TISA

Response by TISA: CMA consultation on the future oversight of the CMA's open banking remedies

March 26th 2021

About TISA

The Investing and Saving Alliance (TISA) is a unique, rapidly growing membership organisation for UK financial services.

Our ambition is to improve the financial wellbeing of all UK consumers. We do this by focusing the convening the power of our broad industry membership base around the key issues to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

TISA membership is representative of **all sectors of the financial services industry.** We have **over 200-member firms involved in the supply and distribution of savings, investment products and associated services**, including the UK's major investment managers, retail banks, online platforms, insurance companies, pension providers, distributors, building societies, wealth managers, third party administrators, Fintech businesses, financial consultants, financial advisers, industry infrastructure providers and stockbrokers.

As consumers, the financial services industry and the economy react to and recover from the effects of the pandemic, the importance of the three key pillars of work that TISA prioritises has never been more apparent:

- **Strategic policy initiatives that influence policymakers** regarding the financial wellbeing of UK consumers & thereby enhancing the environment within which the industry operates in the key areas of **consumer guidance, retirement planning, later lifetime lending, vulnerable customers, financial education, savings and investments**.
- TISA is recognised for the **expert technical support provided to members** on a range of operational and regulatory issues targeted at improving infrastructure and processes, establishing standards of good practice and the interpretation and implementation of new rules and regulations covering **MiFID II, CASS, ESG/RSI, operational resilience, Cyber Risk, SM&CR** and a range of other areas.
- **Digital transformation initiatives.** TISA has become the major industry delivery organisation for consumer focused, digital industry infrastructure initiatives, with these initiatives driving ground-breaking innovation across Uk fianncials services and supporting cross border, international digital trade post Brexit. These initiatives sees the development of the industry's digital infrastructure seeing greater operational effectiveness and enhanced customer digital propositions. These initiatives include the:
    - **Development of Digital ID** that support all UK regulation, government standards and those used internationally.
    - **Open Savings, Investments and Pensions**. Building on the Open Banking, this initiative provides consumers with secure access to all their non-banking assets allowing them to gain a full understanding of their finances and then the control to improve their financial well-being
    - **TURN** (TISA Universal Reporting Network) – a digital platform providing a secure data exchange for financial services consumer facing regulatory data meeting all UK and EU required regulation and standards.

- **TISAtech** - a digital marketplace that brings together financial institutions and FinTechs for greater collaboration and innovation). TISAtech supports UK Fintechs and provides the marketplace for international Fintechs to enter the UK marketplace.

TISA fully supports the Open Finance and works collaboratively with industry, regulators and government in the development and implementation of its major industry digital initiatives that are designed to secure the growth of the digital marketplace for UK financial services and their customers (both in the UK and international marketplaces).

TISA convenes cross-industry working groups and key policy councils (such as Digital Innovation Policy Council) to support its digital projects and associated policy developments; drawing expertise from our growing number of member firms who represent all major industry product & services providers. We have a well-established programme of stakeholder engagement with other industry bodies (e.g. UK Finance, Innovate Finance and others), the Government and the regulators (including the FCA).

TISA would like to be actively involved in the definition and development of the Future Entity for Open Banking, while retaining the ability for other Open Finance initiatives to have their own implementation and governance bodies.

TISA It will provide its support to the CMA, the FCA and Government, through its large cross industry membership, its proven experience in the development of successful industry initiatives and its leadership in the development of major cross-industry digital programmes (such as OSIP, Digital ID) and other major digital initiatives it is planning with its members.

Please see TISA's response to the questions below. Where TISA doesn't have a view, the question has been removed.

Questions from the consultation

Leadership:

We invite views on the following questions relating to the leadership of the Future Entity:

a) It is envisaged by UK Finance that the Members of the Future Entity would appoint the Chair with "votes weighted by participant type." This process is not explained in detail and we will seek further clarity from UK Finance. However, it may give rise to a risk that a particular stakeholder group (eg the largest banks) would have an inappropriate degree of influence over the appointment. What process and criteria should be used to identify suitable candidates for the Chair? Who would be responsible for doing this, who should be kept informed and whose approval should be sought for decisions at this stage? Should the Members alone approve and appoint the Chair or should the CMA's approval be required, as was the case in the appointment of the Trustee?

