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The Financial Services and Markets Bill and “Edinburgh 30” Reforms – What Should You Know?

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Overview of the Financial Services and Markets Bill*

*As introduced in the House of Commons in July 2022

Objectives of the Financial Services and Markets Bill

The FSMB makes significant reforms through measures intended to address issues arising from the UK's departure from the EU

— Extensive amendments to existing financial services legislation, including FSMA, the Banking Act 2009 and the Financial Services (Banking Reform) Act 2013

Some of the objectives of the FSMB are:



OBJECTIVE 1

Implement the outcomes of the Future Regulatory Framework Review



OBJECTIVE 2

Enhance the UK's existing regulatory regime by updating the objectives of the financial services regulators to ensure a greater focus on long-term growth and international competitiveness



OBJECTIVE 3

Maintain the UK's position as an open and global financial hub and harness the opportunities of innovative technologies in financial services



OBJECTIVE 4

Bolster the competitiveness of UK markets and promote the effective use of capital



OBJECTIVE 5

Support the levelling up agenda, promote financial inclusion and consumer protection

Future Regulatory Framework Review



OBJECTIVES

- To determine how the financial services regulatory framework should adapt to the UK's new position outside of the EU, and how to ensure the framework is fit for the future



OUTCOME

- A Comprehensive “FSMA model”
 - The Government believes that the most appropriate way to regulate financial services in the UK is to follow the FSMA model, with certain enhancements:
 - Expand the rule-making powers of the FCA, PRA and Bank of England
 - Greater focus on sustainable growth and competitiveness
 - Enhance the accountability, scrutiny and engagement of the regulators by Parliament, HM Treasury, and relevant stakeholders

Repeal and Replacement of Retained EU Law

Delivering a comprehensive FSMA model of regulation requires the revocation of retained EU law relating to financial services

The FSMB would repeal and replace REUL relating to financial services, as follows, subject to certain exceptions:

- 32 EU regulations
- Almost 200 UK statutory instruments that implemented EU law
- Retained tertiary legislation made under 25 EU directives, or under the above EU regulations and statutory instruments
- Related parts of FSMA
- Any other related EU-derived legislation to the extent it is concerned with financial services or markets regulation

Repeal of each piece of REUL to take effect only once the Government makes a statutory instrument bringing into force the repeal

HM Treasury may make targeted modifications to REUL during the “transitional period” e.g., to remove EU obligations, extend transitional regimes, and make improvements to EU policies

HM Treasury to have the power to “restate” any part of REUL, with appropriate modifications e.g., key definitions

Following revocation, the detailed requirements will generally be set by the FCA, PRA and the Bank of England

HM Treasury to have the power to disapply consultation and cost-benefit analysis requirements

HM Treasury may introduce different rule waiver regimes

Regulator Rule-Making

New power given to HM Treasury to require regulators to “have regard” to matters specified by HM Treasury when making rules

- For example, the FCA, when making rules in relation to the admission of securities to trading on regulated markets and primary multilateral trading facilities, would be required to have regard to “the desirability of facilitating offers of transferable securities in the United Kingdom being made to a wide range of investors”

HM Treasury empowered to place obligations on the regulators to make rules in relation to specific areas of regulation

The regulators will have a duty to keep their rules under review and power is given to HM Treasury to require the regulator to review rules when this is in the public interest

Accountability, scrutiny and engagement mechanisms to balance the greater responsibility given to regulators, including:

- Recommendation letters: Requirement on the regulators to respond to HM treasury recommendations
- Mechanism to require the regulators to notify HM Treasury of actions affecting “deference” arrangements with overseas authorities (preferential treatment for market participants conducting cross border activity) and international trade obligations
- Stakeholder panels
- Cost-benefit analysis
- Parliamentary oversight
- FCA, Financial Ombudsman Service and Financial Services Compensation Scheme co-operation on issues with wider implications
- **“Call-in power” (dropped)**

Regulator Objectives and Principles



FCA and PRA are given new secondary objective to facilitate the international competitiveness of the economy of the UK and its growth in the medium to long term

— The government has made it clear that financial stability and consumer protection should be prioritised over the UK's competitiveness



