Key Points

Consultation on “How fair and effective are the fixed income, foreign exchange and commodities markets?”

We support this initiative to solicit the industry’s views on assessing the degree of fairness and effectiveness in the FICC markets. The need for high standards, and a continuing and rigorous focus on fairness and effectiveness in the FICC markets, is fully accepted. We encourage the Authorities to collaborate, where appropriate, with the industry to build a market-led framework, including future infrastructure, that builds on existing good practices and applies to all market participants.

Whilst we believe that the overall structure of the FICC markets is fundamentally sound, we understand and agree with the need to ascertain what additional steps should be taken to monitor more effectively the functioning of these markets and provide a fair and balanced environment for all market participants.

These additional steps should include those set out below:

- **Establishing uniform code of conduct frameworks of high-level principles** that are global but allow for appropriate regional variances in operational practices. These codes should be supplemented by dynamic market practice guidance, developed by the industry and endorsed by the regulators, around products and associated practices where actual or potential conflicts of interest are most prevalent. There should be some type of enforcement mechanism and sanctions supporting these codes and the industry will need to be closely involved in all stages of their development;

- **Extending more granular market practice guidance** (for example, through the ”Strengthening accountability in banking” regime) for market participants at the day-to-day level, supported by tailored case studies with industry input to assist in resolving “grey” areas;

- **Fostering culture change in the industry** by embedding the principles of ethical behaviour, integrity and accountability throughout organisations, not just at board level;

- **Outlining best practice standards for front office supervision and control**;

- **Establishing an appropriately representative practitioner panel** which could comment constructively on proposed reforms before they are adopted;

- **Supporting criminal sanctions for unacceptable behaviour**, and rebalancing the regulatory enforcement focus away from inadvertent or accidental breaches;

- **Proactive and continuing revision of standards** in a dynamic and evolving market - what is applicable today may not be so at a later date; and

- **Considering the re-introduction of examinations** on relevant regulation and codes to be passed by individuals before working in the industry, as well as annual appraisals to confirm that knowledge is up to date.
Standardisation also has a role to play, although it is important to distinguish standardisation of disclosure and reporting (which we support and have helped establish) from standardisation of issuance practices, procedures and operations, which based on feedback from corporate issuers will likely result in more problems than it would solve.

Clarity, consistency and coordination are key principles that need to underpin any national or global regulatory initiative, and should be supported by a strong regulatory culture of surveillance and enforcement. Furthermore, standards of cross-border regulatory cooperation and consistency should be strengthened as inconsistencies in the regulatory approach of different jurisdictions can cause unfavourable outcomes such as potential market fragmentation and regulatory arbitrage.

The Authorities are better placed today than at any time in the past to ensure clarity and consistency of application. They have been (and will continue to be) provided with detailed market and trading information, through extensive transaction reporting.

Whatever the outcome of the Consultation, we urge the Authorities to consider carefully, the many diverse, complex and positive features of today's FICC markets and the specific measures already underway

- **The market maker model** is vital for the real economy by providing liquidity, enabling market participants to trade smoothly in and out of positions without excessive price volatility, providing certainty of credit exposure and enabling investor flows to raise financing.
- **Potential conflicts of interest will often arise in complex economies and markets:** the key is how these are identified and managed. The current conflict of interest rules under MiFID I (to be extended by MiFID II/R) which apply to authorised entities address these concerns.
- **Transparency helps ensure effective markets**, but inappropriate and excessive transparency could create unintended consequences: costs to investors could increase, issuers could be dis incentivated from issuing bonds, positions could be inferred and market makers would be unable to hedge and unwind their risks, discouraging client trades and reducing liquidity in the market.
- **FICC markets are global and comprise distinct asset classes and sub-asset classes** and it is important that the individual characteristics of the component FICC markets are considered within context so as to develop an appropriate framework that promotes both effectiveness and fairness. A "one-size-fits-all" approach will likely damage markets. The global nature of FICC markets requires international authorities to work closely together to ensure that regulations are implemented effectively and work on a cross-border basis. Any measures should also factor the important underlying purpose of FICC markets which is to facilitate liquidity generation in the system to support efficient capital allocation.
- **Foreign exchange forms the basis of the global payments system** and as such any steps to widen existing derivatives regulation to include FX spot need to be considered carefully. The application of derivatives regulation to the FX spot market would have unintended consequences of disrupting this widely established and well-functioning market, which is of key importance.
• **In the commodities markets**, entities undertaking similar or analogous activities should be regulated uniformly, in a consistent manner, regardless of the nature of the market participant. There has been a transfer of market share in trading from the major investment banks to trading companies and other corporates, many of whom are active in the commodity derivatives market and currently unregulated. We also note that information asymmetries and imbalances are a natural feature of the commodities markets, and understood by the various participants.

• **No additional benchmarks beyond those already proposed by the UK authorities should be brought into scope at this time**: the UK already has a comprehensive framework around certain critical benchmarks. However, the proposed EU Benchmark regulation raises concern around the global consistency and the appropriate proportionality of any benchmark regulatory regime. Any disruption in the availability of key benchmarks, as the result of fragmented regulation, risks creating instability. Coordination and consistency of existing efforts to improve the robustness of benchmarks are more important than undertaking new initiatives.

• **Sufficient time should be devoted** to evaluating the effectiveness of existing and contemplated regulation, at both European and global levels. Specific measures already underway include:
  o **disclosure of inside information**, required by the [MAD](#) [MAR](#) and [REMIT](#) market abuse regimes.
  o **increased monitoring and supervisory powers** under both existing (MiFID, EMIR and MAD/MAR) and future (MiFID II/R and REMIT) regimes, to ensure appropriate behaviour by market participants.

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1 Market Abuse Directive
2 Market Abuse Regulation
3 Regulation on Wholesale Energy Markets Integrity and Transparency
4 European Market Infrastructure Regulation