Financial Services and Markets Act 2000:

Memorandum of Understanding between the Financial Conduct Authority and the Bank of England, including the Prudential Regulation Authority

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Memorandum of Understanding between the Financial Conduct Authority and the Bank of England, including the Prudential Regulation Authority

Purpose and scope

1. This Memorandum of Understanding (MoU) sets out the high-level framework that the Financial Conduct Authority (FCA) and the Bank of England (the Bank), and where appropriate the Prudential Regulation Authority (PRA), will use to cooperate with one another in relation to the supervision of markets and market infrastructure. It fulfils FCA and Bank obligations under the Financial Services and Markets Act 2000 (FSMA), as amended, to prepare and maintain a memorandum describing how they will work together in exercising their functions in relation to Recognised Investment Exchanges (RIEs) and Recognised Clearing Houses (RCHs). The framework in this MoU will also be used to satisfy Bank obligations under the Banking Act 2009 to consult the FCA on the exercise of its payment-system-oversight responsibilities.[1]

2. The FCA and the Bank have different mandates in relation to markets and market infrastructure. The FCA is responsible for regulation of organised financial markets including RIEs and other trading platforms, and the conduct of participants in relation to the financial instruments and derivative contracts traded both on those markets and in over-the-counter (OTC) financial markets.

3. The Bank is responsible for the oversight of clearing, settlement and payment systems ("post trade systems") in support of its financial stability objective. These responsibilities are respectively established in FSMA (as amended by the Financial Services Act 2012), the Uncertificated Securities Regulations 2001 (as amended) and the Banking Act 2009 (as amended). The PRA is responsible for the prudential supervision of many of the firms that are participants of such systems.

4. This means that the actions of each authority may have implications for the objectives of the other. It is therefore essential that the authorities work together in exercising their functions, to ensure each is able to advance its objectives.

[1] A separate MoU outlines how the Authorities' obligations under Part 5 of the Financial Services (Banking Reform) Act 2013 relating to the regulation of payment systems are delivered. See https://www.gov.uk/government/publications.

Roles and responsibilities of the FCA and the Bank

5. In broad terms, under FSMA, the FCA is responsible for:

- regulating standards of conduct in retail and wholesale markets;
- supervising trading infrastructures that support those markets;
- the prudential supervision of authorised firms that are not PRA regulated; and
- the functions of the UK Listing Authority and other functions under Part 6 of FSMA.

6. The FCA has a single strategic objective to ensure that the markets for financial services function well. Three operational objectives support this: securing an appropriate degree of protection for consumers (including investors in financial instruments and wholesale consumers); protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the markets for financial services.

7. Under the Bank of England Act 1998, the Bank has an objective to protect and enhance the stability of the financial system of the United Kingdom. In pursuit of this objective, the Bank is responsible for, inter alia, the oversight of clearing, settlement and payment systems. The PRA is responsible for the authorisation, in conjunction with the FCA, and prudential supervision of individual deposit takers, insurers and certain designated investment firms.

Information exchange

8. Timely and focused exchanges of information will be essential to effective cooperation. The FCA, the Bank and the PRA, will share information related to markets and markets infrastructure where materially relevant to another of them both at their own initiative and upon each other's request, where legally permissible.

9. Some information is received from third parties, such as overseas supervisors. The ability to share such information with each other may in some instances be constrained by the terms of agreements with those third parties. The FCA, Bank and PRA will seek to ensure that these instances are minimised.

Consultation in relation to entities supervised solely by the FCA or Bank

10. The Bank will consult the FCA on issues that arise in respect of post trade systems, or participants in such systems, where it considers such issues materially relevant to the FCA's responsibilities for the supervision of trading platforms or market integrity responsibilities. These issues may include, but not be limited to:

- material changes to system rules, practices, and structures;
- material changes to system access and participation requirements;
- orderly wind-down, recovery and resolution plans; and
- material operational issues.

