

Memorandum of Understanding:

Between the Financial Conduct Authority and the Bank of England (exercising its prudential regulation functions)

Presented to Parliament pursuant to Section 3E(6) of the
Financial Services and Markets Act 2000 as amended by
Section 6 of the Financial Services Act 2012.

July 2019

Memorandum of Understanding

between

The Financial Conduct Authority

and

The Bank of England

I PURPOSE AND SCOPE

1. This Memorandum of Understanding (MoU) sets out the high-level framework the Financial Conduct Authority (FCA) and the Bank of England (Bank) (exercising its prudential regulation functions) will use to co-ordinate and co-operate in carrying out their respective responsibilities under:
 - (i) the Financial Services and Markets Act 2000 (FSMA) (and equivalent legislation covering, for example, mutuals);
 - (ii) the Financial Services Act 2012;
 - (iii) the Competition Act 1998 (CA98);
 - (iv) the Enterprise Act 2002 (EA02); and
 - (v) the Treaty on the Functioning of the European Union (TFEU) and relevant EU legislation.
2. This MoU has been agreed pursuant to sections 3D and 3E of FSMA.
3. The mandates of the FCA and the Bank are very different. At the highest level, the FCA is responsible for maintaining the integrity of the provision of financial services to users.
4. The Bank is responsible for monetary policy and financial stability, primarily through its Monetary Policy Committee, Financial Policy Committee and Prudential Regulation Committee. It has primary operational responsibility for financial crisis management and is responsible for oversight/supervision of payment systems, settlement systems and central counterparties. It is the UK's resolution authority and,

when acting in its capacity as the Prudential Regulation Authority (PRA), it is responsible for promoting the safety and soundness of PRA-authorized persons, that is, deposit-takers, designated investment firms and insurance firms, and in the specific context of insurance, contributing to an appropriate degree of protection for those who are or may become policyholders. Unless otherwise stated, references in this MoU to the 'PRA' shall be read as references to the Bank acting in its capacity as the PRA.

5. The PRA and the FCA (each an authority) have separate and independent mandates, which are set out in statute, reflecting the UK's 'Twin Peaks' micro-regulatory system. While it is important that this is respected, it is also essential that the regulators co-ordinate in some areas, and co-operate in others.
6. This MoU replaces the previous MoU which was adopted on 1 April 2013. This MoU does not affect any arrangements under other MoUs.

II REGULATORY OBJECTIVES OF THE FCA AND THE PRA

7. The FCA has a single strategic objective to ensure that the markets for financial services function well. Three operational objectives support this:
 - (i) securing an appropriate degree of protection for consumers (including wholesale consumers);
 - (ii) protecting and enhancing the integrity of the UK financial system; and
 - (iii) promoting effective competition in the interests of consumers.
8. Additionally, in relation to financial services in the UK and claims management services in Great Britain, the FCA has the concurrent competition functions with the Competition and Markets Authority (CMA) of:
 - (i) enforcing prohibitions against anti-competitive agreements and abuses of dominance in Section 2 and Section 18 of CA98 and Article 101 and Article 102 of the TFEU; and
 - (ii) conducting market studies under the EA02 and making market investigation references (MIRs) to the CMA.

9. Broadly, 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 firms that are not PRA-regulated; and
 - the functions of the FCA as a securities regulator.
10. The PRA's general objective is to promote the safety and soundness of PRA-
authorised persons, and it is required to advance this objective primarily by:
- seeking to ensure that the business of such persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system;
 - seeking to minimise the adverse effect that the failure of such persons could be expected to have on the stability of the UK financial system; and
 - from 1 January 2019, discharging its general functions in relation to ring-fencing, ring-fenced bodies, UK body corporates with a ring-fenced body as a member of their groups and applications to carry on regulated activities which, if granted, would result, or would be capable of resulting, in a person becoming a ring-fenced body, in a way that seeks to:
 - a. ensure that the business of ring-fenced bodies is carried on in a way that avoids any adverse effect on the continuity of the provision in the UK of core services;
 - b. ensure that the business of ring-fenced bodies is protected from risks (arising in the UK or elsewhere) that could adversely affect the continuity of the provision in the UK of core services; and
 - c. minimise the risk that the failure of a ring-fenced body or a member of a ring-fenced body's group could affect the continuity of the provision in the UK of core services.

11. In the case of insurers, the PRA has the additional objective of contributing to securing an appropriate degree of protection for those who are or may become policyholders.
12. The PRA also has a secondary competition objective which requires it, when discharging its general functions in a way that advances its objectives, so far as is reasonably possible, to act in a way which facilitates effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.
13. The PRA is responsible for the authorisation (in conjunction with the FCA), and prudential supervision, of deposit-takers (including banks, building societies and credit unions), insurers (including friendly societies) and designated investment firms.¹

III RESPECTIVE ROLES WITH REGARD TO THE REGULATED ACTIVITIES OF AUTHORISED PERSONS

Policy and rule-making

14. Each regulator will make rules and policies in pursuit of its separate objective(s).
15. The FCA and the PRA will consult each other at an early stage in relation to policy deliberations which are either equally relevant to both regulators' objectives or might have a material effect on the other's objectives. The regulators will seek to avoid introducing incompatible requirements. Where any such conflict is a serious prospect and would have a material effect on the achievement of objectives, the issue will be escalated to the CEO of the FCA and the Deputy Governor for Prudential Regulation, and to the Board of the FCA and the Prudential Regulation Committee (PRC) if necessary.
16. As a matter of routine, the FCA and PRA senior executives responsible for policy will discuss actual and potential policy initiatives of material relevance to each other each quarter, and assess whether co-ordination is effective in practice.

¹ The list of designated investment firms can be found here:

www.bankofengland.co.uk/pru/Pages/authorisations/designatedfirmslist.aspx

The Policy Statement on the designation of investment firms can be found here:

www.bankofengland.co.uk/publications/Documents/other/pru/designationofinvestmentfirms.pdf

17. Routine co-ordination on rule-making will be delivered via the relevant secretariats of the PRA and the FCA. The secretariats will report to the relevant statutory rule-making committees (the Board of the FCA and the PRC) on such activity.