As the proposed process of appointing the chair appointment is based on weighted votes, there is an inherent risk, given the proposed funding model and mix of directors, that the person selected will not provide an impartial and balanced perspective and may not serve the consumer's best interests.

b) Does the proposed composition of the Future Entity Board constitute independent leadership? On its face, the composition of the board would suggest a balance of perspectives will be represented. However, should the CMA seek further information or assurances before concluding that the proposals will result in an independently led organisation?

TISA believes that the composition of the Non-Executives, for the proposed Future Entity Board, allows for a balance of perspectives. TISA recommends enhancing the consumer representation with an additional position and including an International NED with strong Open Data experience in International markets. The Executive team composition is to be defined so TISA cannot provide any comment.

c) To whom should the board be accountable. Should their accountability extend beyond the membership of the Future Entity? Are there transparency or reporting requirements that it would be appropriate to impose on the Entity's Board similar to those imposed on the OBIE?

Accountability should extend to the Smart Data Function, proposed by BEIS, as well as the FCA (subject to secondary legislation detailed below). The Future Entity should also be accountable to consumer bodies to ensure the consumer is adequately protected and innovation flourishes.

UK Finance proposes that the Future Entity is extended into Open Finance. Please note that other independent industry initiatives exist, with their own governance structure, and it should be not be assumed that this Future Entity would have oversight or assume management control of these. Examples includes investments, pensions and energy.

d) Does the initial funding model envisaged risk undermining the Future Entity's ability to act independently because of the potential tension between the interests of the CMA9 (who will be providing all of the funding initially) and the objectives of the independent Chair? Can the CMA be confident that the Future Entity governance structure (including an independent Chair, NEDs and the Advisory Committee) will be sufficient to resist pressures that may arise as a consequence? And if we cannot be confident what steps should be taken to mitigate this risk?

There is significant risk, with the proposed composition of the Board and funding structure, that innovation could be stifled and there could be a lack of commitment following the initial 3 year funding term. TISA proposes that there should be to an independent body (such as the Smart Data function) that sets the strategic direction and the FCA have an active role ensuring the requirements of the CMA Order are continuously met and maintained.

e) Do UK Finance's proposals for the Future Entity raise any other concerns regarding its leadership and governance model? Are there any other alternative approaches which would be more suitable to address these types of issues?

The governance of Open Banking has been a subject of concern, given it was set up as a project and has developed into an organisation with high operating costs, which are financed by the CMA 9 banks. This is not be a sustainable model (with such a high installed cost base) for the future governance of a broader range of firms wishing to operate in Open Finance ecosystem.

As detailed above, the proposed model provides too much control to the CMA9 and there is no guarantee that the new Future Entity will maintain the innovation and support required to make Open Banking a success.

An alternative Governance approach is for a distributed model with the following Smart Data function with the FCA having oversight.

Distributed model:

- BEIS's cross sector Smart Data Function has a central strategy function
    - Smart Data Board function with a cross sector organising layer driven out of secondary legislation with vertical implementing entities including Open Banking, Open Savings, Investments and Pensions and other open finance initiatives as well as other open data initiatives from other sectors (such as Communications, Energy).
    - This enables the potential for implementing entities to establish initiatives within sectors and opportunity for greater functional coordination between initiatives on a function-by-function basis and wider collaboration within the ecosystem. It would co-exist with other existing or new bodies relevant to Open Data. New initiatives would then be able to make use of a collective body of knowledge and practice, as well as explore using functions already developed.

- The FCA has oversight of the Future Entity so it becomes part of the regulatory family and the consumer and businesses are protected.
    - The FCA provides an Open Finance policy function and is responsible for any secondary legislation related to Open Data (following BEIS's Primary enabling legislation).
    - The Future Entity will present its roadmap to the FCA each year and the FCA is responsible for signing off the future roadmap for Open Banking.

- Any residual requirements of the CMA Order should be statutory with the FCA and/or the CMA having responsibility for monitoring progress against the roadmap. The proposed Future Entity will consult and deliver on a roadmap.
- The Future Entity owns the assets created to meet the CMA Order and will provide their best efforts to generate income by providing services to related industry initiatives. This includes transferring the Directory into the Future Entity that provides managed access to other organisations.
- Standards held in a not-for profit with responsibility to maintain and update these standards, which are open and freely available for use by other Open Data initiatives. This could be delivered by an industry led board, similar to the TISA Exchange (more detail provided below).

