

TISA RESPONSE TO

Response to PSR CP14/1

A new regulatory framework for payment systems in the UK



12th January 2015

Introduction

TISA is a not-for-profit membership association operating within the financial services industry.

TISA's membership comprises over 145 member firms involved in the supply and distribution of savings and investment products and services.

These members represent many different sectors of the financial services industry, including banks, stockbrokers, asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers and pension providers.

Following an instruction to the industry from the FSA in 2010 to tackle long delays and high costs for re-registration of assets between fund supermarkets, ISA managers and fund managers, TISA established an industry group to tackle the problem and forestall the need for detailed regulation. In 2011 TISA Exchange (TeX) was established.

TeX is a not for profit industry association. Members sign up to a standard published contract and SLA. There is an open standard (ISO20022) message set. Governance is through an elected Board, with 3 Directors elected by asset managers, 3 by service providers (platforms) and three for multi-roles, where businesses combine both activities. TISA provides the Chair and two other additional directors. Interested parties such as solution providers can join as associates (non voting). This structure allows for meaningful access and input from stakeholders. Operationally there is an SLA Council which monitors MI, adherence to SLA and recommends changes and improvements, a Legal Council, for recommending changes to the legal documents and a forum, chaired by TISA, where solution providers can tackle technical issues, particularly around connectivity and interpretation of standards. TISA ensures that these type of meetings cannot become anti-competitive. All members are welcome to attend meetings of the SLA and Legal Councils

We believe that this form of governance, which allows meaningful input from all industry participants, including third party administrators and suppliers, is a good model to adopt.

Question in relation to our proposed regulatory approach (see *Supporting Paper 1: The PSR and UK payments industry* for more details)

SP1-Q1: Do you agree with our regulatory approach? If you disagree with our proposed approach, please give your reasons.

We support the proposed approach. We would particularly like to see the regulator encourage new entrants to the market. There are no physical infrastructure issues, so we do



not see why new entrants could not compete with existing systems such as BACS, etc. A governance structure that enabled this and offered meaningful access to all stakeholders would be likely to deliver better outcomes for end consumers, as well as for all market participants.

Questions in relation to our proposed approach to payments industry strategy (see *Supporting Paper 2: Payments industry strategy and areas for collaboration* for more details)

SP2-Q1: Do you agree with our proposed approach (Option 1) to set up a Payments Strategy Forum, as opposed to Option 2 (maintaining the Payments Council's or a successor body's role in setting industry strategy) or Option 3 (we develop high-level priorities for the industry ourselves), as described in *Supporting Paper 2: Payments industry strategy and areas for collaboration*? If you disagree with our proposed approach, please give your reasons.

We prefer option 1. Inherently we do not believe it is or should be the business of regulators to develop priorities for the industry. We do not believe that option 2 would work any better in the future than it has to date.

SP2-Q2: Do you have any comments on the design of the Payments Strategy Forum? In particular, please comment on how the Forum could meet the need for broad stakeholder representation while still being effective.

As we commented in our summary, TISA has experience in setting up an industry body - TeX - that ensures meaningful stakeholder representation for all industry participants and has delivered meaningful results in the period since establishment. We should be pleased to discuss our experience with you in more detail.

SP2-Q3: Do you have any comments on our indicative model for how the Payments Strategy Forum could operate in practice?

SP2-Q4: Are there any additional infrastructure-related themes you believe we, or the Payments Strategy Forum, should consider? If yes, please provide a description of why the additional themes are important to you.

As we commented above, there are no physical infrastructure constraints on payments systems as there are for, say, railways, or gas and electricity pipes, so we believe that the regulators should look to lower the barriers to entry to potential payment solutions and providers.

Questions in relation to our proposed approach to the ownership, governance and control of payment systems (see *Supporting Paper 3: Ownership, governance and control of payment systems* for more details)



SP3-Q1: Do you agree with our proposed direction requiring all Interbank and Card Operators to ensure that there is appropriate representation of the interests of service-users in discussions and decision-making at board level? If you disagree with our proposed approach, please give your reasons.

We agree with the proposed direction.

SP3-Q2: Do you agree with the costs and benefits identified for our proposed direction on Operators to ensure there is appropriate representation of the interests of service-users? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We have no comment on this question.

SP3-Q3: Do you agree with our proposed direction on Interbank Operators requiring the Interbank Operator to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? If you disagree with our proposed approach, please give your reasons.