FCA and PRA new regulatory principle to “have regard” to the need to contribute towards achieving compliance with section 1 of the Climate Change Act 2008 (UK net zero emissions target for 2050) when discharging their general regulatory functions

Designated Activities Regime

This regime will co-exist in parallel to the current regulated activities regime

HM Treasury will be able to designate activities relating to financial markets, exchanges, instruments, products, or investments, in secondary legislation

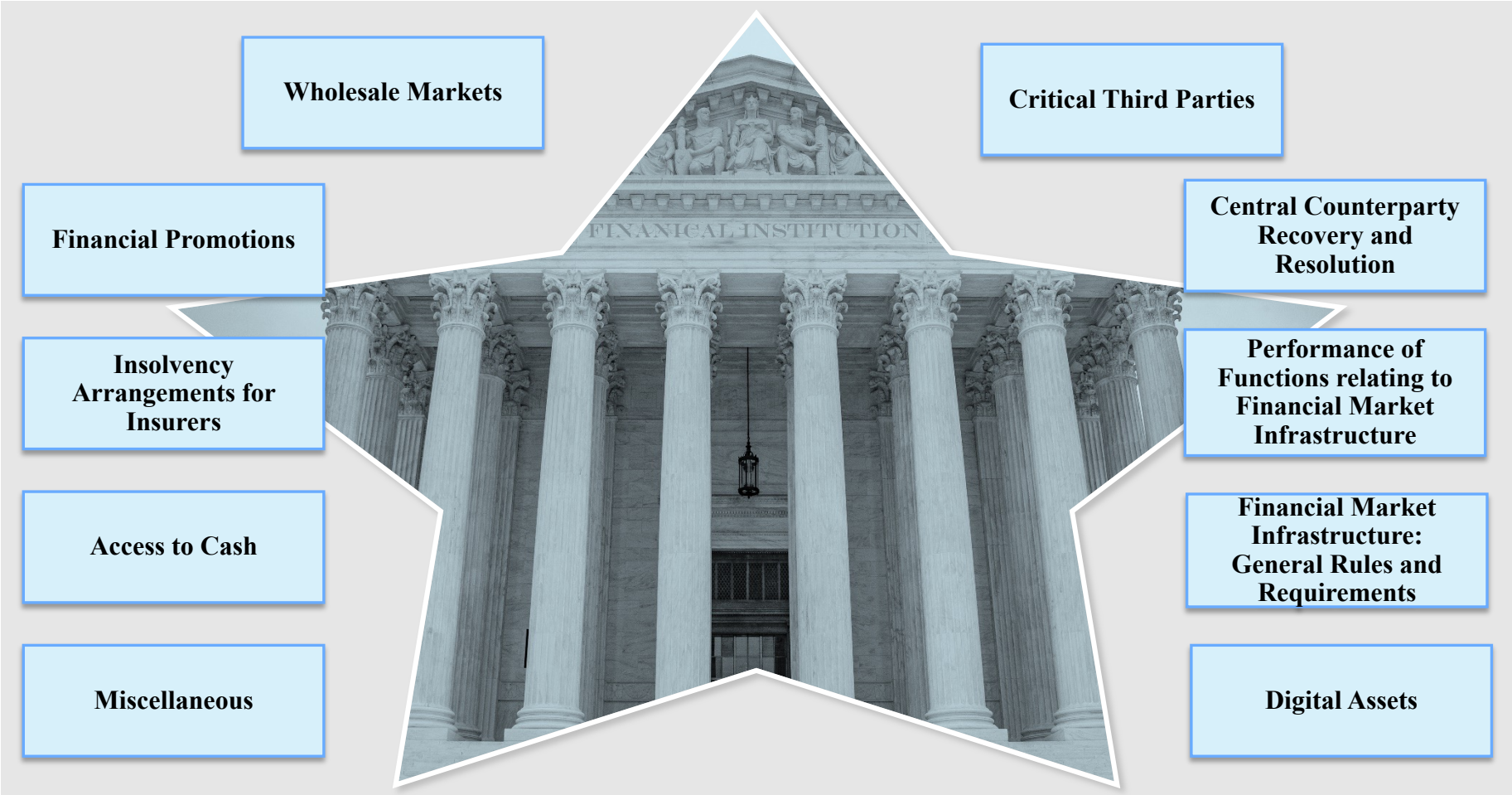
The FSMB sets a prohibition against carrying out designated activities, or stipulates that they must take place in accordance with the relevant rules, which may apply to authorised as well as non-authorised firms

The FCA is given rule making power to make rules concerning designated activities

— These rules would only need to be followed by firms when performing the designated activity in question, not in relation to their other (unregulated) activities

Initially, the government expects most designated activities to be activities which are currently regulated through REUL, e.g., EMIR, the Prospectus Regulation, the Short Selling Regulation etc.

