg and Dublin and not in London. For instance, is it possible for regulators to tackle the obstacles to onshore ETFs to the UK to facilitate growth and competitiveness of the UK's financial services industry.

8. Measures related to the regulators' relationships with Government, Parliament and stakeholders:

a) We support the proposals in the Bill to empower HM Treasury to ask regulators to carry out an independent review of rules, and to place obligations on the regulators to make rules in relation to specific areas of regulation.

b) We recommend that there will be clear criteria for exercising these powers and transparency in how the powers are used.

c) We recommend that the criteria for exercising these powers should include:
    i. Significant developments have occurred, which mean current rules are not appropriate, or
    ii. Rules are not achieving their intended outcome.

9. Establishment of a Cost Benefit Analysis Panel:

a) We support the establishment of a Cost Benefit Analysis ("CBA") Panel.

b) We believe CBAs are an important way of achieving proportionality in regulation, recognising that regulation is rarely cost free. The CBA can only be effective in its purpose if all aspects of implementation are considered in order to arrive at an estimated cost to the industry that is reflective of the anticipated workload. The existence of a CBA panel comprised of practitioners will greatly assist the regulator in preparing these estimates.

c) We recommend that such a panel should comment prior to the publication of regulations, giving time to rework regulatory proposals in light of the findings of a CBA.

d) We believe that practitioner representation on the CBA panel is essential.

e) We support the proposal for a regular review of rules. We suggest an annual review, and at a minimum, newly introduced rules should be reviewed 12 months after implementation to determine whether their introduction has had the desired effect, and whether the imposition of new rules had the unintended consequence of punitive costs on firms, which are ultimately borne by the consumer, without significant beneficial outcomes.

f) We recall the introduction of FCA PS14/9 (which included rules barring firms from placing customer money in unbreakable term deposits with a term greater than 30-days). The implementation of the rules cost the industry and customers, according to the FCA's own account, between £165m - £220m p.a. Therefore for three years, before the rules were changed to allow 95-day deposits rather, the implementation amounted to a cost of over £0.5bn for industry and consumers, a cost that could have been avoided if there had been a CBA Panel in place.

10. Bringing crypto-assets into the UK regulatory perimeter:

a) We welcome the amendment to the HM Treasury Financial Promotion Order to bring "qualifying crypto assets," within scope of the UK's financial promotion rules. Not all consumers fully understand the risks of what they are investing their money in.

b) The Government should strive to achieving an appropriately regulated crypto-assets industry, without driving the industry offshore.

11. Measures on financial promotions:

a) The exemption regime which is used to allow access to high-risk investments for high net worth or sophisticated investors (otherwise banned for retail investors) is not fit for purpose and we ask the Bill Committee use the opportunity of the Bill to seek an alternative way of assessing suitability.

b) HMT have recently consulted on the thresholds used to determine whether an investor fits into the high net worth or sophisticated investor category. Measures of wealth do not take into account financial commitments, non-investable assets, or the fact that wealth can be suddenly gained under circumstances that can lead to vulnerability (such as bereavement). The level of a person's wealth is in fact <u>not</u> a reasonable an indication of whether an investment product is suitable for that person. We also believe it is unfair that wealthier individuals are not afforded the same protections as those in the general retail category. Further, the term 'sophisticated' is determined by frequency of investing and not the success of that previous activity. The definition of 'high-risk' encompasses many types of risk including capital, volatility and liquidity. This means that types of investments (like Long Term Asset Funds that are expected to offer attractive long-term stable returns) will only be accessible to the wealthy.

c) At the current thresholds, we do not believe that wealth is necessarily a binary indicator of the suitability of an investment for a high net worth individual, or their ability to bear losses. However, raising the threshold from £250k to £1m will prevent even more retail investors benefiting from the long-term gains that some higher risk investments, such as Long-Term Asset Funds ("LTAFs") can generate. We do not believe that the opportunity to invest in the UKs future infrastructure and benefit from these returns should be a privilege of the rich.

d) We call on the Government to scrap the exemptions regime. It should be replaced by a different regime that considers multiple aspects of suitability. High risk investments that fall into the FCAs 'restricted mass market investment' category should be available to <u>all</u> retail investors, and access to financial promotions in relation to these investments and entry to the investment itself should be controlled by an appropriateness test which takes into account a wider range of factors than a binary measure of wealth, or sophistication. Investments that fall into the FCAs 'non mass-market investment' category should be available to all retail investors on an advised only basis, where an advisor can perform a detailed analysis of the clients suitability and knowledge. Much of this framework is in place with the introduction of the FCA's new rules in relation to Financial Promotions, but its effectiveness is constrained by the existence of the exemptions.

