



HM TREASURY

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29 April 2013

Nadia Calviño
Deputy Director General for Directorates F, G and H – Financial services policy
European Commission
Directorate General for Internal Market and Services
Communication Unit
B-1049 Brussels
Belgium

Dear *Nadia,*

Replacement of the Financial Services Authority by the Financial Conduct Authority and the Prudential Regulation Authority and the Bank of England as the Competent Authority for certain Directives and Regulations

As you will be aware, the UK Government has undertaken a broad programme of financial reform in response to the global financial crisis. Key elements of this reform package are the changes to the UK's system of financial regulation and supervision. The purpose of this letter is to notify you of the replacement of the Financial Services Authority (FSA) with new regulatory authorities.

The UK has created a system where responsibility for each facet of financial stability is clearly divided among the different regulatory and supervisory authorities. The Financial Services Act 2012 provided for the creation of:

- an expert macro-prudential authority, the Financial Policy Committee (FPC) within the Bank of England to monitor and respond to systemic risks in the financial sector;
- a focused micro-prudential supervisor, the Prudential Regulation Authority (PRA), to supervise firms that manage complex risks on their balance sheets - specifically, all deposit takers, insurers and some large investment firms; and
- a focused conduct of business supervisor, the Financial Conduct Authority (FCA), to ensure that business across financial services and markets is conducted in a way that advances the interests of all users and participants. The FCA is also responsible for the prudential supervision of financial services firms not regulated by the PRA.

This new system came into effect on 1 April 2013.

The Tables in Annex A indicate which of the new UK authorities replace the FSA as the Competent Authority or Authorities in respect of the relevant Directives and Regulations. Table 1 indicates which authorities are competent authorities for passporting purposes, and for

remaining purposes, in respect of European legislation which contains passporting provisions. Table 2 indicates which authorities are competent authorities for the purposes of European legislation which does not contain passporting provisions.

This letter therefore constitutes the formal notice of information to the Commission of the designation of the new Competent Authority or Competent Authorities as a result of these replacements, for the purposes of each Directive or Regulation which requires a formal designation, notice or information, and the Tables in Annex A indicate the provision under which any such designation, notice or information is made. Where a Directive or Regulation uses the term "supervisory authority", the use of the term "competent authority" in this letter is intended to mean supervisory authority.

Additionally, this letter constitutes notice of the designation of the FCA as the single competent authority as a contact point for the purposes of article 56 of MiFID¹, and of the Bank of England as the single authority responsible for co-ordinating co-operation and exchange of information for the purposes of article 22 of EMIR².

This letter does not cancel or replace the role or designation as a Competent Authority of any authority other than the FSA. For example, the UK courts are a competent authority for the purposes of various Directives and Regulations listed in Annex A; this letter does not affect the status of the courts as a competent authority.

Where more than one UK authority is the competent authority, the role of each will reflect their domestic responsibilities and objectives as a firm's supervisor, as set out in the Financial Services and Markets Act 2000 and the subordinate legislation which underpins that Act.

In general, a firm's supervisor will either be (i) the FCA or (ii) both PRA and FCA, depending on whether the activities a firm undertakes fall within the Financial Services and Markets Act 2000 (PRA-Regulated Activities) Order 2013. In summary, the activities which are PRA-supervised are: effecting or carrying out contracts of insurance, accepting deposits and, in certain cases, dealing on own account in relation to MiFID financial instruments. Where a firm carries out PRA-supervised activities, it will be subject to dual supervision - by the PRA generally in regard to prudential issues and the FCA in respect of conduct matters. Firms which do not carry out PRA-supervised activities will be supervised by the FCA alone, in respect of both prudential matters and conduct matters.

Annex B sets out contact details for the new Competent Authorities.

I am copying this letter to Steven Maijor at the European Securities and Markets Authority, Andrea Enria at the European Banking Authority and Gabriel Bernardino at the European Insurance and Occupational Pensions Authority to allow them to update their information as necessary, and in accordance with the obligations to notify or inform which are listed in Annex A. I am also copying this letter to Paul Tucker at the Bank of England, Andrew Bailey at the Prudential Regulation Authority and Martin Wheatley at the Financial Conduct Authority.

