



HM TREASURY

# A new approach to financial regulation:

summary of consultation responses

November 2010





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# Contents

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		Page
Chapter 1	Introduction	3
Chapter 2	Key themes from consultation	5
Chapter 3	Summary of responses to consultation questions	11
Annex A	List of respondents	19



# 1

## Introduction

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**1.1** During the financial crisis, which in the UK involved a run on a high-street bank and part-nationalisation of two of the largest banks in the world, serious deficiencies in the UK's regulatory system were revealed:

- the monolithic financial regulator, the Financial Services Authority (FSA), had too broad a remit and insufficient focus to identify and tackle issues early and it relied too heavily on a 'tick box' approach to regulation;
- the Bank of England (Bank) did not have the tools or levers to fulfil its responsibility for ensuring financial stability;
- the Treasury had responsibility for maintaining the institutional framework but no clear responsibility for dealing with a crisis which put public funds at risk; and
- no single institution had the responsibility or authority to monitor the system as a whole, to identify risks to financial stability and act decisively to tackle them.

The coalition Government has therefore committed to fundamental reform of the framework for financial regulation.

**1.2** There has also been a concerted programme of regulatory reform by governments and financial authorities around the world. Much of this programme has involved internationally coordinated work – for example, through negotiations in the Basel Committee on new capital requirements for banks, or the Financial Stability Board's work on cross-border crisis management and recovery and resolution plans. The Government is committed to playing a full part in this global effort, while proceeding as quickly as possible with reforming the framework in the UK.

### Consultation on the new framework for financial regulation

**1.3** The Government's consultation document *A new approach to financial regulation: judgement, focus and stability* was published on 26 July 2010. The paper outlined and consulted on proposals to overhaul the UK financial regulatory system by disbanding the FSA and establishing a new system of more specialised and focused regulators:

- a new macro-prudential regulator, the Financial Policy Committee (FPC), established within the Bank of England;
- a new prudential regulator, the Prudential Regulation Authority (PRA), established as a subsidiary of the Bank, so that it can contribute to and draw on the financial sector expertise of the Bank, while retaining operational independence; and
- a new conduct-of-business regulator, provisionally titled the consumer protection and markets authority (CPMA), to focus on ensuring confidence in wholesale and retail financial markets, and delivering better levels of protection to consumers.

**1.4** Through this consultation, which closed on 18 October 2010, the Government sought views on a range of issues relating to the proposed legal and institutional framework. During the consultation period, Treasury Ministers and their officials met a wide range of interested parties

to discuss the proposals, including a number of bilateral meetings and workshops with stakeholders. Discussions with international counterparts were also held.

**1.5** Around 220 formal written responses were received, from a diverse range of stakeholder groups. Written responses, except those where confidentiality has been requested, have been published on the Treasury's website and can be found at: [http://www.hm-treasury.gov.uk/consult\\_financial\\_regulation.htm](http://www.hm-treasury.gov.uk/consult_financial_regulation.htm). A list of these respondents can be found at Annex A of this document.

**1.6** This document provides a summary of the responses and sets out the Government's emerging thinking on a number of key issues highlighted by respondents. The second chapter of this paper draws out the five key themes which have emerged from the consultation, and the Government's thinking in these areas:

- accountability and transparency of the new regulators;
- balancing core statutory objectives with other key factors;
- effective coordination between the new authorities;
- markets regulation and the future of the UK Listing Authority (UKLA); and
- the European and international agenda.

**1.7** The third chapter then provides a summary of responses to each of the questions asked in the consultation.

## Next steps for reform

**1.8** Over the coming months, the Treasury will continue to develop its proposals for regulatory reform, working with the Bank and the FSA, taking into account the responses that have been received.

**1.9** The Government remains fully committed to an open and transparent policy-making process. To support this, a further consultation document, setting out detailed policy and legislative proposals, will be published by the Treasury in the early part of 2011. This consultation will include draft legislation comprising the core of the Bill which will provide the new statutory framework. The Government intends that these proposals should take account of the conclusions of the Treasury Select Committee's investigation into the reform proposals, subject to the timing of the Committee's report. Separately, the Treasury also intends next month to publish a joint consultation with the Department of Business, Innovation and Skills on whether the CPMA should take on responsibility for regulation of consumer credit.

**1.10** As set out in the Treasury's business plan, published on the Government's transparency website, the Treasury plans (subject to legislative timetabling) to introduce the Bill before the Parliamentary recess in summer 2011. The Bill is expected to take up to a year to pass through Parliamentary scrutiny, and to receive Royal Assent in summer 2012.

**1.11** As is usual with the introduction of major legislation such as this, there will be a pre-commencement period before the resulting Act comes into force, to allow all affected parties time to prepare for the new statutory arrangements. It is intended that the new regulatory bodies will be up and running by the end of 2012.

**1.12** In the meantime, the FSA remains on track to complete internal reorganisation and move to a shadow PRA and shadow CPMA structure in spring next year.

# 2

## Key themes from consultation

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### Overview

**2.1** The overwhelming majority of respondents welcomed the proposed framework for financial regulation; most also supported the specific emphasis on promoting financial stability and the enhanced focus on macro-prudential as well as micro-prudential regulation.

