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New UK Financial Services Regulators Established and New Rulebooks Come into Effect

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On 1 April 2013, the division of the UK Financial Services Authority (FSA)'s regulatory functions took effect. The relevant regulators and institutions are now the Financial Conduct Authority (FCA), Prudential Regulatory Authority (PRA), Bank of England and Financial Policy Committee (FPC). The FCA and PRA have new handbooks. Firms should consider the impact of these changes on their disclosure documents and agreements.

The Financial Conduct Authority (FCA)

The FCA is the renamed FSA. It will be the UK financial services regulator responsible for the conduct of *all* firms which were previously regulated or supervised by the FSA (except clearing houses and settlement systems). This means that the FCA will remain a regulator for firms now subject to prudential supervision by the PRA. The FCA will be the sole regulator of brokers, investment advisors, fund managers, insurance intermediaries, payment services firms, regulated markets, multilateral trading facilities, investment exchanges and emissions auction platforms. It will have shared competency with the PRA over banks and insurers.

The FCA has a strategic objective to ensure that the relevant markets function well. This is supported by three operational objectives: (i) to secure protection for consumers; (ii) to protect and enhance the integrity of the UK financial system; and (iii) to promote effective competition in the interests of consumers in the markets for regulated financial services and services provided by Recognised Investment Exchanges.

The FCA rules can be accessed on its website: <http://www.fca.org.uk>.

The Prudential Regulation Authority

The PRA has been established as a subsidiary of the Bank of England. It is responsible for the prudential (i.e. essentially, capital and liquidity) regulation of all deposit-takers (including banks, building societies and credit unions), insurers and a small number of systemically important investment firms.

The PRA's statutory objective is to promote the safety and soundness of the firms it supervises. It is required to pursue this primarily by seeking to avoid adverse effects on the stability of the UK financial system.

On 1 April 2013, the PRA issued two documents relating to its approach to banking supervision and to insurance supervision.

The PRA rules can be accessed on its website: <http://www.bankofengland.co.uk/pr/Pages/default.aspx>.

The Bank of England

The Bank of England has subsumed the FSA's responsibility for recognising and supervising Recognised Clearing Houses (RCHs) and Recognised Overseas Clearing Houses (ROCHs). It will take responsibility for similar processes applicable for the same entities as central counterparties under the European Market Infrastructure Regulation (EMIR: Regulation (EU) No 648/2012).

The Bank will also continue to supervise securities settlement systems and recognised payments systems (e.g. BACS, CHAPS, CREST and the payment and securities systems operated by clearing houses).

On 1 April 2013, the Bank published an updated document on its approach to supervising financial market infrastructures as well as two policy statements. The policy statements relate to the Bank's imposition of financial penalties and their power of direction over qualifying parent undertakings of UK RCHs. The Bank of England's supervisory powers in relation to RCHs include the power to gather information, impose requirements and rules, and the power to direct a RCH to take specific actions. Some of these powers are new and go beyond those previously available to the FSA.

The Financial Policy Committee

The FPC is a committee of the Bank of England. It is responsible for macro-prudential regulation and will consider issues affecting economic and financial stability. It will respond to issues by directing the PRA, and if applicable the FCA, to take any necessary action.

On 14 January 2013, the Bank issued a press release detailing a draft policy statement by the FPC explaining the planned powers for them to give directions setting extra capital requirements for the purposes of financial stability.

On 27 March 2013, the FPC published a press release on its meeting held on 19 March 2013 in which it detailed recommendations to the PRA in relation to the necessary steps to be taken with regard to the capital requirements of major UK banks and building societies. The FPC also recommended that the Bank and the PRA should develop proposals for regular stress testing of the UK banking system.

The FPC website can be located at the following web address:

<http://www.bankofengland.co.uk/financialstability/Pages/fpc/default.aspx>.

The Handbooks

The previous FSA Handbook has been split into the FCA and PRA Handbooks. The content of the FCA Handbook is not generally different from the FSA Handbook. However, the FCA Handbook provides for some new powers including those for consumer redress, the power to make temporary product intervention rules, and the power to supervise the LIBOR rate.¹

The PRA Handbook is also based on the relevant provisions from the old FSA Handbook. The PRA also has some new powers including those relating to failing firms, the collection of information concerning financial stability, and the power to make rules relating to PRA authorised firms.²

¹ The FCA Handbook can be located at: <http://fshandbook.info/FS/html/FCA>.

² The PRA Handbook can be located at: <http://fshandbook.info/FS/html/PRA>.

On 2 April 2013, the PRA published certain non-Handbook guidance on its website. This guidance came in the form of supervisory statements, which are intended to help firms understand the rationale behind the PRA's rules.

The recognition requirements for RCHs and ROCHs that were included in the FSA Handbook have not been adopted by the Bank of England, but, in relation to derivatives, EMIR will result in a new set of authorisation requirements in this area.

Practical Guidance

Firms should ensure that any future relevant documentation refers to the correct regulatory authority.

Stationery and statutory disclosures: FSA rules required that references be included in stationery and marketing materials to a firm being "authorised and regulated by the FSA". These disclosures will need to be updated before 1 April 2014.

Contracts: Where there are references to regulators in contracts, it should be checked whether the contract provides for such references to include successors. Where this is not the case, parties should consider amending contractual provisions.

Prospectuses and other disclosure: Disclosures by regulated firms in prospectuses and elsewhere will need to accurately refer to the correct regulator and Handbook provisions going forwards.

For a more detailed explanation of the roles of the FCA, PRA, Bank of England and FPC, you may wish to see our previous client note.³

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This memorandum is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired.

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³ ["The proposed restructuring of the UK financial regulatory framework"](#).