Building Societies Association

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Jeremy Palmer

Wholesale Markets Review – response to HMT CP

This note provides the BSA's brief and high-level response to the Treasury's consultation document (CP) on the UK's approach to regulating wholesale secondary markets following Brexit.

General

The BSA **supports the Treasury's overall approach** as set out in paragraphs 1.5 and 1.6 of the CP: we agree that where MiFID II rules have not delivered their intended benefits, have led to duplication and excessive administrative burdens for firms, or have stifled innovation, the government should of course rectify this. Indeed, even the EU has finally realised that the MiFID II framework needs rectification, so it is essential that the UK is not left with the unsatisfactory acquis as onshored at Brexit. We **support the "driving principles"** in paragraph 1.7 of the CP. At the same time, we agree that **change for its own sake is not wanted**, as all changes incur cost.

BSA members (building societies and some large credit unions) are not generally involved as participants in the principal markets subject to MiFID II, and have no involvement with traditional equity markets. But many are end-users of specific markets, through buying, holding and selling debt securities in their **liquidity portfolios**, issuing debt – and, in a few cases, **core capital deferred shares** - that are equity-like –securities, and **using derivatives only to manage their balance sheet risks**. We therefore welcome any sensible moves to make these markets work better and to reduce the compliance burden of the EU acquis. In this note we address a few questions only, and provide specific comments, where directly relevant to our members activities.

Trading venues – SME markets (chapter 2)

Our members have an interest in the facilitation of tradable small issues of capital. Two societies – Cambridge BS and Ecology BS - have recently made small - £15 mn and £ 3 mn respectively- issues of core capital deferred shares (CCDS), a risk capital instrument for building societies, and others are likely to do so in future. So we support the ideas discussed in paragraphs 2.21 to 2.27. Paragraph 2.26 is particularly insightful :

As the government expects that demand for these shares is likely to come from retail investors, the government would like to explore how investor protection can be upheld while ensuring the demands made of issuers are proportionate and manageable.

Our main concern is that in the development of these proposals, **share issues by mutual or cooperative enterprises should benefit from the same facilitation** as share issues by proprietary companies. And they should be subject to the same proportionate safeguards for investor protection - but not treated as an unfamiliar or riskier instrument sui generis. Mutual and cooperative enterprise is entitled to **parity of esteem and consideration** in the formulation of these policies. We would be happy to work further with the Treasury on this matter.

The derivatives trading obligation (chapter 5)

The EU's handling of derivatives clearing obligations (under EMIR), and trading obligations (under MiFIR), for small financial counterparties (FCs) that are end-users was one of the most foolish and avoidable debacles of the period. Small FC end-users (including most building societies) should have been kept out of scope of the CO and the DTO from the outset, like non-financials. Instead, great disruption was caused, before finally in 2019 the EU accepted their mistake and removed small FCs from the CO under EMIR ReFIT, but even then failed to make the sensible parallel move for the DTO. This has been an object lesson in the weaknesses of EU policy and legislation. So we agree with **Q41** : the scope of the DTO should be aligned with the CO. There are no perceptible risks, and the benefit is that end- users like societies will be able to continue transacting OTC derivatives which is what they need for their business.

Trade and transaction reporting and transparency (chapters 5 to 8)

Our members' experience is that MiFID II transparency and reporting regimes as applied specifically to derivatives have brought no apparent benefits but only compliance costs and hassle. Any sensible attempt to rationalise and cut back these EU –imposed reporting burdens is therefore to be applauded. As regards small FCs such as building societies, the contribution of information about their transactions has – we expect -negligible effect in assisting either price discovery or market monitoring.

Cross-cutting issues : retail investors (chapter 9)

We agree that a correct balance between investor protection and retail access to capital issues is needed, and that this should be consistent. As mentioned above, creating this balance should treat mutual and cooperative businesses equally and in parallel with proprietary companies, not as an afterthought, or neglect them altogether through oversight.

Conclusion

With the few observations and challenges above, we support the driving principles and general approach in this CP.

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