**2.2** Alongside this general support for regulatory reform, respondents also highlighted a number of areas for further consideration in relation to the proposed new regulatory framework. This chapter sets out the Treasury's analysis of the key themes to have emerged from consultation responses. Responses to specific consultation questions are summarised in greater detail in Chapter 3 of this document.

**2.3** While definitive policy positions on all these issues will not be finalised until the end of the policy development and consultation process (including the next round of consultation on draft legislation in the early part of 2011), this chapter presents the Government's emerging thinking.

**2.4** The five common themes to emerge from responses are:

- the importance of accountability and transparency for the PRA, the CPMA and the FPC;
- the need for the regulatory authorities' core statutory objectives to be balanced and supplemented with other factors;
- the importance of effective coordination between the new authorities;
- the need for a strong, coherent markets regulation function within the CPMA, which includes the UK Listing Authority; and
- the importance of the European and international agenda, both during the transition phase and in steady state.

### Accountability and transparency

**2.5** The majority of respondents, including almost all financial services sector respondents, stressed the importance of accountability and transparency for the PRA, the CPMA and the FPC, including through appropriate engagement with regulated firms.

**2.6** A number of respondents also noted that the proposals could result in a concentration of power within the Bank and emphasised the need for checks and balances. Some called for a strengthened role for the Treasury in 'peace time' as well as in a crisis.

**2.7** There was near-universal consensus that the PRA should be subject to the same accountability mechanisms as proposed for the CPMA, including panels, requirements to undertake cost-benefit analysis, and public consultation for new rules. Respondents were generally very supportive of the proposals to ensure transparency and accountability for the CPMA.

## Preliminary response

**2.8** The Government remains committed to ensuring appropriate accountability and transparency for the new regulatory authorities. While it is clearly right for the Treasury to be directly involved in any matters which involve risk to the public finances, the Government sees the independence of the regulatory structure – particularly in normal, ‘business as usual’ periods – as an essential element of efficient and stable financial services and markets. The Government’s reforms are predicated on the notion that the key ingredient for effective regulation is the focus and judgement that comes with independent expertise, appropriately balanced with suitable accountability mechanisms.

**2.9** As set out in *A new approach*, the Government intends to replicate for the FPC as far as possible the transparency and accountability mechanisms applied to the MPC. This will include a requirement to publish records of the FPC’s meetings, setting out the decisions the FPC has taken and an explanation of the balance of arguments that led to those decisions. There will also be accountability, through the Treasury, to Parliament, with the FPC’s six-monthly Financial Stability Reports being laid before Parliament. The Government also expects that the Treasury Select Committee will wish to take a direct challenge and scrutiny role in relation to the FPC and its activities, and would welcome the involvement of Parliament in this way.

**2.10** Like the MPC, the FPC will have a strong, credible external element, with four knowledgeable and experienced independent members providing vital challenge and external expertise in the FPC’s deliberations. An interim FPC will be established before the end of the year.

**2.11** The Government notes the responses to questions regarding which transparency and accountability mechanisms should be applied to the PRA. The Government is committed to getting PRA accountability right, and is developing appropriate mechanisms that will ensure that the PRA can be held fully accountable by Parliament and the general public, and appropriate means of consulting firms and practitioners.

**2.12** More generally, the Government also intends to consider options for using greater transparency and disclosure as a regulatory tool – for example, by enabling publication of relevant and appropriate supervisory information to increase the incentives for firms to adopt a best-practice approach to regulatory compliance.

## Core statutory objectives

**2.13** The majority of respondents supported the Government’s proposals to simplify the regulatory objectives prescribed in the Financial Services and Markets Act 2000 (FSMA) and to replace them with a single, core objective for each new authority. However respondents also, for the most part, underlined the need for core statutory objectives to be balanced or supplemented with other statutory factors – either in the form of secondary objectives or, more commonly, as factors to which the authority must ‘have regard’.

**2.14** The factors cited varied with the authority in question. Many respondents felt that FPC should take into account the impact of its actions on economic growth. Many considered that the PRA should take account of innovation and the competitiveness of the UK financial services industry. ‘Have regards’ on competition, innovation, competitiveness, diversity, financial inclusion and a proportionate approach to regulation were frequently suggested for the CPMA.

**2.15** The vast majority of respondents supported the principle that each of the new entities should have regard to the objectives of the others. There was also support for the idea that the new authorities should have regard to a consistent set of principles of good regulation.

**2.16** The description of the CPMA as a consumer champion was welcomed by many respondents, though many also noted that this should not compromise the regulator's independence or lead to consumer protection taking precedence over other factors.

### **Preliminary response**

**2.17** The Government considers that a key element in the new regulatory framework will be to ensure that the new regulatory authorities each have a single statutory objective. This approach will underpin the creation of specialised and focused regulators, and the Government welcomes respondents' support for this new, more streamlined and focused approach.

**2.18** The Government recognises the importance of the FPC balancing its financial stability objective with the wider consequences of its actions, including on economic growth, and is exploring how best to reflect this in the FPC's statutory remit without diluting the primary focus on financial stability. The importance of coordinating macro-prudential, monetary and fiscal policies was also raised by a number of respondents: cross-membership of the FPC and MPC will ensure that monetary and macro-prudential policies are developed in a coordinated fashion. Additionally, the FPC will include a Treasury representative, who will be able to advise the Committee on the Government's fiscal policy. The Committee's decisions will therefore be informed by, and reflect, both monetary and fiscal policy decisions.

