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RECENT DEVELOPMENTS UK

HM Treasury News

Government looks to promote a sustainable future for community finance

Chief Secretary to the Treasury, Danny Alexander, has announced (on 23 February 2015) that the British Business Bank is commissioning new independent research for a report on the sustainability of Community Development Finance Institutions ('CDFIs'). It will report on its findings in June. CDFIs offer loans for viable small businesses struggling to secure finance from mainstream lenders.

Last year, CDFIs lent £72m to small businesses and micro-enterprises, creating over 15,000 jobs.

Some CDFIs have already successfully secured commercial investment. The report will look into how the CDFI sector can build on these successes and attract more commercial investment in the future, which will provide a long-term funding option for the sector. It will draw on examples from the US, where they have a thriving community finance sector.

The Chief Secretary made the announcement on a visit to Fredericks Foundation in Oxford. Fredericks Foundation is an ethical microfinance charity. It provides affordable loans and support to enable people to start or grow their own small business when they cannot get finance from mainline lenders. Many people are financially excluded or face multiple barriers to employment, and Fredericks provides a route to financial independence through self-employment. Fredericks delivers these loans across much of England, and has now made over 1200 loans, creating and protecting over 2000 jobs in the process.

On the visit, the Chief Secretary met several small business owners, including Natalie Tate. Natalie, having been refused funding from a bank, contacted the Fredericks Foundation who lent her £9,000 to set up her mobile dog wash and grooming service, 'the dog pod'.

Chief Secretary to the Treasury, Danny Alexander said:

> 'Small businesses are the backbone of the British economy, so it's only right that the government supports viable small businesses, particularly those struggling to access conventional finance.
>
> To ensure we help our small businesses as much as possible, I have commissioned a report exploring how the CDFI sector can operate more sustainably. This will provide more evidence about the sector and building on this, CDFIs will be able to help even more viable smaller businesses access the finance they need to grow.'

Economic Secretary to the Treasury, Andrea Leadsom, said:

> 'This government is firmly behind small businesses – that's why we're looking at how we can further support the community finance sector. Community Development Finance Institutions (CDFIs) help viable businesses and social enterprises that are unable to secure lending from high street banks. They also provide help to households that need to meet unexpected expenses and might otherwise use payday lenders. Last year CDFIs created 15,000 jobs and it's only right that we look at how we can ensure that the sector continues to thrive.'

HM Treasury 23.02.15

Government completes banking reforms

The final piece of the biggest reforms to the UK banking sector in a generation came into force on Thursday 5 March, delivering a key part of the government's long-term economic plan. The last piece of secondary legislation under the Banking Reform Act 2013 has completed its passage through Parliament, delivering on the government's commitment to have all elements of its far-reaching banking reform legislation in place by the end of the current Parliamentary term.

The Banking Reform Pensions Regulations 2015 are the final piece of secondary legislation needed to complete ring-fencing. These regulations ensure that ring-fenced banks cannot be liable for the pension liabilities of other parts of the wider banking group. These regulations allow the trustees of the banks' pension schemes to make the necessary changes to implement the ring-fencing and also set out the role of the regulators, the Prudential Regulation Authority ('PRA') and the Pensions Regulator, in monitoring and assessing the changes made. There was a consultation which closed in October 2014 and HM Treasury has been working closely with industry and with the regulators developing these regulations. The final versions of the regulations were laid in Parliament for debate on 21 January 2015.

The Banking Reform Act 2013 is a key part of the government's plan to create a banking system that supports the economy, customers and small businesses. The Banking Reform Act 2013 implements the recommendations of the Independent Commission on Banking ('ICB'), set up by the government in 2010 under the chairmanship of Sir John Vickers to consider structural reform of the banking sector. It also implements key recommendations of the Parliamentary Commission on Banking Standards, which was asked by the government to urgently review professional standards and culture in the banking industry following revelations of attempted LIBOR manipulation in 2012. The government's reforms are based on almost five years of consultation on the future of the UK's financial sector and represents the biggest ever overhaul of Britain's banking system. Since 2010, the government has acted to transform the banking industry through four key areas of reform:

(1) **Supervision:** the government has put the Bank of England back at the centre of the supervisory regime, with new powers to identify and address systemic risks as they emerge, ensuring safer banks that are less likely to bring down the economy in the future.