Management of regulatory processes

18. Both the FCA and the PRA are responsible for managing the following regulatory processes:
 - (i) the grant, variation or cancellation of permission to carry on regulated activities in the UK;
 - (ii) the approval of individuals to perform controlled functions;
 - (iii) the exercise of EEA passporting rights;
 - (iv) acquisitions and increases of control over UK authorised persons;
 - (v) the control of business transfers under Part VII of FSMA;
 - (vi) the grant of rule waivers and modifications; and
 - (vii) the grant of permissions under relevant EU legislation.
19. Broadly, the PRA is the lead regulator for dual-regulated firms (that is, firms authorised by the PRA and regulated by both the PRA and the FCA) and the FCA is the lead regulator for solo-regulated firms (that is, firms authorised and regulated by the FCA only). Except where otherwise stated in legislation, the lead regulator is responsible for managing a single administrative process, providing the other regulator with copies of any application forms, information and accompanying documents received and administering notices to the home or host regulator and to the firm concerned.
20. In respect of dual-regulated firms, and of groups containing dual-regulated firms, each regulator will co-ordinate with the other before taking certain action. This co-ordination varies between seeking consent, consultation or notification. Details of the consultation and consent processes are in Annex 1.

21. Under the Senior Managers & Certification Regime (SM&CR) the lead responsibility for approving individuals for dual-regulated firms will be split between the FCA and the PRA depending on which regulator's rules designated the relevant Senior Management Function.
22. The FCA will maintain a single consolidated register covering all FCA- and PRA- authorised firms and senior managers/approved persons.

Supervision of firms subject to dual-regulation

23. Firms subject to the PRA's prudential supervision and regulation are also subject to conduct regulation by the FCA, and to rules governing the issuance, listing and trading of listed securities. In some groups, there will be entities subject to prudential supervision by the PRA and others subject to prudential supervision by the FCA with the PRA as consolidated supervisor.
24. Given their different statutory objectives, the regulators will not normally conduct supervisory activity jointly. Each regulator's risk assessment for a firm will reflect its own statutory objectives. Conclusions and key information from supervisory activity which is materially relevant to the other regulator's objective(s) will be exchanged on the basis described in paragraphs 25-28 below.
25. In order to ensure that each regulator's supervisory judgements about a firm reflect all relevant information, the regulators will, subject to their respective legal obligations, share information on dual-regulated firms and firms within dual-regulated groups. To that end:
 - (i) The PRA will routinely share the following for all firms that are dual-regulated or part of a dual-regulated group:
 - a. conclusions from the assessment of recovery plans;
 - b. the position of a firm within the PRA's Proactive Intervention Framework²; and

² As outlined in the PRA's Approach documents:

www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx

- c. details relevant to assessments of capital and liquidity requirements, including: (1) its agreement to the use of internal models, and (2) individual capital and liquidity requirements.
 - (ii) The FCA will routinely share the following for all firms that are dual-regulated or part of a dual-regulated group:
 - a. findings on key conduct risks (which includes those under CA98 and/or TFEU) that are materially relevant as to whether a firm is prudently managed or otherwise to its safety and soundness; and
 - b. any material prudential risks concerning the subsidiaries of groups which contain one or more dual-regulated firms.
- 26. To support that process, domestic ‘supervisory colleges’ for individual firms and groups will be established as appropriate, with a view to identifying which risks and mitigating actions might have a material effect on the ability of either regulator to advance its objectives:
 - (i) The frequency of the meetings of such colleges will reflect the importance of the firm to each regulator’s objectives.
 - (ii) Either regulator may call for an ad-hoc meeting and there will be working-level engagement, the degree of which will also reflect the importance of the firm to one or both of the regulator’s objectives. A significant increase in the assessed risk profile of an individual firm will prompt discussions between the regulators.
 - (iii) For dual-regulated groups, the level and nature of engagement will also reflect the PRA’s role as consolidated supervisor and the balance of business and risk between solo- and dual-regulated firms in the group.
 - (iv) For small firms, discussions between the FCA and the PRA will be undertaken on an annual basis at sectoral level and may include input from the respective contact/enquiry centres for firms without a named supervisor.
 - (v) The categorisation of firms by each regulator will be reviewed annually by the heads of supervision.

27. Beyond their exchanges on individual firms and groups, the regulators will share information on any thematic work on the population of dual-regulated firms and groups with dual-regulated firms that is materially relevant to the other including relevant analysis of business models. That will be the responsibility of the respective FCA and PRA senior executives responsible for supervision.
28. Where one regulator contemplates certain action in respect of a dual-regulated firm or a firm in a group with dual-regulated firms under its statutory powers, it will co-ordinate with the other regulator as set out below in the section covering enforcement and formal regulatory action.

Supervision of Lloyd's Insurance Market

29. The PRA is the prudential regulator for the Society of Lloyd's, and has responsibility for promoting the safety and soundness of the Society of Lloyd's and its members taken together, including the central fund. The PRA is also the prudential regulator of managing agents operating within the Lloyd's market.
30. The FCA regulates the conduct of the Society of Lloyd's, managing agents and, on a prudential and conduct basis, the members' agents and advisors, and Lloyd's brokers. Conduct issues in respect of the Society of Lloyd's, for the FCA, include:
 - (i) how the Society of Lloyd's supervises and regulates the auction whereby members of Lloyd's can buy and sell syndicate capacity; and
 - (ii) how appropriate and effective are the Society of Lloyd's procedures for handling complaints where it provides an additional complaints procedure – i.e. policyholders complain to the Society of Lloyd's (before the Financial Ombudsman Service) and members can complain to the Lloyd's Members' Ombudsman.
31. In order to ensure appropriate co-ordination in the supervision of the Lloyd's market there will be a supervisory college for the Society of Lloyd's. The arrangements set out for information sharing in this MoU will apply.

