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BANK OF ENGLAND
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Memorandum of understanding between HM Treasury, the Bank of England, the Prudential Regulation Authority and the Financial Conduct Authority: **equivalence and exemptions**

October 2019



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Presented to Parliament pursuant to
Regulation 6(3) of the Equivalence Determinations
For Financial Services and Miscellaneous Provisions
(Amendment etc) (EU Exit) Regulations 2019

October 2019



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General responsibilities

- 1.1 This Memorandum of Understanding is established in accordance with regulation 6 of the Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019 (the Equivalence Regulations). It sets out how the Treasury, and the Bank of England, Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) expect to co-ordinate the discharge of their respective functions in relation to equivalence determinations and exemption determinations and the provision of information or advice under the Equivalence Regulations.
- 1.2 The Treasury is responsible for determining the equivalence of and the application of exemptions to any country or territory outside the United Kingdom (“third country”) where such a function is provided for in legislation. The Treasury may make determinations which are partial, time-limited, or subject to other conditions.
- 1.3 The Bank of England, PRA and FCA (“the regulators”) are responsible for providing support to the Treasury for matters relating to their regulatory functions. This includes the provision of information or advice to the Treasury in connection with any consideration of a new equivalence or exemption determination.
- 1.4 The regulators are also responsible for recognising third-country firms which operate in the UK under an equivalence determination where this is provided for in legislation.

Process for initiating new determinations

- 1.5 The Treasury will decide whether to initiate considerations of new equivalence or exemption determinations for any third country or any relevant regime within a third country. For example, this may be in response to, or in anticipation of, a regulatory need.
- 1.6 The Treasury will inform the regulators when it initiates consideration of a new equivalence or exemption determination. Each regulator may also recommend to the Treasury to initiate consideration of a new equivalence or exemption determination.
- 1.7 Once informed of the Treasury’s intention to initiate consideration of a new equivalence or exemption determination, each regulator, in light of the potential implications of such a determination on their statutory objectives, may recommend to the Treasury that their advice should be sought.
- 1.8 In the normal course of business, the Treasury will request information or advice from the regulators to support its assessment of third country equivalence or to support its exemption determinations. Such requests will be made in writing to the regulators setting out a reasonable timeframe so that the regulators can organise their resources accordingly.
- 1.9 The regulators may also proactively provide information or advice to the Treasury, in the absence of a formal request from the Treasury.

- 1.10 The Treasury and the regulators should keep in close coordination throughout any equivalence or exemption process, including through updates during the preparation of advice.

Regulators' advice

- 1.11 The Treasury and the regulators will agree on the format of advice. The regulators' equivalence advice should set out the applicable criteria used for assessing equivalence, the assessment methodology, and an account of the evidence gathered to determine whether the criteria are met. The regulators will take a proportionate approach to their assessment of equivalence, in line with their individual statutory objectives, as relevant.
- 1.12 When providing advice in support of a proposal for an equivalence determination, the regulators must be satisfied that the third-country jurisdiction meets the requirements of the relevant equivalence regime. The regulators will not be expected to provide advice on any aspect of a third country's regime which goes beyond their functions.
- 1.13 The regulators' advice in relation to the merits of an exemption will set out the impact of the exemption on the regulators' statutory objectives. It will include an account of any evidence gathered to support this advice.
- 1.14 Subject to any relevant statutory obligations on the Treasury and the regulators, any information or advice which the Treasury receives from the regulators will be kept confidential during the Treasury's assessment process.

Procedure for contacting third countries and responding to third-country communications

- 1.15 When initiating new assessments of third-country jurisdictions, the Treasury will be responsible for contacting the relevant authorities in that jurisdiction of its intention to initiate an assessment. The Treasury will primarily be responsible for contact with third-country finance ministries where relevant functions are exercised at that level. When appropriate, the Treasury may delegate to the regulators the responsibility for contacting third-country finance ministries. The regulators will include the Treasury in correspondence with third-country finance ministries.
- 1.16 The regulators will primarily be responsible for contacting and liaising with third-country regulatory and supervisory authorities. The regulators will keep the Treasury informed of relevant developments from their communications with third-country regulatory authorities.

Timing expectations

- 1.17 The Treasury and the regulators may agree a proposed timeframe for providing information or advice, which will be set out in HMT's written request for advice. Expectations about the timeframe for providing advice should take into account resourcing implications for the regulators and the priority of the assessment, and should be proportionate to the nature of the advice.

Publication of advice and determinations

- 1.18 The Treasury's determinations will be laid in Parliament and made publicly available.
- 1.19 Equivalence and exemption determinations will be accompanied by an Explanatory Memorandum (EM) setting out the justification for the determination. The EM will give an account of the advice that the Treasury has received from the regulators and considered before making an equivalence or exemption determination.
- 1.20 When the Treasury lays an instrument to make an equivalence or exemption determination, the regulators are responsible for determining whether to publish a summary of their advice, as well as any materials they deem necessary in support of it.
- 1.21 The expectation is that the regulators' assessments will not be published in advance of the Treasury laying an equivalence or exemption determination before Parliament.

Other organisations

- 1.22 When necessary, the Treasury may consult other organisations, including other government departments, as a part of making equivalence and exemption determinations.

Process for initiating review of existing equivalence and exemption determinations

- 1.23 The Treasury may review any existing equivalence or exemption determinations.
- 1.24 The Treasury will inform the regulators when it initiates consideration of a review of an existing equivalence or exemption determination.
- 1.25 Each regulator may recommend to the Treasury that a review of an equivalence or exemption determination is undertaken in response to material changes in the applicable framework. Each regulator may also request a review of an equivalence or exemption determination if they have concerns arising from their statutory objectives (including financial stability, safety and soundness, market integrity, consumer protection or competition implications).
- 1.26 In the normal course of business, the Treasury will request information or advice from the regulators to review existing equivalence or exemption determinations. Such requests will be made in writing to the regulators. The Treasury will inform the regulators of its need for information or advice within a reasonable timeframe so that the regulators can organise their resources accordingly.
- 1.27 Each regulator may also proactively provide information or advice to the Treasury to assist the review of existing equivalence or exemption determinations, in the absence of a formal request from the Treasury.
- 1.28 Reviews may be undertaken periodically or at any time, or in response to changes to the applicable framework. This does not prejudice the Treasury's

ability to revoke existing equivalence or exemption determinations at any time.

Monitoring existing equivalence and exemption determinations

- 1.29 The Treasury and the regulators will maintain an appropriate level of engagement with third-country jurisdictions where equivalence or exemption determinations have been made to monitor changes to the regulatory and supervisory framework of that country.
- 1.30 Where relevant, cooperation arrangements with third-country finance ministries and/or regulatory authorities shall be set out in separate MoUs.

Interaction between FCA and Bank of England in areas of joint competence

- 1.31 The regulators will provide advice in relation to their regulatory functions (e.g. the Bank in relation to CCPs and the FCA in relation to trading venues). When advice is requested on areas of joint competence (e.g. Capital Requirements), the 'lead regulator' should provide the advice after consulting the other regulator. In some cases, the regulators may provide advice on different aspects of a determination, according to their functions.

Maintenance and review of MoU

- 1.32 This MoU may be reviewed at the request of the Treasury or the regulators.

HM Treasury contacts

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