



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

Dear Sharon,

16 January 2025

RE: GROUPED DEBATE ON FINANCIAL SERVICES AND MARKETS ACT 2000 (DESIGNATED ACTIVITIES) (SUPERVISION AND ENFORCEMENT) REGULATIONS 2024; SHORT SELLING REGULATIONS 2024; FINANCIAL SERVICES AND MARKETS ACT 2000 (RING-FENCED BODIES, CORE ACTIVITIES, EXCLUDED ACTIVITIES AND PROHIBITIONS) (AMENDMENT) ORDER 2024

Thank you for your contributions during the grouped Parliamentary debate on the Financial Services and Markets Act 2000 (Designated Activities) (Supervision and Enforcement) Regulations 2024, the Short Selling Regulations 2024 and the Financial Services and Markets Act 2000 (Ring-fenced Bodies, Core Activities, Excluded Activities and Prohibitions) (Amendment) Order 2024, on 17 December. During this debate you asked for further detail on statistics on the frequency of tribunals, as well as the difference between powers of direction under the Short Selling Regulations 2024 and Consumer Composite Investments (Designated Activities) Regulations 2024.

Statistics on frequency of tribunals

You asked about how often Financial Conduct Authority (FCA) directions and other enforcement actions are challenged by referral to the Tribunal. The Treasury does not hold this information. However, we have contacted the FCA, and it will write to you on the matter in due course. A copy of its letter will be placed in the Library of the House of Lords.

Difference between powers of direction under Short Selling Regulations 2024 and Consumer Composite Investments (Designated Activities) Regulations 2024

You asked why the powers of direction are different between the Short Selling Regulations 2024 and the Consumer Composite Investments (Designated Activities) Regulations 2024. This reflects differences between the two regimes. The power of direction under the Short Selling Regulations 2024 allows the Financial Conduct Authority to direct firms in the case where they suspect or know that a person is breaching short selling-related rules. As you noted in the debate, the Consumer Composite Investments (Designated Activities) Regulations 2024 includes a broader power of direction for the FCA to direct persons to advance their operational objectives. This is intentionally wider, given the retail-focused scope of the Consumer Composite Investments (Designated Activities) Regulations 2024. It is right that the FCA should have sufficient powers to ensure appropriate consumer protection in this area. It is also worth noting that, under the Short Selling Regulations 2024, the FCA's

power to issue a direction to a firm which is failing, or likely to fail, to comply with a requirement, sits alongside the broad powers in Part 4 of the Regulations for the FCA to intervene in exceptional circumstances. This can include directing firms to notify them of individual net short positions (at a lower threshold than that which would trigger the “business as usual” daily notification requirement), and restricting or even prohibiting short sales in particular instruments. Taken together alongside the FCA’s supervisory and enforcement powers in the Financial Services and Markets Act 2000, the FCA will have the ability to address risks or suspected wrongdoing in relation to short selling.

Thank you again for your contributions during this debate. This letter is copied to all noble Lords who spoke in the debate and a copy will be placed in the Library of the House of Lords.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S. M. Livermore', written in a cursive style.

Lord Livermore

FINANCIAL SECRETARY TO THE TREASURY