Sectoral Reforms under the FSMB



“Edinburgh 30” Reforms

Overview

Package of over 30 measures to reform UK financial services regulation announced in December 2022

- Potential changes planned to various sectoral regulations
- The measures provide detail of plans for the repeal and replacement agenda under the FSMB:
 - 43 “core” files in scope
 - HM Treasury has outlined its approach to dealing with regulatory requirements under REUL:
 - Removal where requirements are no longer needed
 - Replacement with provisions consistent with FSMA
 - Replacement with provisions consistent with FSMA while also delivering targeted policy change
- Approach to prioritisation – “Tranches” 1, 2 and 3
- HM Treasury expects to make “significant progress” on Tranches 1 and 2 by the end of 2023

Tranche 1

Prospectus Regulation

Securitisation Regulation

Solvency II

Wholesale Markets Review

Tranche 2

Packaged retail and insurance-based investment products (PRIIPs) regulation

Short Selling Regulation

Taxonomy regulation

Long-term Investment Funds Regulation

Money Market Funds Regulation

Consumer information rules in the Payment Account Regulations 2015

Payment Services Directive and E-Money Directive

Insurance Mediation and Distribution Directives

Capital Requirements Regulation and Directive

Continue with Solvency II

Remaining implementation of the outcomes of the WMR



Tranche 3

Listing Directive	Transparency Directive	Market Abuse Regulation	Securities Financing Transactions Regulation
Benchmarks Regulation	Credit Rating Agencies Regulation	Consumer Credit Directive	Consumer Credit Directive
Central Securities Depositories Regulation	European Market Infrastructure Regulation	Settlement Finality Directive	Alternative Investment Funds Managers Directive
European Venture Capital Funds Regulation	European Social Entrepreneurship Funds Regulation	Undertakings for the Collective Investment in Transferable Securities Directive	Insurers (Reorganisation and Winding Up) Directive
Life Assurance Consolidation Directive	Motor Insurance Directive	Reinsurance Directive	Cross-border Payments in Euros Regulation
Interchange Fee Regulation	Credit Institutions (Reorganisation and Winding Up) Directive	Bank Recovery and Resolution Directive	Shareholder Rights Directive
Deposit Guarantee Schemes Directive	Distance Marketing of Consumer Financial Services Directive	Financial Collateral Arrangements Directive	Financial Conglomerates Directive

Key Reform Proposals

Overhauling the UK's regulation of prospectuses

- New prohibition on public offers of “relevant securities” in the UK, subject to exemptions (many of which are retained from the existing Prospectus Regulation)
- A prospectus would still be required for admission to trading of “transferable securities” on a UK regulated market
- The government will create a route through which offers of any size can be made to the public – regulated “public offer platforms”
- The FCA will be given enhanced rulemaking responsibilities
- The threshold for liability that applies to certain categories of forward-looking information in prospectuses will be raised, so that a person responsible for the preparation of a prospectus will be liable only where that person knew/was reckless as to whether the statement was untrue or misleading, or, in the case of an omission, knew the omission to be a dishonest concealment of a material fact

Secondary capital raising review

- The UK Secondary Capital Raising Review was launched on 12 October 2021 to look into improving further capital raising processes for publicly traded companies in the UK
- Key recommendations from the review include:
 - Protecting the rights of existing shareholders by maintaining and enhancing the UK pre-emption regime
 - Reducing regulatory involvement in fundraisings, including by raising the threshold at which a prospectus should be required for a further issuance, removing the requirement for a sponsor to be appointed by an issuer, and reconsidering the FCA's approach to working capital statements
 - Making existing fundraising structures quicker and cheaper by making changes to the Companies Act
 - Increasing the range of choice of fundraising structures for companies, including by replicating the key principles and structure of Australian offer processes for smaller fundraisings
 - Establishing the Digitisation Taskforce to drive forward the modernisation of the UK's shareholding framework