32. Under the Lloyd's Acts 1871-1982, the Society of Lloyd's has a role in the supervision and regulation of the Lloyd's market – specifically it has rule-making and enforcement powers, oversees risk in the market and has a role in ensuring capital adequacy. The FCA and the PRA will therefore maintain co-ordination arrangements with the Society of Lloyd's in support of their activities. In particular, the FCA and the PRA will, when relevant, co-ordinate with each other and the Society of Lloyd's in the context of the Society's exercise of its enforcement powers.
33. The FCA and the PRA are required, under FSMA, to keep themselves informed about the way in which the Council of Lloyd's regulates the market at Lloyd's and the way in which regulated activities are being carried on in that market and each has powers of direction over both the Society of Lloyd's and its members. Each regulator must keep under review the desirability of exercising its powers and is required to consult the other before applying certain provisions of FSMA to members of Lloyd's (for example, a regulator may make rules that apply directly to members) or before issuing a direction to the Society of Lloyd's. Each regulator must, under FSMA, obtain consent from the other before exercising its power to require members of Lloyd's to become authorised.

Supervision of with-profit policies

34. The PRA and the FCA will establish specific mechanisms for identifying and co-ordinating their relevant responsibilities in relation to the supervision of with-profits policies or to policyholders.
35. Returns on with-profits policies are not well defined, and are affected by certain actions taken at the discretion of the insurance companies in managing the with-profit fund, which give rise to issues of both fairness to policyholders and the safety and soundness of insurers, and so engage the objectives of both regulators. It will be the FCA's responsibility to satisfy itself that firms are behaving fairly in relation to the exercise of their discretion. The PRA's concern will be to ensure that discretionary increases in liabilities do not adversely affect the insurer's ability to meet, and continue to meet, the PRA's standards for safety and soundness (and in particular its ability to meet the Threshold Conditions). In so doing, the PRA will contribute to the

securing of an appropriate degree of protection for current and future with-profits policyholders. Further information regarding co-operation in this area is set out in a separate MoU.³

Supervision of overseas firms

36. Both the FCA and the PRA will attend international colleges as appropriate and keep each other informed of any matters relevant to their respective responsibilities. Before international colleges, they will consider areas of common interest or concern. The FCA and the PRA will facilitate contacts by the other with overseas central banks and/or regulators on request.
37. In respect of overseas firms, the FCA and the PRA will co-operate and share information with overseas regulators in accordance with applicable legislation. The FCA and the PRA will seek to share with each other information received from overseas regulators where permitted and where relevant to the other regulator's functions.

Co-ordination with the Market Oversight Directorate within the FCA

38. The Market Oversight Function of the FCA, amongst other things, acts as the UK securities regulator and is responsible under FSMA for vetting prospectuses, listing particulars and shareholder circulars produced in accordance with the Prospectus and the Listing Rules. It is also responsible for the continuous monitoring of compliance with the Market Abuse Regulation and the Disclosure and Transparency Rules. In addition, the FCA assesses the eligibility of companies seeking to have their securities admitted to listing by the FCA. The FCA publishes this list as the 'Official List'. A number of listed entities are also PRA-regulated firms or the parents or affiliates of PRA-regulated firms (all such entities are referred to in this section as 'relevant groups').
39. The responsibility lies with regulated firms and other members of relevant groups to ensure their compliance with the above Rules in this area. Firms subject to prudential

³ www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/fca-and-pra-supervision-of-with-profits-policies.pdf or www.fca.org.uk/publication/mou/mou-with-profits.pdf

regulation by the PRA have an obligation to disclose to the PRA anything relating to the firm of which the PRA would reasonably expect notice; where appropriate, this includes the submission of draft prospectuses and other disclosures to the FCA.

40. In line with the general information-sharing provisions in this MoU, where the PRA or the FCA, in its capacity as a securities regulator, considers that information gathered or held by it would be of material interest to the other regulator, it will actively offer such information to the other regulator. The PRA may ask the FCA for details about, and the status of, a potential disclosure and vice versa. The FCA may ask the PRA to comment on specific aspects of draft prospectuses and other disclosure documents that depend materially on the financial soundness of the relevant regulated firm or other members of relevant groups. The PRA will provide to the FCA information within its knowledge that is relevant to those aspects it has been asked to comment on, in order to support the FCA's assessment of the completeness and accuracy of the firm's documents.
41. The FCA will inform the PRA of material and relevant information it holds about the financial condition of regulated firms and other members of relevant groups, fundraising activities and significant transactions.
42. The FCA will consult the PRA before:
 - (i) any decision to cancel the listing of the equity securities of a dual-regulated firm or a related firm;
 - (ii) any decision to suspend the listing of the securities of a dual-regulated firm or a related firm;
 - (iii) any decision to admit to the Official List the equity securities of a dual-regulated firm or a related firm;
 - (iv) an intention to approve a prospectus or other shareholder document produced by a dual-regulated firm or a related firm; and
 - (v) an intention to modify or give exemptions to the FCA rules as relevant to securities regulation in respect of dual-regulated firms.

Co-ordination with other authorities

Financial Services Compensation Scheme (FSCS)

43. In broad terms, secondary legislation made under FSMA allocates responsibility to the PRA for making rules in relation to the FSCS depositor protection and policyholder protection schemes. The FCA has responsibility for making rules for schemes covering other regulated activities.
44. In co-ordinating the exercise of their functions with respect to the FSCS, the FCA and PRA will in particular:
 - (i) co-ordinate with each other when making board appointments to the FSCS;
 - (ii) consult each other before making rules in relation to the FSCS; and
 - (iii) share their respective views on the FSCS's plans and strategy, where relevant to their objectives, to pursue issues where they consider a consistent position would be helpful, including before approving the FSCS annual management expenses levy limit.

International organisations

45. The FCA and the PRA will establish arrangements for exchanging agendas for, and relevant information relating to areas of common interest from, EU regulatory fora where one regulator only is a member (e.g. European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA), European Securities and Markets Authority (ESMA) – together the European Supervisory Authorities (ESAs)) and other global fora (e.g. Basel Committee on Banking Supervision (BCBS), International Organisation of Securities Commissions (IOSCO)) as appropriate.