(2) **Structure:** the government has brought forward new laws to separate the branch on the high street from the trading floor in the City to protect taxpayers when things go wrong.

(3) **Culture:** the government is imposing higher standards of conduct on the banking industry by introducing a criminal sanction for reckless misconduct that leads to bank failure, and a more stringent approval regime for senior bankers.

(4) **Competition:** the government is acting to empower consumers by giving them greater choice, which should incentivise innovation and competition within the banking sector.

HM Treasury 05.03.15

UK announces plans to join Asian Infrastructure Investment Bank

The Chancellor of the Exchequer, George Osborne, announced (on 12 March 2015) that the UK intends to become a prospective founding member of the Asian Infrastructure Investment Bank ('AIIB'). In doing so, the UK is the first major Western country to seek to join the AIIB.

Once fully operational the AIIB will support access to finance for infrastructure projects across Asia, using a variety of support measures – including loans, equity investments, and guarantees – to boost investment across a range of sectors including transportation, energy, telecommunication, agriculture and urban development. This support can complement the work already done in the region by existing Multilateral Development Banks such as the World Bank and Asian Development Bank.

As the first major Western country to apply to become a prospective member of the AIIB, the UK will join discussions later this month with other founding members to agree the Bank's prospective Articles of Agreement, setting out the governance and accountability arrangements that underpin the AIIB's operating practices.

As part of these discussions the UK will play a key role in ensuring that the AIIB embodies the best standards in accountability, transparency and governance, which will be essential to ensuring the success of the initiative and to unlocking the potential benefits for the wider global economy.

The Chancellor of the Exchequer, George Osborne, said:

> 'I am delighted to announce today that the UK will be the first major Western country to become a prospective founder member of the Asian Infrastructure Investment Bank, which has already received significant support in the region.
>
> This government has actively promoted closer political and economic engagement with the Asia-Pacific region and forging links between the UK and Asian economies to give our companies the best opportunity to work and invest in the world's fastest growing markets is a key part of our long term economic plan. Joining the AIIB at the founding stage will create an unrivalled opportunity for the UK and Asia to invest and grow together.'

HM Treasury 12.03.15

Pension freedoms to be extended to people with annuities

The Chancellor has announced that the government will extend its pension freedoms to around 5m people who have already bought an annuity.

From April 2016, the government will remove the restrictions on buying and selling existing annuities to allow pensioners to sell the income they receive from their annuity without unwinding the original annuity contract.

Pensioners will then have the freedom to use that capital as they want – just as those who reach retirement with a pension pot can do under the pension freedoms announced in Budget 2014. They can either take it as a lump sum, or place it into drawdown to use the proceeds more gradually.

The new flexibilities build on the radical reforms announced in last year's Budget, and due to come into effect on 6 April, which allow people to make their own, informed choice about what they do with their savings in retirement.

This could include being able to draw down from their defined contribution pension pots a bit at a time or taking their pension as a lump sum.

To ensure people are in a position to make an informed decision, the government will be working with the Financial Conduct Authority ('FCA') to introduce appropriate guidance and other consumer protection measures.

For the great majority of customers, selling an annuity will not be the right decision. However, individuals may want to sell an annuity for instance to provide a lump sum for relatives or dependants; pay off debts; in response to a change in circumstances for example getting divorced or remarried; or to purchase a more flexible pension income product instead.

HM Treasury 15.03.15

Government responds to independent review of Money Advice Service

The government has published (on 20 March 2015) its response to the independent review, led by Christine Farnish, into the Money Advice Service ('MAS'), which was also published on 20 March 2015. MAS and the FCA, which oversees how MAS is run, have also responded to the independent review. MAS is a body set up by the government to ensure consumers have access to financial education and advice. The government appointed Christine Farnish in May 2014 to lead an independent review of MAS.

The responses set out what MAS, the FCA and the government will do to meet the challenges and recommendations set out in the review, and improve how MAS delivers against its objectives.

