A joint response to the PRA and FCA's joint consultation on "Strengthening accountability in banking: UK branches of foreign banks"

May 2015

The British Bankers' Association (***BBA***), the Association for Financial Markets in Europe (***AFME***), and the Association of Foreign Banks (AFB) welcome the opportunity to respond on behalf of their members on the joint consultation paper FCA 15/10 and PRA 9/15 on "Strengthening accountability in banking: UK branches of foreign banks" [1].

The BBA is the leading association for banks active in the UK. It represents over 170 banking members, which are headquartered in 50 countries and have operations in 180 countries worldwide. As well as banks headquartered in the UK, BBA members include third country banks which operate in the UK either as branches or subsidiaries, or often as a combination of both. The BBA is registered on the EU Transparency Register, registration number 5897733662-75.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

The AFB, whose direct membership includes over 190 global banking groups headquartered in more than 50 jurisdictions, represents the foreign banking sector which provides financial services throughout the UK, mainly in London. The banks operate in the UK through branches, subsidiaries, representative offices and, in many cases, a combination of branches & subsidiaries, engaging in a wide range of banking and investment business activity in the UK, primarily in the wholesale banking markets.

Our general points on the CP are made below, followed by answers to the specific questions posed.

[1] http://www.fca.org.uk/static/documents/consultation-papers/cp15-10.pdf

Individuals not based in the UK

It is now clear (and we welcome this development) that members of the boards of foreign banks with incoming branches (as opposed to those who run the UK branch day to day) will not be covered by the Senior Managers Regime, nor will individuals working in other group entities who set, but do not implement strategy for the UK branch. Accordingly, the majority of individuals falling within the scope of the Senior Managers Regime will be based in the UK.

That said, certain individuals based outside the UK will still fall within the scope of the Senior Managers Regime, particularly if they implement strategy for a UK branch. This application of the regime to non-UK based individuals employed by other group entities increases the existing risk of multiple regulation; by the PRA/FCA, but also by an overseas regulator in relation to the group entity by which s/he is employed.

We also, please, would welcome greater clarity around what the difference is between setting strategy compared to implementing strategy. We would welcome the inclusion of practical examples that clearly highlight what the difference is in the FCA's view. We believe this is essential to allow firms to understand the difference and how to best meet regulators' expectations.

In relation to non-EEA banks, , we note that the FCA is seeking to assert extra-territorial jurisdiction under its Certification Regime and Conduct Rules over a number of individuals not based in the UK, who may have only minimal contact with UK clients. As an example of this, an Analyst employed by a non-EEA bank who is based outside the UK could receive a phone call from a UK client as a result of their contact details being included in a research document. In receiving this call and discussing the research the Analyst could be considered to be dealing with a UK client from an overseas establishment of the non-EEA bank and therefore within the scope of the FCA's Certification Regime and Conduct Rules, even though the contact may be minimal and outside the knowledge and control of the UK branch. This raises further challenges for the UK branch, including how they can be expected to be aware of all contacts being made by UK clients to non-UK branch employees, to which we would welcome further clarity from the FCA.

More generally, our members feel that there is a need for greater clarity from regulators about what is meant by dealing with UK clients and what types of interaction this would capture. For example, if a senior executive is dealing with a customer purely from a relationship point of view – as opposed to actually being involved with the details of a transaction - is that really being part of the transaction?

The potential practical implications of the regulatory notification requirements in relation to breaches of the Conduct Rules are also considerable in the case of employees based overseas. A significant amount of personal information will need to be acquired and transferred from overseas legal entities domiciled in both EEA and non-EEA countries to the UK. It will also prove difficult to access the relevant information in order to conduct a full fitness and propriety assessment of employees based overseas who fall within the scope of the Certification Regime, notwithstanding any potential legal impediments to such transfers of information.

