



HM Treasury

Regulation of non-transferable debt securities (mini-bonds)

A consultation

April 2021

Regulation of non-transferable debt securities

A consultation



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN 978-1-911680-18-5

PU3060

Contents

Chapter 1	Introduction	2
Chapter 2	Overview of the non-transferable debt securities market	5
Chapter 3	Existing regulatory arrangements	10
Chapter 4	Proposals for reform	16
Annex A	List of questions	24
Annex B	Glossary of terms	25
Annex C	Processing Personal Data	27

Chapter 1

Introduction

- 1.1 Non-transferable debt securities (NTDS), commonly referred to as 'mini-bonds', are unlisted bonds typically issued by companies to retail investors in order to raise finance. As non-transferable securities, investors cannot sell their investment, which normally must be held until maturity. The issuance of NTDS is, in general, not a regulated activity for the purposes of the Financial Services and Markets Act 2000 (FSMA), although the marketing of such products falls within the scope of the Financial Promotions Regime¹.
- 1.2 The NTDS market emerged in 2009 as firms sought an alternative form of finance following a fall in bank lending to small and medium-sized enterprises after the financial crisis. This demand for capital was met by retail investors looking for a higher return on their savings in the low-rate post-crisis climate. Initially, NTDS were primarily issued by established consumer-facing businesses who used their offer to raise working capital and as a tool for encouraging company-consumer engagement, with many issues offering additional benefits – such as access to free or discounted products – alongside a return on their investment.
- 1.3 From 2015, there was a significant increase in issuance by companies who focused on raising capital to invest in projects of a third party, rather than to invest in expanding their own businesses. London Capital & Finance plc (LCF) was a prominent firm acting in this market, and issued its own NTDS, which were bought by over 11,000 investors with a total value of more than £230m. LCF was authorised by the Financial Conduct Authority (FCA) to undertake a number of regulated activities², however the majority (if not all)³ of LCF's revenue was generated from its unregulated activities, including its core activity of issuing NTDS. LCF's authorised status, however, allowed LCF to communicate its financial promotions of NTDS, without the need for them to be approved by another authorised firm.
- 1.4 The FCA conducted an unannounced site visit at LCF's premises on 10 December 2018 as a result of serious concerns regarding LCF's conduct, including issues with the accuracy of the firm's financial promotions.

¹ 'Financial Promotions Regime' refers to the Financial Services and Markets Act (Financial Promotion) Order 2005 and related FCA rules on financial promotions.

² Further information on the regulated activities that LCF had FCA permission to carry on can be found [here](#).

³ See page 32 of the Independent Investigation into the FCA's Regulation of LCF, [here](#).

Following this intervention, the FCA imposed various requirements, including restrictions preventing LCF from issuing or approving further financial promotions⁴. The FCA's subsequent concerns regarding the viability of LCF's business resulted in a suggestion by the FCA that the firm should obtain advice regarding its solvency. LCF entered administration on 30 January 2019⁵.

1.5 When the firm failed, the Treasury directed the FCA to conduct an independent investigation⁶ into the events relating to the FCA's regulation of LCF during the period 1 April 2014 to 30 January 2019. The investigation, carried out by Dame Elizabeth Gloster, found that the FCA did not discharge its functions in respect of LCF in a manner which enabled it effectively to fulfil its statutory objectives⁷. The report identified failings grouped into three broad categories: a) the FCA's approach to its regulatory perimeter was unduly limited; b) the FCA failed to consider LCF's business holistically; and c) FCA staff who reviewed materials submitted by LCF had not been trained sufficiently to analyse a firm's financial information to detect indicators of fraud or other serious irregularity.

1.6 The report made 13 recommendations, nine of which were targeted at the FCA's policies and practices and four which were focused on the regulatory regime. The latter included a recommendation that the Treasury should consider whether:

- a. the Markets in Financial Instruments Directive II ('MiFID II') activity of 'execution of orders on behalf of clients'⁸ (as it applies in the UK); or
- b. section 85 of FSMA (the prohibition on dealing in transferable securities without a prospectus),

should be extended to non-transferable securities⁹. These policy options are explored within this consultation (the first option is considered within the broader policy option to make the direct-to-market issuance of certain NTDS a regulated activity).

1.7 Alongside the independent investigation, the Treasury announced in May 2019 that it would consider the regulatory arrangements in place for the issuance of direct-to-market¹⁰ NTDS to retail investors. Although this review was prompted by the failure of LCF, it has been carried out in light of several other issuers of NTDS failing.

1.8 This review has been supported by independent research into NTDS and their role in the economy, conducted by London Economics Ltd and YouGov. The

⁴ Second Supervisory Notice from the FCA to LCF, 17 January 2019 (found [here](#)).

⁵ Further information on the administration of LCF can be found [here](#).

⁶ The Direction to the FCA can be found [here](#).

⁷ The report, as well as the FCA response to it, can be found in full [here](#).

⁸ As defined in article 4(5) of MiFID II.

⁹ Recommendation 11 in the Dame Elizabeth Gloster report.

¹⁰ A 'direct-to-market' issue of securities occurs when an investor purchases the security directly from the issuer. In these issues, there is no authorised person which acts as an intermediary between the investor and the issuer.

report by London Economics and YouGov has been published alongside this document.

- 1.9 As part of the review, and now this consultation, the Treasury has sought to:
- a. better understand the landscape of debt security issuances to retail investors (see Chapter 2 of this document);
 - b. map out the current regulatory framework (see Chapter 3);
 - c. outline the case for further regulation relating to the issuance of NTDS and proposed two options for regulatory reform (see Chapter 4):
 - i. making the direct-to-market issuance of certain NTDS where the proceeds of the issue are used to on-invest or on-lend a regulated activity; and
 - ii. extending the scope of the Prospectus Regulation to cover NTDS, so that public offers of NTDS would require an FCA-approved prospectus.
- 1.10 A glossary of terms used throughout this consultation can be found in Annex B

How to respond to this consultation

- 1.11 The government welcomes views from all interested parties on this consultation, including from firms who offer NTDS and retail consumers who have invested in these products. The government would particularly welcome responses to the questions in Chapter 4 on the proposed options for the regulation of NTDS. When providing answers to these questions the government would appreciate if stakeholders could explain their thinking, and provide any additional information that would they feel would assist the government when considering its next steps.
- 1.12 The government would also appreciate any information from stakeholders pertaining to the number of consumers who currently hold NTDS, the amount they hold and the type of NTDS; and the number of issuers of NTDS, the amount they issue and the type of NTDS they issue.
- 1.13 The consultation will run from 19th April to 21nd July. You can respond by emailing NTDS-Consultation@hmtreasury.gov.uk.

Chapter 2

Overview of the non-transferable debt securities market

- 2.1 This chapter explains the nature and origins of the NTDS market, its function in the economy and explores whether retail investors have the capacity to understand the risks involved with investments of this type. This draws on research carried out by London Economics, which has been published alongside this consultation document.

