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Dear FCA,

Financial Services Consumer Panel response to the Consultation on the new public offer platform (POP) regime

Whilst we acknowledge that not all the questions are applicable to the Panel, the consumer voice is critical to this debate as it is financial services consumers who ultimately stand to benefit from, or be harmed by, developments in the POP regime. Accordingly, the Panel welcome the opportunity to respond to the FCA's Consultation paper on the proposed rules for the new POP regime for public offers above £5 million over a 12-month period. In addition, please refer to the Panel's prior response as noted in paragraph 1.21¹

The Panel urges the FCA to ensure all policy changes, particularly those relating to upstream markets or activities that may affect or impact consumers, are considered through the lens of consumers. Specially, the Panel stresses the importance of evaluating how these policy changes either increase or reduce the possibility of harm for consumers. Although some policy changes within the new regime for public offers to trading may focus on wholesale products and activities, these will inevitably have an impact on consumers, particularly retail investors.

With this letter, the Panel has taken the opportunity to respond to the key considerations from a consumer perspective.

The Panel agrees that the new rules are expected to:

- provide better protection for investors by ensuring they receive sufficient and reliable information about investment opportunities, enabling them to make informed decisions and protecting them against fraudulent offers. This is particularly important, as it can be

¹ [20231006 final fscp response fca -engagement paper 5 - the public offer platform.pdf](#)

challenging for investors to find publicly available information about the issuer.

- improve transparency and reduce the risk of scams, which should, in turn, increase consumer confidence in the market.
- make it easier and more attractive for small and medium-size businesses to raise capital outside the public market in an effective and efficient way, helping those businesses access a broader investor base that can drive innovation, create value and promote growth in line with the FCA's secondary objective of enhancing international competitiveness and growth.

The Panel agrees that investors should have access to adequate, relevant, reliable, sufficient, accurate and high-quality information about the company and the securities that they are considering investing in or have already invested in.

The Panel supports the consultation proposal for POP operators to conduct sufficient due diligence checks on issuers and assess the appropriateness of issuers, ensuring that investors can make informed decisions.

The Panel agrees with the minimum information-gathering requirements proposed in the consultation paper as an important starting point, though not as a proxy for sufficient information. The Panel believes that the proposal provides a good balance between setting clear expectations while allowing flexibility for POP operators to gather additional information as needed for each specific issuer and offer.

The Panel believes that adding the following information requirements will provide further clarity for investors:

- Market Analysis and market position information, including industry trends, growth potential, key clients and exposure percentages for each client, competitive landscape and competitive advantages.
- Information on key suppliers and partners, including dependencies and risks.
- R&D activities and future innovation plans.
- Information on the issuer's environmental, social and governance (ESG) practices and risks, as this is increasingly important to many investors.
- Exit strategies, current and future valuations.

The Panel agrees that the level information required may vary in different cases and that it is the responsibility of POPs to determine whether it is appropriate to facilitate offers to investors based on the information gathered from a given issuer. The Panel also agrees that POPs should

take reasonable steps to fulfil their verification duties regarding the information collected.

The Panel supports the standards and expectations proposed for POP operators to analyse the information they gather and assess whether the issuer and its securities are suitable for public offers. The Panel also supports the proposal to distinguish between factual and non-factual information and POP's obligations with respect to different information types. The focus on plausibility for non-factual information is appropriate given the forward-looking nature of many claims by early-stage companies. Additionally, the Panel encourages the development of guidance documents that clarify the plausibility assessment, along with examples of what constitutes factual and non-factual information.

The proposed approach to creditworthiness assessment seems appropriate and proportionate. The Panel agrees with the proposed approach to creditworthiness assessment by POP operators, with the addition of the following considerations:

- The company's assets and investments, including their liquidity levels.
- The economic and industry conditions affecting the company.

The Panel agrees with the proposed approach for POP operators to communicate the results of their due diligence to investors, while complying with the relevant Conduct of Business Sourcebook (COBS) obligations and taking into account Consumer Duty's focus on consumer understanding when communicating to retail investors. The Panel believes that the proposed approach provides investors with key information in a digestible format while still allowing access to more detailed information if desired.

The Panel supports the proposed approach to provide investors with confirmation statements and any additional information, including details of significant changes regarding securities investors they have agreed to purchase, and those that may still wish to purchase.

The Panel does not disagree with the proposal to allow POP firms some degree of flexibility in determining the precise detail of services they are to offer and the format of information disclosure. However, this can only be on the basis that there is a standardisation of key components of disclosures to enable consumers to make meaningful comparison across investment options that best match their needs and risk appetite and therefore make informed decisions. The Panel also supports the proposal to apply existing financial promotion rules to firms' operating a POP.

The Panel believe that disclosure rules should be set flexible enough to accommodate the different mediums consumers might use to access the information. Key information, particularly regarding risks and costs, should be prominently presented at the early stages of the consumer journey to ensure it is properly understood.

The Panel also advocates for further consumer testing, focusing on information disclosures associated with this regime, prior to its launch. This would ensure consumers receive sufficient and accurate information, which is clear and understandable, to make effective, timely and appropriate decisions.