Additionally, we believe it may be particularly difficult to determine whether an individual had a previous record of misconduct if they had worked for a number of different employers abroad, under more prescriptive employment law regimes. We would also note the potential data protection law difficulties inherent in obtaining such information in certain jurisdictions, especially when the purpose is to notify the UK regulator of potential breaches of the Conduct Rules. The FCA appear to indicate that merely asking for relevant information could be sufficient to satisfy 'reasonable steps', but it would be helpful for the regulators to confirm what would constitute reasonable steps in cases where legal obstacles restrict firms from obtaining information.

Individuals based in the UK

In UK branches of foreign banks it is commonplace for an individual to have both a management reporting line to an individual based in the UK, and a functional reporting line to an individual based overseas. This is now recognised in the consultation (which is welcome), and the worked examples do assist.

In particular we welcome the idea that for UK branches of non-EEA banks (non-EEA branches) there will be a PRA-approved *Head of Overseas Branch* and an FCA-approved *Overseas Branch Senior Manager (OBSM),* and for UK branches of EEA banks (EEA branches) no PRA-approved Senior Managers but an FCA-approved *EEA Branch Senior Manager (EBSM)*. Also that no NED functions will be in scope as Senior Management Functions.

However, we are concerned about the new, and potentially very wide-ranging FCA proposal at paragraph 2.32 of the consultation, which requires a Senior Manager to have responsibility for a transaction where any element of that transaction (booking, negotiating, or arranging) takes place in the UK branch. We find this illogical, and indeed inappropriate. We can see the logic of a UK branch Senior Manager having responsibility for arranging a transaction if it is arranged in the UK but booked elsewhere; and vice versa: but not for all other aspects of the transaction. He/she simply will not have the power to go with the regulatory responsibility.

EEA Branches

Paragraph 2.48 of the consultation contemplates an EBSM being subject to the same conditions as the existing Significant Management function (CF29), i.e. must be involved in designated investment activities other than dealing in investments as principal / processing confirmations, etc, relating to designated investment business / accepting deposits. This, in our members' experience, has been interpreted very inconsistently by FSA/FCA, and hence by the industry. One of our members was told by the FSA to register the Head of Compliance as a CF29; but the FCA pilot scheme staff for the Senior Managers Regime were surprised that they had done this. The phrase "must be involved in" needs clarity. Does this mean the person must actually conduct the activity or does it mean (as we would have thought) the most senior person in the UK with responsibility for managing the activity?

We have also heard this interpreted to the effect that all current CF29s will become EBSMs. Is it not the case that an individual must first meet the statutory definition of a Senior Manager and then also meet the same conditions as currently apply to a CF29? We would ask please for clarification of this point.

Paragraph 2.49 of the consultation contemplates the idea that the FCA, in making a determination of fitness and propriety for an individual applying to perform the EBSM, will "not assess the competence of these individuals, as this is a matter reserved for the home member state". This requires clarification. Is "competence" not synonymous with "fitness"? We have always understood the "propriety" limb of "fitness and propriety" to refer to the individual's attitude to ethics, behaviour, disciplinary/criminal history and the like; and the "fitness" limb to refer to his/her competence (expertise, training and experience in relation to the role in question). Does this mean, therefore, that in these cases the FCA will only be assessing propriety, and not fitness?

Paragraph 2.50 of the consultation states that "the FCA's responsibility framework will not apply to EEA branches" and also that "the obligations on Senior Managers to provide Handover Certificates when leaving a role will not apply to EEA branches".

As to the first point, please explain how this accords with the idea at paragraph 2.46ff that all EEA branches will have an SMF17 (MLRO), and that EBSMs must cover certain regulated activities. We think that the point that the FCA may be making here is that it cannot provide a prescriptive list of functions (the "responsibility framework") that must be considered in documenting the responsibilities map – because of limitations applied under EU legislation - but that the FCA is permitted under EU legislation to prescribe the MLRO role, and has created a general ESBM to address other branch activities. Paragraph 2.52 of the consultation refers EEA branches back to the non-EEA branch requirements for a responsibilities map (discussed in paragraphs 2.33-2.35); but then states: "In addition, EEA branches will only be required to include in the responsibilities map the information necessary to identify the responsibilities of the approved persons – the MLRO and EBSM – and how these fit in with the management and governance arrangements of the branch as a whole". Our members find this very confusing, and not an example of well-made regulation. It would better to have a clear statement as to what a responsibilities map for an EEA branch should include, rather than referring back to the requirements for non-EEA branches in an unclear manner.