On debt advice, the review finds that MAS has made strong progress since 2012, and the government welcomes the review's recommendations that MAS should make sure customers continue to receive high quality debt advice while ensuring value for money. MAS has committed to establish a Debt Advice Steering Group to support the implementation of the review's recommendations, including by helping customers receive advice through the channel that best meets their needs.

The government also welcomes the commitment secured by the review from the energy and water sectors to each contribute £1m to MAS-funded debt advice in the next financial year. This is an important step towards a broader, fairer and more sustainable funding base for debt advice.

On the provision of money advice, the review recommends that MAS should focus on filling gaps in the market, and avoid duplicating the services offered by other providers of financial education and advice. The government supports this objective, and welcomes the commitment from MAS and the FCA to implement a number of the review's recommendations, including improving the way that they work together.

Overall, MAS and the FCA have committed to work together to address the questions raised by the review about MAS's current focus and delivery models, and to publish evidence and action plans and submit them to the government in the autumn.

The government will then consider whether any further changes to MAS are needed, including possible legislative changes, and will publish its conclusions before the end of the year. Any changes will need to be considered within the context of future plans and developments in the financial information and advice sector, including as a result of the government's pension changes which are coming into force from April.

HM Treasury 20.03.15

EU decision on aggregates levy ends period of uncertainty for large part of industry

The European Commission have announced (on Friday 27 March) that all but part of one of the exemptions from the aggregates levy are lawful. Their decision reaffirms the Commission's earlier conclusion that the levy as a whole is lawful and is a major achievement for the UK government after almost 13 years of litigation.

The aggregates levy is an environmental tax on commercially exploited aggregates that are used to provide bulk in construction. The levy exemptions were designed to encourage the use of less environmentally damaging sources of aggregate.

The Commission originally approved the levy exemptions when the tax was introduced in 2002. However, the Commission were forced to re-evaluate this decision after a European General Court judgment of 2012, which followed the British Aggregates Association's claims that a number of the exemptions provided unlawful state aid. In April 2014, the government had to suspend these exemptions while this examination by the Commission took place.

The Commission have again agreed with the UK government that the levy exemptions are in line with state aid rules, with the exception of part of the exemption for one material. These lawful exemptions will be reinstated as soon as possible in the new Parliament, with effect from the date of the suspension. This will allow the government to repay businesses any tax that they have paid on these materials as a result of the suspension.

The exception to the decision is part of the exemption for shale aggregate, which the Commission have now deemed to be incompatible with state aid rules – a reversal of their original decision after almost 13 years. The government is now obliged to narrow the scope of the original shale exemption. Additionally, the Commission have ordered the government to recover the unlawful aid provided by this part of the exemption.

The government is carefully considering what the Commission decision means for businesses that produced this type of shale between 2002 and 2014, and notes that aid below the relevant de minimis threshold does not need to be recovered. It will seek to work with the Commission and businesses to reduce the impact of the Commission's recovery order, consistent with the UK's legal obligation to recover any unlawful aid.

In addition, HMRC will continue to offer Time to Pay arrangements for businesses that face difficulty paying other taxes as a result of this decision, allowing them to spread payments over a longer period.

Exchequer Secretary to the Treasury, Priti Patel, said:

> 'I am pleased that the Commission decision confirms once again that the levy is lawful. The decision will enable the government to reinstate the exemptions and repay businesses, as we promised we would do, in

> the new Parliament. The decision also removes the uncertainty for the overwhelming majority of businesses that were affected by the Commission investigation.
>
> However, I am extremely disappointed that the Commission have changed their mind on part of the exemption for shale. We will work closely with the industry and do everything in our power to minimise the impact on the businesses affected.'

HM Treasury 27.03.15

Bank of England and PRA News

One Bank research agenda launched

The Bank of England launched its new One Bank Research Agenda – an ambitious and wide-ranging framework to transform the way research is done at the Bank. The Agenda aims to improve the coordination and openness of the Bank's research across all policy areas, to ensure the Bank makes the best use of the data, and to cultivate an extensive research community that spans the Bank and beyond. After in-depth consultation with researchers across the Bank and the wider academic community, the Bank has developed five core themes to guide its research:

- policy frameworks and interactions;
- evaluating regulation, resolution and market structures;
- policy operationalisation and implementation;
- new data, methodologies and approaches; and
- response to fundamental change.

