



HM Treasury

The Future Regulatory Framework

Review:

Central Counterparties and Central
Securities Depositories

Response to the consultation

July 2022

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Securities Depositories

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Chapter 1

Introduction

- 1.1 The Future Regulatory Framework (FRF) Review was established to determine how the financial services regulatory framework should adapt to the UK's new position outside of the European Union (EU), and how to ensure the framework is fit for the future. In particular, the FRF Review provides an important opportunity to ensure that the UK maintains a coherent, agile, and internationally-respected approach to financial services regulation that delivers appropriate protections and promotes financial stability.
- 1.2 As part of the Review, on 17 January 2022 HM Treasury published the consultation document, 'Future Regulatory Framework Review: Central Counterparties and Central Securities Depositories'. It proposed giving the Bank of England (the Bank) a general rule-making power over two types of financial services firm, central counterparties (CCPs) and central securities depositories (CSDs), which are regulated in the UK by the Bank. The aim of this proposal, in line with the wider objectives of the Review, was to provide for more extensive delegation of regulation to the Bank, as the expert, independent regulator. The Bank would then perform this role while working within an overall policy framework set by government and Parliament. The consultation closed on 28 February 2022.
- 1.3 The consultation proposed the introduction of an updated set of statutory objectives and principles for the Bank to follow when exercising the new power. It also proposed strengthening the mechanisms which govern the Bank's accountability to Parliament, its relationship with HM Treasury and its engagement with stakeholders to ensure that the Bank is fully accountable and transparent when making rules for these firms in the future.
- 1.4 The consultation sought views on the proposed framework as a whole, but asked specific questions on whether stakeholders agreed with the set of statutory objectives and regulatory principles proposed for the Bank and on whether stakeholders agreed with the proposed enhanced accountability and transparency framework.
- 1.5 The government is grateful for the 12 written responses it received to the consultation and the constructive engagement with stakeholders during the consultation period. There was also one response to the consultation which the government published in November 2021 entitled 'Future Regulatory Framework Review: Proposals for Reform' which focused heavily on the regulatory framework for CCPs, so the government has also considered that response when assessing the feedback from this consultation. The respondents included both UK and overseas CCPs and CSDs as well as trade bodies representing a wide range of financial services firms and professions.

- 1.6 This document provides a breakdown of the key themes raised by respondents in response to the questions posed in the consultation. The government's final policy is laid out in the Financial Services and Markets (FSM) Bill and the accompanying Impact Assessment and Explanatory Notes.

Chapter 2

Response to the consultation

Rule-making powers and general approach

- 2.1 Respondents to the consultation were supportive of the government's proposed approach to give a general rule-making power to the Bank so that it can set direct requirements on the CCPs and CSDs it regulates. It was noted that this approach should allow the UK regime to be more adaptable and agile than at present. A number of respondents commented that the new power should largely be used to maintain continuity with the current regulatory regime, at least initially, and that any changes from existing retained EU law should be publicly consulted on. Several respondents emphasised that their support for the new power was based on appropriate safeguards and accountability measures being in place.
- 2.2 The government intends to take forward the proposal to give the Bank a general rule-making power in relation to CCPs and CSDs. The Bank's use of this power will be subject to public consultation as well as to a range of accountability measures, including those introduced in the FSM Bill.
- 2.3 The government set out in paragraphs 3.20-3.21 of the consultation that the general rule-making power would need to be underpinned by additional powers which replicate arrangements for the PRA and FCA, and that the government was considering whether the Bank's existing powers of direction over CCPs and CSDs should be expanded to allow the Bank to direct CCPs and CSDs when it is "desirable" to advance the Bank's new objectives. These proposals did not draw widespread comment but one respondent noted that they believed the Bank already has broad enough direction powers, and had reservations about expanding this to include the proposed new innovation secondary objective.
- 2.4 Having considered the approach further the government intends to introduce a power for the Bank to impose requirements on individual CCPs and CSDs, similar to the FCA's and PRA's ability to impose requirements on the firms they regulate under section 55L and 55M FSMA. The Bank will be able to use this power where it is desirable to do so in order to advance its objective to protect and enhance UK financial stability.
- 2.5 A number of respondents commented on paragraph 3.16 which noted that rule-making powers will be necessary for the Bank to maintain an appropriate and consistent recognition framework for overseas CCPs and CSDs that provide services in the UK. In the responses on this aspect of the framework, there were two key themes – first, that there should be clarity on the framework and exactly what powers the Bank will have in this area, and