Resourcing

We invite views on the following questions:

a) In overall terms, is the framework proposed by UK Finance capable of performing the functions necessary to ensure the effectiveness of the CMA's open banking remedies going forward? Are there alternative approaches that the CMA should consider? –

An alternative model is the one developed by TeX, which has been established to help facilitate the electronic transfer of wrappers and assets between fund managers, platforms, wealth managers and any firm which holds assets on behalf of investors. TeX was developed by a cross industry initiative and has agreed common standards and associated Service Level Agreements (SLA). The FCA has consistently supported the progress made by TISA in launching TeX.

The TeX approach utilises a very cost-effective approach for managing the scheme and standards, which doesn't require significant and costly resources**.** TeX has strong and well-established corporate governance with its Board consisting of Industry directors representing fund managers, platforms and pension providers.

The TeX Trust Framework enables firms to operate in the scheme with a single contract. The legal agreement provides clarity on the roles and responsibilities of all parties, giving the consumer confidence that if anything goes wrong, they know that the industry has an agreed process to correct any errors, and all providers know and accept their liabilities. There has not been one case of any transfer being undertaken incorrectly in the life of TeX. TeX is supported and funded by all major industry providers covering 95% of Platforms and 90% of Funds.

b) Does the proposed funding model give enough confidence about the resourcing of the Future Entity? In particular:

• What evidence is there that external revenue is now, or will become, available to the Entity through the tendering of relevant projects?

The future plan envisages a cost reduction of around a third of the current £31m and a transfer of costs such that the CMA9 ASPSP's contribution would fall from £26m to less than £10m – this could prove risky and more detail is required on the how these cost reductions will be achieved.

The cost base seems high and TISA would be interested to explore a leaner approach with a flexible workforce. TeX operates on a very low-cost base so the membership fees for the scheme are very modest; please note that it has achieved a 95% market coverage as a result.

It is proposed that a commercial panel is formed that explores new revenue opportunities and there is Business Development Director on the Board.

Alternative funding models should be analysed (such as an industry wide levy) that could provide guaranteed funding; this would help separate the governance and funding function, so a more independent body could be developed.

• *Given that the anticipated external revenues may or not materialise in 2022 or be maintained after that date, how can the CMA and other stakeholders be confident that the budget of the Future Entity will be adequate to deliver the residual requirements of the Order?*

The CMA cannot be confident that the Future Entity will have the budget to deliver the residual requirements of the Order if it is left it to the market as there is a distinct disincentive for commercial entities to invest in a service they do not wholly own, control etc unless there is a very clear path to return their investment.

The funding model is crucial for this to succeed, which TISA recommends should be a mix of membership fees, regulatory levies and revenues generated from the provision of services and access to the Directory etc. This requires a cost: revenue model to be developed to assess how the Future Entity could be sustainable in the long term. Further reductions in the operating costs may be required and the TeX model runs on a fraction of the cost of Open Banking Limited.

• *How should the Future Entity set priorities in the face of a potentially reducing budget and competing requests for investment in future developments, including from the Participant Groups?*

TISA proposes that the Future Entity develops a proposed roadmap with clear costs, resource requirements and am impact analysis); this will need to be signed off by the FCA.

Prioritisation could be based on

- Measurable consumer benefit / reduction in harm with a higher weighting to specific audiences (such as the vulnerable/those in poverty)
- Costs: benefits analysis for delivery of elements of the roadmap

- Resources required and their availability
- Estimated time for development
- A Market Impact assessment
- Opportunities to partner with third parties to reduce costs of development and delivery.

c) *The proposed funding model does not anticipate significant funding from the TPP community in the short term. Is this reasonable? Should more financial support be sought from firms acting as TPPs, some of which are quite large businesses and others, for example retailers, who are likely to benefit from the adoption of existing (rather than yet to be developed) open banking payment services in particular?*

There is a danger of imposing a business and pricing model onto a nascent market. Also, the cost of exposing data via APIs for smaller firms may be disproportionately high, compared to large financial service firms, so any TPP charging structure should consider how smaller firms are able to compete in the market.

