leading on investments and savings

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Dear Mr. Ward 1st June 2015

TISA Response to FCA DP15/3

I am pleased to set out below TISA's response to this discussion paper.

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.
TISA has a highly successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve the performance of the industry and the outcomes for consumers. Policy and regulation continues to be the major focus for our members with regard to corporate responsibility.

What makes TISA unique is that we cover the entire industry, incorporating cross sector policy, industry and technical expertise. Whilst we maintain a solid partnership with government, the regulators and wider industry, we remain independent and develop neutral views and opinions. This impartiality is reflected in our ability to drive development projects, which improves industry performance and puts us in the unique position of being able to constantly challenge the status quo to bring about material improvement. At the forefront in all of our recommendations and actions is to consider national and consumer outcomes.

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Executive Summary

- We generally support consistency of regulation across the retail investment market, but are concerned that consistency does not come at an undue burden on the industry. We should like to see detailed cost benefit analyses with the customer detriment for which regulation is proposed clearly set out.

- We are concerned that the implementation of MiFID ll may result in increased suitability and appropriateness tests, which are bound to increase costs and risks to firms, and which may, particularly in the case of so-called complex products, reduce customer choice and inhibit the freedom of customers to buy without requiring advice.

- We therefore urge the FCA to ensure that the Directive, as implemented, does not extend the scope of complexity to include, for example, default funds for personal and occupational DC pensions, or UK listed investment trusts, or peer to peer loans.

- We recommend that the FCA revisit its obligations on firms in respect of appropriateness if these (as the FCA warns in Chapter 11) will make direct offer or execution only services unavailable for investors.

- We should like to see more detail on the specifics of the product governance requirements that the Directive envisages.

- We support the adoption of the proposed MiFID ll standard for independence as discussed in our responses to questions 13 and 14.

- We are very concerned about the requirements to keep telephone records for five years (see our response to questions 18 to 21). We believe this is impractical, expensive, onerous, and of little benefit to customers.

- We recommend that, where the FCA refers to Articles in its comments, the actual text is also quoted. This would make the FCA comments easier to understand, and help respondents.

Q1: Do you agree that, in principle, we should look to ensure a consistent regulatory regime between insurance based investment and pension products, and MiFID II investments? If not, please explain why.

In general terms we agree with the principle that the regulatory regime should be

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consistent. Our chief concern is that the FCA does not engage in overburdening one part of the industry simply because they have imposed those burdens on another part. Customers pay for each regulatory requirement. In many cases the cost to the customer is less than the benefit derived from the regulation. But this is not always the case and we are concerned that regulatory burdens are heaped on the industry, and then, necessarily for customers where the cost exceeds any real benefit.

Moreover, the UK financial services industry not only serves millions of customers – and has done so for hundreds of years – it also employs hundreds of thousands of people and pays £billions in corporation tax, in addition to VAT and National Insurance contributions, every year. We are concerned that increasing regulation can damage the competitiveness of this important part of the UK's economy. Therefore, new regulatory proposals should always be subject to strict cost benefit scrutiny. And rules imposing new costs should not be introduced any earlier than necessary.

Q2: Assuming IDD does not replicate MiFID II in terms of changes to suitability assessments and client reporting, we plan to apply minor changes where we currently read-across MiFID II rules to insurance-based investments and pensions. Do you agree with this approach? If not, please explain why not.

We agree with this approach in principle.

However, we note that in paragraph 2.14 the FCA states; "*In many cases, MiFID II **does not fundamentally** change the requirements for firms that are currently subject to our conduct of business rules. There are **relatively minor changes** to rules around suitability assessments (such as requirements for firm assessments to include clients' ability to bear losses and risk tolerance) and periodic client reporting.*" In what cases does MiFID ll fundamentally change requirements? What are the relatively minor changes around suitability assessments?

In paragraph 2.15 the FCA write; *"For suitability, MiFID II largely codifies existing ESMA guidance, so our expectations of how firms conduct suitability tests should not **substantially** change."*

This rather implies that how firms conduct their suitability assessments will have to change. What will be the impact on firms, advisers and customers? How substantial will the change be? As you may know, TISA has a D2C and a Suitability Working Group working with the FCA to address these issues, which cause difficulty for firms and the FCA under current rules.

Our concern at present is not with the principle, nor how the rules may turn out, but with giving firms sufficient information so that they can make informed responses to the FCA and take informed steps to amending their procedures in good time.

