Response by TISA to FCA Consultation Paper: Consumer Duty – scope and proportionality (CP26/23)

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About TISA

Supporting the financial journey through life

The Investing and Saving Alliance (TISA) is committed to improving the financial wellbeing of all UK consumers by working collectively with the financial services industry to deliver solutions and champion innovation, for the benefit of people, our industry, and the nation.

We do this by working with our member firms to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

We care about the entire financial life of consumers: from their first savings account opened to ensuring people can age and retire with dignity. TISA believes that savings and investments play a significant role in the lives of people and small businesses. Consumers benefit when they put aside money for their future. Saving and investing can provide a buffer for emergencies; help people achieve big and small goals throughout their lifetime; and give people quality of life in later years.

TISA is a not-for-profit membership organisation and a trusted partner of key industry stakeholders in helping shape the future of the UK financial services and the environment in which we operate. We have over 260 member firms involved in the supply and distribution of savings and investment products and associated services.

Our work, your influence

Our policy work reflects TISA's broad scope of interests and aims on meeting the needs of UK consumers, members and our industry. From improving financial education, inclusion and accessibility, right through to savings, investments and retirement planning, the work we do with our members to **influence policy** is crucial in enhancing the industry we operate in and driving positive change.

As part of our commitment to delivering focused and impactful consumer outcomes, TISA's policy working groups have been structured into three distinct workstreams:

1. **Consumer Protection -** *Protecting the best interests of UK consumers in their financial journeys.*
2. **Consumer Access -** *Considering issues that could directly impact access to financial products.*
3. **Effective Products -** *Examining key considerations and legislation relating to products across the investing and saving landscape.*

All groups focus on both strategic and technical elements of policy/regulation. We provide a channel for firms to have their say on the policy we develop and present, contribute to our technical and regulatory interpretation work and, importantly, gain insights from other TISA members, policy makers, government and regulators.

Find out more about TISA here: **www.tisa.uk.com/about-tisa**

Introduction and Summary of Recommendations

TISA welcomes the opportunity to provide feedback on FCA's consultation on the Consumer Duty's scope and proportionality. We are supportive of the FCA's overall ambition to ensure the Consumer Duty operates in a way that is targeted, proportionate and predictable. We welcome the proposed changes within CP26/23 and agree that the proposed approach to applying the Duty will allow retail consumers to remain protected as firms focus on delivering good outcomes, whilst reducing unnecessary costs and complexity, which are ultimately borne by consumers. Accordingly, the changes also fully align with the FCA's statutory objectives relating to effective consumer protection, promoting effective competition and supporting growth of the UK financial services sector.

More specifically, we welcome plans to:

- remove business with non-UK customers from the Duty's scope,
- make it clearer where the Duty applies,
- clarify how firms within a distribution chain can rely on each other; and
- support a more proportionate approach, focusing on the roles and activities each firm has in a distribution chain.

For the benefits of the targeted and proportionate changes to be achieved, firms and their boards will need to have the confidence to make proportionate amendments to their compliance arrangements. For firms to have that confidence, the FCA needs to ensure it achieves its predictability outcome and supervision activities align with the policy intention.

Although we welcome the proposed CP26/23 changes, there are a number of areas where we believe there is a need for greater clarity in order for the FCA to increase the predictability of the Duty's operation. These areas are summarised below. More detail is provided within our responses to individual consultation questions.

(a) Classification of manufacturers

CP26/23 provides a clearer and more proportionate basis for understanding responsibilities across multi-firm operating models. Additional clarity through rules and worked examples would help firms implement that framework consistently and with confidence, in particular where retail products and services are delivered through arrangements involving product providers, platforms, administrators, custodians, technology providers and outsourced service providers.

(b) Outsourcing arrangements

Although the proposed outsourcing framework provides additional clarity, there remains an opportunity to provide firms with additional practical guidance on where the boundary sits between outsourced service provision, secondary manufacturing and principal manufacturing. Further clarity, in the form of worked examples, would materially support the FCA's objectives of predictability, proportionality and consistent implementation across complex distribution chains.

(c) Excluded activities

The proposed exclusion for depositaries would benefit from further guidance and worked examples to help provide additional clarity on the circumstances that could restrict a firm's ability to apply the exclusion, for example, in a 'direct to fund' model.

(d) Roles and responsibilities across the distribution chain

CP26/23 provides a clearer framework for allocating accountability, supporting reasonable reliance and reducing unnecessary duplication across complex operating models. The most important remaining implementation challenge is to ensure that responsibility allocation reflects authority, control and decision-making accountability, rather than operational involvement alone. Additional guidance (through worked examples) on this distinction, particularly within platform, administration and outsourcing models, together with further guidance on the ability to reasonably rely and adopt a proportionate approach to due diligence, would help provide firms with the clarity they are seeking.

Where we have proposed the inclusion of additional worked examples, beyond the examples included within the Appendix to this consultation response, we would be pleased to engage further with the FCA to develop and agree case studies and example scenarios. We would make full use of the cross-industry experience and expertise that our members have.