second, that the Bank should generally rely on deference to the home regulator where the CCP or CSD is headquartered.

- 2.6 In light of these points, the government intends for the Bill to maintain the effect of the current overseas framework where the Bank defers to the home regulator where appropriate, but may subject systemically important third country CCPs to direct UK regulation and oversight. It intends to achieve this by establishing the concept of a “systemic third country CCP” and to provide for the Bank to be able to apply its rulebook for domestic CCPs, in part or entirely, to these firms. The Bank will continue to have powers to defer to the home regulators of these firms where appropriate.
- 2.7 The government also intends to take powers in the FSM Bill to the effect that, should it deem necessary to change the overseas framework in the future, it would be possible to grant the Bank further powers to apply domestic rules to non-systemic overseas CCPs and overseas CSDs. The government will take into account the feedback it has received from this consultation when considering how and whether to exercise these powers.

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?

- 2.8 Respondents were strongly supportive of the proposal to maintain financial stability as the primary objective for the Bank when regulating CCPs and CSDs. There was also strong support for the government’s proposal to make it clear that, when advancing its primary objective, the Bank is expected to a) consider the financial stability impact of UK CCPs and CSDs on other jurisdictions, and b) ensure non-discrimination on the basis of nationality or location. While no respondents expressed opposition to these proposals, a minority noted some concerns about the Bank’s ability to operate the first of these additions given resource constraints.
- 2.9 The consultation also proposed a secondary objective for the Bank so that as it advances its primary objective for financial stability it must, so far as is reasonably possible, facilitate innovation in the services provided by the CCPs and CSDs they regulate with a view to improving the quality, efficiency and economy of those services. Respondents were generally supportive of this proposal. Several hoped this objective could facilitate a more agile process for launching new products, and it was noted that it was helpful to have support from the regulator when testing new ideas, to ensure they are safe and comply with international standards. Stakeholders were generally keen to support the government’s proposal that this objective should not compromise the Bank’s primary objective for financial stability.
- 2.10 After considering the responses, the government intends to take forward the approach to objectives proposed in the consultation, including a new secondary objective on innovation.
- 2.11 Although the consultation did not seek suggestions for other objectives, a small number of respondents proposed alternative secondary objectives. Some proposed a secondary objective for competitiveness, similar to the

secondary objective for growth and competitiveness proposed for the FCA and the PRA in the November 2021 FRF Review consultation. In addition, and linked to the previous point, a few further respondents proposed secondary objectives or other legislative mechanisms that would require the Bank to take into account how its regulation fits within the international context in which UK CCPs and CSDs operate and to examine whether its rules are proportionate and aligned with international standards.

