True and Fair Campaign Response to The Financial Services Future Regulatory Framework Review - Phase II Consultation

19 February 2021

1. **How do you view the operation of the FSMA model over the last 20 years?**

It is not the design of the FSMA model itself that has progressively become an issue over the last 20 years, but the competence and effectiveness of the financial services regulator (be it the FSA or the FCA). Without an industry regulator that is for fit for the future, has the capabilities to properly regulate the industry and enforce innovation, the UK's competitive position will be compromised.

Andrew Bailey recently gave evidence to the Treasury Select Committee in his capacity as the Former CEO of the FCA in which he referred to the FCA as being 'broken' when he arrived in July 2016. Not only does it remain 'broken' today but the number of scandals has increased.

The FCA as it exists and operates today is simply not fit for purpose.

2. **Do you agree that the model works well and provides a reliable approach which can be adapted to the UK's position outside of the EU?**

The UK now has a golden opportunity to re-consider and re-evaluate its existing regulatory framework and should ensure future regulations consider the key overarching objectives of consumer protection, competitiveness and effectiveness.

One cannot overstate that the FSMA model can never be considered fit for purpose until there is a major review of the financial services regulator, the FCA, which has repeatedly demonstrated that it unable to embrace the necessary change required for it to function in a modern fast moving Financial Services environment. A floundering, unwieldly organisation that will be further tested by the repatriation of regulatory functions from the EU post-Brexit.

As an example, it should not have been necessary for the True and Fair Campaign to have had cause to demand the FCA take urgent steps to prevent Mr Woodford being licensed to trade before publication of the report into his previous failed funds that resulted in 500,000 investors having their financial security jeopardised. This only heightens the extent to which

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the FCA is manifesting its inability to fulfil its key regulatory functions and duties. Its own investigation into Woodford commenced some 18 months ago, has no end date in sight, and appears unlikely to assess the regulator's own responsibilities and failures.

A litany of high-profile scandals has powerfully demonstrated the need for urgent regulatory 'fixes' to protect consumers. The conclusion of recent reports into LC&F, Connaught, as well as the anticipated Dobbs Report, and other scandals detailed in the True and Fair Campaign's 2020 *Asleep at the Wheel* report, attest to this.

We suggest that change needs to encompass the following:

- Reducing the size and fragmentation of the FCA Handbook by focusing on efficient regulation rather than cumbersome, overly detailed / prescriptive regulation.

- Smart use of technology and digitisation of compliance requirements to assist authorised firms, and new entrants.

- Total costs information is critical in terms of improving customer outcomes, but details need to be presented in a coherent and understandable way. The FCA should seek to improve fee disclosure by formulating a Total Cost Methodology and harmonise across pensions and investment products.

- Simplify and reduce the number of poor-quality investment and pension products available to retail investors and savers.

- In the area of ESG products, the Government could announce at COP 26 that the UK will act to introduce transparency of holdings across the investment sector. This will go a long way to addressing the issue of 'greenwashing' in the sector. The UK should also seek to create a Common Form Template that surpasses the EU Sustainable Finance Disclosures Regulation ("SFDR"), to improve the ease of use and veracity of ESG disclosures.

- Review of the FCA register to exclude firms and individuals not fully authorised by the FCA. The register is widely used by the public and the current listing of unauthorised

intermediaries, agents, and marketing firms give users misplaced confidence with potentially dangerous consequences.

- Introduce a Lobbying Register in relation to the FCA, to reduce conflicts of interest, build consumer trust in the FCA, and reflect Lobbying Registers that are a statutory requirement in other sectors.

- A review of the FCA perimeter. As past heads of the FCA have reported, there are issues with the FCA perimeter in terms of regulating firms that fall outside it. This is likely to increase as the industry evolves and changes due to product and service innovations, and the perimeter needs to reflect this. For example, misleading financial promotions – often for products outside the FCA's perimeter – were key in the LC&F minibonds scandal.