To support the launch of the Agenda, the Bank also hosted a conference, webcast live, featuring a range of Bank speakers and external experts. Bank of England Governor, Mark Carney, opened the conference, followed by five panel discussions chaired by Jon Cunliffe, Minouche Shafik, Charlotte Hogg, Paul Fisher and Andrew Bailey respectively. Chief Economist, Andy Haldane, spoke about the promise of new data and advanced analytics and Ben Broadbent gave concluding remarks.

In addition, the Bank published a supporting discussion paper as well as a high-level summary of the five research themes, and released a number of new Bank datasets for use by external researchers. Finally, to catalyse interest in the One Bank Research Agenda, the Governor announced two new competitions sponsored by the Bank – a data visualisation competition using the newly released Bank datasets, and a One Bank research paper competition.

The Governor summarised the launch of the One Bank Research Agenda, saying:

> 'Economies are complex, dynamic and constantly evolving systems that are underpinned by social interactions and behavioural change, shaped by fundamental forces like technology and globalisation and supported – or at times disrupted – by finance.
>
> Policymakers need research to help understand these phenomena and to craft our responses to them. And research can make some of its most effective contributions by speaking to the priorities of policy.
>
> Research can help us to discover insights and build them into our policymaking processes.
>
> By focussing on a clear set of research priorities, by opening up our datasets, and by creating tighter links between policymakers and researchers, both within the Bank and across the broader research community, we can advance our mission – promoting the good of the people of the United Kingdom.'

Bank of England 25.02.15

Reforms to the Bank of England's Market Intelligence programme

The Bank of England announced the outcome of a root-and-branch review of its Market Intelligence ('MI') programme. In a speech at Warwick University, Minouche Shafik said the resulting changes – alongside progressive steps to make the Bank's liquidity insurance framework more transparent – show clearly that the Bank is not just 'open for business' but also 'open about our business'.

MI is the ongoing process of discussion with financial market participants to identify insights relevant to policymaking. The Bank's Governors and Court of Directors endorsed all 11 recommendations stemming from the MI Review, which will make the gathering and use of MI more transparent, robust and effective. The recommendations include:

- an MI Charter which explains clearly the terms of the Bank's engagement with financial market participants, and its rationale for gathering MI;
- a strengthened set of policies that govern MI gathering, supported by expanded training for staff; and
- a new executive-level committee to oversee the MI programme, to ensure it retains the necessary flexibility, focus and relevance to the policy challenges of today and tomorrow.

The Bank of England also published its formal response to the recommendations of Lord Grabiner, following the publication of his Foreign Exchange Market Investigation Report in November 2014. At the time, the Bank endorsed the recommendations – which covered documentation, education and the need for greater clarity over the Bank's market intelligence role – and committed to implementing them in full and as quickly as possible.

In its response, the Bank outlined the actions that have been, or are being, taken to fulfil the recommendations. They will result in stronger systems and controls around the Bank's engagement with market participants.

In a speech – 'Goodbye ambiguity, hello clarity' – Bank of England Deputy Governor, Minouche Shafik, explains why this greater clarity around the Bank of England's interactions with financial markets is essential.

Central banks, including the Bank of England, have moved away from an era of 'constructive ambiguity' to greater openness and transparency. For example, the Bank now has a well-defined set of facilities for the provision of liquidity to the financial system that have evolved to meet changing needs. The Bank's dialogue with markets dates back to 1786 but the days of men in top hats and fireside chats are now a distant memory. The Bank's MI function is a highly professional network of staff covering 23 different markets and sectors, providing first-hand insights on short-term moves and long-term trends relevant to all the Bank's policy functions.

In the speech, Minouche says:

> 'The ability of the Bank's MI function to provide insights to senior policymakers over the past 8 years, as the first waves of the crisis rushed onto the Bank's doorstep, and then as solutions flowed back out across the system, has been vital to our effectiveness.'

Welcoming the changes to the MI programme announced today, Minouche said:

> 'The Bank has been at the centre of one of the world's major financial centres for hundreds of years. Today the Bank has a broader role than ever before. A clear understanding of the root causes of developments in financial markets must underpin the decisions we make about monetary policy and regulation of financial markets. Aligning our Market Intelligence function closely to the Bank's mission, so that its purpose is clear and its approach is transparent, will ensure we continue to seize that opportunity.'