- 2.12 Respondents that commented on the proposal to apply the regulatory principles from section 3B FSMA, including a sustainable growth principle which incorporates the government's commitment to achieve a net zero economy by 2050, to the Bank in its regulation of CCPs and CSDs were supportive. Respondents viewed this as a sensible step to bring the Bank in line with the PRA and the FCA. A few responses opposed the government's suggestion to amend 'the general principle that consumers should take responsibility for their decisions' to reflect that it is specific types of financial services firms that use CCP or CSD services and not retail consumers. Respondents noted that ultimately consumers and retail investors are still affected even if they do not directly use these services.
- 2.13 There was support for the proposal for a new regulatory principle on 'fair, reasonable and equitable provision of services'. A small minority suggested that this should instead be a secondary objective, to reflect its importance in the context of a concentrated market.
- 2.14 The government intends to take forward the approach proposed in the consultation regarding regulatory principles. However, the government agrees with the feedback received on the consumer responsibility principle and therefore no longer intends to amend this.
- 2.15 The consultation proposed, in line with the approach taken for the PRA and the FCA, that the government should have the ability to set activity-specific 'have regards' for the Bank in its regulation of CCPs and CSDs. Respondents were generally supportive of this approach, though several noted that this power should be used sparingly and be accompanied by appropriate safeguards. Respondents encouraged transparency on the use of this power.
- 2.16 The government also proposed that it should be able to require the Bank to make rules covering certain matters to ensure important wider public policy concerns are addressed, as is proposed for the FCA and PRA. A minority of respondents expressed some concern about this proposal, suggesting that there should be safeguards on this power to ensure it does not impinge on the Bank's independence and that further transparency and parameters should be provided on its use.
- 2.17 The government intends to take powers to be able to set 'have regards' that the Bank must consider when making rules in specific areas of regulation, and to be able to place obligations on the Bank to make rules in specific areas of regulation, in line with the approach taken for the PRA and the FCA.

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?

- 2.18 Respondents were generally supportive of the government's proposal for the Bank's FMI Board to be placed on a statutory footing. The government therefore intends to take this forward in the Bill. Stakeholders also, in general, responded positively to the proposals designed to strengthen the Bank's relationship with HM Treasury and accountability to Parliament. A few respondents particularly welcomed the largely similar approach the government is following to that taken for the PRA and the FCA.
- 2.19 A few respondents made specific comment on the power for HMT to ask the Bank to conduct a review of their rules. Some responses suggested that while this power was sensible it should only be used sparingly and in specific circumstances which should be set out publicly. It was also suggested that the report on any rule reviews should be made public. One respondent asked whether Parliament could challenge the outcome of reviews. One response was particularly supportive of this power and encouraged HMT to make use of it where there is evidence that rules may have a detrimental impact on the firms to whom they apply, or risk damaging the UK's clearing markets.
- 2.20 Respondents were particularly supportive of the requirement for the Bank to consult HM Treasury on the anticipated impact on the UK's existing deference arrangements and trade agreements when regulating CCPs and CSDs. Some respondents requested that these issues are specifically flagged for comment in any discussion or consultation papers published by the Bank in relation to the exercise of its rulemaking powers as well as being addressed in any cost benefit analysis, and supported public consultation by the Bank and/or HM Treasury on these issues before policy decisions are made.
- 2.21 There was also support for the proposals on the Bank's engagement with external stakeholders. All of those who expressed a view on the proposals to require the Bank to publish a framework for its cost-benefit analysis (CBA) and to establish a statutory panel to support the Bank's approach to CBA were supportive. There was no consensus on whether stakeholders would prefer the panel to provide input pre- or post-publication of CBAs.
- 2.22 The government intends to align with the approach taken in the Bill for the FCA and the PRA on these issues. For efficiency purposes the government proposes that the Bank use the same CBA panel as the PRA.
- 2.23 In the consultation the government asked for views on whether there could be increased transparency on how the Bank engages with its direct and indirect stakeholders. The responses were generally supportive, with some providing suggestions on how this could be achieved. Some respondents proposed that the Bank could develop a panel or working group to bring together a wider range of stakeholders on issues of mutual concern, suggesting that representatives from different groups such as users of CCPs and CSDs and their clients should be present. Another suggestion was that engagement with firms and members could be done as an informal, continuous dialogue in small groups. Otherwise, respondents generally

supported any measures that could increase transparency for external stakeholders.

- 2.24 As there was no clear consensus on the preferred approach from the consultation responses, the government intends to introduce a requirement for the Bank to report annually on the efforts it has made to engage with stakeholders outside of its direct regulation, such as users of CCP and CSD services, and to provide a summary of this engagement.

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