11. The FCA will consult the Bank on issues that arise in respect of trading platforms and OTC markets, or their participants, where it considers such issues materially relevant to the Bank's responsibility for supervision of post trade systems or wider financial stability. These issues will include, but not be limited to:

- material changes to trading platform or OTC market rules, practices, and structures;
- orderly wind-down, recovery and resolution plans in relation to a trading platform where applicable; and
- material operational issues.

12. The FCA and Bank will consult one another at an early stage wherever practicable, and give due weight to each other's views when taking regulatory action. If conflicts arise and cannot otherwise be resolved, they will escalate through the management and governance structures of each organisation.

Cooperation in respect of groups and dual-regulated entities

13. A single corporate group may contain both an entity that operates trading platforms and an entity that is a clearing, settlement or payment system supervised by the Bank (i.e. two "regulated infrastructures"). There may further be cases where a single entity (or regulated infrastructure) is both supervised by the FCA and overseen by the Bank. In such circumstances, the Bank and the FCA will coordinate the exercise of their functions according to the following principles.

- They will regularly exchange information so as to ensure that the supervisory judgment of each can take into account relevant information, including the risks that the regulated infrastructure faces from its wider activities or from its group, and the relationships between each activity and entity. This information exchange will include but not be limited to findings and conclusions on material prudential risks or key conduct risks relevant to safety and soundness, the adequacy of the regulated infrastructure's or its group's financial resources, material changes in the regulated infrastructure or its group's organisation, governance, risk management, or ownership, material operational stresses or incidents, and assessments of resolvability.
- FCA and Bank will consult in advance of, amongst other things:
    - withdrawing recognition/approval;
    - issuing directions;
    - issuing warning or decision notices (according to their arrangements for liaising with the other);
    - waiving rules that may be materially relevant to the other's objectives;
    - triggering resolution, where applicable; and
    - prospective changes of control.
- When both exercising a function in relation to the same common issue (e.g. assessing the fit and properness of an individual who acts in a critical role for both the FCA and Bank-supervised entities), the FCA and Bank will consult, while recognising that each has distinct objectives and may therefore reach different conclusions.
- With respect to the exercise of powers under Part 11 of FSMA (which contains the information gathering and investigatory powers of FSMA):
    - when FCA or Bank proposes to request information from a trading platform or a clearing house, from a connected person, or from a member or participant of such an entity, it will inform the other party where it considers there is a material risk of duplication;
    - when an entity or a group is supervised by both the FCA and Bank, and one of them proposes to appoint a skilled person or an investigator, it shall notify the other;

    - in such cases the FCA and Bank will, where practicable, consider whether to co-ordinate such investigation jointly and will endeavour to minimise duplication and regulatory burden falling upon the regulated infrastructure or the group as a whole;
    - where the authority commissioning an investigation considers its results may be materially relevant to the objectives of the other, it shall provide the other with a confidential copy of the results.
- FCA and Bank will notify each other when imposing requirements, taking other enforcement actions, making significant public communications related to the regulated infrastructure or its group, or where practicable, before commencing civil or criminal proceedings or making a public statement in relation to such proceedings.

14. In order to facilitate this information sharing and consultation the FCA and Bank may establish regular meetings or other arrangements. A significant increase in the assessed risk profile of an individual regulated infrastructure will prompt ad hoc discussions between Bank and FCA. FCA and Bank will seek to avoid taking regulatory actions that are incompatible or in conflict, and, if conflicts arise and cannot otherwise be resolved, they will escalate through the management and governance structures of each organisation.

15. In recognition of the role played by parent companies that are not themselves authorised persons or recognised bodies, FSMA provides the FCA and the Bank with the power to direct qualifying parent undertakings of RIEs and RCHs in specified circumstances. Each regulator will consult the other in relation to any proposal to direct an entity that is a qualifying parent undertaking in respect of both an RIE and an RCH. Where both regulators propose to direct such a qualifying parent undertaking, they will so far as possible coordinate their actions so as to minimise burdens on the group and avoid incompatible requirements.