Bank of England 26.02.15

European Central Bank location policy for Central Counterparties

The Bank of England takes note of the EU General Court judgement on the European Central Bank's ('ECB's') location policy for Central Counterparties ('CCPs'). The judgement 'annuls the Eurosystem Oversight Policy Framework published by the ECB in so far as it sets a requirement for CCPs involved in the clearing of securities to be located within the Eurozone'.

The G20 has mandated that CCPs take on an increasingly important role in the management of systemic risk internationally.

It is important for the safety and soundness of CCPs that they have access to liquidity arrangements in the currencies they clear. This is first and foremost the responsibility of the private operators. In addition, access to central bank liquidity can provide a backstop arrangement. The most efficient ultimate source of this backstop liquidity in the event of major market disruption is provided by the network of central bank swap-lines. This is already the case for a number of major foreign currencies.

The Bank of England recognises that the ECB has an interest in the safety and soundness of UK CCPs who clear significant amounts of euro-denominated contracts. The Bank and the ECB will continue to seek a coordinated and shared approach for achieving their common objectives of financial stability and the smooth functioning of financial market infrastructures.

Bank of England 04.03.15

European Central Bank and Bank of England announce measures to enhance financial stability in relation to centrally cleared markets in the EU

The ECB and the Bank of England announced a series of measures aimed at enhancing financial stability in relation to centrally cleared markets within the EU.

- The ECB and the Bank of England have agreed enhanced arrangements for information exchange and cooperation regarding UK CCPs with significant euro-denominated business.
- The ECB and the Bank of England are extending the scope of their standing swap-line in order, should it be necessary and without pre-committing to the provision of liquidity, to facilitate the provision of multi-currency liquidity support by both central banks to CCPs established in the UK and euro area respectively. CCP liquidity risk management remains first and foremost the responsibility of the CCPs themselves

This announcement follows the judgement on 4 March by the General Court of the EU. In light of these agreements the ECB and UK government, as set out in the UK government's announcement of today, have agreed to a cessation of all legal actions covering the three legal cases raised by the UK government.

Bank of England 29.03.15

PRA sets out how it will hold senior managers accountable for failure to meet its requirements

The PRA has set out how it will hold senior managers in banks, building societies and designated investment firms to account if they do not take reasonable steps to prevent or stop breaches of regulatory requirements in their areas of responsibility.

In June 2013, the Parliamentary Commission for Banking Standards ('PCBS') published its report 'Changing Banking for Good' setting out recommendations for legislative and other action to improve professional standards and culture in the UK banking industry. This was followed by legislation in the Banking Reform Act 2013.

The Banking Reform Act 2013 introduced new powers which allow the PRA and the FCA to impose regulatory sanctions on individual senior managers when a bank breaches a regulatory requirement if the senior manager responsible for the area where the breach occurred cannot demonstrate that they took reasonable steps to avoid or stop it.

The PRA has published (on 23 February 2015) guidance for banks clarifying how it will exercise this new power; including examples of the kind of actions which may constitute reasonable preventative steps and how firms and individuals may evidence them.

The Banking Reform Act 2013 also creates a separate offence which could result in individual senior managers being held criminally liable for reckless decisions leading to the failure of a bank. This new criminal offence will, however, be subject to the usual standard of proof in criminal cases ('beyond reasonable doubt').

Andrew Bailey, Deputy Governor, Prudential Regulation, Bank of England and CEO of the PRA said:

> 'Senior managers will be held individually accountable if the areas they are responsible for fail to meet our requirements. Our new accountability regime will hold all senior managers, including non-executive directors, to a clear standard of behaviour and we will take action where they fail to meet this.'

Insurers

In November 2014, the PRA consulted on a parallel accountability regime for the insurance sector. The Senior Insurance Managers' Regime is aligned with the banking regime but it is not identical. The business model of insurers, the risks they pose to the PRA's objectives and the legislative framework they operate under are different from banks. Specifically, none of the potential criminal sanctions, nor the 'presumption of responsibility' in the banking regime, will apply to senior insurance managers.