As to the second point, as we understand it, there will be no obligation on <u>any</u> Senior Manager to provide a Handover Certificate when leaving a role.

We also wish to note a potential issue in relation to the drafting of the HM Treasury draft Statutory Instrument extending the application of the Senior Managers Regime and Certification Regime to non-UK institutions (i.e. the Financial Services and Markets Act 2000 (Relevant Authorised Persons) Order 2015, a draft of which was published in November 2014.

Under the terms of the draft SI, the regime is extended to non-UK institutions which, amongst other things, (a) are credit institutions with permissions under Part 4A, schedule 3, or schedule 4 of FSMA to carry on the regulated activity of accepting deposits; (b) have a branch in the UK; and (c) are not insurers (our underlining).

This drafting would appear to capture EEA firms where the EEA firm has permission to accept deposits on an inward services basis, even if the branch itself does not have permission to carry on deposit-taking from the branch under the inward branch passport. Typically such firms are solo-regulated by the FCA. We understand that it was not the

intention to capture such firms within the scope of the regime, and would request that the PRA and FCA liaise with HM Treasury to arrange for the SI to be amended to clarify the position – for example by moving the underlined wording set out above so that it forms part of paragraph 2(b) of the SI rather than part of paragraphs 2(2) and 2(3)(b) of the SI. We also note that the FCA's proposed definition of an "relevant authorised person" (as set out in CP 15/10, Appendix 2, Annex A) would similarly require amendment to reflect this. (Separately, we note that paragraph 3(a) of the current FCA definition is in any event incorrect in that it refers only to Part 4A and not to Schedule 3 or Schedule 4.)

Non-EEA branches

The original requirement for the SYSC attestation from a branch of a non-EEA bank was stated to be due to the expectation that there should be "a senior individual responsible for annually attesting compliance with Senior Management Arrangements, Systems and Controls (SYSC). This individual should be part of the UK management team" (PRA CP4/14). This was further clarified in the PRA Supervisory Statement on Supervising International Banks (PRA SS10/14), where it was noted that "in line with the Senior Managers Regime, the PRA views it as important to have one individual responsible for providing an overall attestation".

In the same Supervisory Statement the PRA state that they "will review if there is a continued need for this attestation once it is clear if, and how, the Senior Managers Regime will apply to non-EEA branches." Given that we now understand, broadly, the scope of the Senior Managers Regime for non-EEA branches, and that a senior individual will be locally responsible for the systems and controls in the branch (PRA prescribed responsibility), is the PRA now seeking to revisit the need for the SYSC attestation requirement, possibly with a view to removing it (thus harmonising the approach as between EEA and non-EEA branches)?

Extraterritoriality

In our responses to the HMT consultation paper on 'Regulating individual conduct in banking: UK branches of foreign banks'[2] AFME / BBA and the AFB asked HMT to confirm that it and/or the regulators had discussed their proposed plans with overseas regulators (both within and outside the EEA) and with ESMA, and that those regulators (and ESMA) were comfortable with the proposed approach. The current consultation simply says (at paragraph 1.20) that "the PRA and FCA intend to discuss the proposed accountability regimes and the proposals in this CP with overseas regulators".

This concerns us. It is late in the day to "intend to discuss" such an important matter with overseas regulators a year before implementation. Regulated individuals are entitled to certainty when they are exposed to personal liability. No other EU regulator has an equivalent regime (the nearest being the Netherlands, who require oaths of those working in banking), nor do we know of other regulators who have anything similar. Given the evident uncertainty, we believe there is a significant risk that overseas regulators may seek to assert jurisdiction over individuals in a similar way, creating duplication of regulation as well as the need for the individual to comply with multiple (and potentially conflicting) regimes; not to mention the likelihood that competent and risk-averse senior managers will

