

Consultation response

CP12/24 Regulatory reform: PRA and FCA regimes relating to aspects of authorisation and supervision

12 December 2012

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on CP12/24 Regulatory reform: PRA and FCA regimes relating to aspects of authorisation and supervision. 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 listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

Introduction

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on FSA consultation document CP12/24 Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision.

AFME represents a broad array of European and global participants in the wholesale financial markets: our members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. Whilst AFME is a European trade association, given the importance of the London markets, both to the European Union as a whole and to the many EU and international firms that have operations in, or provide services on a cross-border basis into, London, we consider it important to engage proactively and constructively in the debate concerning the new UK framework for financial regulation.

Executive summary

AFME recognises that the overall approach being adopted in CP12/24 is to make only those changes required to implement the Financial Services Bill currently under consideration by Parliament and support the creation of new regulatory structure.

The majority of the proposed changes appear to be non contentious however, there are a number of areas where information is yet to be published by the PRA which may necessitate further comment.

1. Increasing accountability

1.1. Chapter 2: Changes to General Provisions and Definitions

Q1: Do you have any comments on the proposed new text for GEN 2 to explain the interpretation of joint Handbook provisions?

Q2: Do you have any comments on the proposed new Handbook definitions included in Appendix 19?

1.2. Chapter 3: Proposed changes to regulatory disclosure and use of the regulators' logos

Q3: Do you have any comments on any of the proposed updated status disclosure wording?

Q4: Do you have any comments on our proposal to remove the option for firms to use either the logo of the FCA or PRA?

Q5: Do you agree with our proposal for a six month transitional period from legal cutover?

Whilst sympathetic to the desire to avoid potential confusion for consumers, AFME believes that a 12 month transitional period from legal cutover would be more appropriate. This extension of the transitional period would allow firms adequate time to update systems and stationery regarding the use of the regulator's logo and the associated disclosure of regulatory status.

1.3. Chapter 4: Changes to the Supervision Manual (SUP 5): Reports by Skilled Persons

Q6: Do you have any comments on our proposals to amend SUP 5?

Use of a panel by the regulators should lead to an improvement in quality, which is welcomed. It should also enable the regulator to better manage the risk of leaks, which will otherwise be widened as a result of greater use of reports by skilled persons.

It would be helpful to understand the circumstances that might give rise to a firm being removed from its panel of skilled persons and how firms can provide feedback on skilled persons.

The regulators must also take into account the proportionality principle and other regulatory demands on a firm before deciding whether skilled persons report is required.

AFME believes that, absent significant concerns within the relevant regulator regarding the fitness and propriety of a firm and/or its management, the appointment of the skilled person should normally be made by the firm and not the regulator.

In order to ensure that any potential conflict of interest issues are managed properly it is essential that the regulator discuss with the firm of the identity of any skilled person(s) it proposes to appoint in advance of any contact with the skilled person.

AFME believes that the PRA should publish an equivalent to Annex 1 of SUP 5 in the PRA Handbook to ensure that regulated firms have a clear view when the PRA envisage using the s.166 tool.

1.4. Chapter 5: Changes to the Supervision Manual (SUP 6): Applications to vary and cancel Part IV permissions and requirements

Q7: Do you have any comments on our proposed approach to amending SUP 6?

1.5. Chapter 6: Changes to the Supervision Manual (SUP 8): Waiver and modification of rules

Q8: Do you have any comments on our proposed approach to amending SUP 8?

It will be helpful to see some examples of circumstances in which publication of a waiver will be detrimental to the UK financial system but meet the other

statutory tests, such as the rule would not achieve the purpose for which the rules were made.

Q9: Are there any additional aspects of the changes introduced by the Bill that you feel should be covered by SUP 8?

It is very helpful to have clarity now that existing waivers and modifications will be grandfathered. It will be helpful to have similar clarity around the arrangements for individual guidance.

It is not clear why PRA is not required to consult FCA on waivers to its rules.

1.6. Chapter 7: Changes to the Supervision Manual (SUP 11): Controllers and close links

Q10: Do you have any comments on our proposed approach to amending SUP 11?

Q11: Are there any additional aspects of the changes introduced by the Bill that you feel should be covered by SUP 11?

1.7. Chapter 8: Changes to Supervision Manual Chapters 13, 13A, 14 and Appendix 3: Passporting and related issues

Q12: Do you have any comments on our proposed approach to updating SUP 13?

Is it not clear from the drafting whether a conflict in timing might arise between the timing of agreeing/ forwarding a notification to a host state regulator and consulting between PRA and FCA

Q13: Are there any additional aspects of the changes introduced by the Bill for outward passporting that you feel should be covered by SUP 13?

Some examples of the circumstances in which consent to a passport may be refused would be helpful.

Q14: Do you have any comments on our proposed deletion of SUP 13A.9?

Q15: Do you have any comments on our proposed approach to updating SUP 13A and SUP 14?

Q16: Are there any additional aspects of the changes introduced by the Bill for inward passporting, top-up authorisations, the application of UK requirements to incoming EEA firms, or related matters, that you feel should be covered by SUP 13A and SUP 14?

1.8. Chapter 9: Changes to the Supervision Manual (SUP 15): Notifications to the FSA:

Q17: Do you have any comments on our proposed approach to amending SUP 15?

1.9. Chapter 10: Changes to the Supervision Manual (SUP 16.2, 16.3, 16.4 (Annual controllers report), 16.5 (Annual close links reports), 16.6 (Compliance reports) and 16.10 (Verification of standing data):

Q18: Do you have any comments on our proposed approach to amending SUP 16?

1.10. Chapter 11: Changes to the Supervision Manual (SUP 18): Insurance transfers of business:

Q19: Do you have any comments on our proposed approach to updating SUP 18?

Confirmation about when and how firms will know if FCA and PRA will want postal or electronic applications would be helpful.

1.11. Chapter 12: Other changes to the PRA and FCA Handbooks:

Q20: Do you have any comments on other changes being made to the FCA and PRA rulebook?

Q21: Do you have any comments on the proposed deletion of SUP TP 1.3 and 1.4 in particular?

Q22: Do you have any comments on the proposed changes to actions for damages in the PRA rulebook?

1.12. Annex 1: Cost benefit analysis:

Q23: Do you have any comments on any part of this cost benefit analysis?

AFME believes that the figures quoted in paragraph 14 of Annex 1 do not reflect the true cost of a report by a skilled person on a regulated firm. In order to facilitate the work of the skilled person the firm must provide adequate resources and access to information required to complete the report. Such resources can include management overview, detailed analysis and explanation by technical experts, extraction of historic data (related to transaction and/or internal systems & controls) that can amount to a significant additional expense for the firm involved. In addition may be lost opportunity costs where firm staff are not able to work on routine business of the firm.

Q24: In the case of GEN 4 and GEN 5, do you have any comments about the costs and benefits of a longer transitional period?

Whilst the updating of regulatory disclosures may appear to be a relatively simple task the need to adequately test systems to ensure amendments have been incorporated correctly are not. Extension of the transitional period as suggested in our response to Question 5 would significantly increase the likelihood of a firm being able to incorporate such updates into a package of other amendments being made. Such an approach could significantly reduce the

overall cost of system testing when compared to the need to test disclosure changes as stand-alone items.