The new regime also takes account of the need to introduce measures relating to governance and the fitness and propriety of individuals as part of Solvency II.

Non-executive directors

In November, the PRA indicated that it would issue a further consultation confirming how the PRA will apply the new Senior Managers' Regime and Senior Insurance Managers' Regime to non-executive directors ('NEDs') in banks and insurers respectively.

The PRA has now confirmed that it will apply the Senior Managers' Regime and Senior Insurance Managers' Regime to the following NEDs:

- Chairman;

- Senior Independent Director;
- Chair of the Risk Committee;
- Chair of the Audit Committee; and
- Chair of the Remuneration Committee.

The PRA's Senior Managers' Regime and Senior Insurance Managers' Regime will therefore focus on those NEDs with specific responsibilities for areas or committees directly relevant to a firm's safety and soundness. In addition to any collective responsibility they may have as members of the board, non-executives in scope of the Senior Managers' Regime and Senior Insurance Managers' Regime will be held individually accountable for their areas of responsibility. The PRA is also proposing to require firms to ensure that all board members are held to high standards of conduct.

The paper also includes details of the FCA's approach to non-executive directors. Following the FCA's decision to narrow the scope of its Senior Managers' Regime to include a smaller group of NEDs, the PRA is also consulting on notification and assessment requirements for those NEDs who are not included in the regime. This will allow the UK to comply with its EU requirements to ensure the suitability of all members of a bank's board.

Whistleblowing

The PCBS also recommended that banks put in place mechanisms to enable their employees to raise concerns internally, and that the PRA and the FCA ensure these mechanisms are effective. The PRA and the FCA have set out (on 23 February 2015) a package of measures to formalise firms' whistle-blowing procedures. These proposals aim to ensure that all employees are encouraged to blow the whistle where they suspect misconduct, confident that their concerns will be considered and that there will be no personal repercussions.

PRA 23.02.15

PRA publishes rules on Solvency II

The PRA has published its final rules setting out how it will implement the Solvency II Directive 2009/138/EC ('Solvency II') in the UK.

Solvency II puts in place a consistent and coherent solvency framework for insurers across Europe and aims to provide greater protection to policyholders by reducing the probability of an insurance firm failure. The framework better aligns capital requirements to firms' asset and liability profiles and enhances the quality of capital, providing greater protection. It also provides incentives to strengthen risk management, reporting and disclosure across the industry.

The policy statement sets out how the PRA will implement the 'long-term guarantees package'. Insurers can reduce the level of risk on some types of long-term liabilities, such as annuities, if they hold closely-matched, long-term assets to back them. The long-term guarantees package allows a firm to reduce its capital and reserving requirements, where the firm is closely matched and invested for the long term.

In addition to publishing the final rules, the PRA has also published a consultation paper on the application process for the 'volatility adjustment'. This is an adjustment to the Solvency II risk-free discount rate which will be used to value insurance liabilities. It is designed to mitigate the effect of short-term volatility in financial markets on valuation of insurers' long-term liabilities under Solvency II.

A firm wishing to use the volatility adjustment can submit a formal application after 1 April 2015. The PRA will assess applications on a case-by-case basis and will adopt a proportionate approach to reviews. The greater the impact of the volatility adjustment on the firm's financial position and risk profile, the greater the expected level of detail and justification that firms will need to provide in the application. The PRA will aim to make decisions on standalone applications (ie those that are not dependent on other approval decisions) to use the volatility adjustment within a six-week timeline, rather than the statutory maximum of six months.

The PRA recognises that firms may wish to submit both matching adjustment (which allows firms to benefit from using assets held to maturity in a portfolio backing illiquid liabilities) and volatility adjustment applications. The PRA will operate a harmonised approval process and will consider these applications in parallel.

Andrew Bailey, Deputy Governor, Prudential Regulation, Bank of England and CEO of the PRA said:

> 'Solvency II represents a fundamental change in the way that insurers are regulated. The papers published today provide clarity for UK firms on how the PRA will implement the new regime – acting in the interests of the wider economy and ensuring an appropriate level of policyholder protection. These publications will allow firms to finalise their preparations for Solvency II in order to be ready for the start of the regime on 1 January 2016.'

