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Leading on Investments and Savings

**Response by TISA to
Consultation Paper on
Industry Codes of Conduct
and Discussion Paper on
FCA Principle 5**

5 February 2018



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About TISA

TISA is a unique, consumer-focused membership organisation. Our aim is to improve the financial wellbeing of UK consumers by aligning the interests of people, the financial services industry and the UK economy. We achieve this by delivering innovative, evidence-based proposals to government, policy makers and regulators.

TISA's growing membership comprises over 180 firms involved in the supply and distribution of savings and investment products and services. These members represent all sectors of the financial services industry, including asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, FinTech, consultants and advisers, software providers, financial advisers, pension providers, banks and stockbrokers.

Current themes of TISA policy work include:

- Brexit: developing proposals for government that will enable the savings and investments sector to prosper on a global scale
- Digitalisation: a digital identity for consumers of financial services, innovation, standards and data responsibilities
- ISA's: LISA, simplification of the regime
- Retirement saving: the Auto Enrolment review, self-employed and pension tax relief
- Housing: the use of property to supplement retirement income
- Guidance: developing a framework and services to make guidance more widely available
- Education: supporting the education of young people to make them aware of the impact of finance on their life. 1737

TISA also provides support on a range of operational and technical issues targeted at improving infrastructure and processes, standards of good practice and the interpretation and implementation of new rules and regulations. TISA has a successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve industry effectiveness by reducing cost and risk and to enhance customer outcomes. This work currently includes: MiFID II, CASS, the UK Fund Settlement initiative and Payments Strategy Forum. TISA Exchange (TeX) is providing a model for transfers and re-registrations.

PART 1 – Consultation Paper on Industry Codes of Conduct

Introduction

We support the recognition of codes of conduct for unregulated markets by the FCA as it will remove some of the uncertainty faced by firms on the proper market conduct to be applied under Conduct Rule 5.

Where a firm has chosen not to subscribe to or adopt a code, particularly where they feel their role is not represented, we are unsure whether the FCA can use reliance on the code as compliance with proper standards of market conduct. Additionally, we are uncertain from the proposal whether recognised codes will be voluntary for individuals where their firm has made the decision not to subscribe to or adopt the code and would appreciate clarity on that matter.

We feel that naturally, the use of non recognised codes will be impacted as recognition becomes the norm and firms may consider application of a non recognised code as being too high of a risk. We do not consider this to be an issue as this will drive higher standards and encourage the recognition of codes for all relevant markets however there may be issues seen during the initial phase of recognition applications.

As described in the answers to the questions below, there are areas in the approach where we would recommend further improvement to enhance the proposal:

- Provide a general overarching set of principles for standards of proper conduct in relevant markets where there is no recognised code
- Providing a list of all relevant markets for the avoidance of doubt
- Including target user details on recognised codes to ensure consistent application
- Creating a clear and transparent recognition application process

Q1 (annex 1): Do you agree that the FCA should support the take-up of industry codes through the general approach described? If not, how should the FCA consider codes for unregulated markets developed by industry practitioners?

Q1 (chapter 3): Do you think we have been sufficiently clear about how we will view industry codes of conduct in our regulated activities, including supervision and enforcement? If not, what further questions do you have about our general approach?

We do agree that there is benefit in the FCA supporting the take-up of industry codes as this provides firms and individuals with an agreed standard of conduct for unregulated markets.

To further enhance the general approach, we feel there would be benefits in including the additional features listed below:

- A list of 'relevant markets' – this would remove any confusion over the status of the markets in which firms are operating
- Require standard information to be provided on industry codes to assist firms in their analysis of whether they are relevant
 - Which market users the code applies to



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- Context or role of the market user (e.g. buy side only)
- Scope of applicability (e.g. UK specific only / Global model)

There will be a need for firms to perform additional analysis of the markets in which they operate and associated codes to identify the proper standards of market conduct. Firms will then need to create a process to assess the performance and behavior of all relevant staff to ensure that conduct rules are being met and link this into the certification processes for certified staff and senior managers.

