



8 February 2022

To: Future Regulatory Framework Review
Financial Services Strategy
HM Treasury
1 Horse Guards Road
SW1A 2HQ
Email: FRF.Review@hmtreasury.gov.uk

Dear HM Treasury,

Financial Services Future Regulatory Framework Review: Proposals for Reform

FIA appreciates the work that HM Treasury (“HMT”) has carried out as part of the October 2020 paper Future Regulatory Framework (FRF) Review: Consultation (“**FRF 2020 Consultation**”) and in setting out the government’s response to the FRF 2020 Consultation with the publication of the Financial Services Future Regulatory Framework Review: Proposals for Reform (“**FRF Reform Proposals**”). We value the opportunity to respond to the proposals that have been made so far and we see the reform to the UK’s financial regulatory framework as a chance to ensure the UK financial markets continue to have the structure and guidance required to remain agile and competitive, and assist with their clear, orderly and proper functioning.

We have set out our responses to a selection of questions from the FRF Reform Proposals below, and we would be grateful if HMT would consider them. We are broadly supportive of most proposals and overall, we believe that the transition to increased discretion for the regulators is an appropriate approach.

1 Question 1 - Do you agree with the government’s approach to add new growth and international competitiveness secondary objectives for the PRA and the FCA?

1.1 We support the new growth and international competitiveness objectives being included as secondary objectives. We believe that in reality a strong regulatory framework and a strong rule of law are attractive for both domestic and international business and would therefore support continued growth and provide an advantage among international markets. We therefore believe that the primary and secondary objectives could be viewed as complementary.

1.2 The combination of the primary and secondary objectives would have the advantage of encouraging regulators to implement truly effective regulation which balances the innovation and development required to remain competitive with the primary pillars of market integrity, consumer protection and competition.



2 Question 10 - Do you agree with the government’s proposal to establish a new Designated Activities Regime (“DAR”) to regulate certain activities outside the RAO?

- 2.1** We have some initial reservations about this approach, but we believe more information is required as to which activities would be covered by the DAR and how regulators will apply the DAR to both authorised and unauthorised firms, as well as the process for including additional activities within the DAR (for example, whether there will be a period of public consultation before additional activities could be added). We would be grateful if the conclusion paper to these FRF Reform Proposals could provide further details on whether there will be a separate consultation on the details of the DAR.
- 2.2** Overall however, we are supportive of the proposed approach to bring the regulation of various activities into the same framework which should encourage continued harmonisation of rules and regulations. We would encourage the government and regulators to group together the rules for both the authorised and unauthorised firms for each of the additional activities under the DAR to ensure there is a clear and coherent framework in place.
- 2.3** In connection with the DAR proposal, which is likely to have a direct effect on many of our members, we would suggest sharing with the industry a clear and indicative timeline of the proposals and the various steps to implementation. For example, ensuring that changes to primary legislation and the timing of the changes are included in HM Treasury’s Regulatory Initiatives Grid. This approach would be both helpful and contribute toward the HMT’s stated aim of having a “clear and transparent approach to transition, that provides continuity and stability and appropriately manages any impact on firms or consumers that would result from the changes”.
- 2.4** We understand that it may not be possible to provide a meaningful program at this time given some fundamental areas are still to be decided on, and that there may be changes to timelines which have already been shared with industry. However, we believe that keeping the industry abreast of intended timings and sharing even high-level indications of the government’s proposed scheduling would be useful for firms in preparing for the transition, for example to ensure firms are in a position to respond to consultations or review new legislation or regulatory handbook rules. Equally, when it is clear that there are going to be delays to consultations or legislation, our members would be very grateful to be kept informed of the amended plans and timelines.
- 2.5** Paragraphs 7.53 and 7.54 describe some of the steps that will need to be taken as part of the transition to the UK’s future regulatory framework, including regulators’ consultations where necessary and initially replacing the repealed provisions with rules similar to those which are already in place. Noting that the changes will be extensive and take a number of years to be finalised, we would also be grateful for clarity around how this move to the future regulatory framework will be combined with the possible changes to the current regulatory rules, for example as a result of the Wholesale Markets Review. HMT’s July 2021 Wholesale Markets Review consultation paper states that the government would like to make some of the changes to the wholesale markets regime quickly and therefore changes would be made to existing legislation (we understand the reference to ‘existing legislation’ to include retained EU law). The Wholesale Markets Review consultation paper also notes that further changes are likely to be made once the future regulatory framework has been implemented. This



represents an extended period of change for firms, and while it can be helpful for firms to have longer lead-times to make adjustments as a result of amendments to rules and legislation, extended periods of change can also lead to uncertainty alongside the usual challenges presented by regulatory change.

