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## AFME Consultation response

### CP2/21 - International banks: The PRA's approach to branch and subsidiary supervision

8 April 2021

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The Association for Financial Markets in Europe (AFME<sup>1</sup>) welcomes the opportunity to respond to: CP2/21 - International banks: The PRA's approach to branch and subsidiary 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. We advocate for stable, competitive, sustainable European financial markets that support economic growth and benefit society.

#### Executive summary

We note that the supervisory statement will apply to existing international firms (including those headquartered in the EEA), as well as those who are applying, or planning to apply for authorisation in the UK.

We agree that it is timely to review and update the previous [SS 1/18](#) and recognise that this is intended to support firms in understanding the PRA's supervisory expectations and how they may choose to structure their operations in order to meet them. We also understand that the PRA have emphasised that their approach is largely unchanged and seeks to align with their current approach to supervision.

However, there are several areas where our Members would welcome additional clarity or further information relating to some of the expectations.

Our key points are:

- Our Members would welcome further information concerning the PRA's cooperation arrangements with home state supervisors and specifically would welcome confirmation that their use will prevent branches and subsidiaries from having to provide (i) duplicative information or (ii) information that is considered to be confidential or sensitive by the institution or (iii) information that is not relevant to PRA authorised entities. We request that the PRA makes use of supervisory cooperation MoUs for the exchange of information between regulators.
- We suggest that the PRA consistently focuses on the outcomes-based approach that is outlined in the consultation paper. There are sections in the draft SS that appear at odds with this approach where a prescriptive line by line assessment of a firm's compliance with certain requirements is suggested instead.
- We wish to feedback that the new requirement to specifically document UK booking arrangements in a single policy is a development since the previous SS and therefore an area where banks may need time for adaptation.

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<sup>1</sup> 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.

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- The draft SS has raised a series of questions as to how responsibilities are allocated to SMF's. We welcome clarity from the PRA on such expectations.

We have provided detailed comments on the PRA's proposed approach below.

## **1. Introduction /Section 1**

We note that the supervisory statement will apply immediately upon publication to existing international firms, including those headquartered in the European Economic Area (EEA). We welcome the PRA's flexibility in allowing firms who are operating under the Temporary Permission Regime (TPR) a longer 'as soon as practicable' timeframe within which to comply with the supervisory statement. However, where the PRA has introduced more prescriptive requirements for existing firms, we ask that the PRA is equally pragmatic in allowing existing international banks a reasonable amount of time to make any changes to their systems, controls, and processes. An example of this is the new expectation that existing banks will be required to specifically document UK booking arrangements in a single policy. We suggest that such firms will also need additional time to meet this new obligation.

The draft SS makes clear that the PRA will request new and more detailed information from international banks and subsidiaries. This will have an impact on all firms to a greater or lesser extent depending on the work they are required to undertake. At the very least firms will need to review existing procedures. Others will need to create and communicate new policies and approaches across the group, which will require internal review and additional time for approval.

We also wanted to share positive feedback from our members, particularly those who are currently navigating the PRA's authorisations process and who viewed the draft SS as a useful resource for branches to use in discussions with their legal entity, helpfully explaining the PRA's approach to cooperation with other supervisors and their expectations of the branch or subsidiary in relation to the head office or wider group.

## **2. Overall approach of responsible openness**

We welcome the PRA's description of how 'responsible openness' is intended to work.

## **3. General approach, size, and systemic importance**

We note the following:

- We understand that the PRA will undertake equivalence assessments of the prudential regulatory regime in international jurisdictions. Whilst we would not expect the PRA to publish details of the assessments, it would be helpful for firms (and home state supervisors) to know if a home state jurisdiction is, or is not, deemed equivalent.
- Where the PRA assesses that a firm meets the systemic threshold conditions, firms would welcome a formal communication from the PRA as soon as possible. The provision of formal confirmation from the PRA will enable firms to assess and make necessary changes.

### **National Competent Authority (NCA) Supervisory cooperation**

- We are keen to understand if the PRA and European Central Bank's (ECB) expectations for branches and subsidiaries are aligned and how supervisory cooperation will work in practice between the supervisors.

- We also note that the FCA/PRA MoU with the European Banking Authority (EBA) sets out supervisory cooperation and information-sharing arrangements between UK and EU/EEA national authorities. Our Members welcome greater clarity on how information will be exchanged including what information the group home supervisor will be asked to share with the PRA.
- Members would welcome further information on how the PRA's cooperation arrangements with home state supervisors will work in practice and welcome confirmation that their use will prevent branches and subsidiaries from having to provide duplicative or non-UK relevant information to the PRA.
- We suggest that where possible all the specified information, including information that is considered confidential or sensitive by the institution or that is not directly relevant to the UK is provided by the home state supervisor and not by the UK branch or subsidiary. This is in line with current practice and will ensure the accuracy and consistency of the information being provided.
- We anticipate that supervisors will work together to manage information requests from home and host supervisors. The MoUs currently in place provide a framework for this.
- We have discussed the value of knowing when a firm's adherence to the SS is moving from good to poor, and that the PRA will utilise their supervisory relationship to openly discuss any concerns of adherence to the SS
- We welcome the PRA and Bank of England continuing to closely coordinate with international supervisory and resolution authorities with regards to recovery and resolution planning, including through Crisis Management Groups.

#### **4. Information, co-operation, and controls to be effectively supervised**

We note that paragraph 4.3 sets out what how supervisory cooperation is intended to work and that home state supervisors should follow guidance issued by international committees. Separately we note that the FCA provided scenario-based examples in the *FCA Mission: Approach to Supervision* which are recognised as a useful mechanism for conveying the regulators expectations for the UK branch or subsidiary. We would welcome similar scenario-based examples from the PRA.

