

Submission to Financial Services and Markets Bill Committee

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Contents

Introduction	1
Revocation of retained EU law and transitional amendments in the Bill	2
New regulatory powers	3
Designated Activities Regime (DAR)	3
Financial market infrastructure rules, requirements and sandboxes.....	3
Powers in relation to Critical Third Parties	4
Regulatory gateway for approving financial promotions	4
Digital settlement assets.....	4
Mutual Recognition Agreements (MRAs)	4
New Regulatory objective and accountability	5
New secondary objective.....	5
Regulator engagement with HMT, Parliament, and stakeholders	5
Cost-Benefit Analysis (CBA) panels	6
Transparency of statutory panels	6
Conclusion	7

Introduction

TheCityUK is the industry-led body representing UK-based financial and related professional services. We champion and support the success of the ecosystem, and thereby our members, promoting policies in the UK, across Europe and internationally that drive competitiveness, support job creation and ensure long-term economic growth. The industry contributes 12% of the UK's total economic output and employs over 2.2 million people, with two thirds of these jobs outside London. It is the UK's biggest net exporting industry and generates a trade surplus exceeding that of all other net exporting industries combined. It is also the largest taxpayer and makes a real difference to people in their daily lives, helping them save for the future, buy a home, invest in a business, and protect and manage risk.

There is broad support across the industry for the Financial Services and Markets Bill ('the Bill') and, in particular, the introduction of a new secondary objective of economic growth and international competitiveness for financial services regulators.

Revocation of retained EU law and transitional amendments in the Bill

We agree with the government that the Financial Services and Markets Act (FSMA) model provides a world leading approach for how policy and regulation should be applied to financial services and markets. We consider that the FSMA model provides a flexible framework for the regulation of financial services and markets by delegating the setting of regulatory requirements to the regulators, working within an overall policy framework set by government and Parliament.

We welcome the proposals in the Bill to give HM Treasury (HMT) the tools to implement the outcomes of its review of the Future Regulatory Framework (FRF). These will allow HMT to revoke retained EU law on financial services, with some Parliamentary oversight on the statutory instruments, and replace it with legislation designed specifically for UK markets, in a way that builds on the UK's existing approach to financial services regulation under the FSMA model.

We encourage HMT, when using these tools, to work closely with the UK regulators and the industry to ensure that the process of revocation, replacement and reform of a large number of legislative files is phased and paced to match regulators' and industry's capacity. The transition approach and prioritisation of files should seek to minimise risks of unintended consequences (for the industry and its customers). All change involves costs and the implementation of the FRF will take place over a period during which there is already a large volume of planned regulatory change and against a backdrop of significant change in the economic, business and technology environment.

We recommend that HMT and the regulators to consider the following regulatory principles which are crucial to the ongoing success of the industry and its wider contribution:

- Clarity, coherence, and predictability: Regulation should be easy for the industry and its users to understand, minimise business compliance costs, and inspire confidence in the UK market.
- Net positive impact: The benefits of regulation and any changes to regulation should outweigh the costs, and demonstrably so, with the full range of social and economic impacts considered.
- Proportionality: Regulation should, wherever possible, be proportionate to the risk involved.
- International alignment and competitiveness: Regulation should be aligned globally wherever possible. UK regulation should keep pace with global changes in regulation, to ensure the UK does not fall out of kilter with competitor jurisdictions, or international standards and best practice. It should also be developed with due consideration of its impact on the UK's competitiveness compared to other jurisdictions.
- Tailored and agile: Good regulation should be tailored to the UK market, support the industry's ability to compete internationally, and evolve to meet changing needs and international standards.

We welcome the transitional amendments made in the Bill to the Markets in Financial Instruments Regulation (MiFIR), European Market Infrastructure Regulation (EMIR) and other legislation. These amendments are the result of extensive industry engagement over recent years and will simplify the regime, improve the operational transparency of trading, streamline processes, drive competition between firms and improve the information accessible by investors through increased transparency. We support them as we find that the amendments are an appropriate simplification and streamlining of these regulations, which do not erode the UK's high standards of consumer and investor protection.

We particularly support the equivalence framework for Simple, Transparent and Standardised (STS) securitisation. This will improve the global attractiveness of the UK and make it easier for UK investors to pool certain types of assets and repackage them into interest bearing securities globally. Because this will be done solely to STS securities, the products themselves will be transparent, on a register, and minimise market stability risk.

New regulatory powers

Designated Activities Regime (DAR)

We welcome the Designated Activities Regime as it will give flexibility for HMT to extend the remit of regulators to protect UK consumers and businesses, and to support financial stability. We believe that it will ensure that the UK maintains its high standards and minimise industry disruption under the FSMA model. It represents a move towards “same activity presents the same risks, so the regulation is the same”, which is more targeted and efficient.

