

Financial Services Future Regulatory Framework Review: Proposals for Reform

Response to the Consultation

Financial Services Future Regulatory Framework Review: Proposals for Reform

Presented to Parliament by the Economic Secretary to the
Treasury by Command of Her Majesty



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Chapter 1

Consultation response overview

- 1.1 The Future Regulatory Framework (FRF) Review was established to determine how the financial services regulatory framework should adapt to the UK's new position outside of the European Union (EU), and how to ensure the framework is fit for the future. In particular, the FRF Review provided an important opportunity to ensure that the UK maintains a coherent, agile, and internationally-respected approach to financial services regulation that delivers appropriate protections and promotes financial stability.
- 1.2 The FRF Review has involved two consultations in October 2020 and November 2021, and the government intends to legislate for changes to the regulatory framework through the Financial Services and Markets Bill.
- 1.3 The first consultation was issued on 19 October 2020 and closed on 19 February 2021. It set out an overall approach to the regulation of financial services, built on the existing Financial Services and Markets Act (FSMA) 2000 model. This consultation asked for responses on 9 key questions relating to the government's proposals for the regulatory regime. The consultation received 120 responses.
- 1.4 The government responded to this first consultation as part of its second FRF Review consultation, which was issued on 9 November 2021 and closed on 9 February 2022. It set out how the government intends to repeal the majority of retained EU law relating to financial services, handing responsibility for setting the direct regulatory requirements on firms to the UK's independent regulators, in accordance with the FSMA framework. Given the repeal of retained EU law and the move to a comprehensive FSMA model, the consultation also set out proposals for changes to the regulators' statutory objectives, enhanced mechanisms for accountability, scrutiny and oversight of the regulators by Parliament and HM Treasury, and for strengthening regulators' engagement with stakeholders.
- 1.5 As set out in the first consultation, published in October 2020, the PRA and the FCA remain the right institutions to deliver the UK's financial services regulatory framework. The government is not proposing to alter the macroprudential elements of the UK's regulatory framework, so the Financial Policy Committee is not within scope of the changes proposed in this document.
- 1.6 The second consultation in November 2021 asked for responses on 11 key questions relating to the government's proposals for the regulatory regime. These questions requested views on proposals to:
 - amend the regulators' statutory objectives and regulatory principles;

- increase the accountability of the PRA and the FCA to Parliament;
 - strengthen their relationship to HM Treasury;
 - enhance their engagement with stakeholders;
 - repeal retained EU law; and
 - create a Designated Activities Regime (DAR) so that certain activities carried out by unauthorised persons can be regulated in a manner which reflects the level of risk these activities pose.
- 1.7 The government is grateful for the 109 responses to the consultation and the constructive engagement with stakeholders during the consultation period. Respondents included financial services firms, consumer groups, independent public bodies, legal and accountancy firms, non-governmental organisations and non-profit organisations, trade associations, individual responses, and non-financial services firms.
- 1.8 The government also acknowledges the public letters it has received from consumer groups and economists on a number of important issues.
- 1.9 This document provides a breakdown of the key themes raised by respondents in response to the questions posed in the November 2021 consultation. The government's final policy to implement the FRF Review is laid out in the Financial Services and Markets Bill and the accompanying Impact Assessment and Explanatory Notes.

Chapter 2

Response to consultation questions

2.1 This chapter summarises the responses to each of the questions put forward in the November 2021 consultation. It also notes the government's final proposals, which will be implemented by the Financial Services and Markets Bill.

Question 1 - Do you agree with the government's approach to add new growth and international competitiveness secondary objectives for the PRA and the FCA?

2.2 The government set out its intention to introduce new secondary objectives for the PRA and the FCA, to provide for a greater focus on growth and international competitiveness. It outlined that this approach respects the need for the regulators to maintain high regulatory standards in the UK, and align with international standards, whilst enabling the regulators to facilitate the long-term growth and international competitiveness of the UK economy, including the financial services sector.

2.3 A significant majority of respondents supported the government's proposal and considered that it strikes the right balance by introducing a new focus on these important issues while maintaining the regulators focus on their existing objectives. Several respondents noted the importance of clear reporting requirements and that these should be public and clearly set out how the regulators have met these new objectives.