Non-Transferable Debt Securities

- 2.2 A debt security is a type of financial instrument issued by firms to investors as a way of raising finance. Unlike equity investments, such as shares, debt securities do not entitle the investor to a share of the ownership of the issuing company. Instead, the issuer will offer investors a fixed rate of interest for a pre-defined period. At the end of this period, the issuer repays the capital to the bondholder.
- 2.3 Common examples of debt securities include government bonds (issued to help the government fund its expenditure) and corporate bonds (used by companies, for example, to fund their expansion or refinance existing debt). These bonds may be traded on an exchange, such as the London Stock Exchange, allowing investors to exit their investment before the bond matures by selling it to another investor.
- 2.4 Debt securities which cannot be traded on an exchange are referred to in this document as being unlisted. As shown in Figure 1, NTDS are a particular type of unlisted security which, in addition to not being traded on an exchange, cannot be legally transferred from one owner to another. This means investors in these products are typically 'locked in' until they mature - in other words they cannot exit their investment early¹¹.

¹¹ Issuers of NTDS can allow investors to redeem early. However, the London Economics study observed that this option was available in a negligible minority of cases. (See page 8 of the report). While transferable unlisted debt securities can be legally transferred from one owner to another, and listed bonds may be traded on the secondary market, this does not mean that a liquid secondary market will exist for them. Where there is not, the effective 'transferability' of the security will be similar to an NTDS. In relation to listed bonds, this issue is discussed in the pages 19-21 of the FCA's consultation on the marketing of speculative illiquid securities (including speculative mini-bonds) to retail investors, which can be found [here](#).

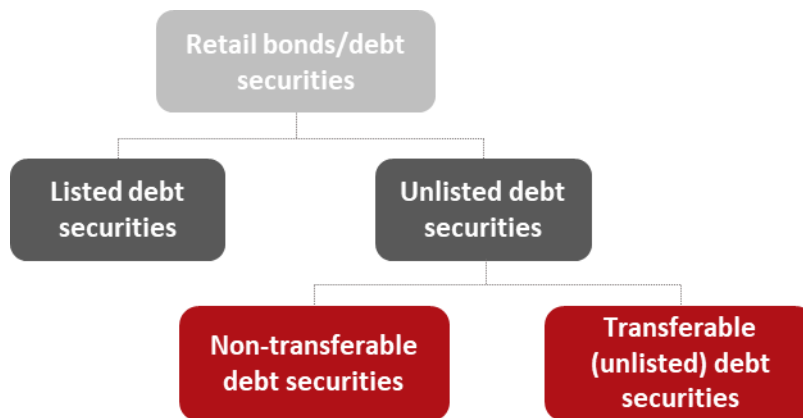


Figure 1: Retail bond market. Adapted from a diagram in London Economics report¹².

2.5 When compared with other investments – such as diversified bond funds – NTDS concentrate risk¹³, given the investment provides exposure to only one company. They are also commonly, but not exclusively, issued by companies with a short track record of borrowing and not able to achieve financing through other traditional routes. These characteristics, and the fact that there are generally fewer regulatory protections and less transparency than for listed bonds, mean that NTDS are generally considered to be a high-risk investment product. To reflect their level of risk, NTDS typically offer high interest rates, typically between 6-9%¹⁴.

The evolution of the NTDS Market

2.6 Analysis undertaken by London Economics shows that issues of NTDS steadily rose in number from 2009, in part due to reductions in bank lending to small and medium-sized enterprises after the financial crisis¹⁵. NTDS issuances were an attractive alternative for many businesses requiring finance, given their relative lower cost compared with other forms of finance (partly due to being subject to a lighter regulatory regime, as discussed in more detail in Chapter 3).

2.7 The London Economics report also shows that the characteristics of NTDS issuers have changed significantly since 2009. Prior to 2015, NTDS were primarily issued by established consumer-facing businesses (herein referred to as 'real economy' issuers) seeking to raise working capital and as a tool for encouraging company-consumer engagement, with many issuers offering additional benefits – such as access to free or discounted products – alongside a return on their investment. This is illustrated in Figure 2, which shows food and drink, renewable energy and retail firms representing the largest number of NTDS issuers before 2015. The London Economics study found that the prominence of firms from these sectors was driven in part by

¹² Adapted from the diagram in page 10 of the London Economics report.

¹³ When investing more in a particular investment there is a higher risk of loss when compared to diversifying investments.

¹⁴ See page 10 of the London Economics report.

¹⁵ See page 24 of the London Economics report.

consumers’ desire to feel a part of a brand, company or cause they know, like or support.

2.8 From 2015, there was a rapid increase in the number of issuances by companies (such as LCF) who typically focused on raising capital to invest in projects of a third party (which often took the form of loans to small and medium-sized enterprises) rather than to invest in expanding their own businesses¹⁶. The significant growth in this sub-sector can be seen in Figure 2 (where London Economics use the term ‘financial services’ to describe this part of the market). The capital raised by these firms significantly outstripped that raised by ‘real economy’ issuers (both before and after 2015). London Economics note these issuers are disproportionately represented among failed issuers of NTDS¹⁷. For these NTDS issues, the prospective return offered to investors appears to have been the primary motivator to invest in such products, rather than desire to feel a part of a brand¹⁸.

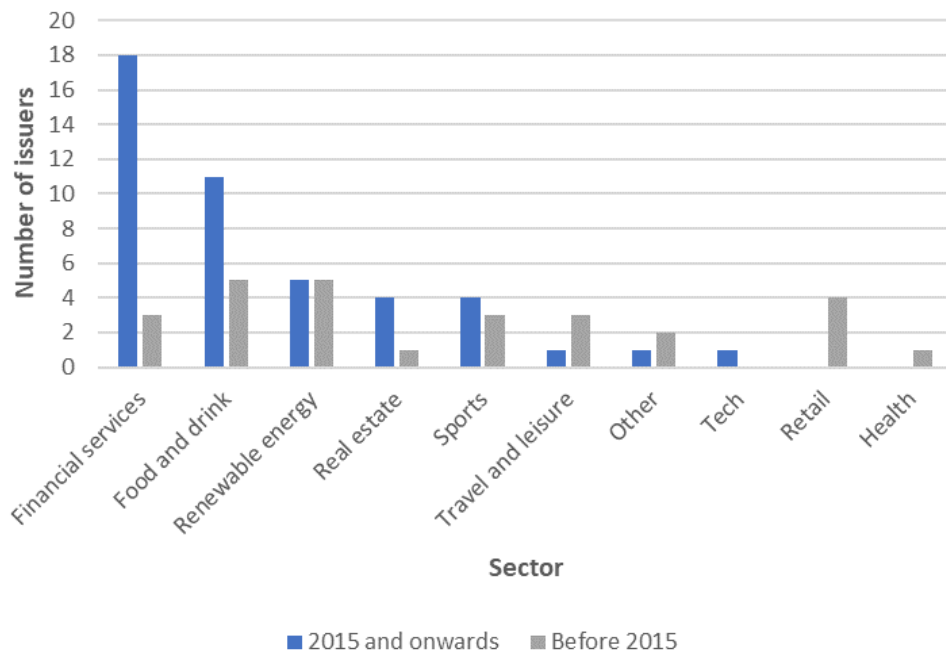


Figure 2: This figure shows the number of mini-bond issuers from different sectors in the time periods displayed. Each issuer is counted at most once in each period. **Source: London Economics mini-bond register and FAME data¹⁹.**

2.9 London Economics found that the NTDS market is currently in decline²⁰. It is believed that this trend has been accelerated by the recent failures of several large issuers (LCF being the most prominent) which have highlighted the

¹⁶ London Economics describes financial services NTDS firms as those who “use the funds raised by their mini-bond issues to invest into the projects of a third party, rather than to invest in expanding their own businesses.” For more detail, see page 31 of the report.