46. Consistent with the MoU on international organisations⁴ and where relevant to their respective objectives, co-ordination in relation to the ESAs will include, in particular when:
- (i) designating individuals who will act as points of contact for regular exchange of papers relevant to each other;
 - (ii) the FCA and the PRA facilitating where possible the attendance of the other regulator at relevant committees and working groups (including the ESA supervisory boards); and
 - (iii) consulting each other to agree positions that reflect the views of the other, while ensuring consistency with each regulator's own objectives.
47. Examples of this may include the FCA attending working groups focussed on consumer matters and the PRA taking into account the FCA's views on prudential matters affecting solo-regulated firms.

⁴ www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/bank-pra-hmt-and-fca-international-organisations or www.fca.org.uk/publication/mou/mou-international.pdf

IV. CO-ORDINATION IN INVESTIGATIONS, ENFORCEMENT AND OTHER FORMAL REGULATORY ACTION

Enforcement investigations under FSMA

48. Where the PRA and the FCA consider that it would help the other regulator to fulfil its public functions and there are no overriding reasons not to share such information, the regulators will notify each other of any material investigation it intends to conduct or is conducting into a relevant firm (a firm which is either dual-regulated, or a member of a group which includes a PRA-authorized firm) or relevant individual (an employee - whether approved or not approved - who is employed by a firm which is either dual-regulated, or a member of a group which includes a PRA-authorized firm) at an early stage, and in any case before enforcement action (including informal action) is taken.
49. Where the matter being considered engages the objectives of both the FCA and the PRA, the regulators will determine whether any investigation against a relevant firm or relevant individual should be carried out by the FCA, by the PRA, or jointly, and how any investigation and subsequent proceedings should be co-ordinated.⁵ This includes coordination as between the PRA's Enforcement Decision Making Committee and the FCA's Regulatory Decisions Committee in contested matters concerning both regulators.
50. Where either the FCA or the PRA carries out any investigation and subsequent proceedings alone, that regulator will keep the other regulator regularly updated on material aspects of the progress of the investigation (including unannounced visits, the execution of a search warrant or ahead of any arrests) and subsequent proceedings.
51. As set out in FSMA, each regulator may issue Warning Notices and Decision Notices. Each regulator will consult the other when they have reached a view in principle regarding the action they plan to take and before a formal decision to issue a Warning Notice or Decision Notice has been taken.

⁵ See www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/pra-statutory-powers/regulatory-investigations-guide and www.handbook.fca.org.uk/handbook/EG/4/14.html for further details.

52. If a decision is made by either regulator to take action against a subject, the regulators should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that both regulators publish the outcome of their investigations simultaneously. In any event, the regulators will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.

Financial crime

53. The PRA will alert the FCA to any evidence which it believes may materially affect the FCA's function in relation to financial crime.
54. The FCA will also bring to the attention of the PRA those financial crime issues in relation to relevant firms and relevant individuals that, either alone or combined with other information about the firm or individual, may point to deeper concerns about the safety and soundness of the firm, the protection of policyholders, or the fitness and propriety of controllers, directors or key management. To the extent that it is permitted under law, the FCA and the PRA will also share information that they receive via 'whistle-blowing' that may be of material interest to the other.

Criminal, civil, insolvency or administration proceedings

55. In the case of criminal, civil, insolvency or administration proceedings against a relevant firm or relevant individual, before commencing such proceedings or issuing any public statement in relation to the same, the relevant regulator shall, wherever practicable, notify the other regulator. This notification will usually take place when a view in principle has been reached and in any event before a formal decision to commence proceedings has been taken.

Powers under FSMA and other legislation

56. In respect of relevant firms and relevant individuals, the FCA and the PRA will co-ordinate with each other before taking a number of actions – this varies between seeking consent, consultation or notification. Where, in the reasonable opinion of the regulator proposing to take action, the proposed action is considered to be materially relevant to the objectives and/or obligations of the other regulator, each regulator will co-ordinate with the other before, amongst other things:
- (i) deciding whether to revoke, cancel or vary any permission of a firm;
 - (ii) exercising its power to impose or vary requirements on a firm;
 - (iii) in respect of an approved person, imposing time limits or conditions (or both) on, or varying or withdrawing an approval;
 - (iv) commencing insolvency or administration proceedings;
 - (v) triggering resolution under the Banking Act 2009; and
 - (vi) exercising powers to compel administrators of benchmarks or contributors to benchmarks under the EU Benchmarks Regulation.

Unauthorised regulated activities

57. Under section 168 of FSMA, the FCA is responsible for conducting enforcement investigations with regard to organisations and individuals that it considers are undertaking a regulated activity without being either FCA- or PRA- authorised, or an exempt person, in breach of section 19 of FSMA. Before deciding whether or not to commence any substantive investigation or institute any legal proceedings the FCA will notify the PRA if the regulated activity is deposit-taking, insurance, certain large-scale investment business or other activities materially related to financial stability.
58. The PRA will also be able to ask the FCA to bring such actions. The FCA will explain to the PRA if it decides not to proceed.

Authorised persons acting without permission

59. The FCA or the PRA may appoint investigators if it appears that there are circumstances suggesting that there may have been a breach by a dual-regulated firm of the prohibition against carrying out regulated activity otherwise than in accordance with its permission. If a solo-regulated firm carries out a regulated activity other than in accordance with their permission, it will be taken to have contravened a requirement imposed by the FCA; if a dual-regulated firm does so, it will be taken to have contravened both a requirement imposed by the FCA and a requirement imposed by the PRA.
60. Before deciding whether or not to commence any substantive investigation or institute any legal proceedings, the FCA will notify the PRA if the regulated activity is deposit-taking, insurance, certain large-scale investment business or other activities materially related to financial stability. The PRA will also be able to ask the FCA to bring such actions. The FCA will explain to the PRA if it decides not to proceed.
61. The FCA will consult the PRA before deciding whether to take action against any FCA-authorized firm undertaking deposit-taking, insurance or certain large-scale investment business i.e. activities that would be PRA-regulated activities. The PRA will be able to ask the FCA to bring an enforcement action against any such firm acting without the necessary authorisation. The FCA will explain to the PRA if it decides not to proceed.