Membership fees for TISA and TeX ensure our member services can be provisioned. TISA proposes that the TPP community should help fund the Future Entity; this could be based on usage of the use of the services of the Future Entity and/or a membership fee based on the size of the organisation. TISA has a tiered membership model based on the UK staff levels of the member firm and requests participation fees to fund its digital initiatives.

A pay per use model may also be considered. With the premium API market developing, the Future Entity should separate the free and premium API market whereby TPPs could pay for data; this needs more analysis. The findings from the OSIP initial business scoping can be shared.

d) The OBIE has performed functions and supplied services which while not stipulated in the Order have, in the opinion of many parties, proved fundamental to maintaining a well-functioning ecosystem. These include, for example, the onboarding services that OBIE provides to help TPPs interface with ASPSPs. Can the CMA and other stakeholders be confident that these will be maintained?

Any value-added services provided above the CMA order should be maintained if they are in demand and add sufficient value to the ecosystem. Special consideration should apply to how smaller firms be provided the same protections as large firms and the consumer is adequately protected.

e) Do UK Finance's proposals for the Future Entity raise any other concerns regarding its proposed resourcing? Are there any other alternative approaches which would be more suitable to address these types of issues?

Please see the TeX model approach outlined above.

Consumer representation

We would welcome views on the following issues relating to customer representation:

a) *Will the proposed arrangements ensure effective representation of consumer and SME interests? Would any alternative arrangements be more suitable?*

The UK Finance proposed Board has a single Non-Executive Director representing the consumer's interests and it is not clear if this role would also represent SMEs. TISA recommends augmenting the Board with a further NED that represents SMEs.

TISA proposes that the FCA performs a supervisory and monitoring function (with the CMA) of the Future Entity ensuring that the consumer and SMEs interests are protected. There needs to be clear recourse if the consumer is not being protected

BEIS's cross sector Smart Data Function would have a central strategy function and build opportunities to ensure the consumer benefits from increasing interoperability between sectors, tackling common challenges and providing a cross-sector perspective to inform ongoing development of existing and future initiatives.

b) Can the interests of consumer and SMEs be adequately represented by the same board member, say with support from the advisory committee?

TISA recommends that the proposed Board be augmented with separate Board members representing the consumer and the SMEs; these will be selected based on their relevant skills and experience.

c) What process and criteria should be used to select the consumer representatives on the Board and Advisory Committee? Should there, for example, be a specific reference to the needs of vulnerable or less well-off consumers?

The selection of the consumer representatives should be based on their specific experience, qualifications, attributes and skills. They are elected to represent consumers' interests; these representatives need to be connected with existing consumer organisations.

Sustainability / adaptability

We note that the proposed arrangements envisage a 3-year financial commitment from the CMA9 after which they would be able to withdraw their membership.

a) *Is the assumed ability of one or more of the CMA9 to withdraw from the Future Entity a cause for concern in terms of the sustainability of these arrangements? Would the CMA9 not have to retain membership in order to comply with certain requirements of the Order, for example to maintain the network that supports the directory requirement in the Order? Would, in any case,* *the benefits of membership to CMA9 members be expected to outweigh the (minimal) cost savings from withdrawing (which we would expect to be limited)? Would, nonetheless, a longer membership commitment from the CMA9 (for example, 5 years) provide greater security for the Future Entity?*

There is a significant risk if one or more member withdraws from the membership as this will undermine the value of propositions that open up data to consumers and businesses; this may result in all of the consumer and industry benefits being significantly diminished very quickly.

TISA recommends that CMA9 member could only withdraw if it seeks the explicit consent of the FCA, the CMA or any other supervising body. Withdrawal would only be permitted in exceptional circumstances and based on mission critical issues (to be determined)

b) Would the membership / proposed funding model allow non-CMA9 account providers who had adopted the open banking standards, to "free ride": enjoy the benefits generated by the entity without making an appropriate contribution? If so, and were it deemed necessary, how could this be avoided?

It needs to be clarified who owns which components. TISA understands that the Banks paid for it as a remedy, however all of the components are owned by Open Banking Limited. There are components of Open Banking that be useful for OSIP and other similar initiatives. A paid for market for specific components (such as the certification, dispute resolution) that could be reused and paid for by other initiatives.