¹ "MiFID" means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

² "EMIR" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

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The letter will also be made available on the internet for the benefit of the public, firms, and competent authorities in other Member States.

Yours sincerely,

A handwritten signature in cursive script that reads "Nikhil Rathi".

Nikhil Rathi
Director, Financial Services
Nikhil.Rathi@hmtreasury.gsi.gov.uk

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Annex A: Competent Authorities from 1 April 2013

Table 1 – Competent Authorities for passporting notices and for remaining purposes

European legislation	Provision under which designation, notice or information is made	Competent Authority for giving and receipt of communications relating to the exercise by non-UK firms of the right of establishment and the exercise of the freedom to provide services	Competent Authority/ Authorities for giving and receipt of communications relating to the exercise by UK firms of the right of establishment and the exercise of the freedom to provide services	Competent Authority/ Authorities for other purposes
Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions		PRA	PRA	PRA and FCA
Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ³	Article 48	FCA	FCA and PRA	FCA and PRA ⁴

³ The FCA is the single competent authority as a contact point for the purposes of article 56 of this Directive.

⁴ The PRA is a competent authority for authorisation in respect of matters falling within the scope of the Directive, when undertaken by PRA-authorized firms. It also has supervisory responsibilities and enforcement powers in relation to prudential matters and systems and controls matters in relation to PRA-authorized firms, to the extent that these fall within its statutory responsibilities. The FCA is the competent authority for authorised firms which are not PRA-authorized, and is also the competent authority for PRA-authorized firms in relation to matters falling outside the scope of the PRA's responsibilities. The FCA and the PRA are required to co-operate with each other to ensure co-ordinated exercise of their respective functions.

<p>Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities</p>	<p>Article 97</p>	<p>FCA</p>	<p>FCA</p>	<p>FCA</p>
<p>Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance</p>		<p>PRA</p>	<p>PRA</p>	<p>PRA and FCA</p>
<p>Council Directive of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance (No 73/239/EEC).</p>		<p>PRA</p>	<p>PRA</p>	<p>PRA and FCA</p>
<p>Council Directive of 22 June 1988 on the co-ordination of laws, etc, and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (No 88/357/EEC).</p>				
<p>Council Directive of 18 June 1992 on the co-ordination of laws, etc, and amending Directives 73/239/EEC and 88/357/EEC (No 92/49/EEC).</p>				

Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC	Article 21	FCA	FCA	FCA
Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (2002/92/EC)	Article 7	FCA	FCA and PRA	FCA and PRA
Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC	Articles 20 and 81	FCA	FCA	FCA
Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions	Articles 3 and 13 (applying articles 20 and 81 of Directive 2007/64/EC	FCA	FCA	FCA

Table 2 – Competent Authorities (where no passporting provisions)

European legislation	Provision under which designation, notice or information is made	Competent Authority/ Authorities
Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions	Article 36	FCA and PRA
Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.		PRA
Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities	Article 105	FCA
Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems		FCA
Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC	Article 24	FCA
Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community Emission Auction Regulation		FCA
Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation	Article 11	FCA

Regulation (EU) No 236/2012 of the European Parliament and the Council of 14 March 2012 on short selling and certain aspects of Credit Default Swaps	Article 32	FCA
Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency	Article 2(9)	FCA
Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies	Article 22	FCA
Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR)	Articles 10, 22,	Bank of England, FCA ⁵ and PRA – see the Note on EMIR (below)
Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing		FCA
Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds		FCA
Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council		FCA and PRA

⁵ The Bank of England is the single authority responsible for co-ordinating co-operation and exchange of information for the purposes of article 22 of this Regulation.