D. RECOMMENDATIONS FOR NEW INCLUSIONS INTO THE BILL

12. Permitting regulated personalised guidance:

a) We recommend that the Bill be amended to facilitate the future establishment of a personalised guidance legislative and regulatory regime in the UK to allow financial services firms to provide more personalised help & support to people in the UK with their financial decision making.

b) TISA is concerned about the lack of help & support that UK consumers have with their financial decision making, particularly the unadvised. At the moment, unadvised consumers are needing to make important financial decisions without professional support – e.g. with decisions such as how much to invest, how to invest, what tax wrappers should I use, should I contribute more to my pension, I've moved employer so should I consolidate my pensions etc. *NB: There are 38 million people that do not receive any formal support with their financial decision making with only 8% of the UK adult population using the services of a financial adviser (as estimated by the FCA in December 2020 in their Financial Lives Survey)*.

c) TISA is highly concerned about:
   i. The plight of unadvised consumers who do not know enough about their options; who feel overwhelmed by the landscape of available products; who find financial services too complex and confusing; who do not know where to start. *NB: From TISA research commissioned in 2021.*
   ii. The gravitation of consumers towards using unregulated sources (like social media sites) and unregulated, high-risk investments.
   iii. Consumers not making any decisions at all, due to lack of professional support.
   iv. Consumers making poor and informed choices, as a consequence of the current cost-of-living crisis, with financial services firms already observing consumers reducing their pensions contributions to meet day to day living expenses, which will ultimately harm their future financial resilience.
   v. Future industry Smart Data initiatives - Open Finance and Pensions Dashboard – falling flat, or not reaching their potential with consumers, because firms are not able to utilise data to provide personalised insights to consumers.

d) In this digital age, it is possible for Financial Services firms to develop a greater understanding of an individual's financial circumstances and use those insights to offer people personalised guidance that, whilst stopping short from providing specific personal recommendations akin to full financial advice would nevertheless provide meaningful assistance to consumers on the financial challenges they face and the opportunities available to them to improve their financial wellbeing. Indeed, we believe that better use of data and technology by financial services firms has the ability to democratise and level-up access to financial support across UK society.

e) Under the current legislative and regulatory regime around Financial Advice, financial services firms are limited from being able to engage consumers in an engaging personalised manner. This is because taking personal circumstances into account (e.g. the customer's goals, how they are invested) is treated in legislation as Financial Advice, and without the necessary advice permissions, firms would fall foul of the rules (if they were to issue personal prompts, nudges, suggestions, alerts).

f) We call on the Bill Committee to recognise the importance of allowing the Financial Services industry to be able to effectively engage consumers to improve their financial wellbeing:
   i. TISA this year surveyed consumers holding more than £5k in a Cash ISA and/or Bank account and 70% of these people without a Stocks & Shares ISA had never considered investing in a Stocks & Shares ISA.
   ii. An equally startling statistic from HMRC is that over 60% of the money in Junior ISAs is held in cash, despite the decades long investment horizon that people have for such investments.

g) Given low engagement is the major problem, the Government urgently needs to review the legislative framework around the prompts, nudges, alerts, and suggestions that firms are (not) allowed to deliver to unadvised people as financial guidance.

h) TISA's proposal is for HMT and the FCA to create well-regulated market, with appropriate consumer protections in place, for regulated personalised financial guidance, ensuring UK society, especially those without a financial adviser have access to better quality help & support that helps to improve their financial outcomes.

i) More specifically, TISA's proposal is for:
   i. HMT to set up a new regulated activity in the Regulated Activities Order – Personalised Financial Communication – allowing firms to take personal circumstances into account when issuing personalised communications to consumers, whilst stopping short from allowing firms to provide personal recommendations via this new permission.
   ii. The FCA to devise a regulatory regime for this new permission, which would require financial services firms to apply for the permission, agree to strict governance & disclosure protocols and share date with the FCA on what customer outcomes are being created.

   NB: TISA has presented detailed policy proposals to both HM Treasury and the FCA recently. We believe our proposals have demonstrated that a robust regulatory regime can be built (for regulated personalised guidance) to manage conduct risk and the risk of consumers interpreting regulated guidance as regulated advice.

j) We believe it should be an absolute priority for Government to enable financial services firms to be able to guide their customers over the longer term, encouraging them to look after their long-term financial resilience when economic conditions improve. The changes we propose would enable firms to do exactly this.

k) We recommend that the Bill mandate HM Treasury to set a clear timetable to consult on the necessary legislative changes to create a well-regulated market, with appropriate consumer protections in place, for personalised financial guidance.

l) Our proposed amendment to the Bill is provided in the **Appendix** to this Briefing.