Information gathering and sharing

We welcome the proposed, more proportionate approach to the gathering and sharing of information with other firms in a distribution chain. This has been an area of significant challenge for TISA members.

We acknowledge that the FCA is looking for an industry-led solution to the challenges faced. Accordingly, within our response, we have noted that TISA plans to update its own best practice guidance on this topic. Our aim is to align the TISA guidance with the proposed FCA rules and guidance. We believe that, with our broad membership base, we are well placed to develop guidance that reflects a cross-industry position.

Once drafted, we would welcome a workshop style meeting with the FCA to walk through the draft TISA guidance, discuss areas of challenge and receive comments or observations from the FCA.

Evolving technology and propositions

We have noted the need for the FCA to maintain its guidance as technology evolves and artificial intelligence becomes more integrated into offerings and propositions. By maintaining guidance it will help to ensure there continues to be clarity around where the Duty applies and provide firms with greater regulatory certainty and thus give firms the confidence to progress with enhancements and changes.

Confidence and Supervisory Alignment

For firms to have the confidence to proportionately reduce their Duty compliance arrangements, they will also need to have confidence in FCA supervisory practice. We would therefore encourage the FCA to ensure that its supervisory approach is consistent with the policy intent to allow the projected benefits from the more streamlined regime to be achieved.

Proportionate supervisory practice will, in particular, be required around information gathering and sharing to allow firms time to develop enhanced information sharing processes in line with the move to a more proportionate approach.

We would like to thank the FCA for their engaging and proactive approach and for the opportunity to respond to this consultation. In particular, our members appreciated the ability to walk through the proposed changes with the FCA policy team in early August. We would be happy to discuss our recommendations and any other aspects of our consultation response. We look forward to the FCA progressing its work and we stand ready to engage, collaborate and lend our support to help achieve the policy objectives.

Question Responses

Chapter 2

Question 1: How could we avoid additional costs for firms where sectoral rules have a different territorial scope to the Duty in the future?

We have noted that this consultation focuses on the territorial scope of the Duty and, accordingly, the scope of other sectoral rules will remain unchanged.

Although we do not have any specific comments to make on other sectoral rules, we would encourage the FCA to keep under review the scope of other rules and, as appropriate, use future relevant broader consultation processes to consider potential changes to the scope of those other rules. We will continue to liaise closely with our member firms and, if appropriate, will highlight to the FCA any evolving sectoral differences that are leading to additional costs.

Overall, we welcome the change to limit the Duty's territorial scope to retail market business where the retail customer is usually resident in the UK and have no specific points to make in relation to the other questions within Chapter 2 of CP26/23. The planned territorial scope changes will benefit firms that currently experience friction from overlapping UK and local regulatory requirements. This change also aligns well with the FCA's objective to facilitate competitiveness and growth of the UK financial services sector and will allow the Duty to be applied proportionately.

The proposed updates to the Handbook and non-Handbook guidance provide appropriate clarity.

Question 2 to Question 6

No additional points to note (see response to Question 1).

Chapter 3

Question 7: Do you have any comments on the proposed application provisions and whether they will help with understanding the scope of the Duty?

We welcome the consolidation of the proposed application provisions within PRIN 3A. This will make it easier for firms to assess and monitor which products and activities fall within the scope of the Duty. Greater certainty regarding the scope of the Duty will give firms the confidence to apply it in a reasonable and proportionate way.

Question 8: Do you have any comments on the proposed approach to defining 'retail market business'?

We welcome the move of the definition of retail market business from the Glossary to PRIN 3A. The linkage to activities associated with the four outcomes within the new elements of the definition will help provide firms with greater certainty on the application of the Duty. In line with our response to Question 7, this will make it easier for firms to assess and monitor the extent to which they undertake retail market business.

Question 9: Do you have any comments on our proposed changes to the 'product' definition?

The simplified product definition within PRIN 3A.1.4R is clear.

Question 10: Do you agree with the changes we are proposing to clarify the scope and obligations for firms in a distribution chain?

We welcome these changes and believe they help to provide clarity around the scope and obligations for firms involved at different stages of a distribution chain.

In particular, we welcome PRIN 3A.4.4R (1) (b) which confirms a firm in a distribution chain is not responsible for ensuring that the conduct of another firm in the distribution chain complies with its applicable Consumer Duty obligations.

Question 11: Do you agree with our proposed approach to clarifying application where a firm is subject to the Duty but doesn't have a role in relation to one or more of the four Duty outcomes?

We welcome this change. It provides appropriate clarity for firms with more limited roles and activities, allowing them to apply the Duty in a proportionate way.

We have noted that PRIN 3A.4.3G (4) states a firm need not evidence compliance in respect of an outcome rule that does not apply to it. We agree with this proposed wording but would suggest an addition to the wording to note that firms should document, from a governance and evidence perspective, why they consider one or more outcome rules not to be applicable.

Question 12: Do you agree with our proposals for updating our rules on material influence?

We agree with the proposal to move away from the material influence concept and focus more on the firm's role in relation to a product or service.

Given that PRIN 3A.4.7R states that a firm must be "able to demonstrate" that it has a limited or remote role, we would recommend additional guidance be added to the rulebook to state that a firm should document, as part of its governance processes, where it has considered PRIN 3A.4.7R to be applicable, including the rationale for that position.

