

TERMS OF REFERENCE FOR THE FINANCIAL MARKET INFRASTRUCTURE COMMITTEE WITH EFFECT FROM 1 JANUARY 2024

- 1) The Financial Market Infrastructure Committee (FMIC) is created by the Bank of England Act 1998 (as amended by the Financial Services and Markets Act 2023)¹.
- 2) The FMIC has responsibility within the Bank for exercising the Bank's FMI functions² as set out in the Bank of England Act 1998.
- 3) The Court of Directors may specify such other functions of the Bank as functions that are to be discharged by the FMIC. The Court of Directors has specified that the functions of the Bank related to the supervision of Financial Market Infrastructure (FMI) are to be discharged by the FMIC. For this purpose "FMI" includes, in addition to "FMI entities" as defined in Part 3B of the Bank of England Act:
 - Any clearing house recognised under Part 18 of the Financial Services and Markets Act 2000 (FSMA 2000), or any person so proposed to be recognised;
 - Systemic payment systems recognised, or any person proposed to be so recognised, by HM Treasury under Part 5 of the Banking Act 2009 and service providers to systemic systems which are specified under that Part;
 - Any person recognised, or proposed to be so recognised, under Part 5A of the Banking Act 2009 as having "systemic significance";
 - Any "operator" for the purposes of the Uncertificated Securities Regulations 2001;
 - Any operator of a system designated, or proposed to be designated, under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999; and
 - Any participant in an FMI sandbox made under Part 1 of the Financial Services and Markets Act 2023.
- 4) The Court of Directors has additionally specified that the Bank's functions (to the extent that those functions are not FMI functions) in relation to critical third parties, or any person proposed to be so designated, pursuant to the Financial Services and Markets Act 2000, generally, are to be discharged by FMIC.
- 5) For the avoidance of doubt, functions of the Bank related to the supervision of FMIs includes the powers set out in Part 4 of Schedule 11 to the Financial Services and Markets Act 2023 and includes the assessment of Condition 1 (failing or likely to fail) under paragraph 17 of Schedule 11 to the Financial Services and Markets Act 2023 and a response to any consultation on resolution Condition 2.

¹ This Terms of Reference is published to meet the requirements under section 30H of the Bank of England Act 1998

² See Annex 1

Membership

- 6) The members of the FMIC are: the Governor; the Deputy Governor for Financial Stability, the Executive Director for FMI, three Bank members appointed by Court, and at least three independent members appointed by Court.
- 7) Where possible, one independent member should also be an independent member of the Financial Policy Committee, and one independent member should also be an independent member of the Prudential Regulation Committee. Independent members will normally serve for a maximum of two three-year terms.

Statutory responsibilities of the FMIC

- 8) The FMIC has a number of non-delegable responsibilities, as set out in Annex 1, which include the Bank's FMI functions, under FSMA 2000, of making rules or technical standards.³

Decisions reserved for the Governor

- 9) In instances where the Governor has access to confidential information that, in the Governor's judgement, cannot be shared with FMIC, e.g. for reasons of national security, FMIC reserves to the Governor the ability to make decisions on such issues without consulting FMIC.

Deputy Governor for Financial Stability

- 10) The FMIC has delegated various responsibilities to the Deputy Governor for Financial Stability, recorded in Annex 2.

Chair

- 11) The FMIC is chaired by the Governor or the Deputy Governor for Financial Stability.
 - a) The Governor will chair, or explicitly delegate chairing to the Deputy Governor for Financial Stability, for:
 - i) Decisions to apply for an FMI Administration Order under Part 6 of the Financial Services (Banking Reform) Act 2013, or applications to appoint other insolvency officials in respect of FMI;
 - ii) Decisions that the conditions for exercising stabilisation powers under Schedule 11 of FSMA 2023 in respect of central counterparties are satisfied;
 - iii) Decisions to withdraw authorisation or recognition from an FMI (without the FMI's consent);
 - iv) Decisions to issue orders under section 199 of the Banking Act 2009 to close a payment system; or
 - v) Decisions to make a direction to suspend the clearing obligation, under Article 6a of EMIR.
 - b) The Governor will also chair, or explicitly delegate chairing to the Deputy Governor for Financial Stability, if, in the view of either the Governor or the Deputy Governor for Financial Stability, a decision may, or uncertainty exists as to whether it may:
 - i) Have a material impact on FMIs from a cost, risk or innovation perspective;

³ Section 30G(4) of the Bank of England Act 1998.

- ii) Have a material impact on the Bank's ability to meet its statutory objectives;
 - iii) Have a material impact on the Bank's domestic or international reputation;
 - iv) Have material financial, legal or operational implications for the Bank; or
 - v) Entail a material risk or change to the Bank's Strategy,
- c) The Deputy Governor for Financial Stability will usually chair the committee for other business.