**2.19** The Government also recognises the importance of many of the secondary factors cited by respondents as those to which the PRA and CPMA should have regard. The Government particularly notes the relevance of principles of good regulation which relate to the manner in which the regulatory authorities will behave. The Government's preferred approach to secondary objectives and have regards will be set out in draft legislation in the next consultation.

**2.20** The Government welcomes many respondents' support for greater focus on consumers and their protection. The Government will continue to design and develop the CPMA's powers to enable it to be a strong consumer champion, while preserving the regulator's absolute independence and impartiality. The CPMA will act as a consumer champion in the sense that, as a regulator focused on ensuring proper conduct in financial services and markets, it will be more proactive in identifying and tackling potential causes of consumer detriment, leading to better outcomes for consumers who use financial services. The independence of the CPMA will not be compromised by this remit to focus on consumer outcomes.

### **Coordination of the new regulatory framework**

**2.21** While most respondents supported the proposals for greater focus and specialisation within the regulatory framework, they also noted that these could lead to new operational challenges. Almost all respondents stressed the importance of coordination – ensuring that the new authorities work effectively together to promote consistency and to minimise duplication and cost for regulated firms, and ultimately for consumers.

**2.22** Many respondents suggested that there may be a risk of gaps emerging and of the regulators taking different approaches. Industry respondents also highlighted the possibility of additional costs and burdens for firms as a result of the new architecture.

**2.23** Questions around scope were also frequently raised in responses; in particular, clarification was sought on the precise boundary of responsibility between the PRA and CPMA and the proposed approach to supervising groups.

**2.24** A number of respondents also sought reassurance that the CPMA would have equal importance, stature and credibility as the PRA.

## Preliminary response

**2.25** The Government recognises the importance of ensuring that there is effective cooperation between the regulatory authorities, in particular between the PRA and the CPMA, and welcomes both the practical issues raised and the solutions put forward by firms and trade associations responding to the consultation.

**2.26** The Government will take these considerations into account as it develops legislative provisions to ensure appropriate coordination and cooperation between the regulators. The Government expects the PRA and CPMA to ensure effective coordination, both through the legislative requirements placed upon them and through a range of non-statutory protocols and arrangements. The Government also notes that the PRA and CPMA will operate under the usual obligation placed on public bodies to behave reasonably and in the public interest; this obligation should provide industry and other stakeholders with comfort that the new authorities will consider the impact of their actions on those they regulate.

**2.27** The Government believes that period of 'shadow running' a 'twin peaks' structure within the FSA prior to establishment of the new authorities will provide an opportunity to develop understanding of the practical working arrangements that will be required for the CPMA and PRA to work together effectively.

**2.28** The Government also considers that it will be important for each authority to establish its own distinct identity and supervisory culture. In developing legislation, the Government will seek to ensure that the PRA and CPMA have equal status, with the use of the PRA's veto only where necessary to protect financial stability.

**2.29** The Government has also noted respondents' suggestion that a Chief Executive-designate of the CPMA should take up post as soon as possible. The recruitment of a Chief Executive-designate is underway. Provided that the recruitment exercise is successful, he or she will be in place, as an executive member of the FSA Board, in time for the move to shadow running within the FSA next year.

## Markets regulation

**2.30** The vast majority of respondents, particularly those directly involved in wholesale financial market activities, stressed the importance of establishing a strong and coherent market function within the CPMA, especially in the context of engagement with the wider international, and particularly European, agenda; this issue is covered in more detail under the next theme. Respondents also stressed the need to ensure that markets regulation receives the same focus and profile as retail conduct regulation and consumer protection. There were mixed views on how best to achieve a strong markets regulation function: some respondents welcomed that markets regulation should sit within the CPMA, highlighting the links between wholesale market activity and retail financial products and services and the opportunities for synergies; others argued that markets regulation be undertaken by a specialist securities or markets regulator.

**2.31** The overwhelming majority of respondents expressed strong support for the proposition that the UKLA should remain within the CPMA, rather than being merged with the Financial Reporting Council (FRC) to create a new companies regulator. Respondents noted that the synergies between the primary market activities of the UKLA and the regulation by the CPMA of secondary market conduct are so great that to attempt to disentangle them could create significant operational difficulties. They also noted that the same synergies do not exist between the UKLA, which is a 'real-time' regulator dealing with market activity as it occurs, and the FRC, which regulates the framework for accounting and information reporting. Furthermore, respondents noted that taking the UKLA out of the CPMA would leave the UK's primary markets

regulator without direct representation in the European Securities and Markets Authority (ESMA).

### **Preliminary response**

**2.32** The Government recognises the strong arguments presented by many respondents for retaining the UKLA as a part of the CPMA. Whilst acknowledging the synergies that exist between the UKLA and the FRC in the regulation of information provided to market participants, the Government has noted the concerns expressed about representation in ESMA and the strong case put forward for the operational linkages between regulation of primary and secondary markets activity. **Therefore, the Government has decided that the UKLA will remain a part of the successor to the FSA's markets division, within the CPMA.**

**2.33** The Government has also considered the case for establishing a standalone markets regulator distinct from the consumer protection and retail conduct functions of the CPMA. The Government has decided not to pursue this option for several significant reasons. First, because splitting the CPMA in this way would lose the operational linkages that exist between retail and wholesale conduct regulation activities. Second, for many firms, this would also have the effect of creating a third regulator with whom they would have to interact, thus increasing regulatory burdens and cost. Third, the Government is concerned that a standalone markets regulator would not be economically viable, as the base of firms and other entities from which it could raise fees and levies to meet (possibly higher) regulatory costs would be very narrow.

