PositiveMoney

Financial Services and Markets Bill

Positive Money briefing, September 2022

Recommendations

- ➔ A new ‘competitiveness’ objective for regulators should be removed from the FSMB. A replacement objective to facilitate balanced and sustainable economic development across all regions of the UK would be preferable.
- ➔ ‘Call in’ powers risk increasing the finance industry’s influence over regulation and should be opposed.
- ➔ The proposed “regulatory principle” for net zero should be strengthened into a new statutory objective that obliges regulators to align the UK’s financial system with the goals of the Paris Agreement.[1]
- ➔ The Bill should include a requirement for the FCA to promote financial inclusion, at a minimum through a “have regard to” addition, if not a secondary objective.
- ➔ The FSMB should strengthen the position limits from MiFID II rather than weaken them. Deregulation via reforms to MiFID II could increase financial speculation on commodity prices, exacerbating the cost of living crisis.

Background

The Financial Services and Markets Bill (FSMB) is legislation updating the UK’s regulatory framework for financial services, as the government ‘onshores’ regulation that was previously set by the EU.

The main focus of the Bill is implementing the outcomes of the Future Regulatory Framework review, which sets out responsibilities and objectives for financial regulators - chiefly the Financial Conduct Authority (FCA) and Bank of England’s Prudential Regulation Authority (PRA). There are widespread fears that these reforms set the grounds for deregulation in a misguided attempt to maintain the competitiveness of the City of London as a financial centre post-Brexit, and civil society organisations have been campaigning to oppose them.[2]

Proposals have also been made to give the government new ‘call in’ powers, which would provide a channel for the finance industry to lobby Ministers to ‘call in’ regulators to review rules which they deem ‘uncompetitive’. **This, when combined with a new competitiveness objective, would essentially amount to regulators being given a primary objective for deregulation.** ‘Call in’ powers did not make it into the FSMB as introduced in July by the chancellor at the time, Nadhim Zahawi, but it is reported that a new leadership will seek to insert them into the Bill, despite concerns from the Bank of England.[3]

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[1] https://financeinnovationlab.org/wp-content/uploads/2022/05/6-May-2022-Climate-Briefing_FINAL.pdf
[2] https://financeforourfuture.org/
[3] https://www.ft.com/content/633e164e-53e2-42a4-a11c-e7c202290db7

Key elements of the FSMB

Competitiveness objective

- **The FSMB in its current form will give regulators a new secondary objective for "competitiveness and growth"**, defined as "facilitating, subject to aligning with relevant international standards— (a) the international competitiveness of the economy of the United Kingdom (including in particular the financial services sector), and (b) its growth in the medium to long term."
- Facilitating "international competitiveness", particularly for financial services, **will mean regulators being pressured to slash regulation** in order to compete with other jurisdictions and attract firms to stay in or move business to the City of London, to the expense of the wider public.
- A competitiveness objective would **reintroduce the failings of financial regulation pre-2008**. As the governor of the Bank of England, Andrew Bailey, remarked while head of the FCA, the Financial Service Authority (FSA) was made to promote competitiveness in the run up to the crash, and "it didn't end well for anyone, including the FSA."[4]
- Moreover, whatever growth can be achieved through financial deregulation will inevitably be centred around London and the South East of England, and offer little benefit to the rest of the country. **Growing the City of London acts as a drain on the rest of the country** - research suggests that an oversized financial sector cost the UK £4.5 trillion between 1995 and 2015.[5] Rather, an objective to facilitate balanced and sustainable economic development across all regions of the UK would be much more effective in delivering the government's objectives, particularly in regards to "levelling up".
- Provisions in the bill for social and environmental goals are much weaker. Despite calls for a core statutory objective related to the green transition[6], the government is proposing a much lower-priority 'regulatory principle' for net zero. Meanwhile, calls for regulators to have a statutory duty for financial inclusion[7] have been completely ignored. In practice, this means that **in any decision involving a trade-off between competitiveness and social or environmental issues, regulators will be forced to favour the former.**

MiFID II and position limits

- The Markets in Financial Instruments Directive II (MiFID II) is a framework for regulating financial markets, inherited from Britain's EU membership.
- A key victory on MiFID II won by campaigners such as Global Justice Now in 2014 was the introduction of 'position limits', and increased market transparency.[8]

[4] https://www.fca.org.uk/news/speeches/future-financial-conduct-regulation
[5] http://speri.dept.shef.ac.uk/2018/10/05/uk-finance-curse-report/
[6] https://financeinnovationlab.org/wp-content/uploads/2022/02/FRF-CSO-Joint-Statement-2022.pdf
[7] https://financeinnovationlab.org/lab-statement-treasury-committee-echoes-civil-society-calls-on-future-of-finance/
[8] https://www.globaljustice.org.uk/news/eu-takes-historic-step-stop-banks-betting-hunger/

- Position limits restrict the extent to which traders can speculate on financial markets. This is particularly important for markets such as commodities, where speculation can push up prices for consumers and producers - a factor currently driving the cost of living crisis.[9]
- **The government seeks to water down MiFID II's position limits through the FSMB, which would increase speculation and exacerbate the cost of living crisis.**[10]

Access to cash

- The FSMB will make the FCA responsible for access to cash, which is welcome as the Payments Systems Regulator has shown itself to be unfit for this purpose.
- The Bill seeks to ensure "reasonable provision" for access to cash - but it is unclear how this will be defined. Action is required urgently given the current pace of free ATM and bank branch closures.[11]

Stablecoins

- 'Stablecoins' are cryptoassets designed to maintain a stable value. Introducing a new 'digital settlement asset' definition, the FSMB seeks to bring stablecoins into the regulatory perimeter as a means of payment. The Treasury would be able to set regulations, in consultation with regulators.
- If, as the Bill suggests, regulation will be based on existing provisions for e-money (which must be fully backed by deposits or high-quality liquid assets), it is unclear what new benefits stablecoins will be able to offer. However there is a risk that firms may be willing to operate stablecoins at a loss in order to capture the payments market. This is especially worrying if, like social media companies, they are able to leverage network effects to rapidly scale-up.
- The risks stablecoins pose to monetary and financial stability require a cautious approach. If they are to function as a means of payment, they must be regulated accordingly. We would recommend that stablecoin issuers be regulated either as e-money issuers or as 'narrow banks', which would mean that the currencies are fully backed by high quality liquid assets.

Positive Money is a not-for-profit research and campaigning organisation, working towards reform of the money and banking system to support a fair, democratic and sustainable economy. We are funded by trusts, foundations and small donations.

For more information or to talk to a spokesperson please contact Simon Youel at simon.youel@positivemoney.org.uk or on 07817765517

[9] https://annpettifor.substack.com/p/why-are-western-governments-impotent
[10] https://www.globaljustice.org.uk/blog/2022/07/sunak-and-truss-to-give-bankers-more-power-to-gamble-on-food/
[11] https://news.sky.com/story/thousands-of-cash-points-switched-off-and-not-replaced-as-hundreds-of-bank-branches-close-12392922