



Response to HMT's Applying FSMA 2000 model of regulation to the UK CRR – Key UK CRR definitions

30 September 2025

Introduction

1. UK Finance¹ and AFME² are pleased to respond to the HMT's [draft CRR Definitions Statutory Instrument](#)³ (the **Draft SI**) and Chapter 4: Key UK CRR definitions of its related consultation '[Applying the FSMA⁴ 2000 model of regulation to the UK CRR](#)'⁵.
2. We have been supported by A&O Shearman⁶ on this response, especially given the significant legal considerations.

Key messages

3. As a general view, we consider the best approach is to simplify definitions where possible and avoid duplication in the legislation and PRA rulebook. (We will respond separately to the PRA regarding updates to its rulebook pursuant to its separate consultation.)
4. We suggest below specific changes to the definition of an "investment firm" and various related definitions of different types of investment firm, instead of creating a new definition of a "Part 4A investment firm". We consider that the approach set out here would establish clarity in the UK regime and would be a significant improvement on the current approach in existing UK legislation.
5. We also suggest revisions to the definitions of a "*financial institution*" and a "*financial holding company*". In retaining the CRR definitions of these terms, HMT retains the ambiguity created in respect of certain types of holding company which would not be types of holding company within the existing scope of regulation (e.g. a "*financial holding company*" or an "*insurance holding company*") but nonetheless could be treated as being "*financial institutions*". This ambiguity was created in the predecessor EU legislation and was capable of being dealt with under the purposive interpretation of EU law. That interpretive approach would not be available for definitions set out in FSMA, so HMT should take this opportunity to resolve these legacy issues.
6. HMT may wish to consider further opportunities to simplify the approach to defined terms. Examples noted below include the proposed definition of a "parent undertaking" in a new section 71(2)(b) FSMA and the new Schedule 19D as a proposed replacement for Annex I of the Capital Requirements Directive.

¹**UK Finance** is the collective voice for the banking and finance industry. Representing over 300 firms, we're a centre of trust, expertise and collaboration at the heart of financial services, championing a thriving sector and building a better society.

² **The Association for Financial Markets in Europe (AFME)** is the voice of the leading banks in Europe's financial markets. Our purpose is to advocate for deep and competitive, integrated capital markets globally, which support companies and investors, facilitating economic growth.

³ The Credit Institutions and Investment Firms (Miscellaneous Definitions) (Amendment) Regulations 2025.

⁴ **FSMA**: Financial Services and Markets Act

⁵ **CRR**: UK Capital Requirements Regulation

⁶ **A&O Shearman** is an international legal practice with nearly 4,000 lawyers, including some 800 partners, working in 28 countries worldwide. Providing a truly global offering with unmatched reach and depth, tailor-made for complex, cross-border work, their team is created to achieve unparalleled outcomes for complex, multijurisdictional matters across an ever-changing world and regulatory landscape.

Responses to questions

7. As a general view, we consider the best approach is to simplify definitions where possible and avoid duplication in the legislation and PRA rulebook. To assist with this, the use of definitions for specific purposes should be avoided to the extent at all possible, with generic definitions used instead. As these wholesale changes are an opportunity to improve the UK framework, the approach should not seek to retain EU legislative structures unnecessarily.

Statutory instrument

Draft SI Part 2 – Amendments to primary legislation

Investment firm definition – consistency across legislation

8. We consider that there may be an opportunity to simplify the use of “investment firm” across various legislation.⁷ In particular, there is an opportunity to eliminate unnecessary duplication by introducing a single, foundational “investment firm” term in FSMA, to which other legislative measures can refer. This approach should replace the proposal to create a new definition of a “*Part 4A investment firm*”.
9. With a single “investment firm” definition, this would give the option to use such definition to clearly articulate the following types of investment firm which are either sub-sets of investment firm, firms of which investment firms are a sub-set or firms which exclude investment firms (or certain sub-sets). This in turn would create a simpler taxonomy which could be applied consistently. That taxonomy should replace the various definitions throughout other piece of legislation which should instead refer to the updated section 424A FSMA
10. For example a basic definition of an “investment firm” could be established in an updated section 424A FSMA as follows:

‘investment firm’ meaning any person whose regular occupation or business is the provision of one or more investment services (as listed in Part 3 of Schedule 2 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001) relating to any financial instruments (as listed in Part 1 of Schedule 2 to that Order).

