Prudential Regulation Authority

Policy on conflicts of interest of the “appointed members” of the PRA Board

1. Members of the PRA Board should have the necessary expertise and experience to command respect in the UK and abroad. It will be necessary to avoid the potential reputational damage that would stem from any perception that members were insufficiently qualified. Such a need raises the possibility that individuals will be considered for membership who have other commitments and relationships that may mean they are conflicted.

2. This policy, approved by the Court of the Bank of England, is the framework against which Court will judge a potential or current appointed member’s relationships with a view to deciding whether the individual concerned is too conflicted or lacking in independence to be appropriate for appointment to the PRA Board, or to continue in office.

3. The principal purpose of this policy is to protect the reputation of the PRA. This requires avoiding a perception:

   a. that the individual concerned may not be wholly independent, disinterested and impartial when acting as a member of the PRA Board, or

   b. that a firm with which a member is connected may have an unfair competitive advantage by reason of assumed access to information or policy thinking.

4. Accordingly, only in exceptional circumstances would it be appropriate for a director of a PRA-authorised person to serve on the PRA board. (For more detail see paragraph 11 below).

5. There are various relevant statutory and code provisions referred to below and explained in more detail in the Annex. These set minimum standards and
do so in general terms and therefore do not prevent Court adopting a more rigorous policy to avoid the reputational risks referred to above.

**Relevant Statutory requirements**

6. The Financial Services and Markets Act 2000\(^1\) (FSMA) states that:

- The appointed members must be appointed by Court with the approval of the Treasury;

- Court must have regard to generally accepted principles of good practice relating to the making of public appointments;

- “Before appointing a person as an appointed member, the court of directors must consider whether the person has any financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge”; and

- Court, with the approval of the Treasury may remove an appointed member from office on the grounds that “the member’s financial or other interests that could have a material effect on the extent of the functions as member that it would be proper for the person to discharge”; and

- In managing its affairs, the PRA is required to have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it. This requires consideration of the relevant provisions of the UK Corporate Governance Code.

7. The PRA is a company incorporated under the Companies Act 2006 and directors are accordingly subject to the provisions of that Act and the Articles of Association of the PRA, including those relating to conflicts of interest.

8. Meaning of “conflict of interest”

- For the purposes of this policy, the term “conflict of interest” includes actual or potential conflicts of interest, conflicts of duty and other relationships which may give rise to a perception that the individual

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\(^1\) As amended by the Financial Services Act 2012
concerned may not be wholly independent, disinterested and impartial when acting as a member of the PRA Board. Financial interests, directorships and employment and consultancy arrangements are the most obvious examples of conflict.

- References to potential conflicts of interest or duty include situations where a relationship already exists and where an actual conflict may arise if and when a particular course of action is considered.

- “PRA-authorised person” means deposit takers, insurers (including Lloyd’s and Lloyd’s managing agents) and those investment firms designated for prudential supervision by the PRA.

Conflicts which may disqualify an individual from becoming or continuing as a member of the PRA Board

9. The acceptability of a conflict should be judged by reference to the potential reputational risk to the PRA. This risk may be reduced by the conflicted board member recusing himself/herself from Board decisions and discussions, although not necessarily so. A reputational risk can materialise even where an individual has not had to recuse himself from decisions and discussions in the past.

Financial interests

10. A conflict of interest as a result of holding a financial interest in a PRA-authorised person would normally disqualify an individual from becoming a member of the PRA board, subject to a “de minimis” test. A small shareholding in a PRA-authorised person held as part of an investment portfolio and which is not significant in terms of the individual’s wealth would not disqualify him (although where individuals invest in financial firms, they should generally do so through mutual funds or blind trust arrangements). Moreover, the Bank’s financial dealing rules preclude any purchase of such holdings and require sales to be approved by the Bank.
Directorships

11. A directorship may be executive or non-executive. The policies in this section are expected to be applied more rigorously in relation to executive directors and to non-executive chairmen. Unacceptable conflicts will, however, generally also arise in relation to Board members who are non-executive directors. Whether a conflict disqualifies an individual will depend on the nature and importance of the firm as described below.

a. **PRA-authorised persons – UK incorporated.** A conflict of duty arising as a result of a directorship of a PRA-authorised person would normally disqualify an individual. However, a judgement should be made on a case by case basis whether the size, significance and nature of the firm’s business in the context of the PRA’s objectives is such as to require disqualification. For example, membership of the governing body of a credit union would not, of itself, be expected to disqualify an individual.