Question 13: Do you have any comments on our proposed approach to classifying which firms are manufacturers for the purposes of the Duty?

Whilst we support the introduction of the principal and secondary manufacturer framework, we consider that further clarity would be beneficial regarding what constitutes a "contribution to the manufacture" of a product or service, which appears to be the key factor in determining whether a firm falls within the proposed manufacturer classification framework (PRIN 2A.2A.7R).

The proposed rules establish substantive control as the key factor in distinguishing between principal and secondary manufacturers. PRIN 2A.2A.7R states that "a manufacturer that lacks substantive control over the product by virtue of the nature and extent of its contribution to the product's manufacture is a secondary manufacturer". However, the framework is less clear on the threshold question of when a firm's activities amount to a contribution to manufacture such that the manufacturer classification framework applies in the first place.

In practice, firms may perform a range of technology, administration, servicing, operational, governance or support activities that influence customer outcomes without it being clear whether those activities constitute a contribution to manufacture. Additional criteria, guidance and/or worked examples would therefore assist firms in consistently determining whether they should be regarded as manufacturers and, if so, whether they should be classified as principal or secondary manufacturers.

The proposed distinction between principal and secondary manufacturers has the potential to provide greater clarity and a more proportionate allocation of Consumer Duty responsibilities across complex distribution chains. This is particularly relevant where retail products and services are delivered through arrangements involving product providers, platforms, administrators, custodians, technology providers and outsourced service providers.

We agree that firms exercising substantive control over the design, operation or key characteristics of a retail product or service should bear the primary responsibilities associated with manufacture. Equally, we consider it important that firms whose role is limited to providing operational infrastructure, administration, servicing or support activities are not automatically treated as bearing equivalent responsibilities solely because they contribute to the delivery of the end proposition.

We therefore support the FCA's focus on control, authority and decision-making capability. In line with comments above, we do however consider additional clarity is required for firms involved in more complex distribution chains.

We believe that clarity could be aided through (a) a number of additions to PRIN 2A.2A.7R (4), and (b) additional examples, illustrating more complex scenarios, within the non-Handbook guidance.

Proposed additions to PRIN 2A.2A.7R (4)

The proposed additions are in red below:

PRIN 2A.2A.7R (4)

For the purposes of (2), the following non-exhaustive factors are indicative of substantive control:

(a) the manufacturer carries on or has overall responsibility for manufacturing activities relating to the core aspects of the product's design or operation;

(b) the manufacturer was responsible for initiating or setting into motion the assembly of the contributions of other manufacturers for the purposes of creating the product;

(c) the manufacturer has a coordinating role over the activities of other manufacturers;

(d) the manufacturer has the power, right or ability to make decisions about, veto or approve proposals relating to core aspects of the product's design and features, overall customer proposition, operation (including ability to appoint service providers), target market definition, distribution strategy, or value proposition for end retail customers, and has the resources, capabilities and expertise to do this effectively; and

(e) the manufacturer holds itself out as the main provider (or a main provider) of the product.

These changes would provide additional clarity for a number of our members; particularly, operational and service providers that may influence customer outcomes through the quality and effectiveness of the services they provide but do not have control of the overall proposition.

Additional examples

To help illustrate this in practice our members, particularly for those providing platform and administration services, would welcome additional examples within the non-Handbook guidance. These could sit alongside the examples below section 6.17 of the guidance or at the end of the outsourcing arrangements section (6.18 – 6.22). The intention behind these examples would be to help clarify the distinction between (a) firms exercising substantive control over the retail proposition; and (b) firms responsible for the operational delivery of that proposition.

We have included, within the Appendix to this response, a number of suggested examples.

These examples would help firms apply the proposed framework consistently and with greater confidence in practice. In our view, they would materially support the FCA's objectives of improving predictability, reducing unnecessary duplication across distribution chains and promoting a more proportionate allocation of Consumer Duty responsibilities.

They would also help firms avoid the false choice between "no meaningful role" and "principal manufacturer". In practice, many platform and administration arrangements sit between those points. A firm may have significant customer-outcome influence without having substantive control over the retail proposition.

The examples in the appendix are drawn from practical issues that have arisen during a TISA member's analysis of Consumer Duty responsibilities. That experience suggests that the distinction between authority over the retail proposition and responsibility for operational delivery is likely to be one of the most important determinants of consistent manufacturer classification across platform, administration and outsourcing models.

More broadly, we consider that greater clarity regarding substantive control should support the FCA's wider objective of reducing unnecessary complexity and duplication across distribution chains. In our experience, uncertainty regarding manufacturer classification can result in firms adopting increasingly expansive interpretations of their responsibilities in order to manage regulatory uncertainty. Clearer guidance on the distinction between principal manufacturers, secondary manufacturers and outsourced service providers would help firms focus effort on the activities and outcomes they can genuinely influence, rather than creating overlapping governance, documentation and oversight arrangements that do not lead to improved customer outcomes.

