TISA

Response by TISA: FCA DP21/1

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About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by focusing the convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry.** We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **MiFID II, CASS, ESG/RSI, operational resilience, Cyber Risk, SM&CR** and a range of other areas.
- **Digital transformation initiatives** that are driving ground-breaking innovation and the development of industry infrastructure for greater operational effectiveness and revenue promoting opportunity for firms. TISA has become a major industry delivery organisation for consumer focused, digital industry infrastructure initiatives – **TISAtech** (a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation) and **TURN** (TISA Universal Reporting Network – a digital platform providing a secure data exchange for financial services using blockchain technology) – alongside projects **Digital ID** and **Open Savings & Investment**. This reflects TISA's commitment to open standards and independent governance.

Comment on Discussion Paper

TISA are broadly supportive of the sentiment of the proposals in this paper. Speculative transactions such as Contracts for Difference, Rolling Forex, Spread Betting and Cryptocurrencies may not be suitable for retail investors since such investors are at a significant disadvantage in comparison to institutions that will have the ability to process relevant data and have professional research available. However, there are certain investments that are considered 'high-risk' such as Innovative Finance ISAs, which may have a place in a well balanced portfolio. We are therefore concerned at the broad stroke approach which may introduce unnecessary friction into the customer journey where the investment may be suitable and therefore discourage innovation among firms. Equally, this approach may unintentionally legitimise products, which are not suitable as a long term investment strategy.

We have a number of concerns about this Discussion Paper.

For example, in paragraph 1.15, the DP refers the reader to FCA research that consumers cannot tell the difference between different types of investment and that consumers should be wary of returns offering significantly more than the current rates of return on Cash ISAs of 1%. The research note itself notes that most of the panelists were invested in Cash ISAs only, 50% or so were female (significantly higher than the typical gender profile of investors in non cash), only half were employed, whereas around 75% of the adult population is employed, that in order to improve comparability the rates on Cash ISAs were increased and the risk warnings on non cash products were significantly harshened, without any comparable change being made to cash products. It is unsurprising in these circumstances that most people preferred Cash ISAs. Who wouldn't want a risk free investment paying 3% pa?

We are not convinced that in the circumstances much value should be ascribed to the research.

What does the FCA mean by straightforward mass-market investments?

Do these include authorised funds, gilts, investment trusts, listed securities?

We are concerned by the FCA's statement in paragraph 1.16 that higher-risk investments (excluding the short term speculative transactions we have raised concerns about) *can* have a place, rather than *should* have a place. If customers are to avoid the erosion of their savings by inflation, or to save for the longer term, inside or outside of a pension, they will need to assume investment risk.

The paper asks whether there are types of investment not currently subject to marketing restrictions that should be. We believe the FCA should be asking if there are types of investment currently subject to marketing restrictions, such as IFISAs, that should NOT be subject to these specific restrictions.

We note that when we met the FCA in December 2019 to consider the imposition of marketing restrictions on IFISAs, which we opposed then and oppose now, it was argued, by FCA, that this would be temporary to see how it worked. We argued then, as we do now, that IFISA are on a risk spectrum between cash and equities, and that it was wrong in principle to impose marketing restrictions more onerous than, say, investing in investment trust companies, which may be subject to an appropriateness test, or equities. We argued that it would kill off IFISAs as a retail investment. Sadly, we were right. We do not wish the FCA to compound this error in its understandable desire to protect customers from products that are manifestly high risk and unsuitable. We agree with the FCA's desire. But the solution to this is strict enforcement of requirements for promotions to be fair, clear and not misleading, appropriate risk warnings and for riskier investments, an appropriateness test combined with strong supervision by the FCA.

In chapter 2 we read the research findings with interest. We note that the investors were significantly richer in terms of income and assets than average, so maybe their attitudes to higher risk investments (not the trading instruments) were not inappropriate. Note that the restrictions for P2P effectively kill off this type of saving for all but the very well off. WE believe an appropriateness test would be sufficient, particularly for IFISAs.

Q1: Please provide any data related to:

a. the number of consumers who currently hold high-risk investments, the amount they hold and the type of high-risk investments they hold
b. the number of issuers of high-risk investments, the amount they issue and the type of high-risk investments they issue

We do not hold this data.

Q2: Are there any investments which are not currently subject to marketing restrictions which should be?

a. If yes, what is the investment and what level of restriction should apply?
b. Please explain your answer, including providing evidence of harm.

No comment

Q3: Should there be changes to how certain types of investments are currently classified for the purposes of our financial promotion rules to prevent arbitrage in the context of our SIS rules?

a. If yes, what changes are needed?
b. Please explain your answer, addressing the issues we identify in paragraphs 3.20 to 3.25 where appropriate.