TISA proposes that the use of standards and access to APIs should be free, but use of the infrastructure and services paid for. It shouldn't be compulsory to use OBL components as there is a burgeoning market of suppliers of components (such as the Directory) and support services (such as the TeX Governance) so each initiative should be free to negotiate and acquire the necessary components for their programmes.

c) *Could or should the Future Entity, as UK Finance has suggested, be a suitable vehicle for the implementation of other "open" projects such as the FCA's Open Finance initiative and the BEIS Smart Data project? The Open Finance and Smart Data initiatives are not, as yet fully defined. How, therefore might the Future Entity be designed so as to accommodate their requirements?*

TISA view is that the proposed Future Entity is not a suitable vehicle for the implementation of other open projects for number of reasons. The proposed composition of the Board is not representative of the whole financial services industry (such as the investment market, wealth and pensions). As the CMA9 Order made it compulsory for the banks to open up customer data and there was much resistance, it cannot be assumed that these organisations will be the natural champions of Open Finance and would support innovation across other projects.

Non-banking businesses (investment, pension, digital platforms, Fintechs) would not accept an organisation run and directed by Banks, as proposed by UK Finance with a Future Entity primarily governed and funded by a small number of organisations (notably the CMA9). Open Banking Limited's expertise is with banking and payments; it cannot be assumed that this readily translates to other parts of the financial services industry.

TISA is leading the Open Savings, Investment and Pensions (OSIP) Project that will open up access to savings, investments and pensions through the development of industry open standards and associated APIs. It works closely with the Money and Pensions Service and its Pensions Dashboard team, as well as the Open Banking Implementation Entity, in the delivery of this project to ensure all are working towards to the delivery of an interoperable environment. The OSIP participating firms are resistant to being compelled to use the Future Entity to govern and resource this project.

TISA's OSIP programme should not be compelled to use the Future Entity, to deliver the OSIP programme, as this could stifle the programme, innovation, competition (unfairly preventing other organisations providing services such as the Directory) and not enable the participants to select the most appropriate service providers for the different requirements. Also, there is a developing marketplace of small firms that can provide open data support services (such as a Directory), these businesses would be adversely impacted if all open data initiatives are compelled to use the Future Entity.

The Open Banking infrastructure was built for banking and payments only, whereas as parts of the industry have different existing standards and infrastructure. The standards and infrastructure, developed by the OBIE, could be used to support open finance, however the suitability and interoperability of these standards and infrastructure for other sectors of the financial services industry needs to be analysed. Alternative architectures and integration approaches, which are interoperable with Open Banking, should be explored for other open data initiatives.

Other standards and infrastructure already exist in the financial services industry that enable the consumer to transfer data and funds (such as TeX, Criterion); these need to be considered for use within an Open Finance ecosystem, as a broader range of firms are already using such and have the processes and connections already in place.

TISA is a strong supporter of interoperability and cohesion, both within and outside of Financial Services. TISA supports the FCA's Open Finance Advisory Group's advice (in the Cohesion and Interoperability paper [1]), which recommends:

Initiate both a multi-stakeholder, federated Working Group which can 'hive up' lessons learned from Open Banking into a central framework, governance and funding structure, and also enable each financial sector to drive their ***own Implementation Entities*** *to address sector-specific issues (e.g. open insurance/ pensions/investment).*

Separate implementation entities may then report to a federated governance body to agree the standards which should operate cross sector. The Smart Data function proposed by BEIS is one option.

As Smart Data straddles a number of different industry sectors, we believe the Government can provide real, strategic value ensuring cross industry development of smart open data, sharing / formulating industry best practice and removing duplication. Through this cross-industry approach, the Government's Smart Data initiative can ensure industry enables customers to securely share their data with third parties (so enabling innovation and improving productivity and competitiveness).

There is a risk that the Future Entity may impose high fees for the use of their services, based on recovering their implementation costs, which would stifle the open finance ecosystem if other initiatives are compelled to the use the Future Entity. There may be more cost effective and agile ways of delivering other open data initiatives.

The OSIP programme team is in ongoing discussions with Open Banking Limited to understand what could be re-used and services they can provide, however there are other existing bodies that provide components to achieve OSIP (such as TeX, Criterion) and a range of SMEs that can provide the core components for OSIP.