Powers under the FCA's concurrent competition functions

62. Where the FCA considers that it would help the other regulator to fulfil its public functions and there are no overriding reasons not to share such information, the FCA will notify the PRA before:
 - (i) launching (but after deciding to launch) a market study under EA02 that may affect dual-regulated firms;
 - (ii) making a market investigation reference to the CMA that may affect dual-regulated firms; or

- (iii) exercising formal powers of investigation under CA98 in relation to a dual-regulated firm.

This notification shall be made to the relevant Executive Director of Supervision with responsibility for the affected firm(s) at the PRA. The relevant Executive Director may, if necessary, escalate the information to other Executive Directors or more senior officials within the PRA.

- 63. The FCA may make infringement decisions or impose interim measures, director disqualification orders (or accept director disqualification undertakings) or financial penalties using its powers under the CA98 or (for director disqualification orders and undertakings) the Company Directors Disqualification Act 1996. Where the FCA considers that it would help the other regulator to fulfil its public functions and there are no overriding reasons not to share such information, the FCA will consult the PRA in advance of exercising these powers in relation to a dual-regulated firm or directors of dual-regulated firms. In relation to infringement decisions, it will consult the PRA after it has issued a statement of objections (SO) but before an infringement decision is issued.⁶
- 64. The FCA may issue a formal decision to impose remedies on a dual-regulated firm following a market study under the EA02. When imposing such remedies, the FCA will consult the PRA after it has issued an interim report⁷ but before a final report is issued which imposes those remedies.

General

- 65. As with policy-making and rule-making, the PRA and the FCA will seek to avoid taking regulatory actions that are incompatible or even in conflict. Where such an instance arises in pursuit of the regulators' different objectives, it will be escalated through the management and governance structures of each organisation.

⁶ If no SO has been issued, the FCA will consult the PRA after it has presented the dual-regulated firm with a summary statement of facts but before an infringement decision is issued.

⁷ If no interim report has been issued, the FCA will consult the PRA after it has presented the proposed remedies to the dual-regulated firm and before a final report is issued.

66. Senior officials from the FCA and the PRA responsible for enforcement and legal intervention respectively will discuss potential and on-going enforcement actions against relevant firms, on a quarterly basis.
67. Any significant public communications concerning the general approach to enforcement or related policy that may materially affect one regulator's objectives will be notified to the other regulator.

V PRA POWERS OF DIRECTION

68. Under section 3I of FSMA, in respect of a dual-regulated firm the PRA may give a direction to the FCA not to exercise a power or not to exercise it in a specified manner if, amongst other conditions, the PRA is of the opinion that the exercise of the power in the manner proposed may:
 - (i) threaten the stability of the UK financial system; or
 - (ii) result in the failure of a PRA-authorized person in a way that would adversely affect the UK financial system; or
 - (iii) from a date to be appointed, threaten the continuity of core services provided in the UK.
69. However, under section 3I(3)(a) of FSMA, this power of direction is only available in respect of the exercise by the FCA of 'regulatory powers' or 'insolvency powers' (as defined in FSMA) and is not available with regard to action taken by the FCA pursuant to its concurrent powers under the CA98 or EA02.
70. Under section 3J of FSMA, if the statutory conditions are met, the PRA may give a direction to the FCA in relation to with-profits policies.
71. Further, under section 3M of FSMA, where one of the regulators (the supervising regulator), but not the other, is the competent authority for the purpose of consolidated supervision, the supervising regulator may, if it considers it necessary to do so for the effective supervision of the relevant group, give the other regulator a direction requiring the other regulator to exercise, or not to exercise, a relevant function in a specified manner in relation to authorised persons who are members of the relevant group.

72. In giving a direction, the PRA will seek as far as possible, in light of its objectives and in accordance with its legal obligations, not to prevent the FCA's delivery of its objectives. Reflecting that, the processes under which any veto would be exercised are as follows:

- (i) the final decision will be taken by the PRC;
- (ii) ahead of that, the PRA should seek a meeting (if necessary, given exceptional time pressures, by conference call) with the FCA to explain its planned course. This would be conducted at the level of the CEO of the FCA and the Deputy Governor for Prudential Regulation (or, in their absence, by a deputy); and
- (iii) every effort should be made to ensure that the FCA understands the PRA's thinking.

VI INVESTIGATIONS INTO REGULATORY FAILURE

73. Under sections 73 and 74 of the Financial Services Act 2012, the FCA and the PRA, respectively, have a duty to carry out an investigation into events that may constitute a regulatory failure and to make a report to HM Treasury on the results. If one or both regulators are undertaking such investigations, they will share information that may be relevant to the other's investigation and co-ordinate the investigations and reports, where appropriate.

VII FEES

74. Each regulator is funded by levying fees on the regulated community.
75. Subject to a separate agreement being in place, the FCA may collect fees and levies on behalf of the PRA and will pass on what is collected to the PRA. The FCA may charge the PRA an administrative fee for this service.
76. The FCA will notify the PRA of the total invoiced amount for each dual-regulated firm.

VIII CROSS-BOARD POSITIONS

77. The CEO of the FCA and the Deputy Governor for Prudential Regulation are appointed ex officio to the PRC and the Board of the FCA respectively, specifically to support the statutory duty on the regulators to co-ordinate. The role will focus on areas of overlap. The CEO of the FCA and the Deputy Governor for Prudential Regulation are not expected to contribute to those Board/PRC discussions that are not materially relevant to his or her own organisation, as to do so would be impractical and unnecessary, given the objective of the ‘Twin Peaks’ architecture.

IX SIGNIFICANT JOINT PROJECTS

78. On occasion, the PRA and FCA will be required to work together on significant projects which impact on both regulators’ remits. Where this is the case the PRA and FCA will put in place a specific agreement between the two organisations on roles and responsibilities and the timescales for key deliverables.