[2] https://www.gov.uk/government/consultations/regulating-individual-conduct-in-banking-uk-branches-of-foreign-banks/regulating-individual-conduct-in-banking-uk-branches-of-foreign-banks

turn down UK postings in favour of postings to a less risky environment (from a personal perspective) or simply leave the industry. We would, therefore, welcome comments from the UK regulators and government on the level of interaction held with overseas regulators, the broad view from these discussions, and how they intend to address situations in which regulations conflict, recognising that this is as much an issue for regulators, domestic and international, as it is for those firms and individuals who are subject to multiple regimes. It would also be helpful to know in this context how the UK regulators actually intend to reach SMFs based overseas; how would regulatory enforcement action actually be exerted on a senior manager resident overseas?

Implementation timeline

Our members are committed to full and proper implementation of the three key elements of the new regulatory framework for individuals, but think that the timelines currently proposed, while longer than originally proposed (for which concession we are grateful), are still tight.

This is particularly the case for UK branches of foreign banks, for whom the new proposals are going to mean significant reorganisations which will be very difficult to carry out in the current timescale.

Impact assessment

We also believe that many of the underlying assumptions in the impact assessment, especially in relation to the methodology used to calculate costs, significantly underestimate the impact the proposed changes will have on firms, especially in relation to third country requirements. That said, we welcome any efforts being made by government and regulators to engage with the industry, and our members stand ready to contribute to this process.

Specific consultation questions

Q1: [PRA]: Does the proposed list of PRA Senior Management Functions for UK branches of non-EEA firms capture the appropriate set of roles? If not,

- are there any other roles which the PRA should consider specifying as SMFs for incoming branches?

- are there any proposed SMFs which the PRA should consider excluding?

We would appreciate clarity from the PRA on the Group Entity Senior Manager (GESM) role, and whether this covers individuals in the same legal entity as a branch of a non-EEA bank.

At paragraph 1.25 of the CP, it is indicated that the GESM SMF could be either UK or overseas based, and also that it is an optional rather than mandatory function, possibly covering Country or Regional Heads.

Paragraph 5.2 of the proposed Senior Management Functions Annex, however, notes that the GESM must be an individual employed by a parent undertaking or holding company of a firm, or another undertaking which is a member of the firm's group.

We would suggest that the rationale for this SMF and its application to regional heads, (for example) is not dependent upon the individual being employed by a separate legal entity, and we would welcome clarification of this point.

Q2: [FCA]: Do you agree with the proposed list of FCA Senior management Functions for non-EEA branches? If not,

- are there any other roles which the FCA should consider specifying as SMFs for incoming non-EEA branches?
- are there any proposed SMFs which the FCA should consider excluding?

As mentioned above, we are concerned about the extent of the proposal at paragraph 2.32 of the consultation, which requires a Senior Manager to have responsibility for a transaction where any element of that transaction (booking, negotiating, or arranging) takes place in the UK branch. We find this illogical. We can see why a UK branch Senior Manager would be responsible for arranging a transaction, if it is arranged in the UK but booked elsewhere, and vice versa; but not for all other aspects of the transaction.

We also question the need always to have an OBSM. For example, in some branches whilst there may be a management committee with individual responsibilities captured by other functions, decision-making on behalf of the branch resides with the branch manager alone, not collectively with the management committee. In these instances, the PRA Head of Overseas Branch function would be sufficient. It is important that there is dialogue between a branch and its supervisor to understand whether the role of OBSM is applicable given the governance arrangements within a particular branch.

Q3: [PRA]: Does the proposed list of PRA Prescribed Responsibilities for non-EEA branches capture an appropriate and proportionate set of areas? If not,

- are there any other areas the PRA should consider including in the list?
- are there any areas which the PRA should consider omitting or clarifying?

We generally agree with the proposed list.

However, we have some concerns regarding the breadth of PRA Responsibility 11. This responsibility covers financial reporting, regulatory reporting and the SYSC compliance attestation. In reality, responsibility for these different types of reporting is spread across various areas of the bank (for example Finance, Operations, Compliance and Risk). Whilst responsibilities can be allocated to more than one individual, the breadth of this responsibility could result in individuals being allocated a responsibility over which they have little or no control (for example, the Chief Finance Officer may have direct responsibility for Financial Reporting but no control or involvement over regulatory returns).