This definition would be agnostic as to whether these entities are established in the UK or overseas.

11. From this, further definitions could be set up in section 424A FSMA establishing a range of basic distinctions among different types of investment firms:
 - a. Regarding their UK regulator:

⁷ For example: UK MiFIR, the Banking Act 2009, FSMA, the Regulated Activities Order and The Financial Conglomerates and Other Financial Groups Regulations 2004 (non-exhaustive list for illustration only).

- i. 'designated investment firm' meaning an investment firm which is PRA-designated (which could be established in the UK or overseas);
- ii. 'solo-regulated investment firm' meaning an investment firm which is solo-regulated (which could be established in the UK or overseas);
- iii. 'exempt investment firm' meaning a person excluded from being an investment firm by Schedule 3 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, read with:
 - 1. Commission Delegated Regulation of 25.4.2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive; and
 - 2. Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business.

The definition of an 'exempt investment firm' captures the exclusions under the Article 3 RAO definition of an "investment firm".

- iv. 'limited requirements investment firm' a person with permission under Part 4A of FSMA to carry on regulated activities to whom the appropriate regulator has granted an exemption from the authorisation and operating conditions which usually apply to investment firms; or

The definition of a 'limited requirements investment firm' captures the exclusion from MiFIR (and related subordinate EU legislation e.g. the MiFID Org Reg) in respect of regulation 8 of the Markets in Financial Instruments Regulations 2017. The various references in those locations to exclusions from the investment firm and that could be replaced with cross-references to this FSMA definition and that regulation 8 could be deleted.

- b. And regarding their location:

- i. 'UK investment firm' meaning an investment firm with its registered office or, if it has no registered office, its head office in the UK;
- ii. 'overseas investment firm' meaning an investment firm which does not have its registered office or its head office in the UK;

12. These in turn could be used to establish more granular distinctions:

- a. 'UK designated investment firm' meaning a designated investment firm with its registered office or, if it has no registered office, its head office in the UK;
- b. 'UK solo-regulated investment firm' meaning a solo-regulated investment firm with its registered office or, if it has no registered office, its head office in the UK;

- c. 'UK exempt investment firm' meaning an exempt investment firm with its registered office or, if it has no registered office, its head office in the UK;
 - d. 'overseas designated investment firm' meaning a designated investment firm which does not have its registered office or its head office in the UK;
 - e. 'overseas solo-regulated investment firm' meaning a solo-regulated investment firm which does not have its registered office or its head office in the UK; and
 - f. 'overseas exempt investment firm' meaning an exempt investment firm which does not have its registered office or its head office in the UK.
13. This approach could be used to create a simpler taxonomy, reducing duplication and increasing the clarity of the current regime.

Parent undertaking definition

14. Regulation 4 of the draft SI creates a new section 71(2)(b) FSMA which defines participation. That definition of a participation should be replaced with a cross-reference to section 421A FSMA instead of setting out its own definition. Doing so would not change the substance of the provision in the draft SI but would simplify the regime.

Financial institution definition

15. Regulation 15(4) of the draft SI defines a financial institution. This definition is transferred, without material change, from CRR to section 417 FSMA. Paragraph (a)(i)(aa) of that definition refers to the primary activity being to "acquire holdings". This suggests that an entity would only qualify as a financial institution if it constantly makes new acquisitions – in contrast, the policy intention is to capture entities which hold holdings, as confirmed by the FCA when finalising the MIFIDPRU Sourcebook: *"In our view, the activity of acquiring holdings does not need to be ongoing – it is sufficient that the undertaking has acquired holdings at some point. This is consistent with the purpose of the group and consolidation provisions and enables intermediate holding structures to be caught."*⁸ Amending this to read "hold holdings" would remove the disparity between the natural reading of the existing definition and the long-standing policy intention of that definition.⁹
16. In keeping with UK CRR, the draft definition of financial institution that is proposed to be inserted into section 417 FSMA refers to an *"undertaking, the principal activity of which is to— (aa) acquire holdings in another undertaking [...] and is not [among other types of entity] a pure industrial holding company"*. The meaning of a *"pure industrial holding company"* is not defined. Whilst one solution to this could be to create a new definition of a *"pure industrial holding company"*, that approach is challenging as creating an appropriately broad definition that does not create circularity by relying on other definitions, such as that of a *"financial holding company"*, is difficult. The better solution would be

⁸ PS 21/6 at page 19.