¹⁷ See page 44 of the London Economics report.

¹⁸ See page 46 of the London Economics report.

¹⁹ The London Economics mini-bond register contains information on 152 mini-bonds issued in the UK between 2009 and 2019 and the 68 companies that issued them. FAME is a proprietary database published by Bureau van Dijk.

²⁰ See page 12 of the London Economics report.

high-risk nature of these investments²¹. However, the study notes that the number of firms issuing NTDS had been falling before this reputational crisis, in large part driven by a shift towards the issuance of unlisted but transferable²² debt securities, which can be included within an innovative finance ISA. (NTDS cannot be held within an innovative finance ISA).

Consumer understanding

- 2.10 As noted in paragraph 2.5, the characteristics of NTDS mean they are considered a high-risk investment product, with investors returns predicated on the NTDS issuer being able to pay a regular coupon and then repay investors' capital when the bond matures. While London Economics' analysis shows that most investors in these securities are aware that they could lose their money, a number of stakeholders²³ consulted as part of their study thought investors underestimated the risk of investing in NTDS. Various reasons are suggested for this, including investors not properly understanding concentration risk; the implications of ranking in fixed income investing (NTDS are typically subordinate and unsecured, meaning that in the event that the issuer goes into administration, the investor's money would be paid back only after all the other debts of the issuer were paid); the complex security structure of some of NTDS; or the financial statements attached to a bond offer²⁴.
- 2.11 Despite these complexities, London Economics note that very few investors took professional advice on their investment (fewer than 1 in 5)²⁵ or understood the relevant regulatory protections. A survey carried out as part of their study found, for example, that a third of respondents thought that "mini-bonds are regulated by the Financial Conduct Authority so are a safe investment", while 41% believed that "mini bonds are covered by the Financial Services Compensation Scheme (FSCS)". Only a third of respondents were found to disagree with those claims, both of which are incorrect²⁶.
- 2.12 London Economics found that investors' understanding of these risks and protections (or lack thereof) is dependent on how information is presented to them. Stakeholders consulted as part of their study found that labels such as 'FCA-authorized' have been used to promote NTDS, contrary to FCA rules (which state that this should not be used by an authorised person to

²¹ Page 42 of the London Economics report notes that almost a quarter (24%) of all issuers identified during their research defaulted. Page 43 of the report outlines the NTDS issuers that have failed between April 2013 and October 2019.

²² As noted in footnote 11, although these bonds are transferable this does not mean there is a liquid secondary market for them and that investors are actually able to exit their investment early if they want to.

²³ London Economics carried out stakeholder interviews with 11 issuers, 3 intermediaries, 1 crowdfunding platform, 2 independent financial advisers, 3 public authorities (FCA, FSCS, FOS), 1 administrator of a failed issuer and 1 academic researcher.

²⁴ See page 57 of the London Economics report.

²⁵ See page vi of the London Economics report.

²⁶ See page 58 of the London Economics report.

promote its unregulated activity²⁷), and may suggest a level of scrutiny or degree of protection to consumers that does not necessarily exist²⁸. A similar effect was seen when it was suggested that NTDS investments are ISA eligible, something which is perceived to give NTDS investments legitimacy and an appearance of being a more mainstream savings product. (NTDS are not ISA-eligible, although some have been sold as such.)²⁹

- 2.13 London Economics also observed marketing practices that could be construed as misleading and aggravate investors' misunderstanding of NTDS. This included statements that sought to downplay the risks of investing³⁰. Again, this would be a breach of FCA rules³¹.

²⁷ [COBS 4.2.4G \(4\)](#) states that a firm should ensure that a financial promotion that names the FCA, PRA or both as its regulator and refers to matters not regulated by either the FCA, PRA or both makes clear that those matters are not regulated by the FCA, PRA or both. This matter is also addressed in the [FCA's Dear CEO letter of 9 January 2019](#) and the [guidance](#) it published for firms approving financial promotions in November 2019. It is also worth noting the provisions of [GEN 4.5](#).

²⁸ See page 58 of the London Economics report.

²⁹ Note, unlisted but legally transferable debt securities may be eligible to be held with an ISA (provided they meet additional criteria).

³⁰ See pages 68 – 70 of the London Economics report.

³¹ See for example COBS 4.5.2R (2), under which, among other requirements, a firm must give a fair and prominent indication of any relevant risks.

Chapter 3

Existing regulatory arrangements

- 3.1 This Chapter explains the key aspects of the current regulatory regime for NTDS, including how it sits within the wider debt security legislative framework.

Issuance of non-transferable and transferable debt securities

- 3.2 In order to undertake a regulated activity, a person must generally be authorised by the FCA or the Prudential Regulation Authority (PRA). Authorised firms must comply with certain regulatory requirements depending on the activity, or activities, they are authorised to carry out. In most instances, the issuance of NTDS is not a regulated activity, as explained in the following subsections.

Dealing in investments as principal and the 'MiFID Override'

- 3.3 Under Article 14 of the Regulated Activities Order (RAO)³², the selling or underwriting of securities (including debt securities) is a regulated activity, specifically 'Dealing in investments as principal'. However, Article 18 provides an exclusion from this activity for firms who issue their own securities (including debt securities)³³, unless the 'MiFID Override' applies.
- 3.4 The 'MiFID Override' is contained in Article 4(4) of the RAO and has the effect that where an activity would otherwise benefit from an RAO exclusion (such as Article 18), the exclusion does not apply if that activity is treated by MiFID³⁴ as a regulated investment service or activity. The issuance of securities is considered to fall within the MiFID service of 'execution of orders on behalf of clients'³⁵ if the following two conditions are met:

³² The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

³³ See Article 18 of the RAO.

³⁴ MiFID II is an EU directive which, along with the Markets in Financial Instruments Regulation (MiFIR), concerns the regulation of financial markets and the provision of investment services. While the UK was an EU member state, the regulatory framework set out under MiFID was transposed into UK law. Although MiFID II no longer applies directly in the UK, the concept of a MiFID investment firm, a MiFID investment service, and the requirements derived from MiFID, remain part of the UK's regulatory framework, as amended for the purposes of leaving the EU. For ease of reference, the UK legislation that transposed MiFID II, and the relevant EU requirements that the UK has onshored, will be referred to as 'MiFID' throughout this consultation.