New wholesale market venue and UK consolidated tape

- The government will work with the regulators and market participants to trial a new class of wholesale market venue which would operate on an intermittent trading basis
- A regulatory regime is expected to be in place by 2024 to support a consolidated tape for market data

Key Reform Proposals (cont'd)

Accelerated settlement taskforce

- This taskforce will bring together industry stakeholders to explore the potential for reducing settlement times from the current T+2 industry standard, which could reduce counterparty risk and increase operational efficiency
- The taskforce is to provide an interim report in December 2023, and to issue its final report and recommendations by December 2024
- Other jurisdictions have been exploring a move to accelerate settlement of trades to a T+1 standard

Investment research review

- Independent review of investment research and its contribution to UK capital markets competitiveness
- Aimed at enhancing the UK's ability to attract companies to list and grow

Investment advice

- The government will work with the FCA to examine the boundary between regulated financial advice and financial guidance
- The FCA wants to carry out a holistic review of the boundary so it can understand how to reduce the regulatory burden while continuing to provide the right level of consumer protection

Key Reform Proposals (cont'd)

Reforming the Securitisation Regulation

- FCA and PRA to make rules on securitisation to replace most of the rules currently in the Securitisation Regulation, including:
 - Reforms to certain risk retention provisions
 - Changes to the due diligence requirements for institutional investors when investing in non-UK securitisations, to provide greater clarity on what is required
 - Exclusion of unauthorised non-UK Alternative Investment Fund Managers from scope of “institutional investors”
- Establishment of equivalence regime allowing UK institutional investors to treat non-UK securitisations as simple, transparent and standardised (STS)

Reforming the Short Selling Regulation

- Call for Evidence – December 2022 which explores the following:
 - Appropriateness of uncovered short sale restrictions
 - FCA reporting
 - Public disclosure
 - Market maker exemption
 - FCA emergency intervention powers
 - Exemption for overseas shares
- The government is currently focused on the regime for UK shares and will consider the regime for short sales of UK sovereign debt and uncovered UK sovereign credit default swaps at a later date

Repealing the PRIIPs Regulation (9)

- HM Treasury consultation on a proposed alternative framework for retail disclosure in the UK
 - Regulatory requirements related to retail disclosure (including PRIIPs and UCITs) should be maintained in FCA rules, rather than in legislation
 - The FCA will determine the format and presentation requirements for disclosure. In some cases, e.g., where an investment is high risk or complex, more prescriptive disclosure requirements may be necessary to ensure that retail investors can make informed decisions
 - However, in most cases, flexible requirements that can be incorporated into firms’ existing information documents should be sufficient
 - In general, PRIIPs-type comparability not needed. However, it will be necessary that certain information, such as costs, be standardised to a significant degree (the FCA will set this out in detail)
 - Wider retail investment and disclosure issues:
 - Government seeks views on improving access to a wider range of investment products (e.g., US Exchange Traded Funds)
 - Government seeks views on digitised disclosure formats

Key Reform Proposals (cont'd)

Repeal of the EU European Long-Term Investment Fund (ELTIF) Regulation

- The government believes that the new UK Long-Term Asset Fund (LTAF) provides a better fund structure for the UK market
- The LTAF is a new category of open-ended authorised fund designed to invest efficiently in long-term assets. The regulatory regime for LTAFs was finalised by the FCA in 2021
- The FCA has consulted on draft rules to allow LTAFs to be marketed to a wider group of retail investors and pension schemes

Pensions

- The government has announced its intention to consult, in early 2023, on issuing new guidance on Local Government Pension Scheme asset pooling
- The government also wants to increase the pace of consolidation in Defined Contribution pension schemes
- The government will lay regulations in early 2023 to remove well-designed performance fees from the pensions regulatory charge cap

Funds and investments taxation

- Improving the tax rules for Real Estate Investment Trusts
- VAT treatment of fund management
- HMRC consultation on expanding the Investment Manager Exemption to include cryptoassets