X INFORMATION SHARING: GENERAL

79. Timely and focused exchange of relevant information is essential to delivering effective co-ordination and co-operation in the necessary areas.
80. The regulators acknowledge that they may only provide information under this MoU to the other to the extent that they are not prevented from doing so under applicable laws, rules and regulations.
81. Exchange of information will take place at many levels. Subject to the Data Handling Principles set out in Annex 2, information available to one regulator (including regularly provided regulatory data) that is relevant to the responsibilities of the other regulator will be shared where requested. In addition, subject to the Data Handling Principles set out in Annex 2, if one regulator considers that information it has gathered would be of material interest to the other, it will actively offer such information to the other. Not all information will be shared because that is unnecessary and would overwhelm each regulator with information not central to its mission.

82. Some information is received from third parties, such as overseas supervisors, competition authorities and public bodies. The regulators' ability to share such information with each other will be subject to applicable law and the terms of any arrangements or agreements with those third parties.
83. Annex 2 sets out detailed arrangements in respect of regulatory data collection, including how the regulators will work together to avoid duplication where this is consistent with the regulators' missions.

XI CONFIDENTIALITY

84. Each regulator will protect the confidentiality, sensitivity and (where relevant) the legal privilege of all unpublished regulatory and other confidential information received from the other regulator in accordance with applicable laws, rules, regulations and other legal obligations and privileges.
85. 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:
 - (i) passing information received from the other regulator to a third party; or
 - (ii) using the information in the context of enforcement proceedings or other court case where it is likely to become publicly disclosed.
86. Where appropriate, the regulators will liaise in responding to requests made under the Freedom of Information Act 2000, the General Data Protection Regulation, the Data Protection Act 2018 and any future legislation that may supersede or supplement these Acts and this Regulation, and will consult before releasing information received from the other.

XII MAINTAINING THE MOU

87. Each regulator will appoint a senior executive responsible for the co-ordination set out in this MoU. The regulators will review the effectiveness and efficiency of co-ordination and co-operation at the end of each quarter and a quarterly report will be prepared for the consideration of the CEO of the FCA and the Deputy Governor for Prudential Regulation, as relevant. Any substantive or material concerns regarding co-ordination and co-operation will be escalated to the CEO of the FCA and Deputy Governor for Prudential Regulation bi-lateral meetings as and when necessary.
88. The regulators' annual reports will include a summary of the key points from those quarterly reviews.
89. Feedback from regulated firms on how co-ordination is working from their point of view will be an input to those reviews. Judgement on whether there has been a lack of co-ordination or unnecessary duplication by the regulators in pursuit of their objectives will be made by each regulator.

FINANCIAL CONDUCT AUTHORITY

BANK OF ENGLAND



Date: 2 July 2019

Date: 3 July 2019

Annexes to the FCA/PRA MoU

Definitions for the purposes of the annexes

Lead regulator: Will be responsible for managing a single administrative process, providing the other regulator with copies of any forms, information and accompanying documents received and administering notices to the firm concerned.

Consent: Where applicable, the regulator providing the consent has the power to veto if they disagree with the application. Disagreements must be resolved before the decision is made.

Consult: Where applicable, the process where the lead regulator requests the other regulator's views on an application.

Notification: Where applicable, the process for ensuring that each regulator is aware of the other regulator's proposed action in advance.

Relevant firm: A firm that is either dual-regulated, or a member of a group which includes a PRA-authorized firm.

Relevant individual: An employee (whether approved or not approved) who is employed by a firm which is dual-regulated, or a member of a group which includes a PRA-authorized firm.

Annex 1: Regulatory processes, enforcement and legal intervention

(i) Applications to grant, vary or cancel a regulatory permission

1. The PRA, as the prudential regulator, will lead and manage a single administrative process for providing permissions to dual-regulated firms. This will include coordinating the process and communicating all formal notices and decisions to the firm. As provided for in FSMA, the PRA will (i) obtain consent from the FCA before granting or removing a permission for dual-regulated firms or before varying a permission by adding a new regulated activity and (ii) consult the FCA before cancelling a dual-regulated firm's permission.
2. Each regulator will assess the application against the relevant Threshold Conditions in line with its objective(s). In general, the PRA will be responsible for asking for any additional information in support of the application. The FCA may ask for such

information in co-ordination with the PRA. Each regulator will provide the other with relevant information, whether submitted as part of the application or any other information it holds, where material to the other's responsibilities.

3. The FCA is required to consult the PRA if authorising, varying or cancelling the permission of an FCA regulated firm which is part of a group containing a dual-regulated firm.

(ii) Senior managers

4. The PRA may designate Senior Management Functions (SMFs) if the functions will require the persons performing them to be responsible for one or more aspects of the authorised person's affairs, so far as relating to the regulated activity, and those aspects involve, or might involve, a risk of serious consequences for the authorised person (section 59ZA FSMA). The PRA will lead and manage a single administrative process for approving individuals for such SMFs. This will include co-ordinating the process and communicating all formal notices and decisions to the firm and/or candidate as appropriate. The PRA will obtain consent from the FCA before taking its decision whether to approve the candidate.
5. Each regulator will assess the application against the fitness and propriety criteria in line with its objectives. In general, the PRA will be responsible for asking for any additional information in support of the application. The FCA may ask for such information in co-ordination with the PRA. Each regulator will provide the other with relevant information, whether submitted as part of the application or any other information it holds, where material to the other's responsibilities.
6. The FCA will designate publicly in its Handbook those SMFs deemed to be materially connected to a firm's interface with customers, including client assets, anti-money laundering and compliance. The FCA will be solely responsible for the approval of individuals for such SMFs, including communicating all formal notices and decisions to the firm and/or candidate as appropriate. The FCA will consult the PRA for a subset of SMFs specified by the FCA.
7. If the PRA responds to a consultation request from the FCA, it may provide a formal view, with supporting evidence, or state informal concerns which may prompt the

FCA to seek further information from the firm, the candidate or other sources. Where the PRA’s view is instrumental to the FCA’s decision to refuse an application, the FCA will notify the PRA prior to taking a decision and will consult on the relevant wording of any notice to be published. The PRA may be called upon to provide evidence of its view in any related legal proceedings.

(iii) Passporting

8. Both the PRA and the FCA will have a role in the administration of the passport notification process as explained in the table below. This section complies with FSMA requirements to publish arrangements made to consult each other regarding EEA passport rights. These arrangements came into force on 1 April 2013.