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Q3: Assuming IDD does not replicate MiFID II in terms of the appropriateness test, should we look to apply MiFID II's appropriateness test to sales of insurance-based investments and pensions?

We do not believe that it would be necessarily appropriate to do so. If the FCA believes that such tests are necessary for the protection of customers and for the orderly working of the market, they should be introduced, after appropriate consultation, irrespective of whether IDD includes such a test.

It would have been helpful if the FCA had set out the text of MiFID ll Article 25(4) on complexity and explained why UK industry concerns in this matter had not been addressed by the Commission in making the Directive.

As the FCA notes in Chapter 11 (paragraph 11.13) of the Discussion Paper *"Firms that currently offer direct offer financial promotions may be particularly impacted by MiFID II's changes in this area. It is unlikely that a firm offering products through a direct offer will be able to meet the requirements of the appropriateness test. This is because the obligation to perform the appropriateness test is on the firm, not the client, or potential client. This may have a particular impact on firms distributing non-UCITS collective investment schemes in the UK."*

We therefore recommend that the FCA revisit its obligations on firms in respect of appropriateness if these will make direct offer or execution only services unavailable for investors. The FCA will recall that many non UCITS collective investment schemes, such as investment trusts, have been historically purchased through direct offers or execution only, without any noticeable issues.

Will this make direct offer insurance-based investments and pensions practically unavailable? We do not consider that making it harder for customers to buy investment products is necessarily in customers' interests, will increase the costs of saving and thus run flatly contrary to the Government's desire to encourage saving.

We believe it is for the regulators to justify regulations that will add to firms' costs and regulatory liabilities, restrict choice, and add to consumer costs. We have not read any quantified justification for this.

Q4: If we were to apply MiFID II's appropriateness test to insurance-based investments, what factors or criteria do you consider make an insurance-based investment and pension product complex?

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We believe criteria analogous to those applied to MiFID investment products should be applied, but see our comments to question 3 above.

Q5: Assuming IDD does not replicate MiFID II with regard to product governance and staff remuneration provisions, to what extent should we look to apply MiFID II's obligations to insurance-based investments and pensions? What would be the implications of doing this, or of not doing it?

We are sceptical of the scope of a number of MiFID ll provisions relating to product governance and do not believe that FCA should extend them to insurance-based investments and pensions without good reason. They should be justified (or not) on their own merits.

Q6: What should our approach be to incorporating the new requirements for structured deposits into our conduct of business rules?

We prefer the second option as discussed in paragraph 3.10, as we believe this would be the simplest approach, but have no strong objections to the third option as described in paragraph 3.11.

However, it is difficult to be certain without seeing what the rules would actually look like.

Q7: Should we develop rules to ban rebating of third party payments altogether by DIM firms to clients?

Yes. This would be consistent with the approach adopted under RDR.

Q8: Should we develop rules to ban cash rebating of third party payments by DIM firms to clients, but allow other types of rebating?

Yes. See our response to question 7 above.

Q9: Do you agree with our approach to re-categorise local authorities undertaking non-MiFID business as retail clients, with the option to opt up to elective professional client status? Do you agree that that the opt-up criteria for local authorities should follow our existing approach with respect to non-MiFID business?

We think this is a question to which local authorities should respond.

Q10: Do you agree with the approach set out in option A and the possibility of providing guidance on the qualitative test? If so, please explain what sort of guidance you think

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would be useful. Please provide any evidence to support your views.

We think this is a question to which local authorities should respond

Q11: Do you agree with the approach set out in option B? Please provide your comments and any evidence to support your views.

We think this is a question to which local authorities should respond

Q12: Do you agree with the approach set out in option C? Please provide your comments and any evidence to support your views.

We think this is a question to which local authorities should respond

Q13: Do you consider that MiFID II's standard of independent advice is different, in practice, to the UK's RDR standard? If so, please explain why.

We believe it is different and that it is a better and more sensible standard than the UK's RDR standard. We believe that adoption of this standard should encourage competition in the provision of affordable advice and should be encouraged.

Q14: How should we implement MiFID II's requirement to develop an independence standard for advice on shares, bonds and derivatives?

Were the FCA to adopt the MIFID ll standard, we believe that this would be less burdensome for firms and therefore more practicable to apply.

We do not think that applying the UK RDR standard of independence and a requirement for a 'comprehensive and fair assessment' to stocks, bonds is justified in the context of the UK retail market. We believe the FCA needs to make a considered case to require this, including a demonstration of the market failings and consumer detriment they believe justifies such requirements.