**2.34** The Government is committed to ensuring that markets regulation will be of equal status and profile within the CPMA and receives appropriate attention and resources.

**2.35** The Government recognises that representation in the new European Supervisory Authorities (ESAs) will be a live issue for any structure which does not bring together exactly the same functions as are proposed for ESMA. However, the Government believes that these issues can be addressed through close co-operation between the various bodies that have responsibilities overlapping the ESMA mandate – including the CPMA, the FRC, the Takeover Panel and, in relation to clearing and settlement infrastructure, the Bank of England. The Government will ensure that there are well-functioning links and protocols for communication between these organisations.

**2.36** Finally, although the issue was not consulted upon in *A new approach*, the document did signal the Government's intention to consider whether the FSA's criminal enforcement powers in relation to market conduct should be transferred to a new Economic Crime Agency, as part of wider improvements to tackling economic crime. **The Government has decided – not least because of the weight of responses calling for the markets function of the CPMA to be established as a strong operational unit within the new regulator – that these powers should be retained within the CPMA at this time** to ensure that it can take a suitably robust and strong approach to both regulating and prosecuting market abuse.

### **European and international reform**

**2.37** Respondents noted that the proposed reforms of the UK's institutional framework for financial regulation are taking place in a context of significant global change. They highlighted the importance of European and international developments in two ways.

**2.38** First, respondents stressed that during the transition to the new regulatory framework, the FSA, Bank and Treasury must continue to engage positively and constructively with European and international partners and institutions.

**2.39** Second, respondents argued that the framework must be designed to ensure that the new institutional arrangements, once they have been implemented and are operating in steady state, maximise UK influence in Europe and internationally.

### **Preliminary response**

**2.40** The Government is committed to ensuring that there is continued, focused engagement by HM Treasury, the FSA and the Bank with European and international developments and that the UK's voice on negotiations is as strong and influential as ever. Recent successes in this sphere include the Alternative Investment Fund Managers Directive, where the UK authorities negotiated agreement to extend the EU Passport to third countries, and resisted a number of onerous and disproportionate proposals on private equity and depositary liability.

**2.41** In order to provide continuity during the transitional period the UK's institutional representation in international forums will not change until the legislation to create this new structure is enacted. As the reform programme advances, the Bank and the FSA will work closely together to ensure that all relevant views are taken into account and adequately represented in international and EU negotiations.

**2.42** The Government agrees with respondents that it is vital that the new regulatory authorities engage effectively with the new ESAs. As the prudential regulator, the PRA will represent the UK in the new ESAs for banking and insurance, ensuring that there is a strong and credible voice to promote the interests of the UK in these new institutions, and cooperating effectively with European counterparts on the regulation of large, cross-border financial firms. The CPMA markets division will represent the UK in ESMA. The Government's decision to move the UKLA into the CPMA will strengthen the CPMA's voice on markets regulation, and the CPMA will also need the Bank of England's input for its contribution to ESMA's work on clearing and settlement infrastructure. It is also likely that different authorities will participate in sub-committees of the new ESAs – for example, with the CPMA sitting on the conduct committees of the banking and insurance supervisory authorities in Europe.

**2.43** The Government will consider how to ensure that effective coordination between authorities, in the European sphere as in all other matters, is supported in legislative and practical terms.

# 3

## Summary of responses to consultation questions

### The Bank of England and Financial Policy Committee (FPC)

- 1 Should the FPC have a single, clear, unconstrained objective relating to financial stability and its macro-prudential role, or should its objective be supplemented with secondary factors?

**3.1** Almost all respondents who addressed this question agreed that the FPC should have a single primary objective – maintaining financial stability – supplemented by secondary factors. Some respondents felt that, without additional secondary factors, the FPC’s actions could be conducted in too blunt or conservative a manner.

**3.2** A very small number of respondents argued that the FPC should have no secondary objectives; conversely, a few argued for other equally ranking objectives, such as economic growth and competitiveness.

- 2 If you support the idea of secondary factors, what types of factors should be applied to the FPC?

**3.3** Responses relating to the FPC’s secondary factors were very mixed. In total, almost a dozen different factors were suggested. The most commonly suggested secondary factors include economic growth (most respondents who commented supported this, though one respondent thought that this would be inappropriate) and the objectives of the PRA and CPMA (this was supported by almost all respondents).

**3.4** Additionally, the importance of competitiveness featured prominently in many industry responses; however, two respondents explicitly felt that competitiveness would not be an appropriate objective.

**3.5** Many respondents, predominantly from the industry, suggested that the FSA’s principles of good regulation, which include taking into account proportionality, competition, and efficient use of resources, should also be applied to the FPC.

- 3 How should these factors be formulated in legislation – for example, as a list of ‘have regards’ as is currently the case in the Financial Services and Markets Act 2000 (FSMA), or as a set of secondary statutory objectives which the FPC must balance?