³⁵ The list of MiFID services and activities in Section A of Annex I of MiFID II, which includes 'execution of orders on behalf of clients' has been onshored in Part 3 of Schedule 2 to the RAO. [Article 4\(1\)\(5\)](#) of MiFID II states that, "execution of orders on behalf of

- a. The security is issued by a firm whose “regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis”, i.e. it is a MiFID investment firm; and
- b. **The activity relates to a MiFID financial instrument.** While transferable securities fall within the definition of a MiFID financial instrument, non-transferable securities do not³⁶.

3.5 This means that a MiFID investment firm issuing a direct-to-market transferable debt security (i.e. where there is no intermediary involved) would be carrying out the MiFID service of ‘execution of orders on behalf of clients’, and through the operation of the ‘MiFID Override’ would be captured under the regulated activity of ‘dealing in investments as principal’. In contrast, an NTDS issuer does not fulfil the conditions set out in paragraph 3.4 – in particular, because an NTDS is not a MiFID financial instrument. The ‘MiFID Override’ will therefore not apply and NTDS issuers can continue to rely on the exclusion in Article 18 of the RAO, meaning NTDS issuers are not carrying out a regulated activity. The instances in which a debt security is considered a regulated activity is shown in Figure 3.

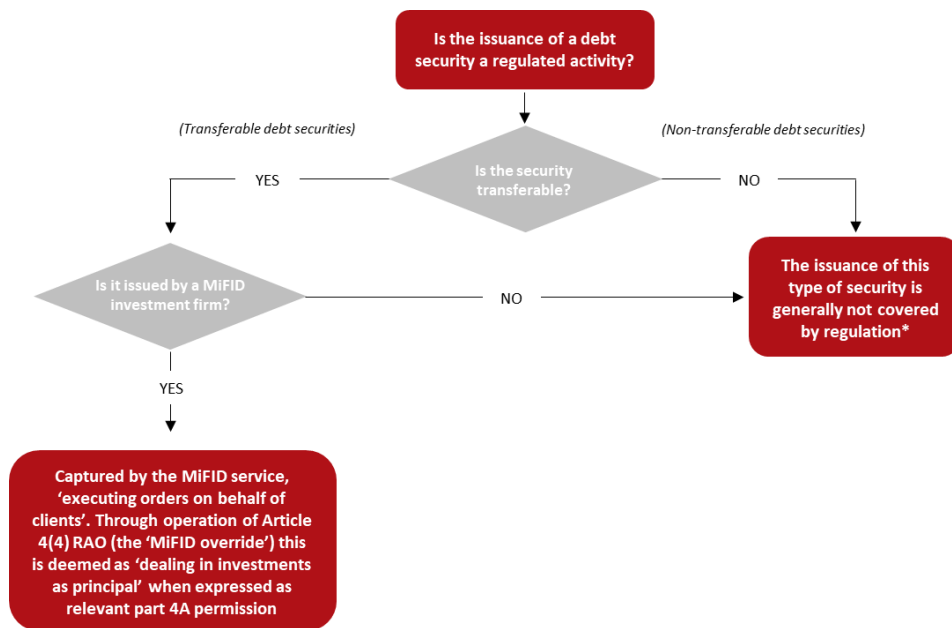


Figure 3: Branch diagram showing when the issuance of a retail debt security is considered a regulated activity’.

*While the issuance of the debt security may be unregulated, an entity acting as an intermediary between the issuer and the investor (such as a crowdfunding platform) would possibly be carrying out a regulated activity e.g. ‘arranging deals in investments’ or ‘dealing in investments as agent’.

clients’ means acting to conclude agreements to buy or sell one or more financial instruments on behalf of clients and includes the conclusion of agreements to sell financial instruments issued by an investment firm or a credit institution at the moment of their issuance”.

³⁶ The list of MiFID financial instruments in Section C of Annex I of MiFID II, which includes ‘transferable securities’, has been onshored in Part 1 of Schedule 2 to the RAO.

Exemption from the activity of 'accepting deposits'

- 3.6 Receiving deposits from investors and then lending that money to others or financing any other activity of the person accepting the deposit is classified as the regulated activity of 'accepting deposits'³⁷. There is an exclusion from this activity for firms who, in exchange for taking a sum from investors, issue a debt security in return³⁸. This means that the activity of issuing NTDS does not constitute 'accepting a deposit'.

Prospectus Regulation

- 3.7 Section 85 of FSMA prohibits offers of transferable securities to the public "unless an approved prospectus has been made available to the public before the offer is made"³⁹. A prospectus is required to contain detailed disclosures about the issuer's business and the securities being offered and needs approval from the FCA.
- 3.8 Among other requirements, a prospectus must contain information on the risk factors specific to the security or the issuer which may have a material impact on an investor's decision whether to invest in a company's securities. There is also a liability regime which applies to the issuer producing the prospectus⁴⁰ should they fail to provide all necessary information to allow an investor to make an informed assessment of the securities which are subject to a public offer. Importantly, these obligations to provide certain information in a prospectus go beyond those required for a financial promotion (discussed in more detail below).
- 3.9 However, the requirement to produce a prospectus only applies to 'transferable securities' (as defined by the Prospectus Regulation⁴¹). This means that this requirement does not cover a public offer of NTDS. There are also some important exemptions from the obligation to produce a prospectus, for example, offers of transferable securities to the public which raise less than €8 million over a 12-month period.

Financial Promotions Regime

- 3.10 A financial promotion is an invitation or inducement to engage in an investment activity, communicated by a person in the course of business. NTDS fall within the scope of the Financial Promotions Regime. This means that while firms do not generally need to be authorised to issue their own

³⁷ See Article 5 of the RAO.

³⁸ See Article 9 of the RAO.

³⁹ Contravention of this prohibition is a criminal offence. (See section 85(3) of FSMA).

⁴⁰ See section 90 of FSMA.

⁴¹ The definition given at Article 2(a) of the Prospectus Regulation refers to transferable securities as defined in Article 2(1)(24) of MiFIR, i.e. those classes of securities which are negotiable on the capital market (with the exception of the instruments of payment).

NTDS, any related financial promotions⁴² must be communicated or approved by an FCA-authorized person (or otherwise be subject to an exemption in the Financial Promotions Order⁴³). In practice, this means that issuers of NTDS require an FCA authorised firm to approve promotions on their behalf, unless they are authorised to carry out another financial services activity (in which case they can communicate their own financial promotions) or are covered by an exemption in the Financial Promotion Order.

- 3.11 The FCA Handbook⁴⁴ sets out the rules which apply to financial promotions communicated or approved by authorised firms. Those rules include the basic requirement that financial promotions must be “fair, clear and not misleading”⁴⁵. In addition, promotions may need to comply with FCA product-specific rules⁴⁶, depending on the type of product or service being marketed. The rules apply to authorised firms who communicate their own financial promotions and to authorised firms who approve promotions for an unauthorised person.
- 3.12 The government has recently consulted⁴⁷ on plans to establish a regulatory ‘gateway’, which an authorised person must pass through before it is able to approve the financial promotions of unauthorised persons⁴⁸. This change would lead to several improvements, such as enabling the FCA to exercise more effective oversight and supervision of authorised persons that approve financial promotions on behalf of unauthorised persons. The proposals apply to authorised firms approving financial promotions for NTDS. However, they do not impact the regulatory framework for the issuance of the security itself, which is what is considered in Chapter 4 of this consultation.