9. The lead regulator will be responsible for managing a single administrative process, providing the other regulator with copies of any forms, information and accompanying documents received and administering notices to the Home or Host state regulator and to the firm concerned. The lead regulator will provide the other with copies of the notice received, as required, and have regard to any advice or representations received from the other.

	Scenario	Role of PRA	Role of FCA
1	Inward passporting via CRD or SII. Inward passporting (all other single market directives, paragraph 1 of Schedule 3 to FSMA) where firm is already passporting via CRD or SII.	Lead regulator. PRA is required to consult with the FCA. (PRA must give a copy of the consent notice without delay to FCA, paragraph 13(1B)/14(1B) of Schedule 3 to FSMA).	May make representations to PRA.
2	Inward passporting (all single market directives, paragraph 1 of Schedule 3 to FSMA) where firm is not passporting via CRD or SII.	For passporting notices from an investment firm under MiFID II wishing to set up a UK branch, which relate to a PRA-regulated activity, a PRA-authorized person or where the firm is in the immediate group of a PRA-authorized person, the FCA requires the consent of the	Lead regulator. For passporting notices to an investment firm under MiFID II wishing to set up a UK branch, which relate to a PRA-regulated activity, a PRA-authorized person or where the firm is in the immediate group of a PRA-authorized person, the FCA

	Scenario	Role of PRA	Role of FCA
		PRA (Paragraph 13(1D) of Schedule 3 to FSMA).	<p>requires the consent of the PRA. (Paragraph 13(1D) of Schedule 3 to FSMA).</p> <p>FCA must give a copy of the consent notice to the PRA without delay, where it receives the notice from an investment firm under MIFID II wishing to set up a UK branch, where the firm intends to provide services or activities in the UK consisting of or including dealing on its own account. This duty only applies where the firm is required under Article 28(2) of the CRD4 to have initial capital of EUR 730, 000 (Paragraph 13(1C) of Schedule 3 to FSMA and paragraph 2A of the Financial Services and Markets Act 2000 (EEA Passport Rights) Regulations 2001 (SI 2001/2511)).</p>
3	Outward passporting of dual-regulated firms (all single market directives, paragraph 1 of Schedule 3 to FSMA).	<p>Lead regulator.</p> <p>PRA is required to consult with the FCA before deciding whether to give a consent notice under Schedule 3 for an establishment or services passport, unless paragraph 19(7A) applies (certain rights about setting up a branch under the Insurance Distribution Directive, Directive 2016/97). (Paragraph 19(7C) or 20(3AA) of Schedule 3 to FSMA).</p>	May make representations to PRA.
4	Outward passporting of solo-regulated firms (all single market directives, paragraph 1 of Schedule 3	Where the firm is in the immediate group of a PRA-authorized person, the PRA may make representations to	<p>Lead regulator.</p> <p>FCA is required to consult with the PRA before deciding whether to give a consent</p>

	Scenario	Role of PRA	Role of FCA
	to FSMA).	the FCA (paragraph 19(7D) or 20(3AB) of Schedule 3 to FSMA).	notice under Schedule 3 for an establishment or services passport where the applicant firm is in the immediate group of a PRA-authorised person. (paragraph 19(7D) or 20(3AB) of Schedule 3 to FSMA).

(iv) Change in Control

10. The relevant prudential regulator of the target firm will be responsible for assessing and processing applications to acquire or increase control in a firm. It will consult the other regulator in the case of dual-regulated firms and groups. Respective roles are set out below.

	Scenario	Role of PRA	Role of FCA
1	Target firm is dual-regulated.	The PRA must consult the FCA before determining the application: section 187A(1).	The FCA may make representations to the PRA on any of the matters set out in sections 185(2) and 186: section 187A(2). Under section 187A(3), the FCA may direct the PRA to object to the acquisition or to approve it subject to conditions, on money laundering/terrorist financing grounds.
2	Target firm regulated by FCA only but a member of its immediate group (see section 421ZA) is dual-regulated.	The PRA may make representations to the FCA on any of the matters set out in section 185(2) and section 186: section 187B(2). If the PRA considers that on the basis of certain matters there are reasonable grounds to object to the change in control, the PRA can direct the FCA not to approve the application unless it does so subject to conditions specified	The FCA must consult the PRA before determining the application: section 187B(1)(a).

	Scenario	Role of PRA	Role of FCA
		by the PRA: section 187B(3). In these circumstances, the matters on which the PRA may object are set out in section 186(d) and section 186(e)(i).	
3	Proposed controller is dual-regulated and target firm is regulated by the FCA.	<p>The PRA may make representations to the FCA on any of the matters set out in sections 185(2) and 186: section 187B(2).</p> <p>If the PRA considers that on the basis of certain matters there are reasonable grounds to object to the change in control, the PRA can direct the FCA not to approve the application unless it does so subject to conditions specified by the PRA: section 187B(3). In these circumstances, the matters on which the PRA may object are set out in section 186(c), section 186(d) and section 186(e)(i).</p>	The FCA must consult the PRA before determining the application: section 187B(1)(b).
4	Target firm is regulated by FCA and is not part of an immediate group containing a dual-regulated firm. Proposed controller is not a dual-regulated firm but its group contains a dual-regulated firm.	No formal role.	Determines whether to approve. The FCA is not required to consult the PRA before determining the application but in practice will give the PRA the opportunity to comment.
5	Target firm is regulated only by FCA and is not part of an immediate group containing a dual-regulated firm. Proposed controller is not a dual-regulated firm.	No role.	Assesses and determines applications.

11. The relevant prudential regulator will be responsible for co-ordinating a single administrative process. It will be responsible for communicating formal notices and

decisions to the firm, and will consult the other regulator before taking its decision in line with the responsibilities above. Where consultation is required, each regulator will feed into this process in a timely manner to ensure that the statutory timeframes are met.