No comment

Q4: Are there any other features of an investment which means they are generally inappropriate for retail investors and should be subject to a mass-marketing ban?

a. If yes, what are the features?
b. Please explain your answer, addressing the issues we identify in paragraphs 3.26 to 3.28.

Short term speculative transactions such as CFDs, Rolling Forex and Spread Betting should not be marketed as investments suitable for a long term investment strategy, since they are complex and volatile instruments, and a retail investor cannot reasonably be expected to have access to the data and research, or have the skill and knowledge to make gains over the long term.

We do not believe that they should be called investments, as they are more like purely short term trades. An investment should be capable of being bought and hold for a longer term.

Q5: Should we change the scope of securities covered by our RRS definition for the purposes of the financial promotion rules?

a. If yes, how should the scope be changed?
b. Please explain your answer, addressing the issues we identify in paragraphs 3.29 to 3.36.

No comment.

Q6: Please provide any data you have about the potential impact of any changes discussed in chapter 3. For example: the number of consumers, issuers, firms and investments which might be impacted; the potential costs and benefits of any changes.

We do not have this kind of data.

Q7: Do you think more requirements should be placed on firms to ensure the accurate categorisation of retail clients?

a. If yes, what requirements should be introduced?
b. Please explain your answer, addressing the issues we identify in paragraphs 4.12 to 4.18.

No, we do not. Assessment is too 'black and white' however the issues firms face with reference to Advice/Guidance makes this difficult to address. We believe that use of appropriateness tests, which TISA developed guides for in the context of MiFID II for investment trusts, and for P2P are a sensible way to help customers understand whether investments are not inappropriate for them.

Q8: Do you think changes should be introduced to help consumers better categorise themselves?
If yes, what changes should be introduced?

a. Please explain your answer.

Yes. The categorisation of retail investors is too simplistic. To consider an individual to be high net worth by looking at only current income and assets outside of pension and primary property may be too generic. An individual should be given information through the self-declaration process to assess their overall financial position and future needs to be able to accurately assess whether they can bear losses, and over what time frame. For example, longer term investments, such as mass market funds often held in ISAs or in auto enrolled pensions will have short term fluctuations.

Q9: Do you think the risk warnings we introduced for SISs should be applied more broadly?

a. If yes, what investments should they apply to?
b. Please explain your answer, addressing the issues we discuss in paragraphs 4.27 to 4.33.

No, we do not.

Q10: Do you think visual based risk warnings should be introduced for high-risk investments?

a. If yes, what visual based risk warnings should be introduced?
b. Please explain your answer.

Yes. For leveraged products in particular, the potential losses should be expressed in terms that an investor can relate to such as the number of years it would take to recoup such a loss at a moderate expected growth rate.

Q11: Do you think additional 'positive frictions' should be introduced to the consumer journey for high-risk investments?

a. If yes, what changes should be introduced?
b. Please explain your answer.

Illustrations of losses and example scenarios.

Q12: Please provide any data you have about the potential impact of any changes discussed in chapter 4. For example: the number of consumers, issuers, firms and investments, which might be impacted; the potential costs and benefits of any changes and evidence of the potential effectiveness of the changes.

Q13: Do you think new ongoing monitoring obligations should be introduced for section 21 approvers?

a. If yes, what ongoing monitoring obligations should be introduced?
b. Please explain your answer, addressing the issues we identify in paragraphs 5.9 to 5.11.

   The approver should monitor the % of investors whose losses have been realised to assess whether the product is suitable for continued marketing.

Q14: Do you think changes should be introduced to the role a section 21 approver in the client categorisation, appropriateness and preliminary suitability assessment processes?

a. If yes, what changes should be introduced?
b. Please explain your answer, addressing the issues we identify in paragraph 5.20.

Q15: Please provide any data you have about the potential impact of any changes discussed in chapter 5. For example: the number of consumers, issuers and investments which might be impacted; the potential costs and benefits of any changes.

Q16: Do you have any other comments you would like to make on the topics covered in this Discussion Paper?

There is a long track record in the UK of execution only/self-directed investments, in equities, bonds and funds. We are concerned that many of the issues raised in the paper could as well be turned at investments in funds, investment trusts and equities, which we believe would be detrimental to investors.

We do believe that if promotions are clear, fair and not misleading, including disclosures of risk, then investors should not have unnecessary hurdles placed in front of them. Often, the choice will be cash, which in different contexts the FCA has railed against, and investing in cash other than for the short term, or as a buffer against emergencies, destroys real value through inflation and the forgoing of the real returns available through long term investing.