- Review the independence and contribution of the five-independent statutory panels. A simple but effective reform would be to move the panels out of the FCA building which would enhance their ability to independently contribute to FCA policy making. They should also be tasked with increased consumer research such as mystery shopping exercises which could be funded by reducing the number of FCA Consultations which have proven expensive, burdensome, and often result in little or no change.

- Improve Whistle-blower procedures, protections, and rewards along the lines of the US, SEC model. This has proved to be among the most powerful weapons in the law enforcement arsenal of the SEC, helping identify possible fraud and other violations much earlier than might otherwise have been possible. It is authorised to provide monetary awards of between 10% and 30% of the money collected to eligible individuals who come forward with high-quality original information that leads to an enforcement action in which over $1,000,000 in sanctions is ordered. Sadly, in the UK whistle-blowers often lose their future careers and are often outed by either their employer or the FCA itself.

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3. **What is your view of the proposed post-EU framework blueprint for adapting the FSMA model? In particular:**

- **What are your views on the proposed division of responsibilities between Parliament, HM Treasury and the financial services regulators?**

Parliament does have huge demands on its time but due to the important of the Financial Services sector to the UK Economy and that its products and services are used by every other sector and all parts of the population, Parliament should be involved in setting the policy approach for all areas of Financial Services regulation. We therefore agree that the new policy framework legislation covering key areas of regulation should be included as part of the adapted regime. This is both democratic and ensures that industry lobbying, and the revolving doors between regulator and industry does not pollute rules and regulations.

- **What is your view of the proposal for high-level policy framework legislation for government and Parliament to set the overall policy approach in key areas of regulation?**

This is a worthy goal and objective, but care needs to be taken that such policy changes or focuses gradually evolve over time else it will inevitably lead to repeated and unpredictable changes, making it both hard and costly for financial services firms to comply and operate.

- **Do you have views on how the regulators should be obliged to explain how they have had regard to activity-specific regulatory principles when making policy or rule proposals?**

No.

4. **Do you have views on whether and how the existing general regulatory principles in FSMA should be updated?**

Please see previous answers – it is not the FSMA principles itself but the operation and implementation of those principles by the FCA that lead to repeated financial scandals and failures.

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5. **Do you have views on whether the existing statutory objectives for the regulators should be changed or added to? What do you see as the benefits and risks of changing the existing objectives? How would changing the objectives compare with the proposal for new activity-specific regulatory principles?**

In terms of the Financial Services industry, the current mandate and statutory objectives of the financial services regulator are simple and straight forward but frequently ignored by the regulator. It would be better to ensure that the FCA is fit for purpose and meets its current objectives, before discussing new ones.

6. **Do you think there are alternative models that the government should consider? Are there international examples of alternative models that should be examined?**

As politicians seek to review regulations and exploit the scope to focus on ***Effective Regulation,*** consumer outcomes should be paramount in politicians' minds, which logically includes a review of the FCA and PRA perimeters.

Such a review should consider a ***Tiering Regulatory*** approach across all Financial Services sectors. At present the PRA has a different approach to supervising smaller firms '*due to their limited potential to cause harm to the financial system'* whilst ensuring '*the safety and soundness of all the firms it supervises'*. The same principle could be applied by the FCA, thereby enabling the survival of existing smaller firms, and very importantly encouraging new entrants to set up in the UK.

Serious consideration should also be given to breaking up the FCA as it has become an unwieldly organisation covering too many product areas. This has contributed to its inability to both pre-empt scandals through proactive enforcement or investigate adequately or in a timely manner when failures / scandals occur. For example, consideration should be given to new Sub-Regulators or Agencies for Green Finance and Digital Finance (especially if Financial Harm is not included in the forthcoming Online Harms Bill). This model would be akin to the Australian Council of Financial Regulators (CFR) which is a coordinating body for Australia's financial regulatory agencies.

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7. **Do you think the focus for review and adaptation of key accountability, scrutiny and public engagement mechanisms for the regulators, as set out in the consultation, is the right one? Are there other issues that should be reviewed?**

Leaving the EU institutions requires the urgent replacement of legislation, scrutiny committees, and technical committees being set up in the UK.

