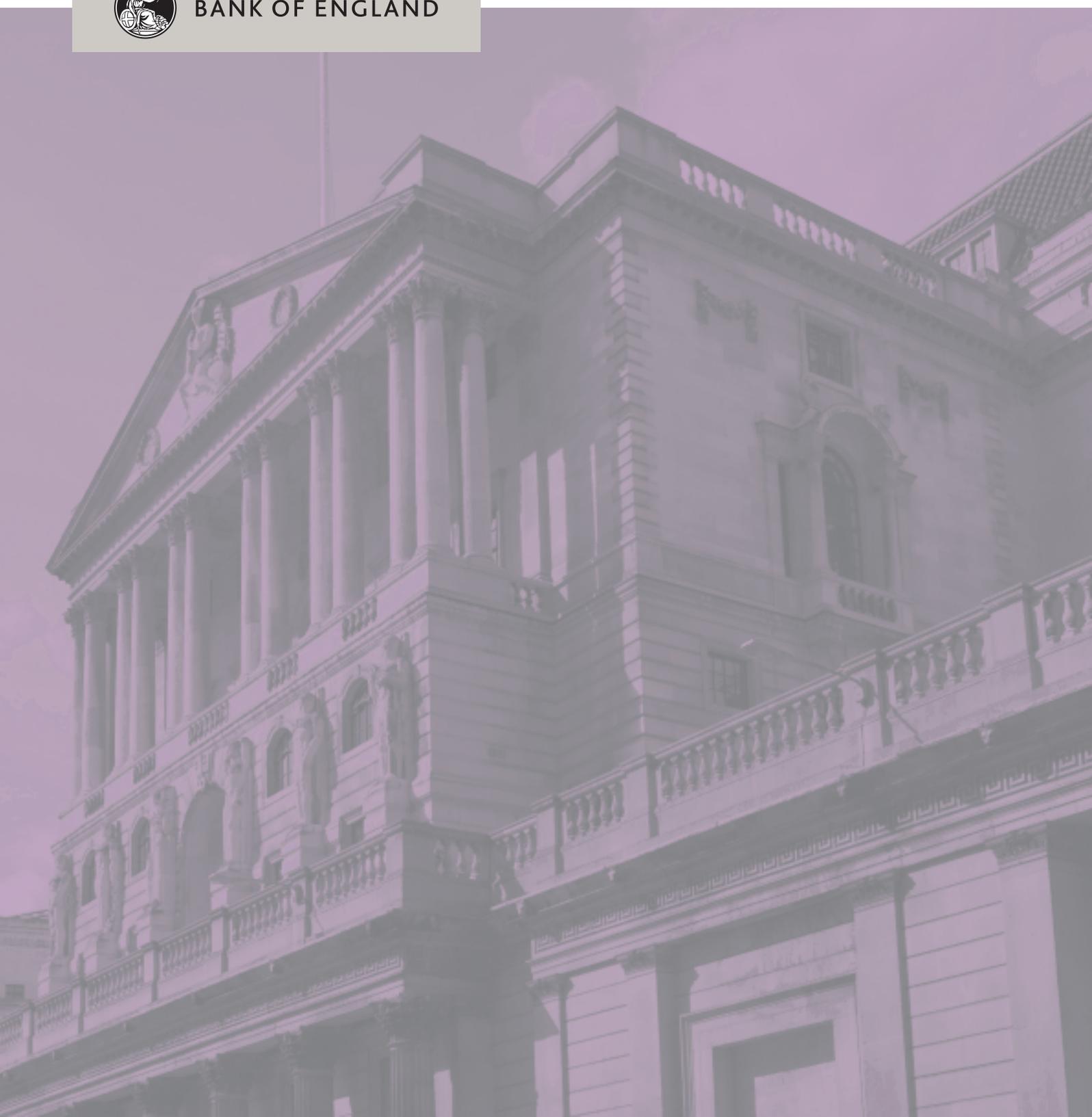


Consultations on rules and statements of policy in respect of the Bank of England's supervision of financial market infrastructure: responses to representations received

April 2013



BANK OF ENGLAND



1. The Bank of England (the Bank) has published the following documents:

- (a) Rules for recognised clearing houses (RCHs) and rules for Operators;⁽¹⁾
- (b) Statement of policy on the giving of directions to qualifying parent undertaking of UK RCHs; and
- (c) Statement of policy on financial penalties imposed by the Bank under FSMA 2000 or under Part 5 of the Banking Act 2009.