2.4 Of the respondents who disagreed with the government's proposal, views were split between those believing the new objectives should be primary, and those opposing the introduction of these new objectives altogether. Some respondents felt that material change would only be delivered via the addition of new primary objectives. Whereas others shared concerns that the proposed new objectives would risk eroding regulatory standards or dilute the regulators' focus on their existing objectives.

2.5 Having considered these arguments carefully, the government intends to introduce new secondary growth and competitiveness objectives for the PRA and the FCA.

2.6 Alternative suggestions included introducing objectives on other issues such as proportionality and financial inclusion. The government consider that proportionality is already sufficiently embedded in the regulators' statutory principles, requiring the regulators to ensure that any burden or restriction is

proportionate to the expected benefits, taking into account costs to firms and consumers. Financial inclusion is covered under the next question.

- 2.7 There were also calls for the objectives – as well as the wider FRF Review accountability arrangements – to be extended to other Financial Services regulators, including the Payment Systems Regulator (PSR).
- 2.8 The government intends to extend the accountability arrangements to the PSR but does not propose to modify the PSR’s statutory objectives. This is because the PSR is an economic and competition regulator with its own unique objectives. It already has an objective to promote the development of innovation in payment systems to improve the quality, efficiency and economy of payment systems. As such, a new growth and international competitiveness secondary objective for the PSR would, in effect, be duplicative.

Question 2: Do you agree that the regulatory principle for sustainable growth should be updated to reference climate change and a net zero economy?

- 2.9 The government set out its intention to further strengthen the UK's regulatory regime relating to climate by embedding climate change into the regulatory principles. It proposed that, alongside the new secondary objective to facilitate growth and international competitiveness, the existing regulatory principles should be amended to be clear that such growth should occur in a sustainable way that is consistent with the government's commitment to achieve a net zero economy by 2050 to meet the obligation set out in section 1 of the Climate Change Act 2008.
- 2.10 The majority of respondents supported the government's proposal, noting that it is consistent with the government's commitment to achieve a net zero economy by 2050 and aligns with the increased focus on climate change across the wider Financial Services sector. Of those who disagreed with the proposal, some noted that government social policy should be excluded from financial regulation. Other respondents noted that a more holistic approach is required to balance the regulators' focus on other social goals such as investment in the economic and social fabric of the UK economy. Some respondents sought further clarity on how this amended principle will work in practice. Some respondents suggested that the government should go further by introducing a new secondary objective instead.
- 2.11 The government therefore intends to require the regulators to have regard to the government's commitment to achieve a net zero economy by 2050 as set out in section 1 of the Climate Change Act 2008 by including a reference to this commitment in the regulatory principles. The PSR's sustainable growth principle will be amended to also require the PSR to have regard to section 1 of the Climate Change Act 2008.
- 2.12 Some respondents also suggested an additional 'have regard' for the FCA on financial inclusion. HM Treasury and the FCA already work closely together to achieve the government's aims on tackling financial exclusion. As outlined in the November 2021 consultation, the government's view is that FCA's current and ongoing initiatives to improve financial inclusion, including those relating to access to cash and vulnerable consumers, demonstrate that it can already effectively support the government's leadership on this agenda through its existing operational objectives and regulatory principles.

Question 3: Do you agree that the proposed power for HM Treasury to require the regulators to review their rules offers an appropriate mechanism to review rules when necessary?

- 2.13 The government set out its intention to introduce a new power for HM Treasury to require the regulators to review their rules when it is in the public interest. Alongside such a power, provisions would be made setting out how it would be operationalised. These may include:
- HM Treasury powers of direction on scope, conduct, timing, and making of reports
 - a requirement for HM Treasury to lay directions before Parliament
 - a requirement for the regulator to report the outcome of the review to HM Treasury, and a requirement for HM Treasury to lay reports before Parliament and publish them, unless this would be considered not in the public interest
- 2.14 Respondents generally welcomed the proposal of a power for HM Treasury to direct the regulator to review rules where it is in the public interest as a pragmatic and proportionate avenue for challenge of the regulators' rules. Some respondents also noted that this approach struck a balance between the need for such challenge and the need to maintain regulators' independence.
- 2.15 Respondents requested more clarity on when the rule review power would be exercised. The government noted in the November 2021 consultation that it expects the proposed rule review power would only be used in exceptional circumstances. For example, where there has been a significant change in market conditions, or other evidence suggests that the relevant rules are no longer acting as intended.
- 2.16 Some respondents also felt that there should be further measures on accountability, though there was no consensus on exactly what these measures should be, or whether this accountability should be to stakeholders, Parliament, or HM Treasury. Some respondents felt that the rule review power did not go far enough, either in terms of requiring the regulator to change its rules, or in terms of who could trigger a review. In particular, some respondents called for the power to be accompanied by a mechanism for stakeholders to trigger reviews directly, or clear avenues for stakeholders to request HM Treasury to direct a review.
- 2.17 The FRF Review proposed new rule review frameworks for the regulators (see Q9). The regulators have committed to ensuring that there are clear and appropriate channels for industry and other stakeholders to raise concerns with specific rules as part of their new frameworks.

Question 4: Do you agree with the proposed approach to resolve the interaction between the regulators' responsibilities under FSMA and the government's overseas arrangements and agreements?

- 2.18 The government set out its proposal requiring the regulators, when making rules and setting general approaches to supervision, to consider the impact of these rules on the deference arrangements the UK has with overseas jurisdictions and assess their compliance with the UK's obligations under our trade agreements. The government also set out that its proposal would require the regulators to consult HM Treasury on the general anticipated impact on the UK's deference arrangements.
- 2.19 The majority of respondents were in favour of these proposals. Respondents noted that the importance of coordination between the government and the regulators to ensure domestic regulation supports the government's deference and trade agendas. Respondents also noted that the proposal would be consistent with the regulators obtaining more rule making responsibility through the FRF Review.
- 2.20 Some respondents cited concerns that this could lead to a lowering of domestic regulatory and supervisory standards in favour of maintaining deference arrangements and the UK's obligations under its trade agreements and sought clarity over how conflicts between these two priorities would be managed. The government does not intend that this mechanism would constitute an HM Treasury veto or require the regulators to proactively take action to pursue the maintenance of deference arrangements unless doing so would better achieve their statutory objectives.
- 2.21 Respondents also argued that there should be public consultation on these impacts as part of the process. The government will communicate developments on deference in line with our policy as set out in the Guidance Document on the UK's Equivalence Framework.¹
- 2.22 The government therefore intends to introduce mechanisms by which the regulators will consult HM Treasury on rule changes and supervisory policy that could interact with existing deference arrangements, and to assess compliance with relevant trade agreements with overseas jurisdictions.²

¹ [Guidance Document for the UK's Equivalence Framework for Financial Services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/guidance-document-for-the-uk-s-equivalence-framework-for-financial-services)

² The mechanism requiring consultation in relation to relevant trade agreements will also apply to the PSR.

Question 5: Do you agree that these measures require the regulators to provide the necessary information on a statutory basis for Parliament to conduct its scrutiny?

- 2.23 The government set out proposals to strengthen the existing mechanisms which Parliament uses to hold the regulators to account. These proposals set out clearer requirements on when and how information should be provided to Parliament, and were designed to support more effective accountability to, and scrutiny of, the regulators by Parliament.
- 2.24 The government proposed a requirement for the PRA and the FCA to notify the relevant Parliamentary committee when they publish a consultation on any matter. The government also proposed a requirement for the regulators to respond in writing to formal responses to statutory consultations from Parliamentary committees.
- 2.25 There was broad support for the government's proposals to formalise through statute the mechanisms through which the regulators provide information to Parliament to ensure they have the information they need to undertake that scrutiny. Throughout the passage of the Financial Services Act 2021, Parliamentarians commented that the current legislation does not set specific requirements on regulators to provide Parliament with the information it requires to scrutinise financial services policy effectively. Respondents recognised that the regulators will be taking on significant new regulatory policymaking responsibilities and that Parliament should therefore have the appropriate mechanisms to be able to hold them to account.
- 2.26 Given the increase the regulators' responsibilities, some respondents noted the importance of the Treasury Select Committee (TSC) having access to appropriate resource and expertise to support their scrutiny. Respondents suggested the formation of a new sub-committee of the TSC or a new Joint Committee of both Houses dedicated to the scrutiny of financial services. Parliament is responsible for determining the best structure for its ongoing scrutiny of the regulators. The government will therefore not be making recommendations to Parliament on this matter.
- 2.27 The government intends to introduce a requirement for the PRA and the FCA to notify the TSC when they publish a consultation on any matter, and a requirement for the PRA and the FCA to respond to any Parliamentary Committee that has responded to a consultation published by one of the regulators.

Question 6: Do you agree with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation?

- 2.28 The regulators are required under FSMA to maintain stakeholder panels as part of their general duties to consult. The government recognises that the regulators' statutory panels are an important part of the process through which stakeholders can inform the regulators' rulemaking functions. These panels are intended to provide valuable insight, advice and challenge, drawing on the experience and expertise of their respective membership. The government set out a number of measures to enhance the crucial 'critical friend' role.
- 2.29 The government proposed that the FCA's Listing Authority Advisory Panel (LAAP) and the PRA Practitioner Panel's insurance sub-committee be placed on a statutory footing and the introduction of a new statutory requirement to systematise existing practice and ensure the regulators are transparent on their engagement with panels across all of their work. The government also proposed introducing a requirement for the regulators to each maintain statements on their processes for appointing members to panels.
- 2.30 Respondents strongly agreed with the proposals to strengthen the role of the panels in providing important and diverse stakeholder input into the development of policy and regulation. Respondents recognised that the measures represented an important step towards better representation and welcomed the increased transparency. A few respondents noted that transparency should be balanced with the role of the panels as a 'critical friend'. Some respondents supported the broad approach, however cited their concerns around the resource and expertise of the panels.
- 2.31 A few respondents suggested that a new external body should be created for scrutiny. The government considers that the existing avenues for stakeholders to provide input, feedback, and challenge through public consultation, as well as the role of HM Treasury and Parliament in assessing whether the regulators are advancing their objectives, remain the appropriate accountability mechanisms. This position is supported by the July 2021 Treasury Select Committee (TSC) report on The Future Framework for Regulation of Financial Services, which said 'the creation of a new independent body to assess whether regulators were fulfilling their statutory objectives would not remove the responsibility of [the TSC] to hold the regulators to account, and it would also add a further body to the financial services regulatory regime which [the TSC] would need to scrutinise'.³ The government does not propose the creation of an external scrutiny body.
- 2.32 The government intends to place the LAAP and insurance sub-committee on a statutory footing, require the regulators to report on their engagement with panels as part of the regulators' annual reports and public consultations and require the regulators to publish and maintain statements

³ *The Future Framework for Regulation of Financial Services*, House of Commons Treasury Committee, July 2021, page 28.

on their processes for appointing members to the panels. The latter two measures will extend to the PSR.

Question 7: Do you agree that the proposed requirement for regulators to publish and maintain frameworks for CBA provides improved transparency to stakeholders?

- 2.33 The government set out its proposal for a new statutory requirement for the regulators to publish their frameworks for conducting cost-benefit analysis (CBA). This will increase transparency regarding when stakeholders can expect a CBA to be conducted, and what that CBA will consist of. Clear and publicly available CBA processes should provide further assurance to stakeholders that the regulators are seeking to understand the effect of their regulatory policymaking. This should also support stakeholders in considering effectively whether the regulators' assessments through their CBA are correct. The government notes that the FCA already publishes a CBA framework, on which the new framework can be built.
- 2.34 Respondents strongly welcomed the proposal for a CBA framework. They noted that it would provide transparency on how the regulators conduct CBA which they considered was a crucial part of the rulemaking process. They also noted that it would be an opportunity for stakeholders to comment on these practices in a more open environment. This would provide transparency on how such comment is taken into account by the regulators.
- 2.35 Some respondents called for there to be specific requirements for how the regulators conduct CBA embedded in legislation, such as assessment of alternative options or both firm-specific and market-wide assessment. Others respondents noted that the efficacy of any CBA framework would depend on how closely regulators followed it. A number of respondents called for a requirement to consult stakeholders on the framework to be included in legislation. The regulators will consult publicly when the frameworks are made, and on any material changes thereafter.
- 2.36 The government therefore intends to introduce a requirement for the FCA, the PRA, and the PSR to publish statements of policy on how they conduct CBA.⁴ This will include requirements on what must be covered as part of the statement.

⁴ In the November 2021 consultation, these statements were referred to as 'frameworks'.

Question 8: Should the role of the new CBA Panel be to provide pre-publication comment on CBA, or to provide review of CBA post-publication?

- 2.37 The government set out its proposal for the PRA and the FCA to be required to set up a panel or panels dedicated to providing support for the development of their CBA. The government considered that this would improve the production and increase stakeholders' confidence that there is regular, independent input into the regulators' CBA. The government noted there were different options for how this panel could operate. The panel could provide its input "pre-publication" as part of the development of CBA for individual consultations. Alternatively, the panel could provide its input "post-publication" and scrutinise the regulators' approach post-implementation of rules to consider more systematically the regulators' approach and methodology for CBAs. The government asked respondents for their views on which option would be preferable.
- 2.38 Respondents overwhelmingly supported the creation of CBA panels. They considered that, under either of the options set out, a CBA panel would help to improve regulators' CBA. There was a clear preference amongst respondents for a CBA panel which provides comment pre-publication to ensure that rules are brought forward for consultation with robust CBA. However, a number of respondents argued that the panels should have the opportunity to comment on CBA both pre- and post-publication, as post-publication comment would allow for a more holistic review of CBA methodology.
- 2.39 Respondents noted that, if the panel was commenting on CBA pre-publication, there would have to be a degree of flexibility for the regulators to avoid disproportionate delays to the rulemaking process. The government has therefore included an ability for the regulators to set criteria for when CBAs do not need to go to the panel before consultation because it would be disproportionate, and to set out this criteria in their CBA statements of policy.⁵
- 2.40 Some respondents also suggested that the panel could be given the ability to block the introduction of new rules if it considered that the CBA was inadequate. The government considers that this could compromise the panel's role as a 'critical friend', and may cause significant delays to rulemaking.
- 2.41 There were also respondents who suggested a power for the panel to trigger a review of rules post-implementation if the panel considered that the effect of the rules appeared to be diverging significantly from that anticipated in the original CBA. The government considers that the power for HM Treasury to direct the regulators to review their rules, and the regulators' rule review frameworks, will provide sufficient avenues for challenge.
- 2.42 Having considered the views on pre-publication versus post-publication panels, the government intends to introduce a requirement for the panels to

⁵ In the November 2021 consultation, these statements were referred to as 'frameworks'.

provide feedback both pre-publication and post-publication, subject to a materiality threshold.

Question 9: Do you agree that the proposed requirement for regulators to publish and maintain frameworks for how the regulators review their rules provides improved transparency for stakeholders?

- 2.43 The government proposed a new statutory requirement for the PRA and the FCA to publish and maintain a public version of their framework for how they conduct rule reviews. This would cover all approaches to assessing the effect of rules, from monitoring to wider evaluation of impact. The government proposed that the content of the framework would be left for the regulators to develop, given their expertise, and to ensure flexibility in their operations.
- 2.44 Respondents broadly agreed that the proposed requirement for the regulators to publish and maintain frameworks for how the regulators review their rules will provide improved transparency to stakeholders. Respondents noted that such a framework would provide an opportunity for stakeholders to contribute whilst also making the regulators' review of their rules more systematic. Respondents noted that it will be important to manage the practical burden of regularly reviewing rules on the regulators and stakeholders. The government notes that the FCA already publishes an impact evaluation framework, which focuses on quantifying the impact of significant or novel measures after implementation. The new framework will also be required to cover other forms of review, such as monitoring, and can be built on the impact evaluation framework.
- 2.45 Respondents also wanted to ensure stakeholder views are represented in rule reviews and the regulators' broader approach to reviewing rules as set out in the framework. Some respondents suggested that the regulators should consult publicly on their frameworks.
- 2.46 Some respondents suggested that there should also be stakeholder-based mechanisms that could trigger a review of rules. Suggestions included mechanisms modelled on the super-complaint procedure in other sectors, powers for the CBA Panel to trigger a review (or to review the rules itself), and for an external body to review rules. The regulators have committed to address stakeholder concerns through their rule review frameworks, ensuring there is a clear and appropriate channel for industry and other stakeholders to raise concerns. The government considers that this will enable stakeholders to engage the regulators on rule reviews and no further legislative mechanism is required. The regulators will consult publicly when the frameworks are made, and on any material changes thereafter.
- 2.47 The government therefore intends to introduce a new statutory requirement for the PRA and the FCA to publish statements of policy on how they review their rules, and for the PSR to publish a statement of policy on how it reviews its generally applicable requirements.⁶ The government also intends to introduce a new statutory requirement for the PRA and the FCA to keep their rules under review and for the PSR to keep its generally applicable requirements under review.

⁶ In the November 2021 consultation, these statements were referred to as 'frameworks'.

Question 10: Do you agree with the government's proposal to establish a new Designated Activities Regime to regulate certain activities outside the RAO?

- 2.48 The government set out its proposal to create the Designated Activities Regime (DAR) so that activities related to financial markets, can be brought within a comprehensive FSMA framework which is suited to the level of risk that those activities involve. This is because there are a number of activities related to financial markets currently regulated by retained EU law, and the government intends to bring these into the FSMA framework, but does not consider it appropriate to require all firms engaging on financial markets to become FSMA authorised persons, and to be supervised as if they are offering financial services directly.
- 2.49 Through the DAR, HM Treasury will be able to 'designate' activities and enable the regulator to make rules relating to those activities. This 'activity-specific' approach means that the regulator will only make rules relating to the designated activity, and not the wider activities of persons carrying out the designated activity. Anyone intending to carry out a designated activity would not require authorisation, but would be required to follow the relevant rules relating to that activity.
- 2.50 The majority of respondents supported this proposal, noting the DAR presented a sensible and pragmatic means of regulation of activities which are carried out by a wider variety of persons on financial markets. Many agreed the 'activity-specific' approach to regulation on which the DAR is based will enhance the current FSMA model, allowing for a flexible and proportionate approach to the regulation of the UK's financial markets, once retained EU has been repealed.
- 2.51 A number of respondents noted that, in designing the DAR, HM Treasury would need to ensure clarity as to what activities the DAR will cover, what constraints will be placed on HM Treasury and the regulators' powers under the DAR, and what the consequences of failing to comply with the relevant requirements will be.
- 2.52 The government therefore intends to create a legislative framework for the DAR which will enable HM Treasury to bring activities related or connected to financial markets within the FSMA model and allow for the proportionate regulation of these activities.

Question 11: Do you agree with the government's proposal for HM Treasury to have the ability to apply "have regards" and to place obligations on the regulators to make rules in relation to specific areas of regulation?

- 2.53 The government set out its proposal to take a power that would enable HM Treasury to set 'have regards' which the regulators must consider when exercising their rules in specific areas of regulation. This power would ensure that the regulators are required to consider aspects of public policy that are not generally applicable and are, therefore, not captured by their objectives and principles.
- 2.54 The government also proposed to take a power that would enable HM Treasury to place obligations on the regulators to make rules in relation to specific areas of regulation, ensuring that essential regulations are contained in regulators' rulebooks.
- 2.55 Respondents were supportive of both the 'have regards' and obligations powers. Responses highlighted the need for government to have the ability to ensure that important matters of public policy were considered in the context of the increased responsibilities of the regulators. Responses also noted that the powers should not be limited to retained EU law, but should be used across financial services legislation.
- 2.56 A number of respondents suggested that the power could be improved if they operated within a framework that included limitations on numbers of 'have regards' and obligations that could be set by the government to ensure that the exercise of the powers was not overly burdensome on the regulators. The government agrees that the powers should be used in a proportionate manner, but believes that limits on the number that could be introduced would be overly restrictive. Other respondents suggested possible uses of the power, particularly 'have regards' related to financial inclusion.
- 2.57 A minority of respondents disagreed with the proposed powers, citing concerns of excessive government interference that could impinge on regulatory independence, and a lack of Parliamentary oversight. However, the government believes that this is an appropriate and proportionate approach. In order to ensure that there is appropriate Parliamentary oversight, the government intends for the powers to be exercised via statutory instrument. Furthermore, when making rules, the regulators will continue to be bound to advance their objectives and regulatory principles as they are now, but these powers will ensure that, when the regulators make these rules, they also take account of important public policy concerns.
- 2.58 Therefore, the government intends to take powers to set 'have regards' that the regulators must consider when making rules in specific areas of regulation, and to place obligations on the regulators to make rules in specific areas of regulation.

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