We would like to see clarity on how it will interact with the Regulated Activities Order and the requirements for authorised firms. In the instance where authorised and unregulated firms are carrying out a designated activity, we would like to see a level playing field between authorised firms and those that are regulated through the DAR.

The DAR envisages giving rule making powers only to the FCA. Therefore, HMT may not use the DAR (unmodified) as the vehicle to replace the clearing and margin obligations where currently the Bank of England, the PRA and the FCA share functions in making Binding Technical Standards (BTS). For example, currently the Bank of England has the power to make the BTS defining the scope of the clearing obligation, an EMIR obligation where certain over-the-counter derivative contracts need to be cleared through a central counterparty. It also makes the BTS specifying when changes to the obligation affect PRA-authorised persons, while the PRA makes BTS on the margin requirements for PRA-authorised persons in these counterparties.

We note that there are other ways in which HMT could preserve the current role of the Bank of England and PRA. For example, it could save and restate the Bank's power to set the scope of the clearing obligation via separate regulations (even though the clearing obligation itself is set via the DAR). The PRA could use its general rule-making powers to set margin rules for PRA-authorised firms.

We will encourage regulators to address any potential asymmetry. HMT and regulators should consult the industry on this.

Recommendation: Consideration must be given to ensuring that competition between authorised, dual authorised and unregulated firms be as level as possible.

Recommendation: We would like to see some clarity on the sharing of regulatory responsibility between the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA) and Bank of England for technical standards in some areas. For example, the entering of Over-The-Counter (OTC) derivatives and how this might interact with the DAR.

Financial market infrastructure rules, requirements and sandboxes

We support the extension of the Bank of England's rule making powers to financial market infrastructure. We welcome the requirement that the Bank have regard to the international landscape, and the global nature of central counterparties and central securities depositories.

We support the formation of FMI sandboxes. There are huge benefits in providing firms with a safe space to test and learn from innovations, and in affording policy makers and regulators the opportunity to assess where technologies can transform the market without undermining intended outcomes from legislation, regulation, or policy. The existing UK regulatory sandboxes have had such success that they are being replicated all over the world. The sandbox powers will be an agile vehicle for legislative tweaking to foster innovation in the UK's capital markets.

Recommendation: While we support the first iteration of this sandbox looking at the use of Distributed Ledger Technology in our industry, we encourage HMT to continue to seek other areas for experimentation and innovation to enhance the UK's ability to lead in financial technology and innovation.

[Powers in relation to Critical Third Parties](#)

We support this measure because it will improve the operational resilience of the industry and begin to address the concentration risk that some third-party providers pose to the industry.

Recommendation: The government should seek to reach a form of equivalence agreement with the European Union in relation to their Digital Operational Resilience Act, which seeks to achieve the same outcomes. The UK and EU are both seeking the same outcome and we would like to see an agreement recognising them as equivalent or including them in a future Mutual Recognition Agreement.

[Regulatory gateway for approving financial promotions](#)

These provisions are a proportionate response to criticisms of the Financial Promotions regime not adequately protecting consumers through lack of relevant approver expertise, due diligence, and challenges in exercising appropriate regulatory oversight.

[Digital settlement assets](#)

We welcome the introduction of legal terminology for these new assets and the introduction of legislation to pave the way for regulation of stablecoins, as well as the reforms to the Banking Act bringing them into the regulatory perimeter. We believe the government's ambition to allow for 'stablecoins' to be used as a means of payment is appropriate to foster further financial innovation.

Bringing these new assets into the regulatory perimeter as a form of payment, with the associated consumer protection, is a crucial first step towards making the UK a hub for future innovation on the use of distributed ledgers, stablecoins and crypto assets.

We also welcome the amendments tabled defining cryptoassets, giving powers to regulate cryptoassets, and the clarification of powers relating to financial promotion and regulated activities over these assets. However, with this clarification comes an overlap of definitions between digital settlement assets and cryptoassets. As both are being framed as "digital representations of value", with one in a payments context specifically (digital settlement asset) and the other in broader financial regulation (cryptoasset).

[Mutual Recognition Agreements \(MRAs\)](#)

We support this reform and the ambition to facilitate and encourage greater international harmonisation of compliance standards.

For example, Switzerland is a priority market for the UK-based financial and related professional services industry. An ambitious UK-Switzerland MRA could shape more integrated UK-Switzerland financial markets, provide UK businesses more freedom to operate in Switzerland, secure digital trade, enable access to high-skilled UK and Swiss talent, and allow for the recognition of UK professional qualifications in Switzerland. This would lead to more high skilled jobs and sustainable investment in both countries.

Recommendation: Government should then use the powers to swiftly pursue and implement other MRAs with global partners, to boost cross-border financial trade between the UK and other key financial centres and thereby boost UK economic growth.