FCA restriction on the marketing of ‘speculative illiquid securities’ to retail investors

- 3.13 Partly in response to the failure of LCF, in November 2019 the FCA made rules under its temporary product intervention powers⁴⁹ which banned the promotion of ‘speculative illiquid securities’ to most retail consumers (although firms were still able to market these products to high net worth or sophisticated investors where certain conditions were met)⁵⁰. The temporary

⁴² By virtue of paragraph 3 of Part 1 to Schedule 1 and paragraph 15 of Part 2 to Schedule 1 of the Financial Promotions Order.

⁴³ The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.

⁴⁴ For investment business, the financial promotions rules are primarily in COBS 4 of the FCA Handbook.

⁴⁵ See [COBS 4.2](#), for example.

⁴⁶ Specific rules relevant to NTDS include those regarding non-readily realisable securities (see [COBS 4.7.7](#)) and speculative illiquid securities (more detail in paragraphs 3.13 - 3.15).

⁴⁷ The consultation on this proposal ran from July to October 2020. Link [here](#).

⁴⁸ This consultation can be found [here](#). The government will be publishing a response in due course.

⁴⁹ Further detail on the FCA’s temporary ban can be found [here](#).

⁵⁰ Under the FCA’s marketing restriction, speculative illiquid securities can only be marketed to high net worth and sophisticated investors once they are categorised as such and following a preliminary suitability assessment. Improved risk warnings and disclosures are also required.

ban took effect from 1 January 2020 and following a consultation process during 2020⁵¹ has been replaced by permanent rules⁵² that came into force on 1 January 2021⁵³.

- 3.14 For the purposes of the permanent ban, the FCA describes speculative illiquid securities as debentures (including mini-bonds) and preference shares with a denomination of less than £100,000 where the issuer uses some or all of the funds raised to lend to a third party, buy or acquire investments, or buy or fund the development of property (subject to certain exemptions). Therefore, the marketing ban applies to complex securities issues where the funds raised by the issuer are used to lend to or invest in other companies (as well as where those funds are used to acquire other investments or buy or fund the development of property), as opposed to those which are issued by a company to raise funds for its own commercial business activities (like those described in paragraph 2.7)⁵⁴.
- 3.15 As discussed in paragraph 2.8, from 2015 the majority of NTDS issues have been by firms who raise capital to lend to or invest in other companies. The FCA's marketing restriction is therefore likely to have significantly constrained the NTDS market (although the London Economics study notes that the market was already in decline before this measure was put in place). The government is supportive of the measure and believes that the intervention has improved protection for retail investors from the highest risk retail debt securities. However, because of its limited powers over unauthorised issuers of speculative illiquid securities, the FCA's ban relates solely to the marketing of these securities and does not restrict or provide supervisory powers over their issuance⁵⁵.

Eligibility for compensation and redress schemes

- 3.16 FSMA established two schemes to support consumers in relation to their engagement with activities undertaken by authorised persons: the Financial Services Compensation Scheme (FSCS) and the Financial Ombudsman Service (FOS).
- 3.17 The FSCS is the UK's statutory compensation scheme for customers of authorised financial services firms. It can pay compensation to customers if a firm has failed and the FSCS has declared it to be 'in default', (on the basis that the firm is not in a financial position to meet claims against it). It is free to use and funded by the financial services industry.
- 3.18 The FOS is a free service to help resolve complaints between customers and financial services firms on a fair and reasonable basis, as an alternative to the

⁵¹ The consultation on the FCA ban on the marketing of speculative illiquid securities can be found [here](#).

⁵² The policy statement can be found [here](#).

⁵³ These rules are contained in COBS [4.14](#).

⁵⁴ Although there are other marketing rules in place, for example the rules for direct offer financial promotions of non-readily realisable securities in COBS 4.7.7 R.

⁵⁵ As explained in the FCA's consultation paper (CP 20/08), found [here](#).

courts. It can help with complaints about most types of financial products and services provided in or from the UK.

- 3.19 As explained in paragraphs 3.5 and 3.6, the issuance of a NTDS is generally not a regulated activity. Investors therefore do not generally have access to the FSCS or the FOS if something goes wrong. This means if the issuer of an NTDS has become insolvent, and the investor does not receive their money back, there is generally no recourse to the FSCS⁵⁶. Equally, if a customer has a complaint about the issuer while it is still operating, the FOS ordinarily has no jurisdiction to resolve the matter.

⁵⁶ It should be noted that in any case, the FSCS does not cover losses resulting solely from poor investment performance.

Chapter 4

Proposals for reform

4.1 This chapter discusses the case for further regulation relating to the direct-to-market issuance of NTDS and then sets out two policy options for consideration, which build on the recommendations made in Dame Elizabeth Gloster's report into the FCA's regulation of LCF. The chapter includes questions on which the government would be grateful for the views of stakeholders. When providing answers to these questions the government would appreciate if stakeholders could explain their thinking, and provide any additional information that would they feel would assist the government when considering its next steps. The government is looking for views from members of the public and industry, but would particularly welcome responses from firms who offer NTDS and retail consumers have who have invested in these products.

Is there a need for further regulation in this area?

- 4.2 As discussed in the previous chapter, issuing NTDS does not generally constitute a regulated activity ('dealing in investments as principal') due to an exclusion in the RAO for those firms who issue their own securities. This exclusion allows firms to issue their own securities (including NTDS) to fund their expansion and refinance existing debt without the need for FCA authorisation. The government continues to support this principle and does not intend to alter its operation as it applies to these 'real economy' issuers.
- 4.3 However, this exclusion also covers issuers of debt securities who use the funds raised to lend to or invest in the business or projects of a third party, with the primary aim of making a profit. The business model of such firms depends on returns on their lending and investments outweighing the cost of servicing the (high interest rate) debt securities. In the view of the government, this business model shares characteristics with other financial services activities.
- 4.4 When the relevant exclusion was included in the RAO in 2001⁵⁷ it would have been difficult for legislators to have envisaged it covering this type of activity. At the time, bonds of individual companies were not accessible to

⁵⁷ A similar exclusion from 'dealing as principal' was contained in the Financial Services Act 1986 (as an exclusion from the definition of 'disposal' in Sch.1 para.28(2)).

retail investors⁵⁸. Even with the opening up of the listed debt security market in the early 2010s⁵⁹, accessing these bonds required a broker, preventing listed bonds from becoming a mainstream investment among retail investors.