Q15: Should we continue to include insurance-based investments and pensions within our definition of 'retail investment product'?

Yes. We see no reason to exclude them.

We should register our concern that many default funds, lifestyle funds and annuity products will fall to be regarded as complex, requiring an appropriateness test. This will necessarily impact on automated transfers of small pots, and on fund choices for auto-

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enrolment. Will the FCA take care to ensure that the definition of complex is rigorously and narrowly defined, and that appropriateness requirements are not extended so as to drive up costs, increase liability to firms and restrict customer choice?

Q16: Should we include structured deposits within our definition of 'retail investment product'?

Yes, we believe this is sensible. We note, however, that making such products complex, and therefore subject to an appropriateness test, is likely to restrict the availability of such products to retail customers, weakening competition in this area. This is because requiring firms to assess appropriateness will make it harder for customers to buy execution only. This is bound to restrict choice and increase costs.

Q17: Do you think we should explore applying MiFID II's remuneration standards for sales staff and advisers across to non-MiFID business?

If FCA does not have to make rules in this area, we believe that the answer should be "No" in the absence of a full consultation process setting out the costs to firms, consumer detriment that would be remedied and proposed rules.

Q18: Do you agree that Article 3 firms should be subject to a regime that is identical to the regime for non-Article 3 firms? What impact would this have for these firms?

No, we do not. We consider that requiring the keeping of telephone records for five years in the circumstances discussed is onerous, expensive and unnecessary. It will likely lead to fines for failures which have no impact on customers. Five years is a long time. Firms move regularly – to bigger or better premises - and two moves within five years is not uncommon. Retaining and tracking records will be in a practicable sense, very difficult and expensive and should not be introduced unless specifically mandated.

Moreover, the potential scope of calls caught is very wide. The FCA notes, in paragraph 8.13; *"Additionally, ESMA clarified that, while the provision of investment advice is not explicitly subject to the recording obligations, conversations and communications that result or **may** result in the reception, transmission and execution of client orders are subject to the rules, and this **may** include investment advice."*

We urge the FCA to resist any optional imposition on UK firms.

Q19: What other approaches do you suggest we could take that would meet the objectives of the MiFID II requirement?

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We dislike the MiFID ll requirements as expensive, unnecessary and unduly burdensome. We have not seen the consumer detriment that the requirement is attended to remedy.

Q20: Do you agree that the two recording exemptions for discretionary investment managers should be removed?

No.

See our responses to Q18 and Q19.

Q21: Do you agree that discretionary investment managers should be required to comply with Article 16(7) of MiFID II?

Without reading Article 16(7) it is difficult to comment. We think that FCA should set out the text of regulations or Articles that the FCA refers to and it is disappointing that the FCA has not done so in this Discussion Paper.

Q22: Are there any technical challenges firms are likely to face in meeting these disclosure requirements that you feel we might be able to help address? If so, what solutions do you suggest to overcome these challenges?

Yes, we believe there are significant challenges. We believe that the FCA should work with the industry and independent firms to develop suitable meaningful disclosures in a way that benefits customers and encourages competition.

Q23: Should we investigate developing a standardised format for disclosing costs and charges for both point-of-sale and post-sale disclosures?

Yes, we think this is a good idea. We would request that it be short and simple and not take the form of pages of seemingly endless disclosures and caveats that serve to conceal rather than inform customers.
We believe that something along the lines of the ESMA OCF across all retail investment products and DIMs would be very useful for customers and advisers. We should be vey pleased to work with the regulators to develop this.

Q24: Do you agree that we should maintain domestic consistency and look to apply MiFID II's inducement standards for independent advice also to restricted advice?

We believe that this may be justified but would like to see a proper cost benefit analysis before supporting this.

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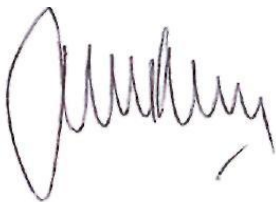
Q25: Do you agree that we should continue to have a consistent inducements regime for sales of MiFID II products and insurance-based investments and pensions? If not, please explain why.

We agree with the principle of consistency, but we would rather, if it is not required by MiFID ll, that the FCA introduce this on its own merits, following appropriate consultation, having due regard to consumer benefits and industry costs. This need not mean that such a regime cannot be justified for insurance-based investments and pensions, as many observers believe that the RDR regime has delivered real benefits for customers and improved the working of the market.

If you have any questions on this response, please let me know

Yours sincerely



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