b. **PRA-authorised persons – non UK and non EU incorporated.** In the case of board membership of a non-EU company which is itself a PRA-authorised person (i.e. operating through a UK branch) the presumption is that the position would be the same as for board membership of a UK PRA-authorised person, unless the amount of business conducted through the branch is immaterial to the group’s business, taken as a whole, and/or the size, significance and nature of the PRA-authorised person’s business itself is not material in the context of the PRA’s objectives.

c. **EU passported firms.** In the case of board membership of an EU company operating through a branch in the UK under EU passporting arrangements, in addition to the matters referred to in paragraph b., account should be taken of the more limited powers that the PRA has in relation to such firms, such that a conflict may not be so significant as compared with a UK PRA-authorised firm.

d. **Parent companies of PRA-authorised persons.** Board membership of an unregulated parent of a PRA-authorised person would normally be judged in the same way as board membership of the authorised person itself, given the presumed influence the parent would have over the authorised person.

i. This will particularly be the case where the PRA has statutory powers of direction over the parent (that is, where the parent is UK
incorporated, or has a place of business in the UK, and is a financial institution).

ii. Board membership of a non-UK parent of a PRA-authorised person to which the statutory power of direction does not apply may not disqualify the individual where the UK business of the group is immaterial to the group’s business, taken as a whole, and/or the size, significance and nature of the PRA-authorised person’s business itself is not material in the context of the PRA’s objectives.

e. **Other group companies.** An individual would not normally be disqualified by reason of sitting on the board of an unregulated group company (other than the parent company) where the group includes a PRA-authorised firm since the individual would not be expected to be in a position of influence in relation to the PRA-authorised person or the group as a whole.

**Employment and Consultancy arrangements**

12. Employment and consultancy arrangements include full time employment, part time employment and “contracts for services” e.g. consultancy arrangements. This section does not apply to employees who are also directors of the firm in question (as to whom paragraph11 applies).

a. Full, or substantially full, time employment in a PRA-authorised person, particularly in a senior position, or any role requiring the individual to be an Approved Person (other than as a non-executive director) is likely to be regarded as giving rise to an unacceptable conflict of duty.

b. Whether part time employment or consultancy arrangements disqualify an individual will depend on the nature of the services to be provided. There is likely to be a difference in perception between the provision of technical advice and a role which enables the individual to influence the business or strategy of the firm. The size, significance and nature of the firm’s business and the degree of influence that the individual has will be relevant to the decision; for example, there will be less concern where it is clear that the individual’s duties do not relate to the business of the PRA-authorised person.
c. The policy in relation to full or part time employment or consultancy arrangements with an unregulated parent of a PRA-authorised person or group company will follow the same principles in relation to a directorship as set out in paragraph 11.

**Other Matters**

13. In determining whether or not a potential conflict of interest may exist that would disqualify an individual from being appointed to the PRA Board it is important that at the time any such decision is to be made, all relevant information about the individual is made available to the appointing body (i.e. Court or a delegated appointing panel).

Approved by Court on 25 September 2013
Annex

Further details of statutory and code requirements

The FSMA requirement to consider conflicts

The statutory requirement on Court to consider financial and other interests before appointing a PRA director can be interpreted as saying that Court should not appoint a person to the Board who is likely to have to recuse himself from issues and decisions to an extent which calls into question his or her usefulness as a member of the Board.

The FSMA requirement to consider the Public Appointments Code

The requirement to have regard to generally accepted principles of good practice relating to the making of public appointments overlaps to some extent with the express provisions of FSMA. The Code of Practice for Ministerial Appointments to Public Bodies states that an appointing panel must satisfy itself that a candidate can meet the Seven Principles of Public life and have no conflicts of interest that would call into question their ability to perform the role. Relevant principles include acting solely in the public interest and not placing themselves under any financial or other obligations to others who might seek to influence them in the performance of their duties.

The FSMA requirement to have regard to principles of good corporate governance

The Corporate Governance Code published by the FRC requires boards to identify the directors it considers to be independent; that is “independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director’s judgement” for the purposes of demonstrating compliance with the requirement that at least half of the board should comprise independent non-executive directors. Given the express provisions of FSMA both in relation to board composition and conflicts, it is arguable that this aspect of the Code
should not be regarded as directly applicable to the PRA, but it is a benchmark of good practice to which Court may wish to have regard in relation to the need to have directors who are independent.

*Companies Act and the Articles of the PRA*

The Companies Act places a duty on a director to avoid a situation in which he has or can have a direct or indirect interest which conflicts with, or may possibly conflict with, the interests of the company unless the interest concerned is authorised by the directors. The Articles provide that any such authorisation will only be effective if the directors agree that the conflict or potential conflict can reasonably regarded as not being material in nature.