

Memorandum of Understanding (MoU) between the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA)

Purpose and Scope

1 This Memorandum of Understanding (MoU) sets out the high-level framework the FCA and the PRA will use to co-ordinate and co-operate in carrying out their respective responsibilities under the Financial Services and Markets Act 2000 (and equivalent legislation covering, for example, mutuals) and the Financial Services Act 2012. It has been agreed in fulfilment of sections 3D and 3E of the amended Financial Services and Markets Act (FSMA), which place the regulators under a duty to co-ordinate and to maintain a memorandum describing how they will comply with that duty.

2 The mandates of the FCA and the PRA are very different. At the highest level, they are, respectively, the integrity of the provision of financial services to users, and the safety and soundness of banking and insurance including contributing to protection for policyholders, with each also having a role in supporting the Financial Policy Committee. The two authorities 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.

Roles and responsibilities of the FCA and the PRA

3 Broadly, under FSMA the FCA is responsible for

- (i) regulating standards of conduct in retail and wholesale markets;
- (ii) supervising trading infrastructures that support those markets;
- (iii) the prudential supervision of firms that are not PRA-regulated; and
- (iv) the functions of the UK Listing Authority (UKLA).

4 It 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 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.

5 The PRA is responsible under FSMA for the authorisation, in conjunction with the FCA, and prudential supervision of individual deposit takers (including banks, building societies and credit unions), insurers (including friendly societies) and certain designated investment firms. Its objective is to promote the safety and soundness of dual-regulated firms, and it is required to advance this objective primarily by seeking to minimise any adverse effects of firm failure on the UK financial system and to ensure that firms carry on their business in a way that avoids adverse effects on the system. In the case of insurers, the PRA has the additional objective of contributing, through its prudential supervision of insurers, to securing an appropriate degree of protection for policyholders.

Information sharing: general

6 Timely and focused exchange of relevant information is essential to delivering effective co-ordination and co-operation in the necessary areas.

7 Exchange of information will take place at many levels. 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, 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 that was not central to its mission.

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

9 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.

Confidentiality

10 Each regulator will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other regulator.

11 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 the information to a third party; and
- (ii) 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.

12 The regulators will liaise on responding to requests made under the Freedom of Information Act and Data Protection Act, where appropriate, and will consult before releasing information received from the other.

Policy and rule-making

13 Each regulator will make rules and policies in pursuit of its separate objective(s).

14 The FCA and the PRA will consult each other at an early stage in relation to policy deliberations which might have a material effect on the other's objectives. The regulators will seek to avoid introducing, inadvertently, 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 elevated to the CEOs, and to the Boards if necessary.

15 As a matter of routine, the FCA and the PRA directors responsible for policy will meet quarterly to discuss actual and potential policy initiatives of material relevance to each other, and to assess whether co-ordination is effective in practice.

16 Routine co-ordination on rule-making will be delivered formally via the Secretaries to the relevant statutory policy-making committees (usually the Boards). They will report to the respective Boards on such activity.

Authorisation of firms, and approval of individuals

17 The FCA will maintain a single register covering all FCA and PRA authorised firms and approved individuals.

18 Under Part 4A of FSMA, the relevant prudential regulator will lead and manage a single administrative process for authorising firms. For dual-regulated firms, the PRA will seek the consent of the FCA to the authorisation. Annex 1 contains further information.

19 Under section 55E of FSMA, the FCA is required to consult the PRA before authorising a firm that is part of a group containing a dual regulated firm.

20 As set out in FSMA (PRA-Regulated Activities) Order, the PRA will consult the FCA before designating an investment firm for prudential regulation by the PRA, or before revoking a designation. This will be the formal responsibility of the Secretaries to the respective committees taking the relevant statutory decisions.

21 Where the PRA and the FCA both have an interest in a 'significant-influence' role then both need to consent to the appointment, as required under FSMA. This includes, for example, the functions of Chairman and Chief Executive. Annex 1 contains further information. The regulator responsible for designating a specific 'Significant Influence Function' will lead and manage a single administrative process.

Supervision of firms subject to dual regulation

22 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.

23 In normal circumstances, the regulators will not conduct supervisory activity jointly, because to do so would lead to confusion about each regulator's objectives, focus and culture; their respective risk-profiles for a firm will reflect their very different statutory objectives. Conclusions and key information from supervisory activity that is materially relevant to the other regulator's objective(s) will be exchanged on the basis described below.

24 In order to ensure that each regulator's supervisory judgements about a firm reflect relevant information, they will share information on dual-regulated firms and firms within dual-regulated groups. To that end,

- PRA will routinely share for all firms that are dual-regulated or part of a dual-regulated group:

- conclusions of assessments of resolvability;
 - the position of a firm within the PRA's Proactive Intervention Framework¹; and
 - details relevant to assessments of capital and liquidity requirements, including (i) its agreement to the use of internal models, and (ii) individual capital and liquidity requirements.
- FCA will routinely share for all firms that are dual-regulated or part of a dual-regulated group:
 - findings on key conduct risks that are materially relevant, either to whether a firm is prudently managed or otherwise to its safety and soundness; and
 - any material prudential risks concerning the subsidiaries of groups which contain one or more dual-regulated firms.

