CFA Society United Kingdom

9 February, 2022

Future Regulatory Framework Review
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Submitted by e-mail to: FRF.Review@hmtreasury.gov.uk

Dear Mr Glen,

CFA UK response to HM Treasury regarding proposals for the reform of the financial services future regulatory framework

The CFA Society of the UK (CFA UK)[1] is pleased to respond to this consultation. CFA UK appreciates the need for changes required to manage the significant body of 'retained EU law' appropriately within the structure of the UK's legal and regulatory system. With one clear exception, we find the proposals pragmatic and balanced. Our responses to the specific questions can be found in Appendix II.

We wish to highlight our objections to the proposed secondary objective of 'growth and competitiveness' for the regulators; we have severe reservations regarding this proposal (see Appendix II, question 1). If introduced, we recommend this secondary objective should be rephrased to promote 'sustainable growth and international competitiveness', not just 'growth and competitiveness'. We also recommend an additional objective of 'promoting international regulatory co-operation' should be adopted if the second component of 'international competitiveness' were to be retained. To be absolutely clear, however, we regard these recommendations only as mitigations of an undesirable proposal and our strong preference is that this proposed secondary objective be dropped altogether.

Should you have any questions or points of clarification regarding this letter or our responses to the questions, do not hesitate to contact us.

Yours sincerely

Will Goodhart
Chief Executive
CFA Society of the UK

Andrew Burton
Professionalism Adviser
CFA Society of the UK

With thanks to the oversight of the CFA UK Professionalism Steering Committee

[1] CFA UK's mission is to help build a better investor profession for the ultimate benefit of society. We refer you to Appendix 1 for a brief overview of both CFA UK and our umbrella organisation, CFA Institute.

APPENDIX I: About CFA UK and CFA Institute

CFA UK serves nearly twelve thousand leading members of the UK investment profession. Many of our members work with pension funds, either managing investment portfolios, advising on investments, or as in-house employees responsible for pension investment oversight.

- The mission of CFA UK is to build a better investment profession and to do this through the promotion of the highest standards of ethics, education and professional excellence in order to serve society's best interests.
- Founded in 1955, CFA UK is one of the largest member societies of CFA Institute and provides continuing education, advocacy, information and career support on behalf of its members.
- Most CFA UK members have earned the Chartered Financial Analyst® (CFA®) designation or are candidates registered in CFA Institute's CFA Program. Both members and candidates attest to adhere to CFA Institute's Code of Ethics and Standards of Professional Conduct.
- For more information, visit www.cfauk.org or follow us on Twitter @cfauk and on LinkedIn.com/company/cfa-uk/.

CFA Institute is the global association for investment professionals that sets the standard for professional excellence and credentials.

- The organisation is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow.
- It awards the Chartered Financial Analyst® (CFA) and Certificate in Investment Performance Measurement® (CIPM) designations worldwide, publishes research, conducts professional development programs, and sets voluntary, ethics-based professional and performance-reporting standards for the investment industry.
- CFA Institute has members in 162 markets, of which more than 170,000 hold the Chartered Financial Analyst® (CFA) designation. CFA Institute has nine offices worldwide and there are 158 local member societies.

For more information, visit www.cfainstitute.org or follow us on Twitter at @CFAInstitute and on Facebook.com/CFA Institute.

APPENDIX II: Responses to questions

Q1. Do you agree with the government's approach to add new growth and international competitiveness secondary objectives for the PRA and the FCA?

CFA UK objects to the addition of a 'growth and international competitiveness' objective, even as a secondary objective for both the PRA and FCA.

GROWTH: CFA UK is conscious that most other actors in the UK's financial services sector are already actively pursuing growth in going about their day-to-day business. A well-constructed financial system must have checks and balances and since it is the core purpose of both the PRA and FCA to defend the health of the UK's financial system and institutions against various threats (e.g. misconduct, inadequate capitalisation, reckless growth strategy) it is critical that they are not distracted from this purpose.

History is littered with examples of where the overly ambitious pursuit of growth by financial institutions has been at the heart of past financial scandals and collapses. Indeed, one needs only to look back no further than the Global Financial Crisis of 2008-9 to find prime examples of this in the UK. Surely, the lesson from all of this is that targeted growth should also be sustainable and long-term?