2. These documents were issued in draft for consultation in February 2013. This document summarises the representations received and the Bank's response to them. One change was made to the rule on notification to the Bank of the appointment and resignation of individuals in response to a representation.

(a) Rules for recognised clearing houses and rules for Operators

Summary of content

3. The consultation on the draft rules included:

- (i) three proposed rules for recognised clearing houses under FSMA 2000 (RCH 1-3); and
- (ii) two proposed rules for approved operators under the Uncertificated Securities Regulations 2001 (USR 1 & 2).

Consultation responses

4. The respondents sought clarification of two main areas.

The proposed rule for RCHs and Operators allowing the Bank to charge fees to reclaim the cost of expert reports that it commissions directly (RCH 3 and USR 2)

5. A concern was expressed that there was not sufficient clarity about the process that the Bank would follow in contracting directly with a skilled person. Respondents questioned the transparency of likely costs to the RCH or Operator; and suggested the RCH or Operator should be involved in determining the scope and nature of the review by the skilled person, and should be able to influence the selection of the person conducting the review. These are matters relating to the process for commissioning the report, rather than to the rule on recovering the cost, so no change has been made to the rule in response.

6. The consultation paper noted, however, that if the Bank contracts directly with the skilled person, the RCH will be provided with an indication of the anticipated costs before work begins. The Bank will consider responses received from

the RCHs in relation to the cost and likely benefit to be derived from the report.

7. The scope and nature of the review by the skilled person will be determined by the nature of the Bank's supervisory concern and it is appropriate the Bank rather than the RCH or Operator should select the person conducting the review. This will also help to ensure the independence of the person conducting the review. The Bank would, however, generally expect to discuss the scope and nature of the review with the RCH or Operator as part of the supervisory process, and will consider their views.

The proposed rule for RCHs determining which appointments must be notified to the Bank (RCH 1)

8. A respondent observed that the proposed scope of the notification obligation was broad. The rule is intended broadly to continue the scope of the notification obligations on RCHs that existed prior to the transfer of supervisory responsibility to the Bank, but also to require pre-notification of relevant appointments — as is already the case for recognised investment exchanges. The Bank has amended paragraph 1.3(d)(ii) to clarify that the notification obligation applies in respect of persons responsible for functions that are *materially* related to, or arising from, regulatory obligations.

9. Other representations supported the introduction of the draft rules.

(b) Statement of policy on the giving of directions to qualifying parent undertaking of UK recognised clearing houses

Summary of content

10. The consultation on the draft statement of policy included:

- (i) the draft statement of policy on the use of the power to direct qualifying parent undertakings;
- (ii) a non-exhaustive list of possible scenarios in which the Bank may consider exercising the power of direction; and
- (iii) a non-exhaustive list of possible directions which the Bank may consider taking.

Consultation responses

11. The Bank received a representation requesting clarification of whether this power extended to parent undertakings outside of the United Kingdom. The power provided by the Financial Services and Markets Act 2012 is limited to UK qualifying parent undertakings. Some UK FMI

(1) Persons approved to operate a system for dematerialised settlement.

have parent undertakings that are not located in the United Kingdom. While this power does not extend to overseas parent undertakings, the Bank, as outlined in *The Bank of England's approach to the supervision of financial market infrastructure*, is committed to working with overseas authorities in respect of international groups that contain a UK FMI to ensure that risks from the group to UK FMIs are recognised and addressed.

(c) Statement of policy on financial penalties imposed by the Bank under FSMA 2000 or under Part 5 of the Banking Act 2009

Summary of content

12. The consultation on the draft statement of policy included the proposed policy on the imposition and amount of penalties.

Consultation responses

13. The Bank received no representations raising concerns about the proposed penalty policies, and has made no changes to the draft policy.