Observers

- 12) The Director of Markets at the FCA (or their alternates) may also attend meetings as an observer. Others, including representatives of the Payment Services Regulator, may attend as observers at the invitation of the Chair.

Legal adviser

- 13) The Bank's General Counsel or an alternate from the Bank's legal directorate will attend meetings as a legal adviser to the FMIC.

Calling meetings

- 14) The Governor or Deputy Governor for Financial Stability may summon a meeting at any time by giving such notice as he or she thinks the circumstances require.

Quorum

- 15) The quorum of the FMIC is three members, which must include:
- i. the Governor or the Deputy Governor for Financial Stability; and
 - ii. if the Deputy Governor for Financial Stability is not present, the Executive Director for FMI; and
 - iii. an independent member appointed by Court.

Members joining remotely

- 16) The FMIC has determined that members who are not present at a meeting, but are in communication by telephone or any form of video-conferencing, are to be treated as present for the purposes of the meeting (including calculating the quorum).

Decisions at meetings

- 17) The Chair must seek to ensure that decisions of the FMIC are reached by consensus wherever possible. Where the Chair is of the opinion that consensus cannot be reached, a decision is to be taken by a majority vote of all those present at the meeting who are eligible to vote. In the event of a tie, the person chairing the meeting is to have a second casting vote.

Conflicts of interest

- 18) A member of the Committee that has any direct or indirect interest (including any reasonably likely future interest) in any dealing or business which falls to be considered by the FMIC must disclose that interest to the FMIC before it considers the dealing or business. The FMIC must decide whether this member is to be permitted to participate in any proceedings of the FMIC relating to any question arising from its consideration of the dealing or business, and if so to

what extent and subject to what conditions (if any). The Bank has issued a Conflicts of Interest Code of Practice describing how members and the FMIC are to comply with these requirements.

Written procedure

19) The FMIC may take a decision on a matter without a meeting. Any eligible member⁴ can request an item circulated by written procedure be considered at a meeting. A decision is reached by written procedure if:

- A majority of eligible members indicate in writing⁵ their agreement to the decision. In the event of a tie, the Chair is to have a second casting vote;
- Those members who agree would have constituted a quorum at a meeting; and
- No eligible members have requested the item be considered at a meeting.

The Governor will act as Chair for written procedures that, in the Governors judgement, require the Governor's view.

Court's oversight function

20) The Court of Directors is to have access in the discharge of its oversight functions to documents considered, or to be considered, by the FMIC. One or two members of the Court of Directors may attend any meeting of the FMIC for the purpose of exercising its oversight functions (but may not speak unless invited to do so by the Chair).

Reporting obligations

21) FMIC will approve the publication of an Annual Report setting out how the Bank has exercised its responsibilities in respect of supervising FMI.

Meeting arrangements

22) The FMI Secretariat functions, reporting to the Chair, will be responsible for organising the logistics of Board meetings, including maintaining agendas, circulating papers, identifying and managing matters arising, and arranging for minute taking. Minutes will be produced in line with general Bank policies. Papers will be made available by electronic means no later than two days prior to the meeting, with hard copies sent by courier where needed and as appropriate. The Chair may decide to defer papers that do not meet this deadline.

⁴ 'Eligible members' are FMIC members who would have been entitled to vote on the matter if the matter had been proposed for decision at a meeting of the FMIC.

⁵ 'In writing' includes by email or other electronic means.

Annex 1

FMI functions

The following functions of the Bank are referred to as FMI functions⁶:

- (a) its function of making rules under FSMA 2000 (considered as a whole);
- (b) its function of making technical standards in accordance with Chapter 2A of Part 9A of FSMA 2000;
- (c) its function of preparing and issuing codes under FSMA 2000 (considered as a whole);
- (d) its function of determining the general policy and principles by reference to which it performs particular functions under FSMA 2000

insofar as they are exercisable in relation to FMI entities.⁷

FMI functions must be exercised by FMIC, except as authorised by section 30G of the Bank of England Act 1998. This section allows FMIC to arrange for such of its functions as it thinks fit (including FMI functions) to be carried out only by, or after consultation with, the Governor. The FMIC may not delegate its FMI functions under FSMA 2000 of making rules or technical standards (but this does not prevent arrangements in relation to the Governor being made in respect of such functions).

In exercising these FMI functions in a way that advances the Financial Stability Objective the Bank must, so far as reasonably possible, act in a way which, as a secondary objective, facilitates innovation in the provision of FMI services (including in the infrastructure used for that purpose) with a view to improving the quality, efficiency and economy of the services (the secondary innovation objective).⁸

In exercising its FMI functions in a way that advances the Financial Stability Objective (and subject to that), the Bank must have regard to—

- (a) the regulatory principles as set out in section 30E of the Bank of England Act 1998;
- (b) the effects generally that the exercise of FMI functions will or may have on the financial stability of countries or territories (other than the United Kingdom) in which FMI entities are established or provide services;
- (c) the desirability of exercising FMI functions in a manner that is not determined by whether the persons to whom FMI services are provided are located in the United Kingdom or elsewhere.