Other specific areas of supervisory cooperation

16. Under Part 2 of Schedule 17A of FSMA, the Bank may require a RCH (or an entity connected to a RCH) to produce information or documents which the Bank reasonably considers may enable or assist the FCA in discharging functions

conferred on the FCA under FSMA (the Part 2 Power). Where the FCA considers that information or documents within the possession or control of an RCH, or a connected person, would be of material assistance to the performance of its functions, the FCA may submit a request to the Bank and, if the Bank reasonably considers this to be the case, it will take steps in accordance with the Part 2 Power to obtain such information or documents on behalf of the FCA.

17. A request by the FCA under that Part 2 may include:

- information or documents relevant to assessing the adequacy of clearing or settlement arrangements proposed by a trading platform; and
- information or documents relevant to pursuit of its objectives in relation to the detection and deterrence of market abuse or financial crime.

18. When undertaking an assessment of the adequacy of clearing or settlement arrangements to be provided to a trading platform by firms supervised by the Bank, the FCA will consult the Bank and seek to avoid duplicating work already undertaken by the Bank.

19. The Bank will notify the FCA of any proposal to designate a clearing or settlement system for the purposes of the UK settlement finality regulations.

20. For the purposes of Article 22 of EMIR, the Bank will be designated as the single authority responsible for coordinating cooperation and the exchange of information under that regulation. Ordinarily, however, FCA and relevant EU institutions (such as the European Commission, ESMA or the ESCB) or other EU competent authorities will liaise directly when an issue concerns an FCA function, and this will not need to be coordinated by, or channelled through, the Bank.

21. The FCA will notify the Bank of any direction it gives to an RCH in relation to market abuse investigations under section 128 of FSMA.

22. The FCA will notify the Bank of any requirement it imposes on an institution under section 313A of FSMA (power to require suspension or removal of financial instruments from trading) where that institution is also an RCH.

23. Other than in exceptional circumstances (see "emergency action" below), the FCA and the Bank will consult in relation to a proposal to give a direction to an RIE or RCH under section 166 (Part 7) of the Companies Act 1989 or take action under arrangements made under Part 4 of the Financial Services Act 2012 in relation to crisis management.

24. In the event of an actual or anticipated default of a user of trading platforms and clearing / settlement systems, the FCA, the Bank, and the PRA, are committed to working closely together, and to communicating effectively and promptly in order to ensure that regulatory actions are coordinated.

Policy and rule-making approach

25. On general policy matters relating to trading platforms, OTC markets and clearing/settlement systems, the FCA and the Bank will, other than in exceptional circumstances (see "emergency action" below), consult each other at an early stage in relation to policy deliberations that might have a material effect on the other's objectives, or the risk borne by clearing and settlement systems or trading platforms, or by OTC market participants.

26. RIEs and RCHs may offer services such as reporting of off-exchange transactions designed to facilitate the provision of clearing services by another person (under 285(2)(b) or 285(3)(b) of FSMA). To facilitate consistent regulation of similar services, the FCA and the Bank shall consult each other on their approach to the regulation of such services.

27. The FCA and the Bank will seek to avoid introducing, inadvertently, incompatible requirements or policy positions in these areas. Where there is a serious prospect of conflict between their requirements or policy positions which would materially affect their objectives, the issue will be elevated to the CEO of the FCA and Deputy Governor for Financial Stability at the Bank.

Financial crime

28. Where the Bank, in carrying out its functions referred to in paragraph 2 above, becomes aware of any evidence that it believes may be materially relevant to the FCA's functions in relation to financial crime, it will alert the FCA.

29. The FCA will alert the Bank to any investigation, in respect of financial crime, into an operator of a clearing, settlement or payment system, or an FCA-supervised person in the same group as a clearing, settlement or payment system, before commencing or publicly announcing such investigation; and will inform the Bank of any actual or suspected financial crime in relation to a clearing, settlement or payment system of which the FCA is aware.

Recognised Payment Systems: exercise of functions by the Bank

30. The Banking Act 2009 provides that, in exercising its powers under Part 5 of that Act to, inter alia, give directions to and impose penalties on payment system operators, the Bank must, before taking action in respect of a person or firm that is authorised by the FCA or recognised by the FCA as an RIE (or has applied for such authorisation or recognition), consult with the FCA and have regard to any action that the FCA has taken or could take in respect of the same person.