Other programmes (such as Open Energy) that fall outside of financial services are developing their own infrastructure. These are being developed by expert participants that understand the industry needs for their consumers and business clients

e) Do UK Finance's proposals for the Future Entity raise any other concerns regarding the sustainability of the proposed approach? Are there any other alternative approaches which would be more suitable to address these types of issues?

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[1] https://www.fca.org.uk/publication/documents/cohesion-interoperability-advisory-group-open-finance-advice-note.pdf

Please see above the proposed alternative model as developed by TeX, which has been established to help facilitate the electronic transfer of wrappers and assets between fund managers, platforms, wealth managers and any firm which holds assets on behalf of investors.

Monitoring and compliance: *Views are invited on any aspect of monitoring but in particular:*

1. Compliance: Our working assumption is that it would not be appropriate for an industry-led body – such as the Future Entity - to have responsibility for compliance monitoring of the conduct of some of its members. However, we envisage that whatever entity does undertake compliance monitoring will rely in part at least on data provided by the successor body to OBIE which it may also use for its own purposes. Is this reasonable? Could, with appropriate governance, the proposed Future Entity be given the responsibility for monitoring the compliance of the CMA9 with the Order?

TISA agrees that it would be inappropriate for the industry led body to be responsible for monitoring the conduct of its members, especially as they are expected to fund the Future Entity and hold senior positions in it. It is recommended that the CMA or FCA would have an oversight and compliance function; it needs to be independent of the Future Entity.

*2. **Monitoring** We have identified ecosystem monitoring as an important function that may, for example, indicate the need for product or other developments. Would this role fit best with the entity charged with compliance monitoring or conversely, would this role fit better with the successor body to OBIE?*

The proposed innovation roadmap should be developed by the Future Entity (in consultation with industry and supported by robust consumer and industry research) and oversight and sign off of delivery would be maintained by the monitoring body.

*3. **Monitoring:** The CMA commonly appoints an independent professional services firm as a Monitoring Trustee to monitor compliance with remedies imposed after Market Investigations or Merger Inquiries. Would this be appropriate in this instance and if so, which types of firms or other bodies could be considered? Would it be practicable to find a firm that was not conflicted?*

It would be more appropriate to have a non-commercial body having oversight. This could be delivered by a Smart Data function. If such a body is not formed, then a non-conflicted firm could take over this role.

4. ASPSPs may challenge suggestions that they are non-compliant and, currently, the Trustee's monitoring function makes an initial assessment which may be subsequently passed to the CMA. Should the new monitoring entity perform this initial screening, or should this reside with *the CMA's enforcement function? We envisage the former but invite views, including to the contrary.*

TISA recommends that the CMA enforcement function should be responsible for monitoring. If a new monitoring entity is formed, it seems sensible that it performs the initial screening and pass this to the CMA or FCA, if enforcement is required.

*5. **FCA role:** Is it necessary to continue monitoring activities at all since the FCA is already responsible for ensuring compliance with the (similar) requirements of the PSR including by the CMA9? To what extent would the FCA's current monitoring activities be an effective substitute for the activities of the Trustee's monitoring function?*

TISA proposes that the FCA performs a supervisory and monitoring function (with the CMA) of the Future Entity (please see detail above) and its devliery. TISA understands that the regulation (pertaining to TPPs) may need to be strengthened to ensure there is consistency across all regulated entities in the eco-system.

6. Are there any other issues regarding monitoring and compliance which the CMA should be aware of?

The CMA should consider how monitoring and compliance is delivered if Open Finance is expanded into other parts of the Financial Services industry, supported by secondary legislation, further to BEIS's primary enabling Smart Data legislation.

Transition

- *What measures should the CMA adopt to mitigate the risk that the OBIE's ongoing services will be interrupted or disrupted during a transition process?*

It is critical to ensure that the need for the remedies, of the CMA Order, are extended for a specific period of time and there is appropriate funding and resources are in place. It is crucial that the core OBL team are retained and there is no significant loss of skills and expertise.

- *How should the ecosystem's performance be monitored during a transition process? Should, for example the Trustee's current monitoring function be maintained during a transition process and if so where would it be appropriate to site it?*

It seems appropriate that the Trustee’s current monitoring function be maintained, during the transition process, and this could then reside in the CMA or Pay UK.

We would be pleased to discuss any of our recommendations with you.