In summary, we consider the proposed principal and secondary manufacturer framework to be a significant enhancement. CP26/23 provides a clearer and more proportionate basis for understanding responsibilities across multi-firm operating models and reflects many of the practical considerations that firms, industry bodies and the FCA have been discussing over recent years. In addition to the proposed minor rule change, additional worked examples would help firms implement that framework consistently, reduce the risk of over-application or under-application, and support the FCA's objective of achieving a more proportionate and predictable Consumer Duty regime.

We would be pleased to engage further with the FCA and to partner to develop and agree further example wording, making use of the cross-industry experience our members could bring to the conversation.

Question 14: Should we consider making similar changes to the rules in DISC and PROD?

Following discussion with TISA member firms, we are not aware of any required changes to current DISC or PROD rules. Separately, TISA has provided feedback the FCA on proposed changes to DISC, in line with the consultations on retail investment disclosures and will be providing further recommendations in response to QCP 26/32.

Question 15: Do you have any comments on how the new approach to classifying manufacturers should apply to existing products and services?

In order to ensure continued compliance with the Duty, the immediate priority for manufacturers will be to update governance processes for any new agreements into which they wish to enter. The process update will also provide firms with the mechanism to review relevant existing agreements against the updated rules.

An appropriate implementation period will be required for any new agreements (we would propose six months from publication of the Policy Statement).

In order to provide all firms involved in the manufacture of products with an aligned timeframe to review all existing agreements, we propose that an additional two year transitional period is given. We believe this timeframe would provide firms with sufficient flexibility to prioritise the review of existing agreements and agree any necessary amendments.

Requiring all existing agreements to be reviewed over that period would help to ensure appropriate alignment between firms. If the new requirements only applied following a material amendment to an existing agreement, this could create the risk of misalignment of understanding of roles and responsibilities between firms in respect of compliance with the Duty. This could result in duplication of effort among firms or, potentially, an oversight gap.

We recommend that the FCA emphasises in the Policy Statement following this consultation process that, although there is a two year transitional period, firms would need to ensure that the review of all agreements was completed within that timeframe. For firms with a significant number of agreements to be reviewed, project disciplines would need to be put in place to ensure progress towards the deadline was actively monitored and achieved.

Question 16: Do you have any comments about our proposed approach under the Duty to outsourcing arrangements in relation to the manufacture of a product or service?

Whilst we support the proposed direction, we note that CP26/23 establishes a framework for distinguishing between principal and secondary manufacturers through the concept of substantive control. However, the consultation provides less clarity on what constitutes “outsourcing of product manufacture” and a “contribution to the manufacture” of another firm's product in the first instance. Greater clarity within the rules would reduce the reliance on examples and guidance, particularly around how firms are caught by the regime. For example, the consultation does not clearly articulate the threshold at which a firm transitions from providing services that support manufacture and remain outside the manufacturer framework to undertaking activities that contribute to the manufacture of a product and are brought within that framework.

Within this consultation response we have requested additional examples and case studies. However, this should not be interpreted as a preference for extensive supplementary guidance. Rather, the request reflects uncertainty as to how firms should classify their role within the distribution chain under the proposed framework. To the extent that greater clarity and precision can be incorporated directly into the final rules and supporting policy text, the need for examples, case studies and interpretive guidance would be significantly reduced.

The overall aim should be to clarify this boundary, particularly in outsourced, platform-based and technology-enabled operating models, and to support consistent application of the framework in practice. We also note that the consultation provides limited clarity regarding which outsourced activities would constitute a contribution to the manufacture of a product, leading to the service provider becoming subject to the proposed principal and secondary manufacturer framework and a substantive control assessment.

Ultimately, we are seeking for additional clarity to help determine when an outsourcing arrangement remains a service relationship and when it gives rise to manufacturer status and, subsequently, principal or secondary manufacturer classification.

In many platform and administration operating models, providers perform operationally important activities and may possess specialist expertise that materially informs how a product or service is delivered in practice. However, this does not necessarily mean that the provider has authority over the retail proposition itself. Client firms often retain responsibility for target market decisions, distribution strategy, charging structures, value assessments, customer communications, commercial strategy and product governance decisions. In those circumstances, firms would benefit from greater clarity as to how operational involvement should be distinguished from substantive control.

We would therefore welcome further clarity on the factors that indicate when outsourcing crosses the line into secondary manufacturing, and when secondary manufacturing crosses the line into principal manufacturing. Relevant factors could include:

- whether the provider can determine, approve or veto core product or service design decisions;
- whether the provider controls the target market or distribution strategy;
- whether the provider determines charges or the value proposition;
- whether the provider controls customer communications content;
- whether the provider is held out to customers as the primary provider of the product or service;
- whether the provider coordinates the contributions of other manufacturers; and
- whether the client firm can instruct, approve, reject or override the provider's recommendations.

In our view, the key consideration should be whether a firm has authority over the retail proposition itself rather than responsibility for its operational delivery. A provider may exercise significant influence over implementation, servicing, technology, administration, resilience, change delivery and operational effectiveness without necessarily exercising substantive control over the underlying product or service.