- 4.5 However, this changed with the advent of the NTDS market in 2009 (which rapidly increased in size after 2015 with the surge of firms who focused on raising capital to invest in projects of a third party) which allowed firms to sell (non-transferable) debt securities direct to retail investors. These products appear to have purposely targeted retail investors with attractively high interest rates. However, the study by London Economics suggests these investors lacked the expertise to properly assess the creditworthiness of the issuer and risks inherent in their business model (e.g. the quality of the businesses in which the NTDS issuers were lending to or investing in)⁶⁰.
- 4.6 In view of how the market has evolved (described in paragraphs 2.6-2.9), the inherent risks for retail investors, the number of recent firm failures and the shared characteristics with other regulated financial services activities, the government believes it is necessary to consider if issuing NTDS (where the proceeds are used to on-lend or invest) should be a regulated activity – and subject to FCA supervision. This approach is considered in Option 1 below.
- 4.7 As explained in paragraphs 2.10-2.13, investors in NTDS have been found to often have a limited understanding of the product, the level of risk involved in investing and the lack of regulatory protection. The government therefore deems it appropriate to also consider whether additional information can be provided to investors when deciding to invest in NTDS to address these issues. To achieve this, Option 2 considers whether the Prospectus Regulation should be extended to apply to NTDS. (Note, issues related to consumer understanding have been observed across the whole NTDS market, i.e. for NTDS issued by ‘real economy’ issuers as well as firms who use the proceeds to on-lend or on-invest. This policy option therefore applies to the whole of the NTDS market.)
- 4.8 The government notes that the FCA’s restriction on the marketing of ‘speculative illiquid securities’ generally prevents NTDS, where the proceeds of the issue are used to on-lend or on-invest in third-party projects, from being marketed to ordinary retail investors (as explained in paragraph 3.14). However, this restriction only addresses the marketing of these products and means there is very little, if any, regulatory oversight in their design, governance and functioning. This is important, because the FCA ban does not apply to high net worth, sophisticated or professional investors. Although these investors should be better placed to understand the risks presented by these products, there is limited evidence that they do. The government therefore think it is still necessary to consult on the policy

⁵⁸ See page 56 of the London Economics report.

⁵⁹ London Stock Exchange opened its trading facility for listed retail bonds in 2010.

⁶⁰ If such products were targeted at professional investors, it seems likely they would demand much more information on the issuer’s activities and / or an even higher premium (interest rate) to reflect the risks involved, or may be unwilling to invest at all.

options outlined above and described in further detail in the following sections.

- 4.9 Options 1 and 2 are included in the Dame Elizabeth Gloster report⁶¹ into the FCA's regulation of LCF. These options are not mutually exclusive and could be applied together.

1. Do you consider that the issuance of NTDS, where the proceeds are then used to on-lend or invest in third party projects, have the characteristics of a financial services activity? Please explain your thinking.

Option 1 – Make the issuance of a non-transferable debt securities a regulated activity

- 4.10 Under this option, the issuance of NTDS where the proceeds are used to invest in or lend to third-party businesses or projects would become a regulated activity⁶². It is the government's intention that this measure wouldn't cover issues where an entity acts as an intermediary between the issuer and the retail investor (such as a crowdfunding platform), and is carrying out a regulated activity in doing so. The measure would therefore apply primarily to the issuance of 'direct-to-market' NTDS. The government believes this is a proportionate approach, as an intermediary carrying out a regulated activity is subject to FCA supervision, meaning the FCA already have oversight of the distribution of these NTDS.
- 4.11 Under this approach, firms wishing to carry on the activity of issuing NTDS would need to be authorised by the FCA for which they would have to meet the minimum standards to become authorised, known as the Threshold Conditions⁶³. Once authorised, the FCA would then be in a position to apply relevant FCA conduct of business, product governance, prudential and systems and controls requirements to issuers, together with the Senior Managers and Certification Regime⁶⁴. The FCA's financial promotions rules would continue (unless an exemption applies) to apply to promotions for relevant NTDS, but as an authorised firm, the issuer would be able to communicate its own financial promotions, without requiring another authorised firm to approve them. The FCA's Principles for Businesses would also apply to the firm.
- 4.12 To achieve this policy option, the Dame Elizabeth Gloster report⁶⁵ recommends that the scope of the MiFID investment service, 'execution of orders on behalf of clients', be extended to capture non-transferable

⁶¹ These options are included in [pages 304-305](#) of the report.

⁶² As outlined in paragraph 3.5, the issuance of a NTDS does not constitute the regulated activity of 'Dealing in investments as principal' because of an exemption in the RAO for those firms who issue their own securities. It is not covered by the 'MiFID override' because only transferable securities fall within the scope of MiFID.

⁶³ These conditions are outlined in [COND 2](#).

⁶⁴ A description of the Senior Managers and Certification regime can be found [here](#).

⁶⁵ See page 304 of the report.

securities (given MiFID⁶⁶ currently only applies to transferable securities). This would involve extending the scope of onshored MiFID requirements so that the issuance of NTDS would be treated as a MiFID investment service or activity (and thus issuers would be considered MiFID investment firms). This would mean that onshored MiFID requirements would apply to these issuers in the same way as they apply to other MiFID investment firms performing the same investment service, including in relation to the matters outlined in paragraph 4.11⁶⁷.

- 4.13 In general, MiFID relates to the framework of investment firms (providing services related to financial instruments) and the venues and structures in which financial instruments are traded. Given its focus on the framework of trading venues / infrastructure under which financial instruments are traded, the government believes that MiFID is not the appropriate framework within which to regulate non-transferable securities. At a time when the government is seeking to clarify and simplify the regulatory perimeter, it also considers that this option would be unnecessarily burdensome and complex.
- 4.14 To avoid the need to amend the scope of MiFID, the option to bring the issuance of NTDS within the regulatory perimeter could instead be implemented by providing a specific exception to Article 18 of the RAO⁶⁸ (which, as described in paragraph 3.3, currently provides an exclusion from the regulated activity 'dealing in investments as principal for firms who issue their own debt securities) so it does not apply to the issue of non-transferable debt securities if the issuer uses the funds raised to on-lend or invest in other third-party projects. In the government's view this would be preferable to amending the scope of MiFID, as it would provide the opportunity to explicitly define what is intended to be captured by the exemption and what is not. This would provide certainty for 'real economy' issuers (referred to in paragraph 4.2) not intended to be caught by the exemption, while capturing the intended target i.e. those firms described in paragraph 4.3. It would also be easier to implement.

Analysis of option

- 4.15 Regardless of how this option would be implemented, it would make the issuance of relevant direct-to-market NTDS a regulated activity. The issuance of NTDS would require FCA authorisation and firms would need to comply with the relevant requirements outlined in paragraph 4.11. The FCA would have direct oversight over these firms and would have the power to supervise NTDS issuers' compliance with relevant regulatory rules. They would therefore have oversight of the conduct of business, product governance and systems and controls of relevant direct-to-market NTDS issuers in a way that they do not currently have. These protections would, in

⁶⁶ See footnote 34 which explains references to 'MiFID' in this consultation.

⁶⁷ Consideration would need to be given to whether any requirements would be inappropriate for this specified kind of business.

⁶⁸ It may also be necessary to consider whether any other exemptions in the RAO would need to be amended to achieve the desired effect of this policy option.

the government's view, lead to better designed products and enhanced investor protection for retail investors able to access these types of product⁶⁹. The government's initial view is therefore to proceed with this option, doing so by amending the operation of Article 18 of the RAO, rather than extending the scope of MiFID.