The Panel agrees with the proposal to require specific contractual terms between POP operators and issuers to ensure material information changes about offers are communicated with the POP operator and subsequently with investors.

Granting withdrawal rights in the event of material changes before an offer closes is a key investor protection. The Panel supports the proposal to grant such rights to investors if a material change in information is disclosed before an offer closes, aligning with the withdrawal rights available to investors in regulated securities markets. The Panel also supports ensuring that investors are informed of these rights and can exercise them until the relevant offer closes.

Despite the ongoing disclosure challenges highlighted in the consultation paper, the Panel disagrees with the proposal for no ongoing disclosure obligations after an offer closes. The Panel supports the introduction of ongoing disclosures to help investors obtain a clear and up-to-date view of their investments. A medium approach could be requiring POP operators to update investors on material events without being overly burdensome.

The Panel supports the policies and procedures proposed for POP operators to carry out their gatekeeping function, provided these continue to offer accurate, relevant, sufficient, and reliable information for investors at the point of engagement and on an ongoing basis.

Given the potentially higher risks associated with these investments, the Panel recognises that consumers should take responsibility for their investment decisions and only invest if their risk appetite aligns with the product or service offered.

The Panel believes consumers can only take responsibility for their investments when they make an active and informed choice about whether to invest or not (and the choice helps them achieve their financial goals), and when:

- They understand the products and services offered and associated risks.
- They trust that the products and services are backed by adequate, reliable, and sufficient information about the company and the securities they are considering investing or have already invested in.
- They are confident that the POP operators act in a manner that helps them make decisions aligned with their financial needs and objectives, and that the products and services offered provide fair value.

The Panel considers that consumer protection should be the key focus when applying the FCA's approach to liability and redress under the new regime. Where consumers rely on misleading statements when making investment decisions, they should have access to redress. This should also apply to situations where firms operating POPs fail to meet compliance requirements, resulting in incomplete or inaccurate information being delivered to investors, or risks not being properly communicated to investors. This said, the Panel expects that the POP regime is likely to provide a greater level of protection to investors than is the case for existing crowdfunding platforms.

The Panel strongly supports the right of consumers to refer complaints to the Financial Ombudsman Service (FOS) and to have access to the Financial Services Compensation Scheme (FSCS).

The Panel supports the approach for voluntary offers below £5 million, particularly when such offers are made by firms operating a POP. The Panel also favours issuing guidance for firms facilitating public offers below £5 million. Furthermore, the Panel urges the FCA to monitor the volume and size of public offers just below £5 million, as there may be attempts to circumvent the requirements for public offers above this threshold, which would result in fewer safeguards for investors.

The Panel agrees with the proposal to apply the Consumer Duty in the context of the new POP regime, so that POP operators can:

- act in a good faith towards retail investors.
- avoid causing foreseeable harm to retail investors.

Additionally, the Panel agrees that POP firms should ensure their communication is clear, meets the information needs of retail customers, and allows them to make effective, timely and well-informed decisions. Firms should also design and deliver customer support that meets the needs of retail customers, including those with characteristics of vulnerability.

The Panel supports applying the same remuneration incentive rules to both MiFID and non-MiFID firms with POP operations, as this would ensure they act in the best interests of platform investors.

The Panel agrees with the proposal to adopt a narrow definition of 'client' for prospective investors via POP operators, while also applying the broader definition of 'client' to both issuers and investors, consistent with crowdfunding platforms.

The Panel agrees with the proposal not to exclude overseas private companies from offering securities to the UK public and supports the proposal that POP operators should be able to communicate public offers from overseas issuers, not just UK incorporated companies. The Panel supports that POP operations regardless of the location of the company seeking to offer its securities, should comply with the rules.

The Panel recognises that firms choosing to operate POPs will incur costs related to compliance but has no specific comments regarding these costs.

In line with FCA's operational objectives to secure an appropriate consumer protection, the Panel would like to reiterate the key consumer message from previous responses. While the Panel acknowledges the FCA's secondary objective to enhance growth and competitiveness in the UK, the Panel would like to remind the FCA that the Secondary International Competitiveness and Growth Objective ([SICGO](#)) is secondary. The primary objective remains to ensure appropriate consumer protection.

There should be no trade-off between primary and secondary objectives. The secondary objective should only be pursued once the primary objective has been fully met. The secondary objective should not dilute the primary objectives.

The Panel acknowledges the FCA's efforts to measure the success of the new POP regime. However, the Panel notes that the success measures outlined in the consultation paper focus primarily on POP firms, with little reference to consumers. The Panel considers that the FCA should monitor the operation of the new system and commit to reducing regulatory thresholds if there is evidence of consumer harm. This includes active monitoring of associated financial promotions and social media and enforcement action against any violations. The FCA should also regularly take the pulse of the consumer during their investor journey to ensure that they are satisfied with their protections and to test consumer confidence and trust. In addition, the Panel believes that the FCA should take this unique opportunity to build a database of the number and

successes of small-business issuers, especially those that support ESG efforts and that are women and minority-owned businesses.

The Panel appreciates the FCA's efforts in developing the POP regime and the potential design of an Overseas Offers regime, as referenced in paragraph 2.4 of the consultation paper, and looks forward to further engagement on these topics.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel