

Financial Services & Markets Bill – Call for Written Evidence response
Response of Santander UK plc

The Financial Services and Markets Bill (FSMB) is an important piece of legislation that will deliver targeted, considered and impactful changes to the UK's financial services regulatory framework across a range of priority areas. These reforms will improve the competitiveness and resilience of the UK financial services sector whilst maintaining high standards of regulation and strengthening consumer protections in key areas.

Santander is broadly supportive of the FSMB in its current form and believes that this will deliver significant and lasting benefit to the UK financial services sector and to the broader UK economy. However, we would encourage the Committee to consider some targeted amendments and clarifications to the FSMB which could help to maximise the impact of the Bill and ensure that it fulfils its objectives.

As noted by MPs during the Second Reading of the Bill, significant powers are granted to the UK regulators under the measures proposed and we would encourage the Committee to consider carefully whether there are sufficient measures to ensure effective accountability to Parliament and Government for the new powers they will receive. Santander supports the calls made by MPs for greater regulator accountability in the FSMB and has suggested targeted mechanisms for the Committee to consider to better achieve this.

- 1. Enable reform of the Consumer Credit Act 1974 (CCA) through the FSMB.** The CCA was not drafted with current technology and the consumer needs in mind and is not suitable for the modern consumer credit market. Santander welcomes and supports the Government's ongoing work to review the CCA and the intention to repeal the Act and transfer responsibility for regulation of consumer credit to the FCA. Santander would support an amendment to include powers in the FSMB that would enable HM Treasury to implement reform of the CCA at a future date. There is unlikely to be another suitable Bill in this Parliament to implement the outcome of the Government's CCA review, which would delay this necessary reform and risk harm to UK consumers and businesses. This amendment would also allow Government to introduce regulation of Buy Now Pay Later (BNPL) products through the FSMB, consistent with the concerns expressed by MPs in the Bill's second reading about the need for prompt regulation of this area.

- 2. Strengthen the position of the FCA in respect of decisions made by the Financial Ombudsman Service (FOS).** Santander supports the concerns expressed by the Treasury Committee about the FOS' handling of consumer complaints with wider implications as in its recent report. As drafted the FSMB requires the FCA, the FOS and the Financial Services Compensation Scheme to consult and coordinate. Whilst this is welcome, Santander believes that stronger requirements are needed to ensure the FOS takes sufficient account of the FCA's powers and remit to regulate and doesn't set regulatory precedent through its decisions. FOS' role in the consumer complaint procedure should be

as an independent adjudicator and there should be an appeal mechanism (other than judicial review) in relation to a FOS decision that has a broad or systemic effect.

- 3. Strengthen regulators' accountability with rule review powers for entities affected by financial services regulation.** The FSMB will confer significant new rule-making powers on the financial services regulators. It is important that these powers are balanced with appropriate mechanisms to hold the regulators to account for their regulation of the sector. Santander welcomes the introduction of powers for HM Treasury to require the UK regulators to review specific rules where there is "public interest" in a review. Santander agrees with points made by UK Finance in recent months however, that any accountability mechanism should also include the views of those affected by regulation. Santander therefore supports UK Finance's proposal that the rule-review powers introduced in the FSMB should be extended to the financial services sector using the process that currently exists for "supercomplaints" in which a designated entity can request a review of regulators' rules where there is risk of significant harm. This would be consistent with the emphasis placed by MPs on the importance of introducing mechanisms to ensure that the UK regulators are accountable for the significant new powers they will receive through the FSMB.
- 4. Include crypto exchanges in the scope of mandatory reimbursement for Authorised Push Payment (APP) fraud.** We welcome the proposed regulation of digital settlement assets. Exchanges and platforms for purchasing crypto-assets are a fast-growing area of financial services that entail significant risks to consumers, and are a growing arena for APP fraud. Bringing crypto-exchanges into the scope of the Payment Systems Regulator's powers to mandate reimbursement for APP fraud would be consistent with the principle of "same risk, same regulation" and would introduce important new protections for consumers in area where risk of fraud is significant.
- 5. Clarify the intended scope of the new Critical Third-Party framework. Santander welcomes and supports the new Critical Third Party (CTP) regime introduced in the FSMB.** The regime will help to better protect UK financial stability and ensure that material risks arising from the reliance on third party technology providers and services in the financial services sector are appropriately managed. It is important that any rules made by, and any exercise of powers by, a relevant regulator have direct effect on a CTP. Our experience with compliance with the PRA's rules on operational continuity in resolution and outsourcing and third party risk management demonstrates the difficulty with imposing rules on a firm that must then seek to reflect in its contractual arrangements with third party service providers. However, (a) the practical implications of enforcing rules and requirements on a CTP located outside the UK should be considered as the regime should not have the effect of restricting firms to using CTPs that are located in the UK (which would harm the competitiveness of the UK as a place from which to undertake financial services business), and (b) Santander would welcome clarification that the intended scope and designation criteria for a CTP would not extend

to entities who are part of the same consolidated group as the applicable authorised person, relevant service provider or FMI entity.

6. Clarify the intended scope of changes to FSMA rules on Financial Promotions.

Santander welcomes and supports proposed changes to the UK's financial promotions rules to require authorised firms seeking to approve financial promotions for unauthorised firms to seek FCA permission. The new "regulatory gateway" for financial promotions will introduce important protections for consumers against the growing threat of fraud. As currently drafted, however, the Bill could be interpreted as applying to communications issued by an authorised person (under section 21(2)(a), FSMA 2000) as well as to communications issued by a third party but approved by an authorised person (under section 21(2)(b), FSMA 2000). Santander would welcome clarification from the Committee that the "regulatory gateway" is only intended to capture communications issued by a third party but approved by an authorised person through section 21(2)(b) of FSMA 2000.

7. Clarify the intended scope of the FCA's powers over designated persons in the cash access services regime. Santander welcomes the provisions in the FSMB which protect access to cash in the UK. Santander has collaborated with other sector stakeholders through the Cash Action Group and welcomes how the FSMB builds on and implements this work. Santander would propose clarifications to the scope of the powers granted to the FCA to direct designated persons in section 131W in two key areas:

- A) The FCA may only exercise the power to require a designated person to provide cash access services to its own customers or, in the case of an operator of cash access coordination arrangements, the customers of the participants in those arrangements. It is not fair and reasonable for a designated person to bear the cost of the provision of cash access services to the customers of other banks or building societies who decide not to make their own provision for access or participate in a cash access co-ordination arrangement.
- B) The FCA should not have retrospective powers to require designated persons to reopen branches closed before the cash access services regime comes into effect. As set out in HM Treasury's response to the Access to Cash consultation in May 2022, the legislation should make clear that the regime starts from existing cash provision. Historic branch closures decisions have been taken in light of guidance provided by the FCA and firms should not be required to reverse such decisions.