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Future Regulatory Framework Review
Financial Services Strategy
HM Treasury
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Tuesday 4 July 2023

Dear HM Treasury colleagues,

Financial Services Regulation: Measuring Success – Call for Proposals

We welcome the opportunity to respond to your call for proposals on the Financial Services Regulation: Measuring Success consultation.

The Quoted Companies Alliance has examined the proposals and advised on this response from the viewpoint of public companies, with emphasis on small and mid-sized quoted companies.

Overall, we agree with HM Treasury's approach to exercising Clause 37 of the FSM Bill, and welcome the opportunity to provide input into the set of metrics that the regulators should publish in relation to their new growth and international competitiveness objectives.

However, we maintain that, in addition to the new growth and international competitiveness secondary objectives for the regulators, a new proportionality objective should be added. It is our view, and the view of our members, that the principle of proportionality is not adequately embedded within the UK's regulatory apparatus. It is too often the case that regulation is implemented that adopts a one-size-fits-all approach and does not take into account the costs and benefits of its impact, meaning that these developments have a disproportionate impact. Proportionality is not considered rigorously or on a consistent basis.

The Government and regulators have an important role to play in ensuring financial services regulation is appropriate, fit for purpose and proportionate. There is a balance to be reached, between protecting investors and allowing companies to grow and develop so they can offer returns to their investors and deliver positive outcomes for the wider economy.

Therefore, the Government should also require the regulators to adhere to a new proportionality objective. At a minimum, the Government should include a proportionality metric to measure the regulators' adherence to their growth objective, as proposed below.

A new proportionality objective would determine the extent to which a company is expected to adhere to new requirements or comply with regulation dependent on its size, complexity and available resources. Any burden imposed as a result of the implementation of new regulation should be proportionate to the benefits. This should also include consideration of the relative impact of regulation on market participants of different sizes and complexities. This would allow the regulators to determine whether the regulation should apply universally, or whether it should just cover the largest companies and those with the ability to comply in a manner that does not disproportionately impact them. This will help the UK's markets move away from the harmful one-size-fits-all approach to regulation that has had a detrimental impact to our markets and contributed to the decline in use of them.

In taking forward regulation with the proportionality metric in mind, regulators should ensure that they have meaningfully and effectively consulted relevant stakeholder groups to help make sure that regulation is flexible enough to accommodate entities of all sizes.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

James Ashton.

James Ashton
Chief Executive

Q1 Do you agree with the government's approach to the exercise of the power of direction in Clause 37 of the FSM Bill?

Yes – we agree with the government's approach to the exercise of the power of direction in Clause 37 of the FSM Bill. The introduction of the Clause 37 provision and the resultant ability for HM Treasury to request information, will allow the effective scrutiny of the regulators, helping to ensure that they are discharging their responsibilities appropriately. This will improve the transparency and accountability of the regulators, in particular against the two new secondary objectives of international competitiveness and growth.

We also agree with the approach that it should be exercised proportionately so as not to impede the ability of the regulator to exercise its other functions.

Finally, it is essential that HM Treasury takes into account the views of industry and market participants where they believe the government needs to exercise their powers with respect to the Clause 37 provision.

Q2 What are the key metrics that the FCA and the PRA should publish in relation to their new secondary growth and competitiveness objectives?

Firstly, it is important to stress that we agree with the government's approach on the need for a set of metrics that are transparent and available to the public in order to be able to effectively scrutinise the performance of the regulators against the new secondary objectives of growth and international competitiveness.

The metrics we put forward in the list below are not intend to be exhaustive, but rather highlight the key issues relevant to small and mid-sized quoted companies and the public markets. These include:

International competitiveness

- **International comparability** – the regulators should publish information on how they have due regard for the regulatory frameworks of other jurisdictions and major international financial services centres, with a particular focus on how the UK remains competitive against these.

  The regulators should use benchmarking to draw inferences in changes to market outcomes by evaluating the experience in markets with different but comparable regulatory structures.

- **UK positioning** – the regulators should publish information on how they have due regard for the unique nature of the UK's markets, and in particular, how they have given consideration to flexibility and proportionality within their regulatory framework.

- **Speed of processing authorisations** – the regulators should publish information on the length of time taken to process authorisations, and how they have had due regard for market participants where speed and timeliness are important factors in their ability to offer new products and services, and/or make appointments to senior management functions.

- **Timely engagement with market participants** – the regulators should publish the details of their processes for engagement, and how they have ensured high-quality, responsive, and timely engagement with market participants.

- **Assurance and transparency of timeframes** – the regulators should provide an explanation and outline their timeframes for their activities and how they have due regard for the effective operation of market participants. Market participants should be able to rely on regulators meeting established time commitments and should be able to determine the status of their engagements with ease.

Growth

- **Proportionality** – the regulators should publish their approach to proportionality and how they have taken into consideration the size, complexity and available resources of market participants prior to any regulatory action. The regulators should also outline how, in performing a cost benefit analysis prior to the implementation of regulation, they have considered the relative impact of regulation on market participants of different sizes and complexities.

- **Market accessibility and flexibility** – the regulators should set out how they ensure that markets are sufficiently accessible and flexible to attract and retain market participants.

- **Regulatory burden** – the regulators should publish information on how they have taken into consideration the regulatory burden and how it impacts growth, including consideration of the costs, both financial and administrative, of any regulatory action.

- **Ex post market outcomes** – the regulators should highlight how regulation and/or regulatory action/developments have resulted in improvements in market outcomes. This should include ex post analysis of the market outcomes as a result of the regulation in place along with a comparison of outcomes that would have arisen without such regulation.

  The regulators should include a high-level overview, as well as an explanation of how regulation and/or regulatory action/developments have resulted in improved outcomes for different market constituents, including companies and investors.

- **Ex ante market outcomes** – the regulators should highlight how a proposed regulation will likely deliver improvements in market outcomes compared with the status quo.

  The regulators should include a high-level overview, as well as an explanation of how the proposed regulation and/or regulatory action/developments will result in improved outcomes for different market constituents, including companies and investors.

- **Deregulation** – the regulators should emphasise their ongoing commitment to deregulation as a key plank of fostering growth. This includes detailing a continuous programme of deregulatory measures that have, or are intended to, remove or simplify existing rules and how they have, or will, deliver positive market impacts. The regulators should also identify areas that are currently impeding growth that they intend to tackle.

In this light, the regulators must also take into account the sequencing of regulatory interventions. For example, where a rule or requirement has been introduced and subsequently removed and the removal has had no effect as the market has permanently adjusted their practices to meet previous requirements.

- **Innovation** – the regulators should set out what their approach to innovation is and how this can contribute to growth.

- **Duplication of legal and regulatory requirements** – the regulators should set out how they have identified, on a targeted basis, potentially overlapping requirements between law and regulation and any actions undertaken to remove these duplications.