⁹ The EU CRR's definition of a "pure industrial holding company" uses the term "own holdings" in a similar context. The phrase "hold holdings" is to be preferred to "own holdings" given the possibility of reading "own" as a possessive adjective (e.g. "the company's own holding") rather than as a verb ("the company's purpose is to own holdings").

instead to discuss holding companies in the definition of a “*financial holding company*” and then ensure that a “*financial institution*” includes a “*financial holding company*”. Drafting of a revised definitions of a “*financial institution*” and a “*financial holding company*” that achieves the necessary clarity whilst also maintaining the current scope of a “*financial holding company*” is set out below in markup against HMT’s proposed definitions:

““*financial holding company*” means ~~a financial institution~~ an undertaking that satisfies the following conditions—

(a) (i) its principal activity is to:

(aa) hold holdings in another undertaking, or

(bb) carry on one or more of the activities specified in Schedule 19D, or

(ii) it is an asset management company,

~~(a b)~~ the financial institution undertaking is not a mixed financial holding company,

~~(b c)~~ the subsidiaries of the financial institution undertaking are mainly or exclusively credit institutions, designated investment firms or financial institutions, and

~~(c d)~~ at least one of the subsidiaries is a credit institution or a designated investment firm;

“*financial institution*” means an undertaking that satisfies the following conditions—

(a) it is—

(i) an undertaking, the principal activity of which is to—

~~(aa) acquire holdings in another undertaking, or~~

~~(bb)~~ carry on one or more of the activities specified in Schedule 19D, or

(ii) an asset management company,

(iii) a financial holding company, or

(iv) a mixed financial holding company, and

(b) it is not—

(i) a credit institution,

(ii) a designated investment firm,

~~(iii) a pure industrial holding company,~~

~~(iv iii)~~ an insurance holding company (as defined in the glossary of the PRA Rulebook), or

~~(v iv)~~ a mixed-activity insurance holding company (as defined in the Group Supervision Part of the PRA Rulebook);”.

Draft SI Schedule – Schedule 19D FSMA

17. The new schedule 19D FSMA replaces CRD Annex I. It uses certain terminology without this defining further and so misses an opportunity to integrate the schedule with UK law rather than retaining EU terminology. HMT may wish to consider more closely aligning this schedule with UK law and providing defined terms where concepts are not otherwise defined in UK law. We remain ready to engage with HMT on this matter in future.

Draft SI Part 3 – Amendments to secondary legislation

Amendments to The Financial Conglomerates and Other Financial Groups Regulations 2004

18. Please see our comments above on the definition of investment firm, which are relevant to the amendments to the definition of “financial sector” (draft regulation 20(2)(c)).

Amendments to The Financial Services and Markets Act 2000 (Excluded Activities and Prohibitions) Order 2014

19. Please see our comments above on the proposed Schedule 19D to FSMA, which is relevant to the definition of financial holding company.

Amendments to The Bank Recovery and Resolution (No. 2) Order 2014

20. We have no comments on these proposed amendments.

Amendments to The Financial Services and Markets Act 2000 (Prudential Regulation of FCA Investment Firms) (Definitions for the purposes of Part 9C) Regulations 2021

21. Please see our comments above on the proposed Schedule 19D which is relevant to the definition of IFPR financial institution.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

22. HMT has not proposed any changes to the MLRs – please see our comments above at paragraph [17].

Engagement

23. We would be pleased to facilitate any further discussion.
24. UK Finance and AFME are content with HMT publishing this consultation response on its website.

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