The regulatory principles set out in section 30E of the Bank of England Act 1998 are:

- (a) the need to use the resources of the Bank in the most efficient and economic way;

⁶ Section 30D(3) of the Bank of England Act 1998.

⁷ FMI entities are defined in the section 30D of the Bank of England Act 1998 as: “(a) a recognised central counterparty within the meaning of Part 18 of FSMA 2000 (see section 285(1)(b)(i) of that Act); (b) a recognised CSD as defined by section 285(1)(e) of FSMA 2000; (c) a third country central counterparty as defined by section 285(1)(d) of FSMA 2000, and (d) a third country CSD as defined by section 285(1)(g) of FSMA 2000; “FSMA 2000” means the Financial Services and Markets Act 2000”.

⁸ Section 30D(2) of the Bank of England Act 1998. “FMI services” means services provided by FMI entities as part of their business as FMI entities.

- (b) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
- (c) the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term, including in a way consistent with contributing towards achieving compliance by the Secretary of State with section 1 of the Climate Change Act 2008 (UK net zero emissions target) and section 5 of the Environment Act 2021 (environmental targets) where the Bank considers the exercise of its FMI functions to be relevant to the making of such a contribution;
- (d) the general principle that consumers should take responsibility for their decisions;
- (e) the responsibilities of the senior management of FMI entities subject to requirements imposed by or under FSMA 2000, including those affecting consumers, in relation to compliance with those requirements;
- (f) the desirability where appropriate of the Bank exercising its FMI functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons;
- (g) the desirability in appropriate cases of the Bank publishing information relating to persons on whom requirements are imposed as a result of the exercise of the Bank's FMI functions, or requiring such persons to publish information, as a means of contributing to the advancement by the Bank of its Financial Stability Objective and its objective under section 30D(2);
- (h) the principle that the Bank should exercise its FMI functions as transparently as possible;
- (i) the desirability of facilitating fair and reasonable access to FMI services.

In addition, the Bank should have regard to any recommendation by the Treasury in writing to the FMIC about aspects of the economic policy of His Majesty's Government:

- (a) when considering how to advance the Financial Stability Objective and the secondary innovation objective, and
- (b) when considering the application of the regulatory principles set out in section 30E.⁹

⁹ Section 30I(1) of the Bank of England Act 1998.

Annex 2

Delegations to the Deputy Governor for Financial Stability

The FMIC delegates to the Deputy Governor for Financial Stability the following functions:

- the day to day management of the Bank's functions in relation to FMI, including day to day management of the Bank's functions in relation to critical third parties, or any person proposed to be so designated, pursuant to the Financial Services and Markets Act 2000;

The Deputy Governor for Financial Stability may sub-delegate those functions to (i) an officer, employee or agent of the Bank, or (ii) a committee consisting of officers, employees or agents of the Bank as appropriate having regard to the nature of the relevant decision and the Bank's objectives and have regards.

Terms, conditions and exceptions

The delegation of functions to the Deputy Governor for Financial Stability is on the following terms and subject to the following conditions and exceptions:

The FMIC should have an opportunity, where appropriate in advance, to consider matters, and make or review decisions that, in the view of the Deputy Governor for Financial Stability, could:

- set a precedent for policy matters;
- involve material change to the Bank's supervisory approach for FMI;
- involve a risk outside the FMIC's agreed risk tolerance statement for FMI;
- have a material impact on the Bank's ability to meet its statutory objectives for FMI;
- have material financial, legal or operational implications for the Bank in relation to FMI; or
- affect the Bank's domestic or international reputation in an FMI related matter.

For clarity, the delegation excludes:

- the Bank's FMI functions of making technical standards or rules under FSMA 2000;
- approving (or material changes to) the Bank's Annual Report on the supervision of FMI;
- approving (or material changes to) the Bank's supervisory approach documents or risk tolerances for FMI;
- approving (or material changes to) the Bank's control framework for FMI;
- responding to HM Treasury's letter of recommendations in relation to the aspects of Government policy to which the Bank should have regard;
- agreeing the strategic direction of policy proposals designed to meet the Bank's objectives;
- approving the authorisation and adoption each year of a supervisory strategy and key risks in relation to:
 - any Category 1 firm; and
 - any other firm escalated by the Deputy Governor for Financial Stability / requested by FMIC;
- any decision in relation to any Category 1 firm that the Deputy Governor for Financial Stability expects to have a significant impact on the firm's ability to carry out its business effectively or the Bank's objectives; and
- any decision in relation to any CCP as to whether Condition 1 for the exercise of a stabilisation power in Schedule 11 of FSMA 2023 is satisfied.