We're not convinced that the conflicts of interest cannot be adequately managed. There are advantages in having knowledgeable industry executives as directors on both sides, not least in being aware of the practicalities and commercials of different courses of action.

SP3-Q4: Do you agree with our proposed approach not to issue directions at this time in relation to the other types of conflicts of interest identified by stakeholders? If you disagree with our proposed approach, please give your reasons.

We agree.

SP3-Q5: Do you agree with the costs and benefits identified for our proposed direction requiring the Interbank Operators to take all reasonable steps to ensure that any individual acting as a director of that Operator must not simultaneously act as a director of an actual or potential Central Infrastructure Provider to that payment system? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We have no comment on this specific question, but see our response to SP3-Q3

SP3-Q6: Do you agree with our proposed direction to require all Operators to publish board minutes in a timely manner? In particular, do you agree with our proposal for the published minutes to include a record of votes and reasons for decisions made? If you disagree with our proposed approach, please give your reasons.

Yes, we agree, provided that the minutes are not neutered so to avoid saying anything useful. In order to encourage meaningful discussion, which industry participants will find



useful, we suggest that ascription of comments to individuals in the minutes is avoided.

SP3-Q7: Do you agree with the costs and benefits identified for our proposed direction to require all Operators to publish board minutes in a timely manner? Can you provide any data that might further inform our analysis of the likely impact of our proposed direction?

We cannot comment on the quantum of the likely costs but we cannot believe they are significant.

SP3-Q8: Do you agree with our proposed approach not to issue a direction at this time in relation to Payments Council reserved matters? If you disagree with our proposed approach, please give your reasons.

We agree with the approach.

Questions in relation to our proposed approach to access to payment systems (see *Supporting Paper 4: Access to payment systems* for more details)

SP4-Q1: Do you agree with our preferred option that an Access Rule, aligned with Principle 18 of the CPSS-IOSCO Principles, should be applied to those pan-GB Operators not subject to Regulation 97 of the PSRs 2009 (i.e. Bacs, C&CC, CHAPS and FPS)? If you disagree with our proposed approach, please give your reasons.

We agree with the preferred option.

SP4-Q2: Do you agree with our proposal to introduce a Reporting Rule (on compliance with the access obligations applicable to them) on all relevant pan-GB Operators (i.e. Bacs, C&CC, CHAPS, FPS, LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

Provided that this requirement does not impose unnecessary costs, which are then bound to be passed on to consumers.

SP4-Q3: Do you agree with our proposal to require public disclosure of Access Requirements for Operators subject to Regulation 97 of the PSRs 2009 (i.e. LINK, MasterCard and Visa)? If you disagree with our proposed approach, please give your reasons.

We agree with this proposal.

SP4-Q4: Do you agree with the costs and benefits identified for our Access Package (i.e. our Access Rule and Reporting Rule)? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?



We cannot comment on this question.

SP4-Q5: Do you agree with our proposed direction requiring Sponsor Banks to publish certain information? If you disagree with our proposed approach, please give your reasons.

We think this is a matter for the banks to respond on.

SP4-Q6: Do you agree with our proposed approach in relation to the development (by industry) of an Information Hub? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We do not believe the regulators should adopt a more prescriptive approach.

SP4-Q7: Do you agree with our proposed approach in relation to the development (by industry) of a Sponsor Bank Code of Conduct, to be approved by the PSR? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We do not believe that the regulators should adopt a more prescriptive approach.

SP4-Q8: Do you agree with our proposed approach in relation to the development (by industry) of Technical Access solutions? Or do you consider that we should take a more prescriptive approach at this time? If you disagree with our proposed approach, please give your reasons.

We do not believe that the regulators should adopt a more prescriptive approach. In general terms, we believe it should be the responsibility of industry to develop solutions, whether of Codes of Conduct, Technical Access solutions and the like. The responsibility of the regulators should be that these solutions are published, meet the strategic requirements of the regulators and are developed in accordance with the governance requirements set out for the industry by the regulators. This is likely to ensure that the solutions are more responsive to the needs of the market and consumers, and can also be updated more promptly than if a prescriptive approach is adopted. This is because if the latter approach is adopted, the regulators will have to go through a more formal consultative and rule making approach than the industry would require, certainly based on TISA's experience with TeX, and this will take more time. Also, the prospect of having to go through such a consultative approach will discourage the regulators from making or proposing change. This will be an inhibitor to change and progress. This will be bad for the UK, for the industry and its customers.