Similarly, we suggest that the SYSC Attestation element should be removed entirely, as making it part of the Prescribed Responsibilities unnecessarily complicates matters, in circumstances where it would in effect add little to the implications of providing the attestation itself. If, however, the PRA wishes to retain it within the Prescribed Responsibilities, then we suggest that it forms part of Shared Responsibility 5 (albeit that the SYSC Attestation is provided to the PRA only), since the SYSC attestation is, in effect, a subset of the general Prescribed Responsibility to ensure compliance with the UK regulatory regime within PR5. There is also a further concern in circumstances where a branch is headquartered in a jurisdiction with SYSC-equivalent requirements that differ from those of the PRA. By way of example, a non-EEA regulator may not have the same requirements for reverse stress testing (SYSC 20), which could make it difficult for a Senior Manager in the UK branch to attest to the PRA that it met all of the PRA's SYSC requirements. Such nuances would need to be taken account of in the wording of the Prescribed Responsibility.

We would request that the PRA further break down, remove and/or reallocate aspects of this prescribed responsibility so as to ensure more accurate and appropriate allocation of the relevant responsibilities.

Q4: [FCA]: Does the FCA's proposed approach to the allocation of responsibilities for non-EEA branches capture an appropriate and proportionate set of areas? If not,

• are there any other areas the FCA should consider including in the list?

• are there any areas which the FCA should consider omitting or clarifying?

See our answer to Q2.

We are also concerned by the idea, expressed in FCA CP15/4/ PRA CP6/15, that the whistleblowing champion in a multinational group headquartered outside the UK should be based in the UK. We agree that he/she should be a Senior Manager, but not that he/she necessarily needs to be based in the UK. We have responded separately on this point to CP 15/4 (Whistleblowing in deposit takers, PRA-designated investment firms, and insurers).

Q5: [FCA]: Do you agree with the proposed list of FCA senior management Functions for EEA branches? If not,

• are there any other roles which the FCA should consider specifying as SMFs for incoming EEA branches?

• are there any proposed SMFs which the FCA should consider excluding?

See our earlier comments on EEA branches.

Q6: [FCA]: Do you agree with the FCA's proposed approach to the allocation of responsibilities in EEA branches? If not, how should the regime be amended?

.See our earlier comments on EEA branches.

Q7: [PRA/FCA]: Do the combined FCA and PRA proposed SMFs branches cover the key decision-makers for the regulated activities of incoming branches?

We have one point of clarification. There is an apparent contradiction between the CP and the PRA's Supervisory Statement SS21/15 on Internal Governance. Paragraph 2.4 in the Supervisory Statement talks about at least two independent individuals responsible for directing the business. However, paragraph 1.24 of the CP mentions that for incoming non-EEA branches, there need to be just one individual heading the branch. It would appear that SS 21/85, which was issued after the CP, supersedes the latter. Could the PRA please clarify this point?

Q8: [PRA/FCA]: Are there any other aspects of the Senior Managers Regime that should be applied differently for non EEA branches? If so, how should the regime be amended?

See our earlier comments on extraterritoriality.

Annex 1 of the CP still suggests that branches are required to provide an annual certificate of compliance (see page 38) in respect of the Senior Managers Regime, although there is no specific rule in SYSC to this effect, since the proposed rule SYSC 4.5.46 does not appear in Appendix 2. We assume that this is an oversight and that there will be no annual certification of compliance, in line with the position in CP FCA15/9 where the FCA stated that it had removed the requirement for the annual certification (at page 16). For the avoidance of doubt, there is no rationale for imposing an annual certification on branches, contrary to the position for UK banks.

Q9: [FCA]: Are there any other aspects of the Senior Managers Regime that should be applied differently for EEA branches? If so, how should the regime be amended?

See our earlier comments on extraterritoriality.