- 4.16 As explained in paragraph 4.10, these policy options would only apply to direct-to-market issues of NTDS. As a result, firms may seek to use an intermediary (who itself is regulated) to avoid the need to become authorised. The government views this outcome as a positive, as the FCA would supervise the intermediary and thus have regulatory grip over the issuance of the NTDS.
- 4.17 If the government decided to make direct-to-market issues of NTDS a regulated activity, it would fall to the FCA to decide whether this activity should be covered by the FSCS and/or the FOS. However, it should be noted that in any case, the FSCS does not cover losses resulting solely from poor investment performance.

2. **What are the benefits and drawbacks of making the direct-to-market issuance of NTDS a regulated activity?**
3. **Do you agree that making the direct-to-market issuance of NTDS a regulated activity by providing a specific exception to Article 18 of the RAO is more proportionate than bringing its issuance within the scope of the MiFID framework? Please explain your thinking.**

Option 2 – Extending scope of the Prospectus Regulation to cover NTDS

- 4.18 Under this option, the scope of the Prospectus Regulation would be extended to cover public offers of NTDS (as explained in paragraph 3.9, the scope of the regulation currently only covers 'transferable securities', which therefore does not include NTDS). This change would mean any issuer wishing to offer NTDS to the public in the UK would be required⁷⁰ to produce a prospectus, which would have to be approved by the FCA before the offer could take place. Potential investors would be able to review the prospectus before deciding whether to invest in the securities being offered.
- 4.19 Issuers would be liable for the information provided in the prospectus in line with the treatment of all prospectuses within FSMA and the Prospectus Regulation. As set out in section 90 of FSMA, issuers are liable to pay

⁶⁹ Due to the FCA's mass-marketing ban for speculative illiquid securities, issuers should only market such securities to retail investors who are high net worth and sophisticated investors, either pursuant to FCA's rules, or in accordance with the exemptions for promotions to these types of investor in the FSMA 2000 (Financial Promotion) Order 2005.

⁷⁰ Unless an exemption within the Prospectus Regulation applies.

compensation to those who suffer loss as a result of untrue or misleading statements, or the omission of any information which must be contained in those documents⁷¹. As such, under this option, issuers of NTDS would be taking on a greater level of responsibility for the information they provide to investors in comparison to the existing framework.

- 4.20 As explained in paragraph 3.9, offers of securities to the public which raise less than €8 million over a 12-month period in the UK do not require a prospectus. If the requirement to provide a prospectus was extended to NTDS, the government believes that consideration would need to be given to whether the existing €8 million exemption threshold for public offers of securities remains appropriate for NTDS.
- 4.21 An alternative option would be to remove the €8 million exemption for NTDS (but not for other types of security), in which case issuers of NTDS would need to issue a prospectus where they are seeking to raise more than €1 million over a 12-month period⁷² (assuming the issue wasn't otherwise outside the scope of the Prospectus Regulation).

Analysis of option

- 4.22 In contrast to Option 1, Option 2 would mean that issuance of an NTDS would remain an unregulated activity. Instead, issuers would be required to issue a prospectus to investors. This additional information should, in theory, allow investors to make a more informed decision when deciding to invest in NTDS⁷³. However, prospectuses are long and complex documents, typically used by those with significant relevant expertise in financial services. As set out in paragraph 2.10, NTDS investors have been shown to struggle to digest all the information currently presented to them when deciding to invest in these products. It is therefore the view of the government that the additional information provided within a prospectus would be of limited benefit to the typical retail investor. In addition, the liability imposed by the prospectus regime and potential recourse for investors (explained in paragraph 4.19) may be less effective in practice given many of the more recent issuers of NTDS have been relatively small, and prone to failure with limited assets from which any value could be recovered.
- 4.23 As these prospectuses would require FCA approval before they could be published, the FCA would have some visibility and a 'vetting' role over public offers of NTDS⁷⁴. However, prospectus requirements are focused on disclosure. Therefore, while sufficient disclosure of specific risk factors, among other information, is required, an approved prospectus does not amount to a check on the 'suitability' of an investment or the likely success of an issuer's business model. Therefore, the FCA's role in 'approving' a

⁷¹ Subject to any exemptions in Schedule 10 to FSMA.

⁷² This would be in line with the position established in article 1(3) of the Prospectus Regulation.

⁷³ When evaluating this policy option, the government will also consider Lord Hill's recommendation on the prospectus regime, in his Review of UK listings, more information about which can be found [here](#).

⁷⁴ Except where an exemption in the Prospectus Regulation applies, or the offer is outside the scope of the regulation.

prospectus could be misunderstood by consumers who may take undue comfort from the availability of an FCA-approved prospectus.

- 4.24 The FCA also has no ongoing supervisory or monitoring role over an issuer or its securities beyond the public offer stage if securities are not listed or admitted to trading and an issuer is unauthorised. This means that there would be no oversight nor any prescribed transparency on behalf of investors to allow them to assess the further prospects of the issuer and the likelihood it will remain solvent and capable of repaying bondholders.
- 4.25 On balance, the government believes that of the two options, making the issuance of direct-to-market NTDS a regulated activity, and doing so by amending Article 18 of the RAO, best addresses the issues identified with the current regulatory framework.
- 4.26 For both options, the regulatory requirements would create an administrative burden⁷⁵ for issuers of NTDS. This could result in some potential issuers being unwilling to pursue a direct-to-market issue of NTDS to retail investors as a funding option, leading to a further decline in the market (discussed in paragraph 2.9).

4. Do you think that the provision of a prospectus would better inform retail investors when choosing whether to invest in NTDS? Please explain your thinking.
5. What are the benefits and drawbacks of extending the provision of the Prospectus Regulation to the issuance of NTDS?

Option 3 – Rely on other FCA and Treasury measures

- 4.27 The alternative to Options 1 and 2 would be to not introduce any additional regulation regarding the issuance of NTDS, and instead rely on changes that have been, or are planned to be made to the UK's financial promotions regime.
- 4.28 The most relevant of these changes is the FCA's ban on the mass-marketing of speculative illiquid securities. As discussed in paragraph 3.13, this restriction prevents NTDS that are issued to raise capital for high-risk activities, such as lending to a third party, buying or acquiring investments, or buying or funding the development of property, from being marketed to most retail investors. While the FCA's marketing ban is limited to the marketing of such securities, rather than their issuance, it effectively closes off this part of the NTDS market for most retail investors. This significantly reduces the risk of uninformed consumers investing large amounts of money in this type of NTDS product and the consequential risk of financial loss.

⁷⁵ With regard to Option 2, the estimated cost of producing a prospectus ranges from 7 to 12 percent of the funds raised. Find more information on this [here](#).

4.29 As discussed in paragraph 3.12, the government has also consulted on plans to establish a regulatory 'gateway', which an authorised person must pass through before it is able to approve the financial promotions of unauthorised persons⁷⁶. This change would lead to several improvements to the financial promotions regime, including enabling the FCA to exercise more effective oversight and supervision of the authorised persons which approve financial promotions of unauthorised persons. It will also mean that authorised persons approving financial promotions (which includes confirmation of compliance with FCA rules) will have the necessary expertise to do so. These proposals will apply to the approval of financial promotions of unauthorised persons generally, including those which relate to issues of NTDS. The new regulatory gateway will mean that where a financial promotion for the issue of an NTDS is approved by an authorised firm, that firm will have the necessary expertise to confirm that the promotion is fair, clear and not misleading, and complies with the FCA's mass-marketing ban for speculative illiquid securities.