Unless the resulting capacity and resource implication is addressed, consumer protection, industry stability, and competitiveness cannot be assured. It is therefore vital that Parliament clarifies what they want regulators to prioritise in the future – competitiveness, treating customers fairly, or stability with growth.

In the light of the government's proposals, True and Fair believes that, whilst the cross-party Treasury Select Committee (TSC) is the correct vehicle to hold regulators to account, in conjunction with HM Treasury, we are also mindful of the TSC's resource limitations.

Financial Services is a highly technical sector and, as such, it would both be prudent and proportionate that the TSC should be supported by a Technical Secretariat or Sub-Committee. HM Treasury and the Treasury Select Committee require this kind of technical support if they are to hold the UK financial regulators to account, ensure consumers are being treated fairly and protected, and ensure the industry is competitive. This proposed new Technical Sub-Committee would also ensure that the intentions of legislation are being correctly interpreted and scoped out in regulation.

Such a Secretariat could take evidence from industry and consumers to inform the deliberations and programme of work of the eleven members of the TSC, and would be better able, for example, to hold witnesses to account.

There should also be a review of the independence and contribution of the five-independent statutory panels. A simple but effective reform would be to move the relevant panels out of the FCA Building which would enhance their ability to independently contribute to FCA policy making. They should be tasked with increased consumer research such as mystery shopping exercises which could be funded by reducing the number of FCA Consultations which have proven expensive, burdensome, and often result in little or no change.

Regrettably, the FSCP is not fit for purpose and cannot be independent whilst it is housed within the FCA, which takes conspicuously little heed of its recommendations. A new panel should be established at the earliest possible opportunity, comprising experts of firms and

consumer groups alike, with the common goal of improving standards, protecting consumers and promoting public confidence in its system of regulation.

Its recommendations should be presented and reviewed by the Treasury Select Committee on a regular (and, at least, annual) basis, who should be mandated, in turn, with ensuring that the FCA endeavours to follow, wherever possible, its recommendations. This would confer on the FCA greater authority, public confidence and prestige.

8. **How do you think the role of Parliament in scrutinising financial services policy and regulation might be adapted?**

See answers to Question 7 above.

9. **What are your views on how the policy work of HM Treasury and the regulators should be coordinated, particularly in the early stages of policy making?**

We agree that there necessarily needs to be coordination between HM Treasury and the regulators, but independence is crucial. The independence of the regulator would be better protected if it were the Treasury Select Committee who appointed the FCA CEO, rather than the Treasury and that the performance of the Chair and CEO of the FCA was automatically reviewed every 3 years.

It is unacceptable that the current FCA Chair, Mr Randall, given his tenure covers many of the current scandals, has never been properly or independently reviewed. This is especially

important as culture flows from the top and confidence in the system of regulation is predicated on it.

10. **Do you think there are ways of further improving the regulators' policy-making processes, and in particular, ensuring that stakeholders are sufficiently involved in those processes?**

Whilst there must be safeguards against conflicts or interest and undue lobbying from City institutions, regulated Firms, and other professionals that service the wider Financial Services

ecosystem, these stakeholders do have a wealth of knowledge, resources and influence that can assist the policy making process.

New but carefully calibrated channels should be developed to access and utilise these resources to assist the regulator, Treasury Select Committee, Parliament and other government departments, for example the Department of Education and the Department for Environment, Food & Rural Affairs Environment Department.

The True and Fair Campaign

The True and Fair Campaign, founded in 2012, is focused on delivering reform within the UK Investment and Pension industry to achieve better consumer-facing outcomes and restore trust in the Financial Services sector.

The Campaign's Founders, Gina and Alan Miller, have combined practitioner experience in the sector totalling more than 60 years, and became campaigners following the Financial Crisis in 2008-09. The Millers believe in the importance of creating an efficient and effective regulatory framework that enhances consumer protection; promotes competitiveness through transparency, diversity; and supports pro-active regulatory enforcement. They also believe that this is vital to boost the UK's attractiveness to international investment and ensure the UK optimises its credentials for quality and competitiveness in international markets.

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