**3.6** Views on this question were also split. Around half of respondents indicated a preference for secondary factors to be formulated as secondary statutory objectives, largely because it was felt

that secondary objectives would carry more weight than 'have regards'. The other half felt that 'have regards' would be appropriate, either because a second set of objectives might cause confusion or because the existing provisions in FSMA are believed to have worked well and should therefore be replicated.

## Prudential Regulation Authority (PRA)

- 4 The Government welcomes respondents' views on:
  - whether the PRA should have regard to the primary objectives of the CPMA and FPC;
  - whether some or all of the principles for good regulation currently set out in section 2 of FSMA, particularly those relating to good regulatory practice, should be retained for the PRA;
  - whether, specifically, the requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained; and
  - whether there are any additional broader public interest considerations to which the PRA should have regard.

**3.7** The vast majority of respondents felt that the PRA should have regard to the primary objectives of the CPMA and the FPC.

**3.8** Most respondents said that the principles of good regulation should be retained, although some suggested that these principles could be made more effective.

**3.9** A large proportion of respondents thought that the requirements to have regard to potential adverse impacts of regulatory action on innovation or the competitiveness of the UK financial services sector should be retained. A few respondents preferred to retain a 'have regard' to competition over innovation, though others argued that, whilst innovative products which magnified risk or carried unknown risks in markets were undesirable, this does not mean that innovation itself is inherently damaging to financial markets.

**3.10** There were a number of suggestions for broader public interest considerations, which can be grouped into three categories: diversity (in particular ensuring that mutuals are not disadvantaged under the new regulatory framework), economic growth and consumer outcomes.

- 5 Is the model proposed in paragraph 3.16 – with each authority responsible for all decisions within their remit, subject to financial stability considerations, appropriate, or would an integrated model (for example, giving one authority responsibility for authorisation and removal of permissions) be preferable?

**3.11** More than three-quarters of respondents preferred an integrated model. It was felt that this would remove the opportunity for regulatory arbitrage, reduce burdens on firms and ensure that resources were being used efficiently.

**3.12** A number of respondents recognised that the majority of firms would in any case be solely regulated by the CPMA and therefore suggested that it would be appropriate for the CPMA to lead on integrated functions. Others called for a joint 'shared services' company to be created

which could run integrated functions, such as authorisations, permissions, approvals, fees, enforcement and data requests.

**3.13** Those who agreed with the proposed model noted the need for a clear focus and ethos within each regulatory authority and the advantages of closely linking policy formulation with supervision. Nonetheless, there was support from these respondents for consistent, standardised processes or a single gateway, to minimise burdens on firms subject to dual regulation.

- 6 Is the approach outlined in paragraph 3.17 to 3.23 for transfer of regulatory functions and rule making sufficient to enable the PRA to take a more risk-based, judgement-focused approach to supervision?

**3.14** The majority of respondents agreed with the approach proposed and the use of FSMA as a basis for this. Whilst there was some support for reviewing the handbook, under the principle of proportionality, there are concerns that this may not be feasible due to the quantity of EU rules. Some also noted that a new simplified rulebook for the PRA could lead to a lack of consistency in regulatory decisions and additional regulatory burden on firms.

**3.15** A number of respondents commented that, whilst the approach proposed is appropriate, it relies heavily on the creation of a culture where supervisors feel free to challenge firms. For this to work effectively, it will be vital for both the current and new regulatory authorities to focus on the retention of experienced staff and equipping new staff with appropriate expertise.

- 7 Are the safeguards on the PRA's rule-making function required?  
8 If safeguards are required, how should the current FSMA safeguards be streamlined?

**3.16** The vast majority of respondents believed that there is a need for safeguards to remain in place where there is a rule-making function, and that the requirements to consult the public, industry and the consultative panels and produce a cost benefit analysis should be retained. A number of respondents felt that the safeguards for the PRA should mirror those in place for the CPMA in order to provide consistency between regulatory authorities. A number of industry respondents pressed for an appeals process.

**3.17** A number of respondents supported a streamlined process in certain instances, such as where the PRA is implementing EU rules, new guidance and in emergency situations.

- 9 The Government welcomes views on the measures proposed in paragraphs 3.28 to 3.41, which are designed to ensure that the operation of the PRA is transparent, operationally independent and accountable.

**3.18** There were a variety of responses to this question, with the most common response being that the accountability measures for the PRA should mirror those proposed for the CPMA. Relatively few respondents agreed with the proposals in their entirety; a small number agreed in principle but suggested amendments to strengthen the arrangements. There was significant support for the PRA to be audited by the National Audit Office (NAO) and to be accountable to Parliament.

**3.19** Where respondents did not agree with the measures proposed, this was due to either a desire to see an increased level of accountability or because they wished to see more detail on the measures. The most common concern was that the governance structure proposed could lead to a concentration of power within the Bank of England. To counteract this and to ensure an appropriate range of sector expertise on the PRA Board, a number of respondents suggested that the PRA Board should have a greater proportion of external members, who are of sufficient seniority within their own industries to provide robust challenge. Other suggestions included ensuring regular contact between the PRA and industry, through the consultative panels or an alternative format.