We would also encourage the FCA to confirm that existing governance arrangements may form an important part of evidencing appropriate Consumer Duty responsibilities. In particular, outsourcing governance,

operational resilience governance, service management, incident management, change governance and contractual oversight arrangements can provide strong evidence of how responsibilities are allocated and governed in practice, particularly where those arrangements support good customer outcomes and clear accountability.

We welcome the FCA's acknowledgement that the written agreement requirement does not need to be satisfied through a standalone document and that wider commercial agreements may be used. However, we would welcome further clarification that existing outsourcing, commercial, service and operational agreements may satisfy the proposed written agreement requirements where they already clearly document roles, responsibilities, governance arrangements, information-sharing obligations, decision-making authority and operational dependencies between the parties.

In our view, firms should not be required to create separate Consumer Duty-specific agreements solely to satisfy the proposed requirements where existing contractual arrangements already provide equivalent clarity and accountability. This would be consistent with the FCA's objective of reducing unnecessary duplication, supporting proportionality and avoiding the creation of additional documentation where existing arrangements already clearly allocate responsibilities and support good customer outcomes.

Overall, we consider the proposed outsourcing framework to be a significant improvement on the current position. The remaining opportunity is to provide firms with additional clarity on where the boundary sits between outsourced service provision, secondary manufacturing and principal manufacturing. In our view, this would materially support the FCA's objectives of predictability, proportionality and consistent implementation across complex distribution chains.

We would be happy to support the FCA on the development of additional guidance and case studies, making use of the cross-industry experience and expertise our members can bring to the conversation.

Question 17: Do you agree with our proposed exclusions for activities that fall out of scope of the Duty? Should we make any changes to them, either to broaden them or to limit their availability for certain activities (and, if so, why)?

Overall, we agree with the list of non-exhaustive proposed exclusions. It will help provide certainty for firms that undertake such activities.

Our main comment relates to the proposed exclusion for depositaries. We have noted that, within PRIN 3A.2.1R (12) (f), the exclusion is not available where a depositary “has additional responsibilities or a more active role in relation to a fund”. Whilst a couple of examples are given, feedback from our depositary members has indicated they would welcome further guidance and examples to help provide additional clarity. This would be best placed within the non-Handbook guidance as there is greater flexibility to make changes as regulation, technology and propositions evolve.

For example, given the increased potential, following PS26/7, for both conventional and tokenised funds to move to a ‘direct to fund’ model there is potential for depositaries to have a greater role. Additional guidance would assist firms that are considering the regulatory implications of a change to that model and allow the FCA to demonstrate regulatory predictability. Without sufficient regulatory certainty, this could hinder a broader move to the direct to fund model.

In line with earlier responses, we would be happy to partner with the FCA, and with the support of our depositary members, propose additional depositary related examples.

More broadly, the above example highlights the need for forward thinking by the FCA as technology evolves, artificial intelligence becomes more integrated into offerings and propositions evolve to ensure there continues to be clarity around application of the Duty. Accordingly, industry guidance will need to be kept under review.

We also recognise that, as a membership body, there will be a complementary role for TISA to play to help ensure requirements are fully understood by our members from a practical perspective and there is a common and aligned understanding around the application of the requirements. Accordingly, to complement the updated FCA rules and non-Handbook guidance, we will work with our members to update our existing Consumer Duty best practice guide and ensure this kept up-to-date (e.g. following the publication of further good and poor practice papers, as propositions and technology evolves).

Question 18: Are there any other activities where we should consider exclusions on a similar basis?

We have not identified any other activities where exclusions should be considered.

Question 19: Do you have any comments on our proposed changes to Chapters 2 and 6 of the non-Handbook guidance?

Other than comments noted in previous responses, we have no other comments to make on the proposed non-Handbook guidance changes.

Chapter 4

Question 20: Do you agree with our proposals to clarify firms' roles and responsibilities across the distribution chain? If not, please explain why, and any other options we should consider.

We strongly supports the FCA's proposals to clarify firms' roles and responsibilities across the distribution chain. In our view, this is one of the most important and beneficial aspects of CP26/23 and represents a significant step towards a more targeted, proportionate and predictable Consumer Duty framework.

Clear responsibility allocation is important, not only for firms, but also for customer outcomes. Uncertainty regarding responsibility allocation can lead to duplication of activity, excessive information requests, overlapping governance processes and differing interpretations of accountability across the same operating model. This can lead to increased complexity without improving customer protection. Conversely, where responsibilities are clearly allocated, firms are better able to focus on the activities they control and the customer outcomes they can most effectively influence.

We therefore support the FCA's broader move away from reliance on the terminology of co-manufacturing and towards a framework that focuses on the actual role performed by each participant within the distribution chain. Debate has often centred on whether a firm should be described as a co-manufacturer, rather than on the more important questions of what activities the firm performs, what decisions it controls, what responsibilities it owns and what outcomes it can reasonably influence. The proposed principal and secondary manufacturer framework should provide a clearer and more practical basis for analysis.