We believe growth in financial services should be a target for government and HM Treasury, but not for financial regulators, which need to stand effectively as a bulwark against 'growth at all costs'. Whilst the proposed growth objective is mitigated by structuring it as a secondary objective, we still feel that this leaves room to 'muddy the waters' and for FCA and PRA staff to feel unduly compromised in situations when they should not be. UK financial markets should be open for business, but not any business. Our financial regulators' mandates should be clear and unequivocal and not leave room for any confusion or compromise on that.

There is also the question about how this objective, if introduced, should be measured and both the PRA and FCA fairly held to account against it; there are many factors driving the growth of the UK's financial services sector and many are outside of their control.

INTERNATIONAL COMPETITIVENESS: CFA UK is equally conscious that most actors in the UK's financial services sector, if they are internationally active, are seeking to improve their competitive position internationally. Again, as with 'growth' above, the regulators should be left to regulate to protect markets and customers in a financial system with checks and balances; they should not be pursuing international competitiveness and compromising standards at the expense of this. Our regulators should be targeted to having the 'gold standard' of regulation and not be encouraged to lower standards in a race to the bottom simply to compete for business. By avoiding unattractive, poorly regulated or unsustainable business, both domestic and international, the UK may miss out on short-term opportunities, but over the longer-term the UK will benefit.

We take the fact that the FCA has already consulted on, carefully considered and implemented many of the Hill review recommendations to modernise the UK listing regime, without needing such an objective in place, as clear evidence that the FCA's current set of objectives work. We also note that other leading global financial regulators (e.g. SEC [2], ESMA [3], FSA [4]) are not tasked with anything like 'international competitiveness' as an objective. We note the SEC's and FSA's more specific and much narrower objectives to 'facilitate capital formation' or 'facilitate financing' which are much less open to abuse and misinterpretation.

Another important consideration is the status of English Law as the prevalent contract law in most international financial markets – FX, derivatives, commodities and most fixed income markets. One important reason why English law has achieved this status is because the UK is recognised as having a principles-based legal regime that upholds fairness, impartiality and which is independent of political interference. We worry that this hard-won status and recognition might be undermined if the UK's leading financial regulators are mandated to be deliberately targeting national interests, even as a secondary objective.

Given that financial markets globally are now inter-linked more than ever before, CFA UK believes that regulators around the world need to co-operate and collaborate, rather than compete. This is currently particularly evident in the emerging financial regulation around climate-change investing and climate-related disclosures. Efforts to harmonise regulation globally must be supported whilst national interests that threaten to fragment that global regulation into a confusing and obstructive labyrinth of different rules should be set aside.

Ultimately, CFA UK believe that ensuring that the UK financial services sector serves its customers well is the best way of ensuring the sector is also competitive, both domestically and internationally. For this reason, we welcome the introduction of the new Consumer Duty setting a higher standard of care for retail consumers of UK financial services.

In summary, we:

- are fundamentally against the introduction of a secondary objective for the PRA and FCA targeting either 'growth' or 'competitiveness';
- believe that, if a growth objective were introduced despite our objections, that this objective surely should have to target '<u>sustainable</u> growth', not just 'growth';
- that the pursuit of 'international competitiveness' must not be allowed to undermine our high regulatory standards. It should also not impede

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[2] The U. S. Securities and Exchange Commission (SEC) has a three-part mission: Protect investors; Maintain fair, orderly, and efficient markets; Facilitate capital formation *(https://www.investor.gov/introduction-investing/investing-basics/role-sec#:~:text=The%20U.%20S.%20Securities%20and%20Exchange,Facilitate%20capital%20formation)*

[3] The European Securities and Markets Authority (ESMA) is an independent European Union (EU) Authority that contributes to safeguarding the stability of the EU's financial system by enhancing the protection of investors and promoting stable and orderly financial markets. ESMA achieves its objectives by: • assessing risks to investors, markets and financial stability; • completing a single rulebook for EU financial markets; • promoting supervisory convergence; and • directly supervising credit rating agencies, trade repositories and securitisation repositories *(https://www.esma.europa.eu/sites/default/files/library/about_esma.pdf)*

[4] The Financial Services Agency (FSA) has a mission to secure the stability of financial functions in Japan and protect depositors, policyholders, securities investors, and any equivalent persons, and facilitating financing *(https://www.fsa.go.jp/en/about/pamphlet_e.pdf)*

collaboration between the PRA and FCA and other global financial regulators. Therefore, we recommend that an additional objective of 'promoting international regulatory co-operation' should be introduced if the second 'international competitiveness' component of the proposed new objective is retained, despite our objections.

