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Association for Financial Markets in Europe

Consultation Response

UK Future Regulatory Framework Review: CCPs and CSDs

February 2022

The Association for Financial Markets in Europe (AFME)[1] welcomes the opportunity to comment on **HM Treasury's consultation on the future regulatory framework for Central Counterparties and Central Securities Depositories**. 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.

We set out below our high-level response to the consultation, which is followed by some more specific comments in relation to the questions raised.

Executive Summary

As outlined in our response[2] to the broader consultation on the Future Regulatory Framework Review ("FRF Review"), AFME is supportive of measures to ensure high regulatory standards, financial stability, competitive markets, sustainable growth, appropriate levels of investor protection and responsive legislation for financial services. We continue to support the principle of independent regulators acting to advance objectives set for them by Parliament as the most appropriate legislative framework for achieving this.

As such, we agree that delegating general rule-making power over CCPs and CSDs to the Bank of England is appropriate. As proposed, this should be supported by robust measures to ensure sufficient accountability to government and Parliament, and transparency to market participants.

AFME strongly endorses harmonised international standards for Financial Market Infrastructures (FMIs), including the existing CPMI-IOSCO Principles[3]. These standards underpin the multitude of existing recognition arrangements, whereby supervisory authorities defer to the relevant local regulators of third-country FMIs.

We believe it is critical that UK's future regulatory framework prioritises continued alignment with international standards, and the preservation of existing recognition arrangements, allowing UK market participants to access non-UK FMIs, and UK FMIs to service non-UK clients.

Questions

Question 1: Do you agree with the proposed set of statutory objectives and regulatory principles for the Bank, in its capacity as CCP and CSD regulator?

AFME agrees with retaining the proposed primary Financial Stability Objective, and supports the inclusion of a specific mandate to also consider the potential effects on the financial stability of other countries in which UK CCPs or CSDs operate or provide services, and to ensure non-discrimination on the basis of location or nationality.

[1] 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.

[2] https://www.afme.eu/Portals/0/DispatchFeaturedImages/AFME%20response%20FRF%20proposals%20FINAL%2008022022.pdf

[3] https://www.bis.org/cpmi/publ/d101a.pdf

AFME believes that maintaining existing recognition arrangements for CCPs is necessary to avoid financial stability risks in both the UK and other jurisdictions.

International recognition arrangements operate on the basis of deference to the local regulator, with the aim of ensuring that CCPs are not subjected to duplicative supervision by other regulators. We strongly believe this is the correct and optimal approach to cross-border regulation of CCPs, and do not support measures which would have the effect of permitting the Bank of England to apply rules extra-territorially to non-UK CCPs.

We note that as per recital 3.15, "the government intends, as a general approach, to take a power to repeal retained EU law, which it will use to repeal the direct regulatory requirements which apply to firms. For CCPs and CSDs, this repeal will enable the Bank to replace those provisions with its own rules."

AFME strongly recommends that any material divergence from retained EU law is subject to public consultation and robust cost-benefit analysis. UK authorities should consider the impact of any future rule changes on the continuation of existing recognition arrangements.

We note that the domestication of retained EU law is a considerable undertaking for both policymakers and market participants, and recommend careful prioritisation and sequencing to ensure this process is done at a manageable pace. We believe that the current regulatory requirements applicable to CSDs and CCPs are broadly fit-for-purpose, and do not see any obvious imperative for the Bank to significantly amend these provisions.

Further, we wish to note that legislation transposed from Regulation (EU) No 648/2012 ("EMIR") and Regulation (EU) No 909/2014 ("CSDR") contain not only requirements applicable to Financial Market Infrastructures, but also to direct and indirect users of these FMIs.

AFME is also supportive of the proposed secondary objective of promoting innovation. We welcome recent initiatives from UK authorities to explore potential opportunities for the use of new digital technologies in capital markets. We note that it is important that this secondary objective is balanced against the primary objective of financial stability. In other words, we support where possible the development of international standards regarding the use of new technology, and encourage collaboration across all jurisdictions.

Specifically in relation to Recital 4.20, we note HM Treasury's view that "it is specific types of financial services firms that use CCP or CSD services and not retail consumers." We respectfully note that ultimately, all retail investors in listed securities will be indirect users of CSD services, and indeed that the UK CSD, Euroclear UK and International, does permit individual accounts to be held directly be retail investors.

Question 2: Do you agree with the proposed enhanced accountability mechanisms to HM Treasury and Parliament, as well as the proposed measures to increase transparency to external stakeholders?

AFME agrees that, as regulators take on more powers and responsibilities, Parliament must take on an enhanced oversight and scrutiny role.

We support the proposed robust cost-benefit analysis (CBA) processes, and the establishment of a new dedicated statutory panel, which we believe will help deliver informed, evidence-based policy decisions. We believe that CBAs should be undertaken as a mandatory requirement, as proposed in the broader FRF Review.

With respect specifically to recital 5.39, which contemplates whether the panel's input should be provided "pre-publication" or "post-publication", AFME is supportive of the "pre-publication" option. This would afford regulators the opportunity to revise their CBA and, if necessary, their proposals in light of the panel's feedback.

Indeed, if the panel were to comment only ex post, the opportunity to provide feedback and effect positive change in the timeliest manner would be lost.

In terms of stakeholder engagement, we would also note that in addition to consulting with CCPs and CSDs, it will also be equally important for the Bank of England to consult with the members of CCPs and CSDs when considering new rules, as the rules will potentially impact the wider industry.

Finally, we are broadly supportive of the proposals for enhanced Parliamentary scrutiny, and recommend further strengthening measures in this area, as outlined in our response to the broader FRF Review,

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