We also support the FCA's proposed approach to reasonable reliance. In complex distribution chains, no single firm will necessarily possess all relevant information required to assess customer outcomes. For example, a platform provider may hold detailed operational data and servicing information but have no visibility of customer circumstances, advice suitability considerations or the commercial rationale

underpinning proposition design decisions. Equally, a manufacturer may retain ownership of the customer relationship, distribution strategy and product governance framework whilst relying on information generated by the platform provider regarding service delivery, complaints, transfers, operational incidents and customer journey performance.

In our view, the final framework should recognise that effective Consumer Duty oversight requires structured and proportionate reliance between firms. Firms should be expected to provide information that is relevant to their role and responsibilities, but should not be required to replicate the assessments, oversight processes or governance activities undertaken by other firms where this does not materially improve customer outcomes.

We have also noted the requirement for firms to act in good faith and not rely on information where it would be unreasonable to do so. The draft guidance gives an example of a case where information is received "which clearly indicates" there may be consumer harm. One of the examples within the non-Handbook guidance makes reference to "significant issues" such as consistent negative feedback from investors. Feedback from member firms has indicated there remains uncertainty around the circumstances where information received from another firm should be challenged and where reasonable reliance is appropriate.

In order to help ensure alignment of understanding, we would welcome additional guidance on the extent to which firms are expected to take proactive steps to challenge other firms where, for example, there is an inconsistency within the data provided but no clear indication of potential consumer harm. We are keen to ensure the correct balance is achieved to protect against harm, but without significantly increasing the compliance burden for firms reviewing information from another firm in the distribution chain, given the ability to reasonably rely on the information received. An additional example within the non-Handbook guidance that considers this from a practical perspective would be welcome.

Similarly, we welcome the additional due diligence clarifications, in particular, the ability to be proportionate when deciding whether to work with another firm in a distribution chain. However, we believe there is a need to provide firms with confidence and greater regulatory certain around this more proportionate approach. To achieve this, we would welcome the inclusion of additional examples within the non-Handbook guidance. The inclusion of additional examples would also support the FCA's aim to be targeted and predictable. Again, we would be happy to work with the FCA to propose potential additional non-Handbook guidance examples.

In line with our response to previous questions, we believe one of the most important questions arising from the proposed framework is how responsibilities should be allocated where a firm has significant involvement in operational delivery but does not control the retail proposition itself. This issue sits at the heart of many platform, administration and outsourcing arrangements.

In our view, the distinction between authority over the retail proposition and responsibility for operational delivery of that proposition is likely to be a critical determinant of responsibility allocation across the distribution chain. A firm may materially influence customer outcomes through administration, servicing, technology, settlements, transfers, complaints handling, operational resilience, change delivery and management information. However, that same firm may have no authority over target market decisions, proposition design, pricing, value assessments, distribution strategy, customer communications content or product governance decisions.

As noted within our earlier responses, we would welcome further clarity on how the FCA expects responsibilities to be allocated in these circumstances, particularly in relation to secondary manufacturers

and outsourced service providers. This would help firms apply the framework consistently and would reduce the risk of both gaps and unnecessary overlap in accountability.

Similarly, we would welcome clarification regarding how the four Consumer Duty outcomes are intended to apply to secondary manufacturers and outsourced service providers under the proposed framework. Under the current rules, firms have often focused particularly on the products and services outcome and price and value outcome because co-manufacturing references sit most clearly within those parts of the framework. The proposed move to principal and secondary manufacturers provides an opportunity to clarify more explicitly how each outcome should apply according to a firm's role, responsibilities and degree of control.

We would also note that, for firms to have the confidence to apply the Duty in a proportionate way, they will need to have confidence in regulatory expectations and FCA supervisory practice. We would therefore encourage the FCA to ensure that its supervisory approach is consistent with the policy intent. The projected benefits from the rule changes will only be achieved if firms have the confidence to make proportionate changes to their processes.

Overall, we consider the proposed approach to distribution-chain responsibilities to be a significant improvement on the current position. CP26/23 provides a clearer framework for allocating accountability, supporting reasonable reliance and reducing unnecessary duplication across complex operating models. In our view, the most important remaining implementation challenge is ensuring that responsibility allocation reflects authority, control and decision-making accountability rather than operational involvement alone. Additional guidance on this distinction, particularly within platform, administration and outsourcing models, together with further guidance on the ability to reasonably rely and adopt a proportionate approach to due diligence would further support the FCA's objectives of consistency, proportionality and improved customer outcomes.

Question 21: Do you agree with our proposals to better reflect how firms support for consumers in vulnerable circumstances will differ depending on their role in distribution chains? If not, please explain why, and any other options we should consider.

The FCA's proposals promote proportionality in recognition that responsibilities are allocated across the distribution chain. However, we would encourage a more nuanced position, particularly in light of the new CCIs regime. Under the CCI disclosure regime, manufacturers are responsible for creating Product Summaries. These documents need to be consumer-friendly – i.e. accessible and intelligible. – and are given to consumers during pre-sale journeys. It would be helpful for the FCA to provide guidance on how manufacturers should factor in the needs of vulnerable customers when designing these critically important pre-sale disclosures. This is a D2C communication that manufacturers are responsible for. We believe these considerations should extend beyond taking into account the CCI's product features. We agree with the FCA that distributors have the direct consumer relationship, but the Product Summary is key to ensuring consumers understand an investment product and helps them make informed financial decisions.

