

State Street – Written evidence (SCG0055)

Committee question

In response to Lord Lilley's question regarding State Street's engagement with the FCA over the non-applicability of the Consumer Duty to State Street's business (p. 10), Mr Coulter noted that "we are stuck in a convention of having to document all this decision-making. In that scenario, it is a convention that can be broken." In response to this, please answer the following:

- (a) Is the rigorous documentation of decision-making primarily driven by regulatory requirements or cultural inertia within firms and the regulators?*
- (b) If the latter, what can firms and regulators do to ensure that established supervisory practice does not exceed the regulatory requirements?*

Mr. Coulter's response

Rigorous documentation of decision-making is an integral part of effective governance of the control environment, and an important way in which firms record management decisions taken in ensuring a firm's compliance with all applicable laws, regulations and guidance. Our supervisors—and wider stakeholders—have a reasonable expectation on us to provide transparency on the impact of major regulatory change.

The convention that could be broken, as referred to in this context, specifically relates to instances where firms expend significant resources to rationalise the non-application of certain rules that contain ambiguous language on the intended scope of application to the financial sector. The broad application of FCA's 'Consumer Duty' rules to the wholesale market is a prominent example.

Regulatory clarity could have reduced the implementation burden on the financial sector. Some market participants (e.g., asset managers)

were already subject to comprehensive regulatory requirements that outline their clear fiduciary duties, so it was not only unclear as to why the new framework was necessary but also resulted in significant work to understand and embed the Duty where it applied. Similarly, wholesale banks had to expend significant resources to self-determine that the Duty did not apply to their activities or applied only in limited circumstances. That work incurred significant compliance and legal costs and is generally an unhelpful distraction for management teams. Providing greater clarity, from the outset, on the distinction between wholesale and retail expectations in line with the new Duty would have been helpful.

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