For those who are operating under the TPR the proposals are useful in providing additional guidance and clarity that will support them in their planning as they proceed to full authorisation. There are, however, some areas where the PRA's approach appears to go beyond current practice and there are some suggestions below that would assist in aligning the SS with current PRA practice. They include:

- The PRA's expectations relating to group information. As currently drafted, this expectation is considered problematic as it suggests that branches or subsidiaries may be asked to provide information to the PRA that goes beyond what is relevant for risk management and governance arrangements of UK entities and that may in addition be, considered confidential or sensitive by the head office overseas.
- We recognise the potential need for the PRA to request group information where there is a clear relationship to the risk profile of a branch or subsidiary. Such requests should be proportionate and justified.
- The treatment of sensitive information must be considered carefully, and requests with clear justification made via a home state supervisor. Making a request directly to a branch instead of via the home state supervisor should be avoided, as it would create an unnecessary

duplication of effort and compromise the clarity of the information request and roles and responsibilities of NCA's. We believe that information flows from one NCA to another, will be more efficient, accurate and facilitate better communication between the home state supervisor and the PRA.

- We suggest additional drafting in the SS, that clarifies that the PRA would expect to receive information concerning risks or strategy in the wider group when there is a clear evidence that it could affect the UK and recommend that this information is provided by the home state supervisor. Several of the illustrations and examples listed in Box 1 will need to be adjusted accordingly.
- The PRA's principles on booking arrangements have been updated and significantly more detail on the PRA's expectations has been included. The additional detail is considered helpful to firms, as some firms have submitted, or are submitting information on their booking arrangements to the PRA as part of their re-authorisation or remediation processes. However, additional clarity is welcomed from the PRA on their approach to reviewing these more detailed expectations.
- Given that firms' existing or new booking practices can vary, we encourage the PRA's review to be consistent with the flexible and outcomes-based approach described throughout the CP. In particular, in the context of their international arrangements' firms may achieve the required level of transparency and governance in different ways. Their approach to documentation and reporting may vary.

In paragraph 4.23 on operational resilience, the expectations appear straightforward with the exception of paragraph 4.23, where it is unclear what information relating to 'operational resources' is required. It is also unclear what 'regardless of the geographical location' implies. It would be helpful if the PRA could provide further clarity on the purpose of the expectation and the type of information that they expect to receive.

When assessing the adequacy of the group's capabilities to deliver resolvability outcomes that are broadly comparable to those set out in the Bank of England's Statement of Policy on the Resolvability Assessment Framework (RAF) in accordance with paragraph 4.26 of the draft supervisory statement, it is important that the PRA and Bank of England take account of group resolution planning in coordination with the group home resolution authority and take an outcomes-based approach based on the FSB Key Attributes for Effective Resolution Regimes. In particular the PRA should clarify that it is not extending the scope of application of the Statement of Policy on the RAF, which currently only applies to host subsidiaries which the Bank of England has identified as material and is referencing the general broad outcomes of capabilities to support resolvability rather than the detailed requirements of the RAF.

## **5. Integration and independence/Section 5**

We welcome the additional information provided by the PRA in this chapter.

## **6. Additional considerations for the supervision and authorisation of branches**

While we welcome the additional information provided in chapter 6, we have identified several areas where we would welcome confirmation of our interpretation or further clarification from the PRA on their intent

- Where the PRA states that it will expect to meet at least annually with the Chief Executive Officer or the Chief Risk Officer, or both, of the authorised entity of which the branch is part, to discuss the PRA's expectations on information sharing, (as outlined in Box 1, for the firm) we note that the requirement for an annual meeting already exists, for both branches and subsidiaries. Currently these meetings do not discuss information sharing. We would welcome confirmation that this is to be incorporated into existing annual meetings and an additional meeting on this is not required.
- We would also welcome clarity from the PRA on the intention of the drafting in Box 3 of the draft SS relating to the SMF7, which reads as follows: *"Where an individual based in the head office of the firm has significant influence over the branch's booking arrangements, then that individual should seek approval as Group Entity Senior Manager function (SMF7). This includes where there is a group executive responsible for firm-wide systems or operations upon which the branch relies (for example, in custody, which is often run as a globally integrated activity)."* Some of our members note that the Section 5.2 of the Senior Management Functions part of PRA rulebook seems to suggest that the SM7 can be from either the parent undertaking or holding company of the firm (i.e., what the PRA refers to as "the head office of the firm" in the SS) or another undertaking which is a member of the firm's group (emphasis added). However, the PRA does not mention this second part of the definition in the Supervisory Statement. Our members would welcome the PRA's confirmation that this continues to be the case. The wording in Box 3 referring to "head office of the firm" is not sufficiently clear.
- In this same section, we also note the reference to custody arrangements and are unclear why this activity in particular has been used as an example in this context. In practice we suggest that the executive with responsibility for custody would be separate to the SMF7.
- We also wish to raise a concern between the expectations for roles of the SMF7 and the SMF19 outlined in the draft SS. Where an individual is responsible for risk transferred to the branch as a booking hub, some firms suggest that this individual should not be held responsible and accountable for having oversight and visibility of all incoming business into that branch from elsewhere within the group. This is considered an unhelpful and impractical responsibility.
- We also note that whilst SS 1/18 refers to the PRA's powers under FSMA, as does the accompanying CP2/21, this reference is omitted from the draft SS. Our Members are interested in understanding why the reference has been removed by the PRA.

We would welcome the opportunity to discuss the points made in our response with the PRA further, if that would be helpful.

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