We would also note that some of the examples cited by the FCA seem to cut across general accepted information that is provided to customers in relation to investing – i.e. that consumers should look to invest money for 5 years or more, rather than turning to investments for short term needs.

In addition, we would also welcome the FCA providing guidance on their expectations in a scenario where a vulnerable customer has engaged an AI assistant and delegated financial decision-making authority to the AI assistant. In this scenario, the FS regulated firm does not have a direct relationship with the consumer. Does

the FCA expect regulated firms to block AI Assistants that cannot confirm the underlying customer's vulnerability status? Is the underlying customer's vulnerability status irrelevant? What guard rails should firms put in place in this scenario and how should the firm consider vulnerability in this scenario?

Question 22: Do you agree with our proposals to better reflect a reasonable approach to information gathering and sharing to monitor outcomes under the Duty? If not, please explain why, and any other options we should consider.

Information gathering and sharing has proved to be a significant challenge for many of TISA's member firms since the Duty came into force, both for firms requesting data and for firms providing data. We therefore welcome the proposed more proportionate approach to the gathering and sharing of information with other firms in a distribution chain. This aligns well with the broader objectives of this consultation paper as it will help to limit the regulatory burden for firms but, at the same time, should help to achieve good outcomes for retail consumers.

Although industry developed templates can provide some benefits, the rigidity of that approach creates a risk of a 'one size fits all' approach. Following review of CP26/23, feedback from our members has indicated that TISA should focus its energies on updating its best practice guidance on information sharing with the aim of moving towards an approach where firms:

- ensure information requests are more targeted, supporting firms to assess whether the activities for which they have responsibility are achieving good retail outcomes,
- focus on understanding where there is risk of harm and obtain information associated with those risks which provides meaningful insight at a target market level,
- consider how information sharing can work well within more complex distribution chains, where multiple firms are involved,
- keep in mind potential practical challenges associated with data gathering, recognising a more pragmatic approach is, at times, more likely to be effective,
- recognise the need for both qualitative and quantitative information that balances forward-looking and retrospective information. Where possible, firms should seek, through data sharing, to prevent potential harm rather than focus solely on detecting harm,
- consider what action to take, or what may be available, where friction occurs (e.g. challenges are experienced obtaining requested data)
- adopt a more flexible bilateral approach to engagement

We acknowledge the FCA is looking for an industry-led solution to the information sharing challenge. Accordingly, in advance of the publication of the Policy Statement, we plan to work with TISA member firms to create an updated draft of our information sharing best practice guidance with the aim of achieving the above objectives and aligning the TISA guidance with the proposed FCA rules and guidance. This would allow us to quickly finalise the updated guidance following publication of the Policy Statement. With TISA having a broad membership base, we are well placed to develop guidance that reflects a cross-industry position.

We will also engage with our key trade body contacts to ensure TISA's planned approach is consistent with any engagement activity other bodies have planned.

We are keen to ensure that the best practice guidance is aligned with FCA expectations. Accordingly, once we have a draft of the proposed TISA best practice guidance, we would welcome a workshop style meeting with the FCA to walk through the draft TISA guidance, discuss areas of challenge and to receive comments or observations on it from the FCA.

In the meantime, we would ask the FCA to acknowledge, within the Policy Statement and through its supervisory practice, that the industry will need further time to develop enhanced information sharing processes in line with the move to a more proportionate approach.

Question 23: Do you agree with our proposals to clarify our expectation that board or governing body reporting should be proportionate to the firm's circumstances, including its actual role in influencing retail customer outcomes? If not, please explain why, and any other options we should consider.

We welcome the increased flexibility proposed for board or governing body reporting. The proposal links well with the other changes noted within CP26/23, and will allow firms to re-evaluate their reporting requirements, allowing them to take a proportionate approach in line with their role and activities in the distribution chain. This will lead to a tangible reduction in the regulatory burden for many firms.

We have noted, within paragraph 4.45 of CP26/23, that the FCA will, in its supervisory work, take a proportionate approach when assessing governance reporting is effective. As noted in our response to earlier questions, for firms to have the confidence to reduce their reporting in a proportionate way, they will need to have confidence in regulatory expectations and FCA supervisory practice. Again, we would therefore encourage the FCA to ensure that its supervisory approach is consistent with the policy intent to allow the projected benefits from more streamlined reporting to be achieved.

The update to the non-Handbook guidance provides appropriate clarity on the revised regulatory expectations.

Chapter 5

Question 24: Are there specific areas where further clarification would help firms avoid unnecessary duplication in practice? If so, what form of additional guidance can we give firms to improve the clarity of our expectations?

We have not identified any specific areas where further clarification is required.

Question 25: Do you consider that there are specific areas or activities where you consider we should disapply the PROD 3 product governance rules and rely instead on the standards set by the Duty? If so, what are these areas, and what would be the impact on firms' processes, costs and customer outcomes?

We have not identified any specific areas or activities where PROD 3 rules should be disapplied.