Q2. Do you agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net zero economy?

CFA UK supports the proposal to qualify the regulatory principle for sustainable growth by also referencing climate change and the aim of building a net zero economy.

Sustainability and sustainable growth is about much more than climate change, however, so the re-drafting of this principle should be done in such a way as not to imply that the principle of sustainable growth pertains solely to climate change and achieving climate targets.

Q3. Do you agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary?

CFA UK appreciates that this is an area requiring the correct balance to be struck between ensuring the independence of the PRA and FCA on the one hand and also ensuring their rule-making is open to ongoing scrutiny.

On balance CFA UK supports the proposal but agrees that the power to commission a review of a rule in the public interest must only be reserved for 'exceptional circumstances'. We believe further guidance would be helpful to provide clarity as to how government would in practice substantiate the 'independence' of the person being appointed to lead/conduct such a review.

Q4. Do you agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements?

Yes. CFA UK agrees with the proposal which appears pragmatic.

Q5. Do you agree that these measures require the regulators to provide the necessary information to Parliament on an appropriate statutory basis to conduct its scrutiny?

Yes.

- We regard the proposal to notify the relevant Parliamentary committee of any publication of a consultation as non-controversial.
- Depending on the length and frequency of select committee consultation responses, the proposal to have the FCA and PRA formally respond in writing to all select committee consultation responses could demand additional staffing resources and executive time. It may be wise to put this itself to some form of cost benefit analysis and/or establish some threshold. We would wish to avoid the situation where unnecessary bureaucracy served to reduce the agility of either regulator and distract their focus from their core purpose and responsiveness to markets.

Q6. Do you agree with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation?

Yes. CFA UK supports the proposals.

Q7. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for CBA provides improved transparency for stakeholders?

CFA UK agrees the proposal should bring about increased transparency to stakeholders. At the same time this requirement will demand additional resources within both government and the regulators and we recommend that the extent to which stakeholders read and value the frameworks should be subject to an independent review after a 3-year period.

Q8. Should the role of the new CBA Panel be to provide pre-publication comment on CBA, or to provide review of CBA post-publication?

As HM Treasury's paper outlines there are advantages and disadvantages to both pre- and post-publication approaches. CFA UK suggests that:

- Pre-publication input be sought in cases which lead to no or slight and acceptable delays in publication of the consultation; and
- Post-publication reviews be conducted as proposed for a period and then perhaps ceased. One imagines that after a while most, if not all, of the important lessons to be learned will have been learned.

CFA UK welcomes the additional focus on the CBA process and, if concerns about over-regulation is at the heart of the proposed growth objective (re question 1), note that a more thorough CBA process would be the right way to tackle this issue rather than the proposal for a growth objective.

With regards to recent consultation papers and the CBAs within them, members have commented that the CBAs could be improved if they:

- Took into consideration not only the costs of the proposals under consideration in that specific consultation but also overlaid these with a running aggregate of costs to be imposed on firms/listed companies that year resulting from other new regulations coming on-stream;
- Discussed, in so far as they are comparable or relevant, the costs on firms/listed companies of implementing and maintaining similar regulations in overseas jurisdictions, particularly the EU;
- In certain circumstances included a sensitivity analysis.

Q9. Do you agree that the proposed requirement for regulators to publish and maintain frameworks for how the regulators review their rules provides improved transparency to stakeholders?

CFA UK supports this proposal.

Q10. Do you agree with the government's proposal to establish a new designated Activities Regime to regulate certain activities outside the RAO?

CFA UK supports this proposal. CFA UK notes that many of the activities outside of the regulatory perimeter and to be included in the DAR are international in nature (FX, derivatives, for example) and that the PRA and FCA will need to co-operate extensively with other international regulators in their future rule-making for these activities, as noted in 7.24. We therefore refer you to our answer to question 1 and our comments regarding the PRA and FCA needing to intensify efforts to collaborate with other leading international financial regulators.

Q11. 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?

CFA UK supports this proposal.