TISA

Response by TISA to FCA's Quarterly Consultation (CP26/32)

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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 approximately 270-member firms involved in the supply and distribution of savings and investment products and associated services. Our members include the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, FinTechs, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

Our work, your influence

With a focus on four key workstreams that best support the consumer and UK financial services, TISA has become a leading industry voice and ally for delivering consumer focused initiatives.

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 **four 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.

- **Effective Products**
  Examining key considerations and legislation relating to products across the investing and saving landscape.

4. **Corporate Responsibility**
   Exploring issues that directly impact society, the environment, and the economy.

All groups focus on both strategic and technical elements of policy/regulation. Key outputs from our workstreams can include recommendations to government and regulators on developing a financial services framework that protects and benefits UK consumers, finding solutions to operational/infrastructure challenges and developing standards of good practice on the interpretation and implementation of new 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:** **https://www.tisa.uk.com/about-tisa/**

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Introduction and Summary of Recommendations

We would like to thank the FCA for the opportunity to provide feedback on the QCP. We have focussed our comments on the CCIs-related clarifications.

We welcome the majority of the proposed changes and have suggested some further amends to ensure the FCA's policy intention is accurately reflected in the proposed rule changes. In addition, there are a couple of additional clarifications that we would welcome from the FCA, to ensure that the regime operates effectively and firms have appropriate clarity on how to operationalise the regime.

As ever, TISA would be happy to discuss any of the comments or recommendations contained in this response.

Question Responses

Question 8.1: Do you agree with our proposed changes? If not, please explain why.

We welcome the clarificatory changes to DISC 3.5.3R, DISC 5.5.1R, DISC 6.2.3R, to DISC 7.1.4R, DISC 7.2, DISC 7.5.3R, DISC Sch 1 on record keeping requirements. We also welcome the additional implementation time given to closed book products. This will help the industry prioritise resource and efforts.

Aligning historical performance across COBS and DISC

We welcome the FCA's intention to have consistent requirements in respect of past performance. The proposed changes to COBS 4.5A.10R(2) and COBS 4.6.2R relate to a rule that applies to all financial instruments, not just CCIs. In principle, we support the move to consistent disclosure requirements; however, we believe more consideration is needed in order to avoid consumer confusion and misunderstanding. There are nuances that the FCA should consider, in order for a consistent outcome and consumer understanding to be achieved in practice. For example, applying the FCA's current proposed approach to asset classes that are sensitive to maturity or expiry, or generate cashflows will generate a misleading disclosure. For example, showing past performance of gilts will not include coupon payments and consumers may draw incorrect inferences from the decreasing volatility as the bond nears maturity. We would urge the FCA to consider the consumer and what information they would like to know. We would suggest that consumers want to understand the return on their investment that they could have made over a £10 year period, so "if I invested £10,000 10 years ago, how much money would I have made? The way in which this information can be accurately presented across asset classes needs careful consideration, in order for consumers to make a fair assessment and ultimately make informed decisions.

We would also like to draw out that eISAs have been purposefully exempted from the blanket CCIs past performance requirements, yet don't appear to receive consistent treatment under COBS. We assume the FCA would like to apply a consistent policy rationale to these products, so that consumer understanding is prioritised.

The requirement for performance periods to end no more than 60 days before information is prepared may create additional challenges for products, benchmarks and reporting processes that operate on a quarterly cycle. This is particularly problematic for illiquid and private-market products where valuations and performance reporting are often produced quarterly. There may be similar issues for benchmarking and peer-group information produced by third parties, as some comparators and peer-ranking providers only publish data on a quarterly basis, meaning the latest available information could fall outside the proposed 60-day window. Given this, we would welcome the FCA providing clarity on how the proposals should operate in practice, for example:

- how the FCA defines when information is considered to be 'prepared' for the purposes of the 60-day requirement?
- whether performance materials produced can continue to be used beyond the 60-day period where they remain the most recent available information and the production date is clearly disclosed?
- how firms should treat benchmark and peer-group data that is only available on a quarterly basis?
- whether firms would be able to continue using customers' most recent quarterly statements during periodic client reviews where those reviews take place more than 60 days after quarter-end?

- whether market updates and CEO reports would be able to continue referencing the latest available quarterly performance information where no newer data exists?