Question 26: Do our proposed changes to the non-Handbook guidance provide sufficient clarity for firms? If not, what further clarification is needed to help firms reduce unnecessary duplication or uncertainty in practice?

It would be useful for the FCA to clarify how the guidance sits alongside DISC 2A.2.3G(1)(b) and (2). The latter seeks to encourage firms to create tools and modellers to maximise consumer understanding, whereas the current proposed guidance seems to encourage firms to do the minimum – i.e. simply produce a product summary. Given the Product Summary is a PDF document, we think it is likely that some consumers will not read and engage with this. Interactive tools can bring disclosures to life for consumers, helping them personalise key disclosures and understand what it means for them. TISA has long supported its members to adopt these tools and it would be useful for the FCA to consistently do the same.

On page 36 of the proposed guidance, it may be more suitable to make the "investment bank" currently cited in the applying the Duty across the distribution chain section an "asset manager".

Chapter 6

Question 27: Do you agree with our proposed approach to making the technical clarifications in this chapter?

Yes.

Question 28: Do you agree with our proposal to clarify that the exclusion in relation to instruments where the minimum investment is £50,000 applies per investment and per end investor?

Yes.

Question 29: Are there any other minor or technical changes that would help improve the clarity or operation of the Duty?

No.

Appendix - Suggested Examples (Linked to Response to Question 13)

All examples below relate to the same firms (Firm A and Firm B).

Example 1: Platform and administration operating model

Firm A is a regulated firm and proposition owner. It determines the target market, charging structure, distribution strategy, customer proposition, customer communications content, value assessment and product governance arrangements.

Firm A has appointed Firm B to provide platform technology, administration, dealing, transfers, payments, settlement, complaints administration, customer servicing, operational MI and change delivery. Firm B may also provide operational recommendations and customer outcome data to Firm A.

Firm B has significant involvement in the operation and delivery of the service and may materially affect customer outcomes through the quality, resilience and effectiveness of service delivery. However, Firm B does not have authority to determine the target market, product features, charges, distribution strategy, value assessment, product governance conclusions or customer communications content.

Guidance and clarification required: would Firm B generally be regarded as a secondary manufacturer, or potentially an outsourced service provider only, rather than a principal manufacturer, unless it has substantive control over key aspects of the retail product or service?

Example 2: Client-directed platform change

Firm A instructs Firm B to implement a platform change to support a new proposition, charging model, retirement journey or servicing feature. Firm A determines the proposition design, customer strategy, target market, customer communications and product governance rationale.

Firm B provides feasibility input, technical solution design, operational risk assessment, implementation capability and post-implementation MI. Firm B may also advise that the proposed change should be modified, delayed or implemented differently because of technology, resilience, regulatory, conduct or operational-risk considerations.

Guidance and clarification required: how should firms distinguish between Firm B's technical or operational contribution to delivery and substantive control over the retail product or service? It would be particularly useful for the FCA to provide clarity where Firm B's input materially affects how the proposition operates in practice, but Firm A retains decision-making authority over the proposition itself.

Example 3: Operational approval and veto rights

Firm B provides platform and operational infrastructure for a retail proposition Firm A is looking to introduce. It has the right to delay, reject or require modification of proposed changes where those changes create operational resilience, cyber security, financial crime, legal, regulatory or service-risk concerns.

Those rights are designed to protect the integrity, resilience and safe operation of the platform environment. However, Firm B does not determine the target market, product design, distribution strategy, value proposition, customer communications content or pricing decisions (these are determined by Firm A).

Guidance and clarification required: would operational approval or veto rights of this nature, in themselves, be indicative of substantive control, or is substantive control intended to arise where a firm has authority over the underlying retail proposition? This distinction is important because operational approval rights may be necessary for resilience and risk management purposes, without necessarily meaning that the provider (Firm B) controls the product or service.

Example 4: Joint development of a new customer journey

Firm A and Firm B jointly design a new digital journey or service feature. Firm A owns the customer proposition and approves the customer-facing design, communications, distribution approach and product governance rationale. Firm B designs the underlying workflow, platform functionality, data flows, operational controls and servicing processes.

Guidance and clarification required: which factors would indicate that Firm B has become a secondary manufacturer, and which additional factors would be needed before Firm B is considered to have substantive control and therefore principal manufacturer status?

Relevant factors may include whether Firm B has authority to determine the customer proposition, approve or veto core design decisions for commercial or customer-outcome reasons, determine the distribution strategy, set or influence charges, approve customer communications content, or coordinate the contributions of other firms involved in manufacture.

Example 5: Operational service with customer outcome impact but no proposition control

Firm B provides custody, settlement, transfers, payments, call handling, complaint administration or operational servicing to Firm A. Poor performance by Firm B could cause foreseeable harm or poor customer outcomes. However, Firm B does not determine the product, service proposition, customer journey, charges, communications, value assessment or distribution strategy.

Guidance and clarification required: should this generally be treated as outsourced operational service provision, a secondary manufacturer contribution, or outside manufacturer classification, depending on the nature and extent of Firm B's involvement?

This example would be particularly helpful because many operational services can affect customer outcomes without necessarily amounting to control over the manufacture of the retail product or service.