- 2.6** We would not want the process of moving to the future regulatory framework to delay the important changes that may need to be made to current legislation. However, we are cognisant of the fact that the transition, while it may appear procedural, may be ‘book ended’ by more substantive changes. We would therefore urge the government to keep industry clearly informed of the proposed timelines and the detailed program for change as soon as possible.
- 2.7** The changes that the FRF Reform Proposals put forward, including the DAR, will affect both firms which are based in the United Kingdom, as well as those located outside the United Kingdom. As the financial services regime in the United Kingdom enters a period of consultation and change, it will be of critical importance that the proposals and the opportunity to comment on them are also made available to incoming, non-UK based firms which may be affected by the changes. Trade associations such as FIA will of course have a role to play in publicising proposals to our international members. However, we would encourage HMT to be proactive in highlighting where proposals may affect such firms, as well as identifying methods for informing non-UK based entities of consultations and proposals and making the documents accessible to these firms.

3 Question 11 - Do you agree with the government’s proposal for HM Treasury to have the ability to apply “have regards” and to place obligations on the regulators to make rules in relation to specific areas of regulation?

- 3.1** Yes, we are generally supportive of the use of “have regards” provided it is used appropriately and with clearly defined parameters. We agree with paragraph 7.45 on the importance of the ability to set “have regards” and to put an obligation on the regulators to make rules in relation to specific areas which at a minimum extend to any areas currently covered by retained EU law to ensure the transition follows a coherent approach and to avoid gaps in the transition to the future regulatory framework.
- 3.2** In connection with the process of repealing retained EU law and moving to a comprehensive FSMA model, and the procedure outlined in paragraphs 7.51 to 7.54 of the FRF Reform Proposals, we would be grateful if HMT could provide information on how the government plans to handle recitals from retained EU law. Recitals play a critical role in EU law and continue to play the same critical role in the retained EU law; currently under the European Union (Withdrawal Act) 2018 (the “**EU Withdrawal Act**”), recitals will continue to be interpreted as they were prior to the UK’s exit from the EU. As noted in the explanatory notes to the EU Withdrawal Act, “[Recitals] will, as before, be capable of casting light on the interpretation to be given to a legal rule, but they will not themselves have the status of a legal rule”.
- 3.3** One solution which may assist in retaining certain recitals would be to incorporate them into the amended legislation’s explanatory notes. However, we recognise that this may not be appropriate in all circumstances as explanatory notes do not form part of the legislation and are not designed to resolve ambiguities in the text of the legislation. By contrast, recitals can



assist in determining the meanings of potentially ambiguous provisions. A combination of measures may be required in order to fully incorporate recitals into the future regulatory framework; for example, by including language in primary and secondary legislation, in guidance accompanying FSMA, as well as in the FCA's Handbook and the PRA's rulebook. Given the importance of recitals, we would encourage regulators and HMT to work together closely in this area, and we would be grateful if HMT could provide clarity on the measures that will be taken to ensure that in repealing retained EU law, the guidance provided by recitals is not lost or overlooked.

3.4 As mentioned above, our members are preparing for an extended period of regulatory change which will involve reviewing a large volume of proposed amendments to legislation and regulatory rulebooks. One area which would greatly assist our members in processing the proposals and providing considered responses to them, is in the presentation of the amended texts during the consultation process. We would urge HMT to provide marked-up versions of the proposed texts clearly highlighting the changes put forward. We strongly support HMT clearly indicating in the marked-up drafts of legislation and regulatory rulebooks, where drafting represents purely a transposition of the retained EU law, as well as where changes are made to the retained EU law which are technical in nature, and where changes are being made due to a change in policy resulting in a provision which is different in substance.

3.5 In addition to the marked-up texts showing the changes, a clear signposting of where retained EU law is being transposed in the legislation and rulebooks would also be of paramount importance in the drafts provided. Providing details of the original retained EU law provisions and where they can be found in the future regulatory framework would allow the industry to follow the 'journey' of sections or particular provisions of EU law into FSMA, other primary and secondary legislation, and/or into the regulatory rulebooks. We would strongly support regulators and HMT working on this as a joined-up exercise to ensure a seamless transposition to the future regulatory framework without gaps.

Finally, we note the proposal that the Bank of England be given general rulemaking powers in relation to CCPs and CSDs. It is absolutely right that financial stability should continue to be the Bank of England's primary objective in this enhanced role. However, FIA is of the view that a secondary objective which requires the Bank to take into account the international context in which UK CCPs and CSDs operate is required to ensure a proportionate framework aligned with international standards and which recognises the international nature of clearing and settlement markets. It is noted that the proposal includes allowing the Bank of England to make rules in relation to overseas CCPs and CSDs who wish to provide services into the UK, in order to safeguard UK financial stability. FIA and its members have long advocated that the optimal way to manage financial stability risks is to have supervisory and regulatory co-operation, and believe that the best approach to cross-border regulation of CCPs relies on regulatory deference. We therefore have reservations regarding the creation of new rulemaking powers which extend the application of UK rules to the clearing activities of non-UK CCPs. This approach may, in effect, provide UK authorities with primary supervisory powers over non-UK CCPs. However, we look forward to providing more detail on these points in our response to the Future Regulatory Framework Review: Central Counterparties and Central Securities Depositories consultation.



We would like to thank HMT for the opportunity to respond to the FRF Reform Proposals and we would be delighted to engage in further discussions with HMT on any of the points raised above or on the wider proposals.

Best regards

FIA

About FIA

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. Our membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.