Q10: [PRA]: Do you agree with the PRA's proposed approach to defining certification functions?

We agree with the PRA's proposed approach.

Q11: [FCA]: Do you agree with the FCA's proposed approach to the Certification Regime for non-EEA branches?

We understand the FCA's proposed approach to be as follows and, if so, we do not entirely agree:

1. Certified Persons must be either based in the UK or dealing with a UK client.

2. A manager, based overseas, of a Certified Person will not for that reason alone be a Certified Person.

3. A manager, based overseas, of a Certified Person will be a Certified Person in their own right if their role involves them participating in dealings with UK clients.

We believe that the application of the FCA's Certification Regime to individuals based outside the UK who are dealing with UK clients should be proportionate and should be related more closely to the nature of the engagement with UK clients. For example, for large deals with wholesale clients it is not unexpected that a UK branch would wish for someone senior from outside the UK to participate for relationship purposes. While they might be 'dealing' with a UK client they will not, in practice, have a material role in the business relationship with the client and it would seem disproportionate to apply the Certification Regime to them on this basis alone.

One option is to restrict the application of the Certification Regime to UK-based individuals. This would provide simplicity of process and of enforcement, and conform with the treatment of EEA branches. If the FCA does not want to go this far, however, we would suggest that the Certification Regime should only apply to individuals based overseas who have a direct, transactional relationship with UK clients such that they could cause significant harm to such clients. See also our answers to questions 12 and 13.

We would also welcome clarification of the term 'UK client', as it does not appear in the FCA Handbook Glossary. Non-EEA branches will have clients that are principally clients in the home state, often simply holding an account with the UK branch; and clarity would be welcome on whether they would be classed as a UK client in this respect, when they are for all practical purposes not a UK client.

Q12: [FCA]: Do you agree with the FCA's proposed approach to the Certification Regime for EEA branches?

We agree with the FCA's proposed approach, but would welcome a clear statement from the FCA on the qualification requirement, specifically as to whether roles not subject to a qualification requirement are out of scope.

Q13: [FCA]: What are your views on the potential changes to the scope of the FCA's Certification Regime described above for incoming branches? In particular, do you agree that the scope of the Certification Regime should include all individuals involved in wholesale activity, where these individuals are capable of causing significant harm to the firm or its customers?

We do agree (and had always assumed it was the intention) that the scope of the FCA's Certification Regime should include all individuals involved in wholesale activity, where these individuals are capable of causing significant harm to the firm or its customers. Our problem rests with the difficulty of defining the extent of this group of individuals.

For example, even the most junior trader in wholesale markets could cause significant harm if they breach their trading limits. Is it the FCA's intention to include wholesale market traders at all levels of seniority within the scope of its Certification Regime,

perhaps using existing CF30 approved status as an indicator of who should be certified at the point of commencement?

As part of any future consultation on the extension of the Certification Regime, clarification from the FCA would also be welcome on whether traders of unregulated products, such as spot FX, would be included.

We note that the FCA has thus far failed to comment on the intended scope of its proposed specified significant-harm function included in its consultation paper 14/13 as SYSC 5.2.20 R (7) (Functions that have a material impact on risk). Perhaps the FCA could clarify its intentions in this regard, bearing in mind that this function is clearly capable of including individuals involved in wholesale activity?

Q14: [PRA/FCA]: Are there any other aspects of the Certification Regime that should be applied differently for non-EEA branches? If so, how should the regime be amended?

No.

Q15: [FCA]: Are there any other aspects of the Certification Regime that should be applied differently for EEA branches? If so, how should the regime be amended?

No.

Q16: [PRA]: Do you agree with the PRA's proposed approach to conduct rules for non-EEA branches? If not, why not?

We agree with the PRA's proposed approach.

Q17: [FCA]: Do you agree with the FCA's proposed approach to Conduct Rules for incoming branches? If not, why not?