12. A change in control application may relate to more than one target firm, and those firms may include both dual-regulated and solo-regulated firms. Where a change in control application or applications relates to a number of firms within the same immediate group (e.g. in a group restructuring) and a member of the immediate group is dual-regulated, the FCA is required to consult the PRA before determining any application (see scenario 2 above). Similarly, the PRA is required to consult the FCA before determining any application relating to a dual-regulated firm (see scenario 1 above). In practice, the PRA and FCA do not formally and separately ask for each other's consultation in these cases. Instead, the consultation is achieved through ongoing discussion and the exchange of information. At the conclusion of its assessment, the FCA will provide its formal consultation in respect of the dual-regulated firms to the PRA.
13. In general, the relevant prudential regulator will be responsible for asking for any additional information in support of the application. The other regulator may ask for such information in co-ordination with the relevant prudential regulator. Each regulator will provide the other regulator with relevant information, whether submitted as part of the application or any other information in its possession, where material to the other's responsibilities.
14. The relevant prudential regulator will be notified when control is decreased. It will pass on such information to the other regulator as appropriate.

(v) Part VII transfers

15. The PRA will lead the Part VII process in relation to insurance business, banking business and ring fencing transfer schemes. While the ultimate decision of whether to sanction a transfer is with the courts:
 - (a) the PRA will be responsible for specific regulatory functions connected with Part VII applications and the provision of relevant regulatory certificates in relation to PRA-authorised persons as required by legislation; and

- (b) the FCA will be responsible for specific regulatory functions connected with Part VII applications and the provision of relevant regulatory certificates in relation to authorised persons but which are not PRA-authorised persons as required by legislation.
- 16. In the case of insurance business transfer schemes, the PRA will consult the FCA before approving the independent expert to produce a report on the scheme and the form of that report.
- 17. In the case of ring-fencing transfer schemes, the PRA will consult the FCA before approving the skilled person to produce a report on the scheme and the form of that report, and before consenting to or approving an application (including in the event of a rejection) relating to a ring-fencing transfer scheme.
- 18. For banking and insurance business transfers, the PRA will also co-ordinate with the FCA before approving notices due to be published in the press and, for insurance business transfers only, sent to policyholders as and when required by legislation.
- 19. For ring-fencing business transfers, the FCA will be responsible for reviewing the following:
 - (a) notices of the RFTS in legal gazettes and national newspapers; and
 - (b) individual notices to be sent to all consumers (as defined in section 1G of FSMA) who are likely to be adversely affected by the scheme, including accompanying material, e.g. a statement on the terms of the scheme and summary of the scheme report.
- 20. Each regulator has the right to make written/oral representations to the Court, including, where appropriate, providing the Court with reports setting out their views of the proposed transfer scheme.
- (vi) Enforcement and legal intervention**
- 21. The PRA will consult the FCA before exercising the power to vary, on its own initiative, a firm's permission to carry out regulated activities by limiting or removing a regulated activity from that permission and the FCA will consult the PRA before exercising this power against a relevant firm. The FCA will obtain the consent of the PRA before varying a dual-regulated firm's permission where the variation involves

adding a regulated activity to the permission or widening the description of a regulated activity, except where the regulated activity is the activity of administering a benchmark. The PRA will obtain the consent of the FCA before varying a firm's permission where the variation involves adding a regulated activity to the permission or widening the description of a regulated activity.

22. The PRA will consult the FCA before exercising its power to impose requirements on a firm's permission on its own initiative. The FCA will consult the PRA before exercising its power to impose requirements on a firm's permission on its own initiative against a firm that is or, which on the granting of an application for permission will be, a relevant firm.
23. Each regulator will consult the other before withdrawing an approval of a senior manager given by the other.
24. When contemplating the appointment of investigators, in relation to a relevant firm or relevant individual, the FCA and the PRA will notify each other. The purpose of these notifications is to allow the other regulator to analyse the impact of the proposed action on its objectives.
25. Where the issue affects advancement of the objectives of both the FCA and the PRA, the regulators will determine whether any investigation against a firm or officer/employee should be carried out by the FCA, by the PRA, or jointly, and how any investigation and subsequent proceedings should be co-ordinated. This includes coordination as between the PRA's Enforcement Decision Making Committee and the FCA's Regulatory Decisions Committee in contested matters concerning both regulators. Where either the FCA or the PRA carries out any investigation and subsequent proceedings alone, that regulator will keep the other regulator regularly updated on material aspects of the progress of the investigation (including unannounced visits, the execution of a search warrant or ahead of any arrests).
26. As set out in FSMA, and elaborating on paragraph 51 of the FCA/PRA MoU, each regulator may issue Warning Notices and Decision Notices to a relevant individual or relevant firm. Each regulator will consult the other when they have reached a view in principle regarding the action they plan to take and before a formal decision to issue a Warning Notice or Decision Notice has been taken.

27. The FCA and the PRA will also notify each other in appropriate FSMA cases involving proposed civil (including insolvency or administration) or criminal proceedings. This notification will usually take place when a view in principle has been reached and in any event before a formal decision to commence proceedings has been taken.
28. The FCA and the PRA will notify each other before issuing any press release in relation to an enforcement action or legal proceeding involving a relevant firm.

Annex 2: Regulatory data

1. The regulators will routinely share regulatory data available to each other in accordance with applicable law and where it is relevant to the responsibilities of the other.
2. Data will be shared according to the following principles:
 - the ability of either regulator to obtain data should not be constrained;
 - the approach should be as efficient as possible for both firms and the regulators;
 - the approach must maintain data security;
 - the importance of data integrity and accuracy will be recognised; and
 - the process of data management should be flexible, including in response to potentially rapidly changing requirements.
3. Each regulator will be responsible for validation and quality checking, as well as data collection in a timely and efficient way.
4. Where relevant, the PRA and FCA will consult each other on changes to regularly collected data/forms.
5. The PRA and the FCA will consult each other on:
 - shared data definitions; and
 - deciding on, agreeing and approving the management of data systems to allow for the efficient sharing of data between the regulators.
6. The regulators will establish a forum for consultation on issues regarding existing data sets and introducing new data sets.
7. In addition, a data management committee will meet on a quarterly basis and will be responsible for ensuring that practice and working processes accord with the framework and principles set out above, as well as considering the need for any amendments to these arrangements.