31. Where consulted in accordance with the Part 5 regime, subject to the urgency and the nature of the case, the FCA expects to respond to the consultation and notify the Bank within five working days as to whether it is considering taking action in respect of the operator. If the FCA gives the Bank such notice, the Part 5 regime provides that the Bank may not take action unless the FCA consents or the notice is withdrawn. The FCA will give such notice only if it reasonably expects that the action it is considering would address the Bank's concerns and will confirm as soon as reasonably practicable, and usually within no more than three months, whether it intends to take action. In this circumstance it is also envisaged that the FCA will provide regular updates to the Bank with regard to the action being taken.

Emergency action

32. It is important that the FCA and the Bank have the ability to act quickly where appropriate to advance their respective objectives. In that context, in particular market conditions or other relevant circumstances, the precise arrangements set out in this MoU may not be compatible with one or more of the parties advancing its objectives with the urgency required. For example, where justified, action may need to be taken without consultation. In this case, the FCA or Bank will provide the other with notice as soon as practicable of the situation and the action taken, or proposed to be taken.

Cooperation regarding representation of the UK at international meetings

33. The FCA and the Bank will establish arrangements for exchanging agendas for, and relevant information relating to areas of common interest from, EU regulatory fora of which one is a member (e.g. EBA, EIOPA, ESMA) and other, global fora (e.g. BCBS, IOSCO) as appropriate.

34. Consistent with the MoU on international organisations[2] and where relevant to their respective objectives, co-ordination in relation to ESAs will include in particular:

- designating individuals who will act as points of contact for regular exchange of papers relevant to each other;
- the FCA, PRA and Bank facilitating, where possible, the attendance of the others at relevant committees and working groups (including the ESA supervisory boards); and
- consulting each other to agree positions that reflect the views of the other, while consistent with its own objectives.

In relation to ESMA, this co-ordination reflects that the Bank has a statutory role and responsibilities for the supervision of post trade systems.

[2] http://www.bankofengland.co.uk/about/Documents/mous/mouintorg.pdf

Confidentiality

35. The FCA and the Bank (including the PRA) will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other.

36. Without prejudice to the obligations a regulator may have to use or disclose information in relation to enforcement proceedings or otherwise, each regulator will endeavour to consult the other, where practicable, before

- passing the information to a third party; and
- using the information in the context of enforcement proceedings or other court case where it is likely to become publicly disclosed.

It is recognised that it may, over time, become more difficult to identify the source of certain types of information.

37. The FCA and the Bank (including the PRA) will liaise, where appropriate, on responding to requests made under the Freedom of Information Act and Data Protection Act, and will consult before releasing information received from the other.

Maintaining the MoU

38. The FCA and the Bank will each appoint a senior executive responsible for cooperation between them under this MoU. Where an appointed executive so requests, and at a minimum annually, the appointed executives will meet to review whether the arrangements set out in this MoU are proving effective.

39. The CEO FCA and Deputy Governor for Financial Stability at the Bank will review each year how the MoU is working. The Bank and FCA will each publish a summary of the key points from those reviews.

40. Feedback from trading platforms and from clearing and settlement systems on how cooperation is working from their perspective will be an input to those reviews. Both FCA and Bank will make a judgment on whether there has been a lack of co-ordination or unnecessary duplication between them in pursuit of their objectives.

The relationship between the FCA and the Bank and the PRA

41. FSMA provides that the FCA, PRA and the rest of the Bank must prepare and maintain a memorandum of understanding setting out how they plan to work together in exercising their functions in relation to recognised bodies that are, or are members of the same group as, PRA authorised persons. At present there are no such entities. If that were to change this memorandum will be updated.

42. Where the PRA is responsible for the prudential supervision of participants of infrastructure systems supervised by the FCA or Bank it will share relevant information with the FCA or Bank as appropriate and the PRA will, where necessary, facilitate similar sharing with overseas supervisors of members of UK infrastructures. The infrastructure supervisors will likewise share information with the PRA where such information is relevant to the safety and soundness of participants of infrastructure systems. The authorities will share crisis related information as referred to above.

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