## Consumer protection and markets authority (CPMA)

10 The Government welcomes respondents' views on:

- whether the CPMA should have regard to the stability of firms and the financial system as a whole, by reference to the primary objectives of the PRA and FPC;
- whether some or all of the principles for good regulation currently set out in section 2 of FSMA should be retained for the CPMA, and if so, which;
- whether, specifically, the requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained; and
- whether there are any additional broader public interest considerations to which the CPMA should have regard.

**3.20** There was overwhelming support for the CPMA to have regard to the objectives of the PRA and FPC.

**3.21** Most respondents said that the principles of good regulation should be retained, although some suggested that these principles could be made more effective. There was widespread support for retaining the principles of proportionality and competition, although a small number of respondents wanted to see the promotion of competition reflected in the CPMA's objective.

**3.22** Views were split on 'have regards' relating to innovation and competitiveness. Industry respondents in the main argued these are vital to ensuring the CPMA acts in a proportionate way and does not stifle the industry. Several also made the link with the important role of the financial services industry in the UK economy. However, non-industry respondents tended to believe that have regards to innovation and competitiveness were inappropriate for a conduct regulator.

**3.23** A number of additional have regards were suggested including: recognising the value of diversity in financial services (this call came primarily from the mutuals sector); the desirability of the United Kingdom playing a full part in developing and shaping international rules and standards; the need to proactively disclose information which might influence a consumer's decision to engage in a commercial relationship with a firm; and the desirability of promoting and facilitating effective forms of self-regulation. Some respondents, including both consumer groups and industry, supported public understanding and financial inclusion have regards for the CPMA, but a similar number disagreed.

**3.24** A small number of respondents felt that further have regards would add little value or could distract the regulator from its primary objective.

11 Are the accountability mechanisms proposed for the CPMA appropriate and sufficient for its role as an independent conduct regulator?

**3.25** There was widespread support for the proposed accountability mechanisms, in particular making the CPMA subject to audit by the NAO.

**3.26** Some consumer representatives argued for greater transparency, specifically in the context of the CPMA's decision-making and maintaining an open dialogue with consumer groups.

12 The Government welcomes views on the role and membership of the three proposed statutory panels for the CPMA.

**3.27** There was broad support for retaining the Practitioner and Consumer Panels and putting the Small Business Practitioner Panel on a statutory footing. The panels were generally seen to provide an important external challenge to the regulator, although several respondents noted the panels could be made more effective. A number of respondents wanted to see more transparency as to how the regulator would take account of the panels' recommendations. Some respondents also identified a role for the panels in the coordination of the CPMA and the PRA.

**3.28** There was a general consensus that the practitioner panels should represent a wide range of regulated firms. Some respondents also noted that panel members need to be able to demonstrate sufficient experience and independence, and should be of appropriate seniority to exercise influence in the wider marketplace. Several respondents argued that the panels need to be well-resourced to allow them to make robust recommendations.

**3.29** Several respondents proposed a Markets Practitioner Panel.

13 The Government welcomes views on the proposed funding arrangements, in particular, the proposal that the CPMA will be the fee- and levy-collecting body for all regulatory authorities and associated bodies.

**3.30** Most respondents agreed that the proposed funding arrangements are sensible, efficient and cost-effective. Some respondents suggested that a central service company could be established to collect fees; it could also take on other integrated functions such as authorisation, approvals, enforcement and data collection.

**3.31** Industry respondents sought that the new bodies should be required to consult annually on their business plans and budgets, and that the setting of fees and levies should be subject to audit by the NAO.

14 The Government welcomes views on the proposed alternative options for operating models for the FSCS.

**3.32** There was strong support for retaining the FSCS as the single administrator of compensation, whether as a single scheme or separate schemes.

**3.33** Views on separating the scheme were mixed. Around half of respondents who commented on the FSCS supported a single scheme, which would sit under the CPMA, as it would minimise administration costs and avoid differences in rules and interpretation; the other half were in favour of separate schemes, as it would separate certain classes of levy payers.

**3.34** A large number of respondents drew attention to the current FSA review of the FSCS and EU proposals regarding deposit guarantee schemes, and suggested that this may not be an appropriate juncture at which to discuss alternative models for the FSCS. Many respondents called for a more detailed consultation regarding the FSCS, once the outcomes of the above initiatives are clearer.

## Markets and infrastructure

15 The Government welcomes views on the proposed division of responsibilities for markets and infrastructure regulation.

**3.35** Support was split fairly evenly between the proposed split of responsibilities for market and infrastructure regulation between the Bank of England and the CPMA and a preference for clearing and settlement systems being regulated by the CPMA rather than the Bank. The latter view tended to be driven by a desire to maximise the effectiveness of representation in the European Securities and Markets Authority (ESMA) and to ensure that market regulation covers the whole of the transaction process.

**3.36** One respondent favoured the PRA rather than the Bank to regulate central counterparty clearing houses (CCPs). One respondent favoured all infrastructure being regulated by the Bank so that the CPMA can focus entirely on consumer protection.

16 The Government welcomes views on the possible rationalisation of the FSMA regimes for regulating exchanges, trading platforms and clearing houses.

**3.37** All existing UK recognised bodies favoured retention of the RIE and RCH regimes rather than rationalisation of the recognised body and authorised person regimes. Those Multilateral Trading Facility (MTF) operators that responded favoured rationalisation.

17 The Government would welcome views on whether the UKLA should be merged with the FRC, as a first step towards creating a companies regulator under BIS.