We believe that the FCA's statement in paragraph 4.8 of the consultation that "the Conduct Rules are drafted at a high level and the FCA does not expect them to be inconsistent with any separate standards by head office or the home state regulator" may be optimistic. See also our earlier comments on extraterritoriality. We think it very important that individuals subject to personal liability should have complete clarity as to the rules that apply to them and not be subject to the risk that overseas regulators may seek to assert jurisdiction over individuals in a similar way, creating duplication of regulation as well as the need for the individual to comply with multiple (and potentially conflicting) regimes. We wonder if the FCA should apply a territorial limitation in the case of Conduct Rules staff of non-EEA branches that are not Senior Managers so that the Conduct Rules will only apply to individuals based in the UK (consistent with the proposed treatment of EEA branches).

Q18: [FCA]: What are your views on the potential changes to the reporting of Conduct Rule breaches for incoming branches as described above?

Our views on the reporting of Conduct Rules breaches have not changed and apply equally to incoming branches as for UK firms falling within the scope of the Conduct Rules. Please also see our earlier comments (page 2).

The regulators have also alluded to the development of further guidelines. It would be helpful to have these further guidelines concerning the Conduct Rules, which should i) specify a high bar and ii) ensure that there is a level playing field for firms.

Q19: [PRA/FCA]: Are there any other aspects of the requirements associated with the Conduct Rules that should be applied differently for non-EEA branches? If so, how should the regime be amended?

No.

Q20: [FCA]: Are there any other aspects of the requirements associated with the Conduct Rules that should be applied differently for EEA branches? If so, how should the regime be amended?

No.

Q21: [PRA and FCA]: Do you agree with the PRA and FCA's proposed approach to grandfathering existing approved persons into Senior Management Functions in incoming branches?

Yes. However, consistent with our response to Question 2, we believe that the grandfathering from CF29 (Significant Management) to OBSM should be undertaken very much on a case by case basis, reflecting the differing governance arrangements of the firm and the fact that an OBSM may not be necessary in all cases.

We do, however, have a question with regards to the grandfathering from CF10 (Compliance Oversight) to SMF15. The consultation paper appears to suggest that CF10 is currently a compulsory function and, therefore, easily grandfathered across, but this is not always the case. A number of branches of non-EEA banks do not have a CF10 approved individual, having been advised by the regulators that this function was not compulsory. We would welcome clarity from the FCA and PRA on how these banks should approach the grandfathering process, recognising that it would be disproportionate to require a full approval process to be followed before the regime comes into place.

We would also welcome further clarity as to the role of Senior Managers in the of fitness and propriety of those who will be captured in the Certification Regime, as well as the timing of when this should take place – especially initially, given the one-year gap between when those in the Certification Regime must be identified and when the certificates are actually issued.

Q22: [PRA and FCA]: Are there any other aspects of the requirements associated with transitional arrangements that should be applied differently for non-EEA and/or EEA branches? If so, how should the regime be amended?

No.

Q23: [FCA]: Are there any other aspects of the requirements associated with transitional arrangements that should be applied differently for EEA branches? If so, how should the regime be amended?

No.

Q24: [PRA & FCA]: Do you agree with the proposed changes to the new forms?

Our views on the forms have not changed and apply equally to incoming branches as to UK firms falling within the scope of the new regime**.**

Q25: [FCA]: Do you agree with the proposed changes to the Form A for EEA branches?

Our views on the forms have not changed and apply equally to incoming branches as to UK firms falling within the scope of the new regime.

Q26: [PRA & FCA]: Do you agree with the proposed changes to these existing forms?

Our views on the forms have not changed and apply equally to incoming branches as to UK firms falling within the scope of the new regime.

Specifically on Long Form A, please advise how the referencing requirement as per 5.05.4 is to be applied in relation to an internal transfer of an existing staff member.

Q27: [PRA]: Do you have any comments on the PRA's proposed consequential Rulebook changes, or think more are needed?

We have not reviewed the proposed Rulebook changes line by line, but they need to incorporate our comments above.

Q28: [FCA]: Do you have any comments on the FCA's proposed consequential Handbook changes, or think more are needed?

We have not reviewed the proposed Handbook changes line by line, but they need to incorporate our comments above.

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