SP4-Q9: Do you agree with the costs and benefits identified for our proposed direction on Indirect Access? Can you provide any data that might further inform our analysis of the likely impact of our directions?

We have no comment on this question.



Question in relation to our proposed approach in relation to interchange fees (see *Supporting Paper 5: Interchange fees* for more details)

SP5-Q1: Are there other matters regarding interchange fees that you think we should consider at this stage?

We have no comment on this question.

Questions in relation to our proposed approach to our regulatory tools (including our high-level Principles, and our enforcement and dispute resolution processes) (see *Supporting Paper 6: Regulatory tools* for more details)

We have not sought to comment on this section, except as indicated below, as this seems to us to be a matter for firms. We continue to believe that adoption of the type of governance structure we discussed in relation to TeX, coupled with increasing competition, under the supervision of the regulators, will deliver most of the objectives set out by the regulators.

SP6-Q1: Do you agree with our three proposed high-level PSR Principles on Relations with regulators, Compliance and Financial Prudence? If you disagree with our proposed approach, please give your reasons.

SP6-Q2: Do you agree with our proposed approach that our PSR Principles on Relations with regulators and on Compliance should apply to all participants? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider they should apply to and why.

SP6-Q3: Do you agree with our proposed approach that our PSR Principle on Financial Prudence should apply to Operators and Central Infrastructure Providers? If you disagree with our proposed approach, please give your reasons for disagreeing, and explain which categories of participants you consider it should apply to and why.

We are always concerned that regulators will require more capital than necessary from market participants under the rubric of financial prudence. A consequence of this is misallocation of capital, reduced competition, more costs for users and consumers, and increased barriers to entry.

SP6-Q4: Do you think that we should also adopt some or all of the additional proposed Principles relating to Integrity, Skill care & diligence, Management & control, Governance, Service-users' interests, and/or Conflicts of interest? If you think we should adopt some or all of the additional proposed Principles, do you agree with the proposed participants to which each Principle would apply? Please give reasons for your response. If you disagree with the proposal to adopt some or all of the additional Principles, please give reasons for



your response.

Market participants are surely already subject to regulatory oversight whether from FCA or PRA, so we should be concerned if the adoption of these Principles imposed further burdens and costs on industry participants.

SP6-Q5: Do you agree with the anticipated costs and benefits identified for our three proposed high-level Principles? Can you provide any data that might further inform our analysis of the likely impact of our proposed directions?

SP6-Q6: Do you agree with our proposed approach for our Objectives Guidance? If you disagree with our proposed approach, please give your reasons.

SP6-Q7: Do you agree with our proposed approach for our Administrative Priority Framework, or are there any additional points that you think we ought to cover? If you disagree with our proposed approach, please give your reasons.

SP6-Q8: Do you agree with our proposed approach for our Powers & Procedures Guide? If you disagree with our proposed approach, please give your reasons.

SP6-Q9: Do you agree with our proposed approach for our dispute resolution and applications procedures? If you disagree with our proposed approach, please give your reasons.

SP6-Q10: Do you agree with our proposed approach for our Super-complaints Guidance? If you disagree with our proposed approach, please give your reasons.

SP6-Q11: Do you agree with our proposed approach to setting penalties? If you disagree with our proposed approach, please give your reasons.

We believe that any penalties imposed should not be retained by the regulators, but paid away to HM Treasury for use in developing financial education.

SP6-Q12: Do you think that we should also take into account metrics other than revenues when setting penalties, in particular when considering participants organised as not-for-profit entities (e.g. should we take into account the value of funds transferred through the relevant system and relating to that participant in such a case)?

Any system has to be fair and objective. What the metrics should be should be for the industry to agree with the regulators.

SP6-Q13: What should be the upper limit (if any) on penalties (e.g. 10% of annual revenues derived or billings made by the participant from the business activity in the United Kingdom to which the compliance failure relates), and should this upper limit differ according to the category of participant?



We would dislike the idea of fines being imposed for anything under than anticompetitive behaviour or wilful non compliance. Otherwise firms will become more fearful and risk averse in their decision making, and this will be bad for firms, for customers and, ultimately for the competitive position of the UK.

SP6-Q14: Do you agree with our proposed approach with respect to the enforcement and enforceability of penalties? If you disagree with our proposed approach, please give your reasons.

As a general rule fines and penalties should only be imposed on objective grounds, calculated on the basis of metrics published in advance with rights of appeal where appropriate.