New Regulatory objective and accountability

New secondary objective

It is important to recognise the role that regulators play in the international competitiveness of an industry in global markets. We live in a world that is deeply interconnected. The standards that we hold industries to are important to market participants' trust and confidence in a jurisdiction, and to minimising frictions in international trade. The UK has benefitted from its high standards for a long time and should continue to do so.

We believe that the creation of an objective for regulators to support economic growth and international competitiveness is important for the future of the UK's position as a leading international finance centre.

Regulator engagement with HMT, Parliament, and stakeholders

We welcome, in principle, the accountability mechanisms described in Chapter 3 of the Bill. We would, however, encourage further amendment to the Bill in this regard with the following context, arguments, and benefits.

The regulators are mandated to report to HMT via their Annual Reports. These contain performance metrics that are selected by the regulators themselves. While the Treasury Select Committee (TSC) has the power to send for "persons, papers and records", it does not have the power to mandate the regulators to report on specific performance metrics over time. We believe the efficiency and effectiveness of regulators, and the impact of their operational performance on UK competitiveness, would be improved by greater accuracy and transparency of, and accountability for, operational performance metrics.

We have shared with HMT a proposed amendment to give HMT powers to require regulators to report specified operational performance metrics, with TSC consulted on the metrics to be reported, and reports to be published. It is the industry's view that effective accountability of regulators requires transparency.

With the secondary objective for competitiveness, which we support, it is critical that progress in working towards and meeting this objective is measured and reported. The efficiency with which our regulators carry out their duties is an important factor in the UK's global attractiveness and competitiveness. Hence, this efficiency should be measured and reported transparently.

Recommendation: That the following proposed amendment be inserted into FSMA 2000 after section 3RE (inserted by section 28):

"3RF Requirement to publish specified information

- (1) The Treasury may at any time, by notice in writing, direct a regulator to measure its performance against specified metrics and to publish such information if—
 - (a) The regulator does not already publish such information, or
 - (b) The Treasury consider the information published is insufficient for the purposes of holding the regulator to account.
- (2) A direction under subsection (1) may –
 - (a) Specify the element of the regulator's performance to be measured;
 - (b) Specify the appropriate metrics to be used;
 - (c) Specify the period for which performance must be measured;

- (d) Specify the date by which the performance information must be published.
- (3) As soon as practicable after giving the direction under subsection (1) the Treasury must –
- (a) Lay before Parliament a copy of the direction, and
 - (b) Publish the direction in such manner as the Treasury think fit.
- (4) A direction under subsection (1) may be varied or revoked by the giving of a further direction.”

Cost-Benefit Analysis (CBA) panels

We support the creation of CBA panels and their remit of both pre and post publication consultation.

Recommendation: The industry would welcome further detail on how CBA panels will consult and engage with industry stakeholders. We have shared with HMT proposals for strengthening the CBA panel(s) as follows:

- HMT should issue guidelines around the composition of the CBA panel(s) (i.e. economists, consumer representation, industry representation).
- Where a CBA panel is consulted on particular rules, the panel’s advice should be made publicly available and cover a list of principles (e.g. impacts on cost to consumers, consumer protection).
- Regulators should consult a CBA Panel when conducting a rule review.
- A CBA panel should have the explicit power to recommend improvements to a regulator CBA and use a traffic light system to rate CBAs. This is an established approach used by the Regulatory Policy Committee (RPC). Where the regulators decide to ignore a CBA panel’s advice, this should be justified transparently in its consultation paper.
- A CBA panel should have the necessary independence to undertake these functions.

Transparency of statutory panels

We welcome the provisions in the Bill which give statutory footing to strengthen and improve the transparency and member diversity of the Listing Authority Advisory Panel and PRA Practitioner Panel insurance sub-committee.

Recommendation: We recommend that the panels are organised into activity specific expert groups which would provide ad-hoc advice on specialist issues. The regulators would benefit from a pool of individuals who have specialist expertise in the proposed activity.

Proposed Senior Manager & Certification Regime

The extension of the Senior Manager and Certification regime seems appropriate and logical in bringing the expectations of senior individuals working in financial services to an equal level.

Conclusion

TheCityUK is encouraged by the considered and holistic approach in this legislation and welcome its reforms. We support the commitment to maintaining high standards, reducing areas of friction, and expanding the regulatory perimeter to new areas. We are keen to work with Parliament to refine the Bill as it continues to receive scrutiny and amendment.

A key issue moving forward is how the powers, remits and objectives in the Bill will be interpreted and implemented by HMT and the regulators. We look forward to working with them on this to deliver a strengthened FSMA model.

We believe that with this trajectory the UK can secure its position as one of the world's leading international financial centres. We hope to continue having constructive, considered, and nuanced discussions with the regulators, government, and Parliament.

If you have any questions relating to the points in this response, please contact Oliver Nelson-Smith, Oliver.Nelson-Smith@thecityuk.com.