25 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 the other regulator to advance its objectives:

- The frequency of the meetings of such colleges will reflect the importance of the firm to the other regulator's objectives, e.g. six-monthly for major firms and annually for medium-sized firms.
- 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.
- 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.
- 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.
- The categorisation of firms by each regulator will be reviewed annually by the heads of supervision.

¹ As outlined in the PRA's Approach documents:

www.bankofengland.co.uk/prs/pages/supervision/approach/

26 Beyond their exchanges on individual firms, the regulators will share information on any thematic work on the population of dual-regulated firms that is materially relevant to the other including relevant analysis of business models. That will be the responsibility of the respective directors of supervision.

27 Where a regulator contemplates action in respect of a firm under its statutory powers, it will notify the other as set out below in the section covering formal regulatory processes and enforcement.

Supervision of Lloyd's insurance market

28 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.

29 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:

- how the Society of Lloyd's supervises and regulates the auction whereby members of Lloyd's can buy and sell syndicate capacity; and
- 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.

30 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 elsewhere in this MoU for information sharing will apply.

31 Under the Lloyd's Act, 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 over the Society's exercise of its enforcement powers.

32 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 prior to exercising its power to require members of Lloyd's to become authorised.

With-profits policies

33 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.

34 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.²

Overseas firms

35 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. In advance of 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.

² bankofengland.co.uk/about/Documents/mous/mouwithprofits.pdf or fca.org.uk/your-fca/documents/mou/mouwithprofits.pdf

36 For EEA supervisors, information gateways are established in the EU's Single Market Directives to permit the sharing of information between regulators. For non EEA supervisors, the FCA and the PRA will maintain arrangements, consistent with legal gateways, including MoU, for the sharing of information. The FCA and the PRA will seek to be able to share with each other information received through these mechanisms where sufficiently relevant.

Co-ordination with UKLA

37 The UKLA function of the FCA is responsible under FSMA for vetting prospectuses, listing particulars and other shareholder circulars produced by listed companies in accordance with the Prospectus and the Listing Rules. It is also responsible for the continuous monitoring of compliance with the Disclosure and Transparency Rules. In addition, the UKLA assess the eligibility of companies seeking to have their securities admitted to listing by the FCA; the FCA publish this list as the 'Official List'. A number of listed entities are also PRA regulated firms.

38 The responsibility lies with regulated firms to ensure their compliance with the above Rules in this area. Firms prudentially regulated 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 UKLA.

39 In line with the general provisions of paragraph 7, where the PRA or the UKLA function in the FCA considers that information gathered, or held, by either regulator would be of material interest to the other, it will actively offer such information to the other. The PRA may ask UKLA about the details and status of a potential disclosure and vice versa. UKLA may ask the PRA to comment on specific aspects of draft prospectuses, other disclosure documents, or actions under consideration, that depend materially on the financial soundness of the relevant regulated firm or its parents or affiliates. The PRA will provide to UKLA information, within its knowledge, that is relevant to those aspects it has been asked to comment on, in order to support the UKLA's assessment of the completeness and accuracy of the firm's documents.

40 UKLA will inform the PRA of material, relevant information it holds about the financial condition of regulated firms, fundraising activities for firms and significant transactions.

Formal regulatory processes and enforcement

41 The detail of co-ordination of formal regulatory processes and of enforcement and legal intervention are set out in Annex 1.

42 The FCA and the PRA will co-ordinate with each other in advance of a number of actions relating to dual-regulated firms and groups – this varies between seeking consent, consultation or notification.

43 In respect of firms, and of groups containing firms regulated by both the FCA and the PRA, each regulator will consult with the other in advance of, amongst other things:

- Decisions to revoke, cancel or vary any permission of a firm
- Exercising its power to impose requirements on a firm
- Withdrawing an approval of an approved person
- Issuing Warning and Decision Notices
- Applying to commence insolvency or administration proceedings
- Triggering resolution under the 2009 Banking Act
- Any waivers of rules that may be materially relevant to the other regulator's objectives
- Part VII transfers
- Changes of control

44 And in the case of the FCA only:

- Any decision by UKLA to cancel the listing of the equity securities of a dual-regulated firm or a related firm.
- Any decision by UKLA to suspend the listing of the securities of a dual-regulated firm or a related firm.
- Any decision by UKLA to admit the equity securities of a dual-regulated firm or a related firm to the Official List.
- An intention to approve a prospectus or other shareholder document produced by a dual-regulated firm or a related firm.
- An intention to modify or give exemptions to UKLA rules in respect of dual-regulated firms.

45 As with policy 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.

46 If a regulator decides to carry out an investigation (including appointing investigators under Part 11 of FSMA) in relation to a dual-regulated firm (or group) or individual, the FCA and the PRA will, wherever practicable to do so, consider whether or not the investigation should be co-ordinated jointly. Further, before either regulator commences civil or criminal proceedings in relation to a dual-regulated firm (or group) or individual or before it makes a public statement in relation to such investigations or proceedings, it shall, wherever practicable, inform the other regulator.