**3.38** The majority of respondents believed that the UKLA should be kept with the CPMA (or included in a separate markets regulator); only a few respondents favoured a merger with the FRC. The reasons cited by respondents include: need for effective representation of UKLA in ESMA; clear links between primary and secondary market regulation; and differences in operational culture between the UKLA (real-time processing of primary market documents) and the FRC (which focuses more on ex post reviews of accounting information).

18 The Government would also welcome views on whether there are other aspects of financial market regulation which could be made more effective by being moved into the proposed new companies regulator.

**3.39** Few respondents commented. Some of those who commented did not favour a companies regulator or considered that there is no need for further change now. Some respondents suggested that the Takeover Panel could be included while others would prefer the Takeover Panel to retain its current status.

## Crisis management

19 Do you have any overall comments on the arrangements for crisis management?

**3.40** There was widespread support for the proposed arrangements for peacetime and escalation into crisis, with the Governor of the Bank of England notifying the Chancellor of emerging financial stability risks.

**3.41** Respondents sought greater clarity about how the crisis management arrangements will work in practice, and some suggested that there could be a formal institutional structure bringing together the Treasury, Bank of England, PRA and other stakeholders to prepare for and deal with a crisis.

**3.42** A number of respondents welcomed the proposal that the Bank of England should lead crisis management. Some respondents noted the challenges of dealing with systemically important firms, and suggested that it would be important for the Chancellor to retain a role in cases where such a firm needs to be resolved.

**3.43** A number of respondents noted that the crisis management arrangements focus on the response to banking crises and sought more detail on the how other financial crises would be addressed, including whether there would be a role for the CPMA.

**3.44** Many respondents emphasised the importance of ensuring consistency with the European and international agenda.

20 What further powers of heightened supervision should be made available to the PRA and the CPMA, and in particular would there be advantages to mandatory intervention, as described in paragraph 6.17?

**3.45** There was some support for the introduction of a prompt intervention framework. Industry respondents emphasised the importance of early intervention tools, heightened supervision and recovery and resolution plans (RRPs).

**3.46** There was also some support for the introduction of a formal Prompt Corrective Action (PCA) regime. However, in general, respondents did not think that mandatory triggers for early intervention would be effective, and opposed mandatory triggers for the use of Own Initiative Variation of Permission (OIVOP) powers.

**3.47** Respondents were broadly supportive of proposals to clarify the OIVOP, but did not think that it would be helpful to expand or strengthen the powers, suggesting that an extension of

the use of OIVOPs could blur the line between supervision and enforcement. Some respondents also made the point that mandatory intervention might not be consistent with the new regulator's judgement-led approach and could remove the options open to regulators in unforeseen crisis situations.

**3.48** Insurance sector respondents were generally opposed to the introduction of a special resolution regime (SRR) for insurers, arguing that the core activities of insurers do not pose the same risks to financial stability as those of other financial sectors.

**3.49** Several respondents noted that the Government will need to consider how 'bail in' arrangements will work, should international policy on this issue develop further.

21 What are your views about changes that may be required to enhance accountability within the SRR, as described in paragraphs 6.21 to 6.24?

**3.50** Some respondents noted the Bank's dual role in a crisis, with the PRA 'pulling the trigger' to put a firm into the SRR, and the Bank's Special Resolution Unit leading resolution. Respondents agreed that it would be helpful to have clarity around how potential conflicts between these two roles would be addressed.

## Impact assessment

22 The Government welcomes comments from respondents on the assumptions made about transitional and ongoing costs for all types of firm. In particular, comments are sought from all types and size of deposit-taking, insurance and investment banking firms (including credit unions and friendly societies), and from groups containing such firms.

**3.51** In general, respondents who commented on the preliminary impact assessment wanted to see more detail, including a detailed breakdown and justification of cost estimates. Some respondents called for an assessment against a wider range of possible approaches to regulatory reform. A few respondents requested more evidence to demonstrate that these proposals would reduce the frequency or severity of financial crises.

**3.52** None of the respondents offered any detailed comments on the assumptions made about costs, although, in more general terms, some felt that ongoing costs of the new regime are likely to be higher than the existing regulatory regime. To help to limit the costs of the new regulatory framework for firms, some respondents supported a shared services model.

**3.53** Many felt that those firms to be regulated by both the CPMA and the PRA would face increased costs; this was highlighted by respondents representing smaller firms in particular. There were mixed views on whether those firms regulated solely by the CPMA would face any significant additional transitional or ongoing costs.



# List of respondents

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ACE Credit Union Services  
ACE Europe Insurance  
Addleshaw Goddard LLP  
AEGON UK  
Age UK  
Allen, B (Cass business school)  
Allianz Insurance plc  
Anglo-American  
Association for Financial Markets in Europe  
Association of British Credit Unions Ltd  
Association of British Insurers  
Association of Chartered Certified Accountants  
Association of Corporate Treasurers  
Association of Financial Mutuals  
Association of Foreign Banks  
Association of Independent Financial advisors  
Association of Investment Companies  
Association of Lloyd's Members  
Association of Private Client Investment Managers and Stockbrokers  
Aviva  
AXA UK  
Bagnol, A (Phonetic Ltd)  
Baillie Gifford & Co  
Barclays  
BATS (Better Alternative Trading System) Europe  
Berwin Leighton Paisner LLP  
Bevan, J (Joseph Bevan Partnership)  
Bishop, G (Bishop Calway Insurance)  
Black, J (London School of Economics)  
Bluefin Insurance Group  
Bovill Ltd