13. Aligning pensions regulation:

a) We recommend that the Bill facilitates future measures to align pensions regulation (contract based vs trust based).

b) Pensions regulation is clearly an important part of financial services, that affects all households in the UK, whether through accumulation or decumulation. Money invested in pensions are an important engine of long-term investment in the UK. Whilst a more joined up approach has been adopted by DWP/TPR and FCA, the different regulatory regimes still necessitates different sets of regulation. Whilst many regulatory objectives spanning both regimes attempt to address the same issues (such as the Stronger Nudge), the separate consultation processes results in different rules and requirements which are not always joined up.

c) Consumers will typically not be aware of what type of pension they have (i.e. contract based vs trust based), however they all are exposed to the same risks and require the same levels of protection and access to opportunities irrespective of the regulatory regime their scheme is subject to. To improve engagement in pensions, then we need to ensure the industry uses consistent consumer journeys for members of all schemes.

d) Pension Dashboard principles promote the benefits of consistency and with its impending public launch in 2024, we believe now is the perfect time to align Defined Contribution pension regulation.

e) We recommend that Pensions regulations be rationalised and aligned and that the FCA lead this regulation. We believe this approach should be mandated in this Bill.

14. New Secondary Objective for Regulators: Promoting financial wellbeing of UK households

a) TISA agrees that that the regulator's primary objective should be to ensure safe and sound firms, well-functioning markets and the protection of consumers. As mentioned above, TISA is also in agreement with the regulators having a secondary objective to facilitate growth and competitiveness. However, we believe that the regulators should be striving for growth & competitiveness alongside promoting the financial wellbeing of UK society.

b) Therefore, we recommend that a further secondary objective be added for the regulators to promote the financial wellbeing of UK society. NB: The Government's Money and Pensions Service defines financial wellbeing as follows: *"Financial wellbeing is about feeling secure and in control. It is knowing that you can pay the bills today, can deal with the unexpected, and are on track for a healthy financial future. In short: confident and empowered."*

c) The FCA do currently have initiatives linked to promoting financial wellbeing. For instance, the FCA's *InvestSmart* consumer campaign is targeted at individuals investing in high-risk investments (including some that sit outside the existing regulatory perimeter), to promote better awareness of the risks. Also, in September 2021, as part of their *Consumer Investments Strategy*, the FCA quite rightly identified the risk from inflation posed to people sitting with large cash holdings. We believe it is highly important that the FCA continues its focus on such initiatives and we wouldn't wish compromises to be made as a result of the additional objective of facilitating growth and competitiveness.

FOR MORE INFORMATION CONTACT:

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APPENDIX – AMMENDMENT PROPOSAL

Financial Services and Markets Bill

CHAPTER 2

NEW REGULATORY POWERS

23A Personalised financial guidance: power to make regulations

(1) The Treasury may by regulations make such provision as they consider appropriate for the purpose of, or in connection with, ensuring that UK citizens, especially those without a financial adviser, are able to receive personalised financial guidance from appropriately regulated financial services firms, which is designed to help and support them with making decisions that improve their financial wellbeing.

(2) In this section, "personalised financial guidance" means a communication—

(a) that is made to a person in their capacity as an investor or potential investor, or in their capacity as agent for an investor or a potential investor;

(b) which constitutes a recommendation to them to do any of the following (whether as principal or agent)–

(i) buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular investment which is a security, structured deposit or a relevant investment; or

(ii) exercise or not exercise any right conferred by such an investment to buy, sell, subscribe for, exchange or redeem such an investment; and

(c) that–

(i) is based on a consideration of the circumstances of that person; and

(ii) is not explicitly presented as suitable for the person to whom it is made.

(3) The provision that may be made by regulations under this section includes provision—

(a) applying legislation relating to the provision of financial advice;

(b) applying legislation relating to suitability requirements under MiFID;

(c) conferring powers on the Treasury (including a power to legislate);

(d) conferring powers, or imposing duties, on a relevant regulator (including a power to make rules or other instruments);

(5) The power to make regulations under this section includes power to modify legislation.

(6) The power under subsection (5) includes power to modify the definition of "personalised financial guidance" in subsection (2).

(7) Regulations under this section that modify only the following kinds of legislation [referred to in Schedule 1] [1] are subject to the negative procedure—

(a) EU tertiary legislation;

(b) subordinate legislation that was not subject to affirmative resolution on being made.

(8) Regulations under this section to which subsection (7) does not apply are subject to the affirmative procedure.

(9) Before making regulations under this section, the Treasury must consult the relevant regulator.

(10) In this section—"legislation" means primary legislation, subordinate legislation and retained direct EU legislation;

"MiFID" means Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

"relevant regulator" means the FCA.

[SCHEDULE 1

Section 1

REVOCATION OF RETAINED EU LAW RELATING TO FINANCIAL SERVICES

PART 1

RETAINED DIRECT PRINCIPAL EU LEGISLATION

Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational

[1] It is not clear whether the legislation needs listing but we have concluded relevant legislation below for completeness

requirements and operating conditions for investment firms and defined terms for the purposes of that Directive

PART 2

SUBORDINATE LEGISLATION

The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001]

September 2022