

Rt Hon Mel Stride MP
Chair
Treasury Select Committee
House of Commons
SW1A 0AA

11 May 2021

Our ref: SA210427

Dear Mel,

Re: Independent Reviews

Charles Randell wrote to John Glen on 16 April with a summary of the actions we have taken to date in response to the recommendations/lessons learnt in the London Capital & Finance plc (LCF) and Connaught Independent Reviews. In that letter, Charles advised that I would write to the Treasury Committee with a further update in advance of our hearing on 12 May.

I would like to draw the Committee's attention to five significant areas. We will be publishing a further detailed update in July.

Financial Promotions Discussion Paper

On 29 April, we published a [Discussion Paper](#) on strengthening financial promotions rules for high-risk investments. The paper builds on our recent permanent ban on the mass-marketing of speculative illiquid securities, including speculative mini-bonds, and the feedback on our Call for Input regarding the consumer investment market which closed in December.

Consumers often build their understanding of the risks and regulatory protection associated with an investment through financial promotions. For high-risk investments, a good financial promotion may not be enough to ensure adequate consumer protection. A financial promotion may meet requirements to be fair, clear and not misleading, but the underlying investment may still be inappropriate for many investors and not meet their needs. In these cases, we can use financial promotion rules to apply further protections for consumers.

I would like to highlight three key areas. Firstly, we are looking at how we classify high-risk investments, making sure that all investments that share similar high risks for retail customers are subject to similar protections. We will potentially restrict other high-risk investments from being freely marketed to retail customers. Secondly, to further segment high-risk investments from mainstream products, we will potentially introduce new frictions to reduce the chance that consumers are misled or induced to take unsuitable levels of risk. Finally, we are looking at the responsibilities of authorised firms which approve financial promotions, considering further due diligence requirements, including due diligence on an ongoing basis and not just at the point when the promotion is first launched. The feedback we receive will inform the consultation proposals we intend to publish later this year.

High-Net-Worth and Sophisticated Investor Exemptions

As we discussed during our last evidence sessions, we have been discussing reforms to the Financial Promotion Order (FPO) exemptions ('the exemptions') for High Net Worth (HNW) and Sophisticated investors with the Treasury. The exemptions have enabled unauthorised firms to issue financial promotions to HNW and Sophisticated investors without having to comply with any of our rules, even the basic clear, fair and not misleading requirements.

We believe the exemptions are a significant vulnerability in the financial promotion regime. Indeed, we have seen evidence that strengthening our rules has resulted in more firms using the exemptions to market high-risk investments to ordinary consumers. We have also seen the exemptions being exploited by bad actors to target consumers with inappropriate high-risk investments or scams. Leaving this aspect of the legislation unchanged will continue to result in significant consumer harm that the FCA is unable to mitigate. We believe both the ability to self-certify qualification for the exemptions, as well as the income/net assets thresholds that apply, need to be addressed. As the exemptions are set in legislation, any changes are a matter for Government and Parliament.

"Use it or Lose it"

Incorrect or out-of-date permissions increase the risk of harm to consumers as they can mislead consumers about the level of protection offered or give credibility to unregulated activities, the so-called halo effect. We committed to take action to remove permissions for regulated activities that are not being actively used where out-of-date permissions may cause harm to consumers – our 'use it or lose it' programme. We are in the process of contacting the first tranche of firms. We have set up a dedicated phone number staffed by experienced call handlers, and lessons from the first set of firms will be used to develop training for other call handlers as we expand the programme.

Our intention is to use this first tranche as a pilot, and we will then use a survey platform following our initial letters to engage with a larger number of firms in future tranches. Not only will this allow us to issue much larger numbers of letters, but it will also allow real-time information on delivery rates and firm completion statistics regarding our information requests, evidence for us to use in any contested cases.

We also expect to use the abbreviated administrative cancellation powers introduced by the Financial Services Act 2021.

Engagement with Technology Platforms

Consumer alerts published by the FCA rose from 573 in 2019 to 1,184 in 2020, and we have implemented a new fast-track process which enables quicker additions to the FCA's warning list. We provide alerts to Google once a week to enable them to remove Google Ads by firms which appear on our list. This work disrupts the actions of those behind the promotions and their ability to market to consumers, but the volume of new promotions being identified every week is high, so our focus is on challenging the online platforms to stop these promotions from being marketed in the first place to disrupt this flow.

The law applying to online financial promotions changed at the end of the Brexit transition period. A broad exemption from the UK's financial promotion regime for e-commerce financial promotions (those constituting the provision of an information society service) made from an EEA State other than the UK was removed. As a result, online platforms now need to have clear regard to the UK's financial promotion regime when they are disseminating adverts for financial services and products to ensure that consumers are not exposed to unlawful promotions.

We are being clear with Google and other platforms about their need to comply with the financial promotions rules and to do so publicly to protect users from scams and fraudulent financial promotions. We reserve our right to take legal action for non-compliance where necessary. We also continue to consider that inclusion of investment fraud in the Online Safety Bill would be a critical tool to prevent consumers being scammed online.

Updating the FCA principles for retail consumers

Later this week, the FCA will be publishing a consultation paper on updated principles for firms doing business with retail consumers, proposing new and higher expectations of the standards of conduct we expect. New products and services, and a constantly changing environment, mean we cannot anticipate every possible driver of harm. We want to set expectations that can apply flexibly and dynamically to new products, services and business models as they continue to emerge and develop in an increasingly digital age. We envisage that the Consumer Principle itself would play a role as a 'touchstone' where firms encounter situations that seem novel. The formulation of the Consumer Principle should build on and develop our existing requirement to 'have due regard to customer interests and treat them fairly'¹. We want firms to play a greater positive role in delivering good outcomes for consumers. They can do this by taking responsibility for proactively establishing an environment in which consumers are empowered to make effective decisions that support their financial wellbeing.

Charles and I will, of course, be willing to answer any of your questions on these topics, or Charles' earlier letter, at our hearing tomorrow.

Yours sincerely,



Nikhil Rathi

Chief Executive

¹ <https://www.handbook.fca.org.uk/handbook/PRIN/2/?view=chapter>