These nuanced considerations do not appear to have been taken into account by the FCA or reflected in the cost benefit analysis, where the greatest impact of these proposals are arguably on firms who do not manufacture or distribute CCIs. We would welcome clarity from the FCA and suggest the FCA moves forward in a more considered way that prioritises consumer understand and the FCA's underlying policy intent.

DISC 5.2.1A and DISC 5.3.1A: volatility track record

We would note that the requirements in 5.2.1A(2) and DISC 5.3.1A to have weekly, or if not available, monthly pricing information, are difficult for illiquid assets, such as LTAFs, private assets and structured products. For example, it is typical for some LTAFs to release quarterly pricing at most, depending on the underlying assets. Currently, LTAFs use historical ("stale") pricing, where there is insufficient liquidity, accompanied by a fair value assessment, as needed. Similar to our recommendation in relation to the 60 day past performance requirement, it would be useful for the FCA to clarify how firms should apply these FCA requirements in practice when they relate to illiquid and private-market assets, including the circumstances in which available weekly or monthly pricing information should not be regarded as sufficiently representative without adjustment.

We would note wider government and FCA policy that is seeking to increase retail exposure to these asset classes, and it would be useful for the FCA and Government to avoid policies that clash.

DISC 5.2.1A R: benchmarks

We recommend that the drafting of DISC 5.2.1A(4) is revisited, as we believe it is possible to have a fund that has the same investment objective, but a different strategy. Given this, we think it would be appropriate for the benchmark to align with both the investment objective *and* the strategy.

In relation to benchmarks mark broadly, some TISA members have indicated that using a benchmark as a proxy for past performance of the CCI may be very difficult to explain to consumers. We would welcome any insights FCA can share, for example consumer testing, that demonstrates how this requirement can be complied with whilst also complying with the Consumer Duty.

Areas for additional clarification.

We believe that DISC 2A.3.1R(2)(d) requires clarification as the current drafting is likely to lead to unintended application. The requirement starts by stipulating that the product summary should be provided in a durable medium at the time of sale, or as soon as reasonable thereafter. We agree with this requirement. However. DISC 2A.3.1R(2)(d) continues and also stipulates that the durable medium must be given before the customer is bound to buy or invest in the CCI – i.e. before the sale. These 2 requirements are contradictory. The second limb of the requirement will mean that customers are sent the product summary prior to a sale. It is not clear what the purpose of this communication would be – the customer does not own or has not executed a buy order – so why would they need a record of an investment they do not own? Depending on the pre-sale trigger for the durable medium record requirement, this could mean consumers are sent multiple product summaries for CCIs that they do not purchase. This is likely to irritate consumers and could confuse them, as they may assume that the document implies they have bought the investment. This is particularly likely if the consumer is new to investing. The customer experience becomes even more perverse in a non-digital journey setting. If the consumer has asked for durable mediums to only be sent via post, this could delay the completion of any agreement to buy an investment by days, or even weeks. If a consumer's decision is time sensitive, the durable medium requirement is likely to frustrate the customer and prevent them from executing their intended transaction in a timely manner. This could lead to complaints and

reduce consumer willingness to invest (where it is in their best interest to do so). We suspect the FCA did not intend to require the durable medium obligation to cut in pre-sale. It makes sense for a consumer to receive the product summary as a form of receipt, in relation to an investment they have bought. It doesn't make sense to send the consumer the product summary of an investment they haven't bought, or haven't agreed to buy. In this scenario, distributor websites, apps and literature is the best place to house these documents, to ensure they remain up to date. Consequently, we recommend the FCA amends DISC 2A.3.1R(2)(d) as follows:

> (d) provide the *retail investor* with a copy of the *product summary* in a *durable medium* at the time the sale is concluded or as soon as reasonably practicable afterwards ~~and, in any case, before the *retail investor* is bound by any agreement to buy or otherwise invest in the *consumer composite investment*.~~

Such an amend would align with the existing communications approach firms apply to pre-sale documents and would prevent consumer confusion, irritation and misunderstanding.

We would also welcome clarification from the FCA as to whether they would expect a machine readable file to be provided (under DISC 3.5.5R) where a CCI is distributed directly to advised customers. In this scenario, the customer purchases the CCI directly from the manufacturer, but the customer is advised to do so by a third party financial advisor. We note that the term "distributor" is widely defined, so it is likely to capture the sale of such instruments, but the phrase "solely distributed" in DISC 3.5.5R is undefined. We would welcome a clarification from the FCA that the exemption to provide the machine readable file does not apply in this circumstance.