Analysis of option

- 4.30 Although the FCA's marketing restriction effectively closes down the highest risk part of the NTDS market for ordinary retail investors, the restriction only addresses the marketing of these products and means there is very little, if any, regulatory oversight in the design, governance and functioning of these products. This is important, because the FCA ban does not apply to high net worth, sophisticated or professional investors, and it is unclear as to whether these investors are better placed to understand the risks presented by these products.
- 4.31 The government therefore believes that, despite the FCA's marketing restriction, it is therefore important to seek views on whether the issuance of NTDS should be brought within the regulatory perimeter, as outlined in Option 1.

6. Do you consider that relying on existing FCA and HMT measures is sufficient, meaning that further regulation of non-transferable debt securities is not required?
7. Are there any other credible options that may better address concerns around the issuance of NTDS, whether instead of, or alongside, those considered here?

⁷⁶ This consultation can be found [here](#).

Annex A

List of questions

- 1 Do you consider that the issuance of NTDS, where the proceeds are then used to on-lend or invest in third party projects, have the characteristics of a financial services activity? Please explain your thinking.
- 2 What are the benefits and drawbacks of making the direct-to-market issuance of NTDS a regulated activity?
- 3 Do you agree that making the direct-to-market issuance of NTDS a regulated activity by providing a specific exception to Article 18 of the RAO is more proportionate than bringing its issuance within the scope of the MiFID framework?
- 4 Do you think that the provision of a prospectus would better inform retail investors when choosing whether to invest in NTDS? Please explain your thinking.
- 5 What are the benefits and drawbacks of extending the provision of the Prospectus Regulation to the issuance of NTDS?
- 6 Do you consider that relying on existing FCA and HMT measures is sufficient, meaning that further regulation of non-transferable debt securities is not required?
- 7 Are there any other credible options that may better address concerns around the issuance of NTDS, whether instead of, or alongside, those considered here?

Annex B

Glossary of terms

Term	Definition
Direct-to-market issuance	Instances in which a firm issues a financial services instrument (in the case of this consultation, non-transferable debt securities) directly to the investor, without any intermediary involved.
Dame Elizabeth Gloster review	Independent investigation carried out by Dame Elizabeth Gloster into the events relating to the FCA's regulation of LCF during the period 1 April 2014 to 30 January 2019.
Debt security	A type of financial instrument issued by firms to investors as a way of raising finance. The issuer offers investors a fixed rate of interest for a pre-defined period. At the end of this period, the issuer repays the capital to the bondholder.
Financial Ombudsman Service (FOS)	A free service to help resolve complaints between customers and financial services firms on a fair and reasonable basis, as an alternative to the courts.
Financial promotion	An invitation or inducement to engage in an investment activity, communicated by a person in the course of business.
Financial Services and Markets Act 2000 (FSMA)	The key statute that regulates the financial services industry in the UK.
Financial Services Compensation Scheme (FSCS)	The UK's statutory compensation scheme for customers of authorised financial services firms. It can pay compensation to customers if a firm has failed and the FSCS has declared it to be 'in default'.
Intermediary	An entity that facilitates a financial transaction between two parties. For example, a crowdfunding platform brings together investors and firms wishing to raise capital.
Issuer	An entity which sells securities to investors to raise finance.
Liquidity	Liquidity refers to the ease with which an asset or security can be traded or converted into ready cash.
Listed	Companies that are included and traded on a given stock exchange (e.g. London Stock Exchange).

London Capital & Finance (LCF)	London Capital & Finance was a firm which issued non-transferable debt securities to investors. The firm entered into administration in January 2019.
London Economics	Consultancy who carried out research into non-transferable debt securities on behalf of HM Treasury.
Maturity	The point at which an investor is repaid their original investment. A debt securities term to maturity is the period during which its owner will receive interest payments on the investment.
MiFID II	An EU directive which, along with the Markets in Financial Instruments Regulation (MiFIR), collectively referred to as 'MiFID', concerns the regulation of financial markets and the provision of investment services.
Mini-bond	There is no legal definition of a 'mini-bond', but the term usually refers to illiquid debt securities marketed to retail investors.
Non-transferable debt security	A type of debt security which cannot be legally transferred from one owner to another.
Prospectus	A disclosure document that describes a financial instrument for potential buyers.
Regulated Activities Order (RAO)	Legislation which outlines the kinds of activities and investment for which are considered 'regulated activities' for the purposes of FSMA.
Regulated activity	An activity of a specified type relating to financial services businesses in the UK, regulated by the FCA or the PRA.
Retail investor	Anyone who is not a professional investor. Professional investors are, generally, institutional investors and large businesses. Consumers and smaller businesses are retail investors.
Speculative illiquid security	Term used by the FCA to describe securities where the funds raised by the issuer are used to lend to or invest in other companies (as well as where those funds are used to acquire other investments or buy or fund the development of property), as opposed to those which are issued by a company to raise funds for its own commercial business activities.

Annex C

Processing Personal Data

This notice sets out how HM Treasury will use your personal data for the purposes of a consultations campaign and explains your rights under the General Data Protection Regulation (GDPR) and the Data Protection Act (DPA).

Your Data (Data Subject Categories)

The personal information relates to you as either a member of the public, parliamentarians, and representatives of organisations or companies.

Legal Basis of Processing

Information may include your name, address, email address, job title, and employer of the correspondent, as well as your opinions. It is possible that you will volunteer additional identifying information about themselves or third parties.

Special Categories Data

The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals or obtaining opinion data in order to develop good effective government policies.

Legal Basis for Processing Special Category Data

Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop good effective policies.

Purpose

The personal information is processed for the purpose of obtaining the opinions of the members of the public and representative of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who We Share Your Responses With

Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom

of Information Act (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: <https://www.gov.uk/government/organisations>.

As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process data for our purposes and in fulfilment with the contractual obligations they have with us.

How Long We Will Hold Your Data (Retention)

Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your Rights

You have the right to:

- request information about how your personal data are processed and to request a copy of that personal data
- request that any inaccuracies in your personal data are rectified without delay
- request that your personal data are erased if there is no longer a justification for them to be processed
- in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted

- to object to the processing of your personal data where it is processed for direct marketing purposes
- to data portability, which allows your data to be copied or transferred from one IT environment to another

How to Submit a Data Subject Access Request (DSAR)

To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit

G11 Orange

1 Horse Guards Road

London

SW1A 2HQ

dsar@hmtreasury.gov.uk

Complaints

4.32 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk

4.33 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contact at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

casework@ico.org.uk

4.34 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

4.35 The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

London

020 7270 5000

public.enquiries@hmtreasury.gov.uk

Contact Details

4.36 The contact details for HM Treasury's Data Protection Officer ('DPO') are:

The Data Protection Officer

Corporate Governance and Risk Assurance Team

Area 2/15

1 Horse Guards Road

London

SW1A 2HQ

London

privacy@hmtreasury.gov.uk

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk