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Subject Public Consultation Paper on Legislation to Enhance Protection for Consumers Against Unfair Trade Practices

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Here is my submission on this topic, as it relates to AIs.

"Except specified, the legislative proposals cover all sectors. In view of the presence of sector-specific regimes, we propose in Chapter Four of the consultation paper that the financial services sector, property transactions and professional practices regulated by regulatory bodies established by statute should not be brought under the ambit of the expanded TDO."

I wish to comment specifically on these words, particularly as they apply to financial services.
It has, for as long as I can remember, been the received wisdom that the financial services sector should be excluded from consumer protection on the footing that there are 'other safeguards'. This dates right back to the pre-Big Bang days of the Control of Exemption Clauses Act when the City of London was claimed to be of strategic economic importance to Britain, and in any case the City Gents were "good chaps keeping an eye on other good chaps.'
Yet, also for as many years as I can remember, there has one financial debacle after another – the 'minibonds' saga being only one recent example – where such regimes have been found not to work. Nor are my concerns limited to cases where there is an obvious problem – modern financial instruments are in many cases so complicated that they are understood neither by those who draft them, nor by those who market them, nor by those who purchase them – and this is in the industry, let alone among the investing public. The S&L purchasers of mortgage securities in the 1980's did not understand the nature of the instruments they were acquiring, and surprise, surprise, commercial banks and others were none the wiser 20 years later in the most recent crisis.
At the same time, there has been an ever-increasing tendency amongst AIs to distance themselves from the products they are selling by disclaimer. Here, as an aside, I ask a rhetorical question; if it is true that past performance is no guide to future performance, why is there a graph on every product summary (I mean here the one shown by the AI to the customer, not the issue documentation) showing past performance, if not to influence the customer to purchase the product?
Now we have AIs defending themselves from highly-justified public criticism on the basis that they themselves did not understand the products they were selling! How can this be?
'Weights and measures' and 'description' legislation is fundamental to the operation of any organised society and depends on the simple proposition that if I am sold a certain 'weight' or 'measure' of some product, I have a right to expect that the weights and measures used are the same as those kept by some authority somewhere (be it the BIPM, or some official of the First Emperor of China, or even Hammurabi, for that matter), and the product is as described, be it a ton of lead, or a ton of feathers. The strictness of the liabilities imposed corresponds directly with the enormous potential for harm that flouting the rules entails.
Now, an AI might argue that it is in the nature of financial instruments that the 'product' is not like a ton of lead or a ton of feathers in that it is 'more complex' (although wholesale traders in non-ferrous metals or slaughterhouse by-products might well disagree!). But that does not explain how a financial instrument can be marketed as a 'mini-bond' when it is not, in fact, a bond at all. Nor does it explain how an instrument that is in fact a combination of a currency future with a put option can be described as a 'Deposit Plus', or an undivided interest in a time deposit evidenced by certificate as an 'RMB Bond', or an investment fund of funds (what used to be called a 'unit trust') following some proprietary index known only to the issuer, as an 'ETF', Similar abusages in any other sector would rightly land the offender in the criminal Courts.
If an instrument is a future coupled with an option, it should be called 'future coupled with option'; if an 'insurance policy' is in substance an investment vehicle, it should be referred to as 'Long Term Investment Fund with an Insurance Element', and so on. If the bank manager or insurance representative is receiving any kind of incentive for selling the product, including a performance bonus, or a holiday, or even a discount for insurance of their own, this must be disclosed to the customer. AIs should not be heard to say; 'I could not sell these products in these circumstances; customers would be put off, and would not understand'; that is exactly the point; customers should be able to

understand what they are buying. If a product is so novel or so complex that the AI is unable to explain it in plain language, then the AI should either refuse to sell it, or clearly label it 'Toxic Instrument - Unable to Recommend.'

Now another thing I often see is a statement that a particular investment is 'low-risk' or 'high-risk'. This (together with other statements in product summaries) is also a representation, which someone should be responsible for making; that someone is the AI. Say a butcher receives a consignment of meat which his professional judgement leads him to suspect is kangaroo meat, rather than the prime steak it purports to be. If he nevertheless puts it on the counter, he will be criminally liable for selling a product not matching its description. It will not be good enough for him to say, 'The supplier seemed like a good chap'. If an AI says that an investment is 'low-risk' that should be as a result of a judgement that the AI has made, and by which it is prepared to stand. If (as appears recently to have happened) the AI itself does not fully understand the risks inherent in a particular transaction, then the AI should say so, and be responsible for failing to say so. If the agent or representative of the AI does not understand what the risks inherent in a particular transaction are, how can that person be expected to supply the customer with any kind of meaningful explanation of what the product is?

I suppose that some AI representatives might argue, 'My customers know as much or more about transactions of this kind than I do'. But I have yet to hear a bank manager or insurance representative say, 'We are selling this new product; here it is; but I really have no idea what it is.' On the contrary, they are invariably anxious, perhaps too anxious, to push the product through the door. One of my friends received over 100 calls from a bank manager selling 'Deposit Plus' type product which subsequently resulted in heavy losses; neither she (a professional accountant) nor the manager had properly understood the potential of the product to incur losses.

Then again, the AI could argue, 'Why should we be responsible; our documentation contains disclaimers; the original issue documentation is there for the customer if she wants it; as to the rest of it, *caveat emptor*'. The reality is that the AI is in a much better position than the customer to make the relevant inquiries, and what is more, the relationship is one where the customer in general trusts the AI, or at least its representative, to sell prime beef rather than kangaroo meat. AIs go to enormous lengths to stress their own trustworthiness (even if, in the small print, they disclaim responsibility) as sound, reliable, solid institutions. I have yet to see an advertisement for an AI that admits that it is no more to be relied on than the man down the pub with a dodgy car; yet that is the law, as it now stands.

I am not here suggesting anything new or revolutionary; all I am suggesting is that AIs should be held to account for the 'weights, measures and descriptions' of the products that they sell in the same way as the butcher and the baker. It is a measure of how far short they fall of that standard, that they should be so strident in objecting to the imposition of obligations, including criminal obligations, that according to their marketing, they ought to be determined far to exceed.