Key Reform Proposals (cont'd)

Reforming the Senior Managers & Certification Regime (SMCR)

- HM Treasury and the UK regulators parallel reviews
- PRA and the FCA jointly consulted (CP15/22 and 22/28, respectively) on proposals to end the cap on bankers' bonuses (as announced in the former Chancellor of the Exchequer's mini-budget in September 2022)

Reforming the ring-fencing regime for banks

- The government has announced its intention to consult in mid-2023 on a series of reforms aimed at improving the functionality of the ring-fencing regime, while maintaining appropriate financial stability safeguards, including:
 - Review of the deposit threshold: The ring-fencing regime currently applies to banks with over £25 billion retail deposits. The government intends to consult on plans to increase the threshold to £35 billion
 - Take banking groups without major investment banking operations out of the regime
 - Review and update the list of activities which ring-fenced banks are restricted from carrying out, to assess whether certain activities could in future be undertaken safely by ring-fenced banks
 - Remove blanket geographical restrictions on ring-fenced banks operating subsidiaries or servicing clients outside the European Economic Area (EEA)
 - Take forward technical amendments to improve the functioning of the regime, removing unintended consequences

Building Societies Act 1986 reform

- In December 2021, the government issued a consultation on amendments to the Building Societies Act 1986
- The government published its response in December 2022
- Proposals aim to update the Building Societies Act 1986 regarding building societies' funding model and corporate governance requirements

Key Reform Proposals (cont'd)

Consumer Credit Act reform

- HM Treasury published a consultation on reforming the Consumer Credit Act 1974 in December 2022, which closed in March
- The government believes that reforming the regulatory regime based around the CCA will modernise and simplify consumer credit and consumer hire regulation, facilitating innovation in products and the arrival of new entrants into the market
- HM Treasury intends to develop more detailed policy proposals, which it expects to put to stakeholders through a second stage consultation

Payment Accounts Regulations 2015 reform

- The government has issued a consultation on information requirements in the Payment Account Regulations
- The government considers that many of the information requirements in the Payment Accounts Regulations, that are intended to improve the comparability of fees connected with payment accounts, may be either too prescriptive or less necessary in a UK context

Digital assets

- Joint HM Treasury - Bank of England consultation on a UK retail central bank digital currency published in February 2023
- In February, HM Treasury also published a consultation and call for evidence – “Future financial services regulatory regime for cryptoassets” for “Phase 2” cryptoasset regulation
- The government intends to implement a Financial Market Infrastructure Sandbox in 2023

Key Reform Proposals (cont'd)

Sustainable finance

— Updated Green Finance Strategy published in March 2023

- Seeks to deliver five key objectives:
 - UK financial services growth and competitiveness
 - Enhancing investment in the green economy
 - Ensuring financial stability to manage risks from climate change and nature loss
 - Incorporation of nature and climate adaptation
 - Aligning global financial flows with climate and nature objectives
- Proposals relate, among things, to:
 - UK Green Taxonomy
 - Transition plans
 - IFRS Sustainability Disclosure Standards
 - Scope 3 emissions reporting
 - Taskforce on Nature-Related Financial Disclosures
 - Transmission channels

— Bringing ESG ratings providers into the regulatory perimeter

- Consultation in March 2023
- Industry-led ESG Data and Ratings Code of Conduct Working Group convened by the FCA in November 2022
 - Mandated by the FCA to develop a voluntary code of conduct for ESG data and rating providers
 - HM Treasury as an observer

Where do the FSMB and the Edinburgh 30 Reforms Leave Things?

A packed reform agenda

— Regulatory Initiatives Grid: <https://www.fca.org.uk/publications/corporate-documents/regulatory-initiatives-grid>

An evolving picture over several years

HMT — *“Repealing and replacing REUL is a resource-intensive exercise for the government, HM Treasury, and the regulators ... Industry face similar challenges ...”*

FCA — Expects to invest £12.7 million in 2023/24 to prepare for the FRF

UK-EU relations?

— Mutual equivalence decisions should hopefully be facilitated by draft Memorandum of Understanding establishing a framework for financial services regulatory cooperation between the EU and the United Kingdom published in May 2023



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