47 Senior officials from the FCA and the PRA responsible for enforcement and legal intervention respectively will meet quarterly to discuss potential and on-going enforcement actions against relevant firms.

48 In addition, the FCA will consult the PRA before deciding whether to take action under section 20 of FSMA against any FCA-authorised firm undertaking deposit-taking, insurance or certain large scale investment business i.e. activities that would be PRA-regulated activities, if the firm were appropriately authorised. 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.

49 Any significant public communications related to the general approach to enforcement or related policy that may materially affect the other's objectives will be notified to the other regulator.

The PRA's right to veto certain FCA regulatory actions

50 Under section 31 of FSMA, in relation to a dual-regulated firm the PRA may direct the FCA not to exercise a power or not to exercise it in a specified manner if the PRA believes that would:

- threaten the stability of the UK financial system; or
- result in the failure of a PRA-authorised firm that would adversely affect the UK financial system.

51 The PRA must consult the FCA before giving such a direction. The FCA is not required to comply if in its opinion it would be incompatible with any EU obligation or any other international obligation of the UK. A direction from the PRA must be given or confirmed in writing and must be accompanied by a statement of the reasons for giving it. Where the PRA exercises this veto, it must provide a copy of the direction and a statement to the Treasury. The Treasury will lay these documents before Parliament unless the PRA considers that it would be against the public interest to do so for the time being.

52 In exercising the veto, the PRA will seek as far as possible not to prevent the FCA's delivery of its objectives. Reflecting that, the processes under which any veto would be exercised would be as follows:

- the final decision will be taken by the Board of the PRA;
- 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 CEO level (or, in their absence, by a deputy or, if necessary, the Chair).
- Every effort should be made to ensure that the FCA understands the PRA's thinking.

Reporting into possible regulatory failures

53 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.

Unauthorised regulated activities

54 Under section 19 of FSMA, the FCA is responsible for enforcement actions against organisations and individuals that it considers are undertaking a regulated activity without being either FCA- or PRA- authorised, or an exempt person. 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.

55 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.

Financial crime and fraud

56 The PRA will alert the FCA to any evidence which it believes may materially affect the FCA's function in relation to financial crime.

57 In addition to the interaction outlined in paragraphs 41 – 49, the FCA will also bring to the attention of the PRA those fraud issues in relation to firms and individuals that, either alone or combined with other information about the firm, may point to deeper concerns about the safety and soundness of the firm, the protection of policyholders, or the fit and properness of controllers, directors or key management. The FCA and the PRA will also share information they receive via ‘whistle-blowing’ that may be of material interest to the other.

Co-ordination with other authorities

58 Under FSMA, secondary legislation allocates to the PRA the responsibility for making rules in relation to the Financial Services Compensation Scheme’s (FSCS) schemes for deposits and provision of insurance. The FCA has responsibility for making rules for the schemes covering other regulated activities.

59 Under Part XV of FSMA, the FCA and the PRA are further required to take such steps as they consider appropriate to co-operate with each other to exercise their statutory functions in respect of the FSCS. In order to do so, the FCA and PRA will:

- co-ordinate with each other when making board appointments to the FSCS;
- consult each other before making rules in relation to the FSCS; and
- 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.

60 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 of which one 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, International Organisation of Securities Commissions) as appropriate.

61 Consistent with the MoU on international organisations³ and where relevant to their respective objectives, co-ordination in relation to the ESAs will include, in particular:

³ www.bankofengland.co.uk/about/Documents/mous/mouintorg.pdf or fca.org.uk/your-fca/documents/mou/mouintorg.pdf

- Designating individuals who will act as points of contact for regular exchange of papers relevant to each other;
- The FCA and the PRA facilitating, where possible, the attendance of the other 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.

Examples of this may include the FCA attending working groups focussed on consumer matters and the PRA reflecting the FCA's views on prudential matters (since the FCA will be the prudential regulator for firms which are not PRA-authorised).

Fees

62 Each regulator may be funded by levying fees on the regulated community.

63 In terms of administration, 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.

64 The FCA will notify the PRA of the total invoiced amount for each dual-regulated firm.

Cross-board positions

65 The CEO of each regulator is appointed ex officio to the Board of the other regulator, specifically to support the statutory duty on the regulators to co-ordinate. The role will focus on areas of overlap. Each CEO is not expected to be on top of or to contribute to those Board discussions that are not materially relevant to his or her own organisation, as to do so would be impractical and is unnecessary given the objective of the 'Twin Peaks' architecture.

Maintaining the MoU

66 Each regulator will appoint a senior executive responsible for the co-ordination set out in this MoU. They will meet quarterly to review the effectiveness and efficiency of co-ordination and co-operation. For the first year, this will be the respective CEOs.

67 The Boards of each regulator will review each year how the MoU is working. The regulators' annual reports will include a summary of the key points from those reviews.

68 Feedback from regulated firms on how co-ordination is working from their point of view will be an input to those reviews. Judgment 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.

PRA & FCA