In the described approach there is no avenue for firms to identify where codes have been rejected by the FCA which does increase the risk of voluntary adoption of a code that is not recognised due to inadequacies or conflicting principles. We would encourage the FCA to create a general overarching set of principles that firms should apply as a minimum standard for their activity in a relevant market where there is no recognised code.

Q2: Do you agree with our proposal to recognise certain industry codes of conduct in unregulated markets? If not, please provide your reasons.

We agree with the benefits of FCA recognised codes as this will enable firms to clearly identify the proper standards of market conduct for relevant markets.

As noted in response to Q1 we feel it would be beneficial for the FCA to general overarching set of principles that firms should apply as a minimum standard for their activity in a relevant market where there is no recognised code or for any topic that is not covered by a recognised code.

Q3: What challenges do you foresee for the FCA or industry with recognising certain industry codes?

To ensure there are no overlaps with recognised codes in any relevant market, the user, context, role process and area covered by any code should be clearly identifiable and defined.

Firms will, understandably, prioritise the adoption of FCA recognised codes and may be reluctant to adopt a voluntary code that has not been recognised for FCA. This is particularly a problem where there is a lack of a fully transparent recognition process as firms will be unable to identify where a code has not applied for recognition or has been rejected by the FCA. The risk of adoption of a code that is not recognised may be viewed as high risk and result in useful and relevant codes being ignored by market users.

Q4: Do you agree with the proposed changes to the FCA Handbook designed to give effect to our proposals? If not, please provide your reasons.

The consultation states that adoption of codes will remain voluntary and codes will not be given equivalent standing akin to binding regulation. As a result, if firms and individuals do not subscribe to the codes, particularly where, particularly there they feel their role is not represented, we are unsure whether the proposed rules as drafted in Annex B (Decisions Procedure and Penalties Manual (DEPP)) and Annex C (Enforcement Guidance (EG)) would be applicable. It is unclear whether



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the FCA will be able to use reliance on meeting the codes as 'compliance with applicable FCA rules that reference 'proper standards of market conduct' where the firm has chosen not to subscribe to the code.

Q5: Do you agree with our proposed process for recognising certain industry codes? If not, how should we amend it?

We feel the process should be open and transparent with visibility and record on the FCA website.

Where an application for recognition has been made, this should be displayed on the FCA website with details of the relevant market, scope, aims and contact details. Once a draft code has been produced for review by the FCA, a consultation period should be opened with a link from the FCA website to the code and contact details of the authors. This will ensure a fully open code creation process with the opportunity for all market users to provide input and identify any areas of conflict. Following this period, the amended code would be subject to the FCA consultation process. The decision should be and remain publicly available on the FCA website along with any relevant details (e.g. reason for rejection).

Q6: Do you agree with the criteria proposed for deciding which codes to recognise? If not, what additional or alternative criteria should we consider?

We do agree with the proposed criteria and would support the inclusion of user, context and role details to allow firms to clearly identify whether the code would be relevant to their staff.

Where initial applications are made to the FCA for recognition of existing codes, we assume that condition ii. would be amended, or applied in practice, to 'set' rather than 'raise' standards.



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PART 2 – Discussion Paper on FCA Principle 5

Q7: Do you believe the FCA should consider extending the application of Principle for Businesses 5 (A firm must observe proper standards of market conduct) to unregulated as well as regulated activities? If not, please state why.

We do not feel it necessary to extend Principle 5 to unregulated activities as introduction of the conduct rules for all regulated firms will require individuals to observe proper standards of market conduct and require firms to ensure compliance and assess fitness and propriety.

Where the FCA has concerns over the actions of a firm, those actions will always be the result of an individual, or group of individuals. The introduction of the SM&CR and conduct rules for all regulated firms will provide the required accountability as the FCA will have the power to take enforcement action against all relevant individuals. It is unclear at this stage what additional benefits such an extension would provide.

Q8: What benefits and challenges do you believe this would pose to FCA authorised firms, the FCA or financial markets more generally?

Extension of Principle 5 to unregulated activities would place an additional burden of compliance on firms with associated costs of gap analysis, documentation, review, monitoring and testing.