Brewin Dolphin  
British Bankers' Association  
British Exporters Association  
British Insurance Brokers Association  
British Land Company PLC  
British Retail Consortium  
British Standards Institution  
Broadhurst and Company Insurance  
Building Societies Association  
Burton, S  
Capita Group Plc  
Carne, S  
Charles, S  
Chartered Financial Analyst Society UK  
Chartered Institute for Securities and Investment  
Chartered Institute of Loss Adjusters  
Chartered Institute of Management Accountants  
Chartered Insurance Institute  
Chartis Insurance  
Chi-X Europe  
Citizens Advice  
City of London Law Society Company Law Sub-committee  
City of London Law Society Regulatory Law Committee  
CME Group  
Complaints Commissioner  
Confederation of British Industry  
Consumer Council for Northern Ireland  
Consumer Credit Counselling Service  
Consumer Focus  
Cooperatives UK  
Council of Mortgage Lenders  
Create Solutions  
Credit Action  
Curtis, A  
Daly, E  
Dart Compliance Ltd  
DAS Legal Expenses Insurance Company Ltd

Deloitte LLP  
Depository And Trustee Association (DATA)  
Derry, R  
Dickson, K  
Edgington, M  
Equitas Insurance Ltd  
Euroclear UK and Ireland  
European Central Counterparty Ltd  
Fair Pensions  
Fenwick, M  
Fidelity Investment Managers  
Financial Inclusion Centre  
Financial Inclusion Taskforce  
Financial Ombudsman Service  
Financial Reporting Council  
Financial Services Consumer Panel  
Financial Services Practitioner Panel  
Fischer, M (Modern Capital LLP)  
Flight, H  
Floyd, M  
Fraud Advisory Panel  
Freshfields Bruckhaus Deringer  
Funeral Planning Authority  
Futures and Options Association  
GC100 Group  
Genworth Financial  
Goldman Sachs Ltd  
Grant Thornton UK LLP  
Green, D  
Grenet, P  
Grix, C  
Gulliford, N  
Hall, M (Loughborough University)  
Hamilton, P  
Hammerson PLC  
Hannigan, B (University of Southampton)  
Heape, B

Heath Lambert Employee Benefits  
Hiscox PLC  
Hoadley, S  
Holzke, M  
Homeserve  
HSBC  
Hubbard, M  
Hundred Group  
ICE (Intercontinental Exchange) Futures Europe  
International Monetary Fund - staff views  
Independent Loss Adjusters Association  
Institute of Chartered Accountants England and Wales  
Institute of Chartered Accountants Scotland  
Institute of Chartered Secretaries and Administrators  
Institute of Credit Management  
Institute of Directors  
Institute of Insurance Brokers  
Intellect  
International Capital Market Association  
International Financial Data Services  
International Underwriting Association  
Investment and Life Assurance Group  
Investment Management Association  
Johnson, M  
JWG Group  
Killik & Co  
Land Securities Group PLC  
Lastra, R (Queen Mary University of London)  
LCH Clearnet  
Lee, S  
Leeds Building Society  
Legal and General PLC  
Lending Standards Board  
Life After X  
Linklaters LLP  
Listing Authority Advisory Committee  
Lloyds Banking Group

Lloyd's Market Association  
Lloyd's of London  
London and International Insurance Brokers Association  
London Metal Exchange  
London Society of Chartered Accountants  
London Stock Exchange Group  
Manx Insurance Association  
McKee, M  
McKeown, G  
Middleton, P  
Miller, D  
Morton Michael Insurance  
Mullineux , A  
National Association of Pension Funds  
National Grid PLC  
Nationwide Building Society  
New Economics Foundation  
Norton Rose LLP  
Norton Rose LLP Financial Stability Group  
NYSE Euronext  
Old Mutual PLC  
Palmer, C (Colin Palmer Financial Services)  
Panacea IFA.com  
Paradigm Risk  
Payments Council  
Pensions & Investment Research Consultants Ltd  
Pettifer, M  
Phelps, P  
Pittaway, R (Rural Arbor Products Ltd)  
PLUS Markets group  
PriceWaterhouse Coopers  
Prism CoSec  
Prudential  
Publish What You Pay  
Quoted Companies Alliance  
Residential Landlords Association  
Retail Motor Industry Federation.

Ridley, A  
Rolls Royce Holdings  
Royal Bank of Scotland Group  
Royal Sun Alliance  
Rushton, Ken  
SAB Miller PLC  
Samuel, A  
Shared Interest IPS  
Shearman and Sterling LLP  
Skoglund, I  
Smaller Business Practitioner Panel  
Solicitors Regulation Authority  
Spottiswoode, C  
Standard Chartered  
Standard Life  
Talbot, P  
Tomorrow's Company  
Trafford's Facilities Ltd  
True Research Ltd  
UK Cards Association  
UK Shareholders Association  
Unite the Union  
Virgin Money  
Walton's Insurance Brokers  
Which?  
White & Case  
Wholesale Markets Brokers' Association and London Energy Brokers' Association  
Womersley, N  
Wynn, S  
Zurich

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