Regulation (EC) No 924/2009 of the European Parliament and of the Council of 16 September 2009 on cross-border payments in the Community and repealing Regulation (EC) No 2560/2001	Article 9	FCA
Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro and amending Regulation (EC) No 924/2009	Article 10	FCA
Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010	Article 44	FCA
Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes		PRA ⁶
Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes		FCA and PRA ⁷
Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings		PRA and FCA ⁸
Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions		FCA and PRA
Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group		FCA and PRA

⁶ The body which administers the deposit guarantee scheme in the UK is Financial Services Compensation Scheme Limited.

⁷ The body which administers the compensation scheme in the UK is Financial Services Compensation Scheme Limited.

⁸ These bodies are the administrative authorities competent for the purposes of the reorganisation measures or the winding-up proceedings.

Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance	FCA and PRA
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Note on EMIR

The Bank of England is responsible for all functions of the Competent Authority for central counterparties imposed by EMIR, including:

- a. functions under Title 2 (clearing, reporting and risk mitigation of OTC derivatives);
- b. functions under Title 3 (authorisation and supervision of central counterparties) and in particular Article 22(1);
- c. functions under Title 4 (requirements for central counterparties);
- d. functions under Title 5 (interoperability arrangements);
- e. the function under Article 81(3)(c) (transparency and data availability);
- f. functions under Article 89(3) to (5) (transitional provision); and
- g. supervision of the obligations imposed on central counterparties by EMIR.

The Bank of England is also responsible for the purposes of the second sub-paragraph of Article 22(1) of EMIR for coordinating cooperation and the exchange of information.

The FCA is responsible for all functions of the Competent Authority for financial counterparties, non-financial counterparties and trading venues imposed by EMIR, including:

- a. except where paragraph (8)(a) applies, supervision of the obligations imposed on financial counterparties, non-financial counterparties and trading venues by Title 2;
- b. considering notifications under Article 4(2) (clearing obligation: exemption in relation to intragroup transactions);
- c. acting as competent authority for the purposes of Article 10(5) (non-financial counterparties: requirements in relation to OTC derivative contracts);

- d. considering notifications and determining applications under Article 11(5) to (10) (risk mitigation techniques for OTC derivative contracts not cleared by a central counterparty: exemptions) and the functions referred to in Article 11(11);
- e. the function under Article 18(2)(d) (college membership);
- f. the function under Article 25(3)(c) (ESMA consultation in relation to recognition of third country central counterparty); and
- g. the function under Article 81(3)(d) (transparency and data availability).

The FCA is responsible for the supervision of clearing members of a central counterparty for the purposes of EMIR, including functions under:

- a. Article 18(2)(c) (college membership);
- b. Article 25(3)(b) (ESMA consultation in relation to recognition of third country central counterparty);
- c. Article 48(3) (default procedures: supervision of defaulting clearing member); and
- d. Article 52(1) (risk management).

The FCA is also responsible for the supervision of the obligations imposed by EMIR on entities referred to in Article 4(1)(a)(v) of EMIR (third country entities).

The FCA is also responsible for all functions of the Competent Authority in relation to trade repositories imposed by EMIR, including functions under:

- a. Title 6 (registration and supervision of trade repositories) including Article 71(3);
- b. Title 7 (requirements for trade repositories); and
- c. Article 89(6) and (7) (transitional provision).

The FCA is also the competent authority for the purposes of Article 89(2) of EMIR (transitional provisions in relation to pension scheme arrangements).

The PRA is the Competent Authority responsible for:

- a. supervision of financial counterparties authorised by the PRA in relation to the obligations imposed by Article 11(3) and (4) of the EMIR regulation; and
- b. supervision of any clearing members of a central counterparty authorised by the PRA in relation to the following functions under EMIR:
 - i. Article 18(2)(c);
 - ii. Article 25(3)(b);
 - iii. Article 48(3); and
 - iv. Article 52(1).

Annex B: Competent Authorities – contact details

	Financial Conduct Authority	Prudential Regulation Authority	Bank of England
Address	25 The North Colonnade Canary Wharf London E14 5HS	20 Moorgate London EC2R 6DA	Threadneedle Street London EC2R 8AH