PRA 20.03.15

PRA consultation papers

Consultation paper 9/15: Strengthening accountability in banking: UK branches of foreign banks

This consultation sets out the PRA's and the FCA's proposals for extending and, where appropriate, tailoring the Senior Managers Regime ('SMR'), Certification Regime and Conduct Rules to UK branches of overseas banks and PRA designated investment firms ('incoming branches').

The consultation is in anticipation of secondary legislation which will extend the statutory elements of the above regimes to incoming branches. The consultation builds on the following previous consultation papers and supervisory statements:

- Consultation Paper 14/14, which consulted on the implementation of the accountability regimes in UK firms;
- Supervisory Statement 10/14, which set out the PRA's supervisory approach for incoming branches;
- Consultation Paper 28/14, which consulted on the technical aspects of the accountability regimes in UK firms; and
- Consultation Paper 7/15, which set out a revised approach to NEDs under the SMR and clarified the PRA's proposed application of the presumption of responsibility in the Financial Services and Markets Act 2000 ('FSMA 2000'), s 66B for UK firms.

This consultation and the consultation papers referred to above seek to implement the amendments which the Financial Services (Banking Reform) Act 2013 ('the Act') made to the FSMA 2000 to replace the Approved Persons Regime ('APR') for banks, building societies, credit unions and PRA-designated investment firms (collectively referred to as 'Relevant Authorised Persons' in FSMA 2000, s 71A) with a new regulatory framework for individuals. These statutory changes followed the recommendations of the PCBS.

This consultation is relevant to firms identified as Relevant Authorised Persons above, in particular overseas banks and designated investment firms operating in the UK through a branch.

Summary of proposals

Due to limitations on the PRA's supervisory powers over EEA branches under EU law, the PRA's proposals in this consultation paper are restricted to incoming non-EEA branches.

Senior managers regime

- All incoming non-EEA branches will be required to have their most senior individual approved by the PRA as a bespoke Senior Management Function ('SMF') of Head of Overseas Branch.
- Any dedicated CFO, CRO or Head of Internal Audit of an Incoming non-EEA country branch will need to be approved as the branch's corresponding SMF.
- An individual based in another group entity may require approval as Group Entity Senior Manager of a branch if they take direct decisions relating to its management or the conduct of its UK-regulated activities (e g certain Heads of Europe, Middle East and Africa ('EMEA')).
- Senior Managers in incoming branches will be subject to a customised set of PRA Prescribed Responsibilities reflecting those areas of a branch's activities which are subject to regulation in the UK.

Certification regime and conduct rules

- The scope of the PRA's certification regime for incoming non-EEA branches will be the same as for UK firms; ie it will cover staff identified as Material Risk Takers under the PRA's Remuneration Rules. The scope of the PRA Conduct Rules will also be the same as for UK firms.

This consultation closed on 25 May 2015.

PRA 16.03.15

Consultation paper 10/15: Regulated fees and levies: rates proposals 2015/16

This consultation paper proposes the fee rates to meet the PRA's 2015/16 Annual Funding Requirement and the 2015/16 rates for Special Project Fees for the financial period 1 March 2015 to 28 February 2016 for dual regulated FCA/PRA firms.

The consultation is relevant to all PRA-authorised firms.

Summary of the key proposals covered by the consultation paper

The consultation seeks views on the PRA's proposed:

- fee rates to meet the PRA's 2015/16 Annual Funding Requirement;
- fee rates in respect of the Special Project Fee for Solvency II;
- fee rates for the Special Project Fee for restructuring; and
- amendment to the PRA Financial Penalty Scheme.

The paper also sets out how the PRA intends to distribute refunds from the 2014/15 Annual Funding Requirement and Solvency II Special Project Fee.

The consultation closes on Tuesday 19 May 2015.

PRA 19.03.15

FCA News

FCA sets out approach to NEDs and the SMR

NEDs with specific responsibilities, such as Chairman, will come under the new SMR, the FCA and the PRA confirmed.

Following a detailed consultation across industry and with stakeholders it was also decided the regime would not apply to those NEDs who do not perform delegated responsibilities.

Martin Wheatley, Chief Executive of the FCA, said:

> 'Our approach is driven by wanting to ensure firms are managed in a way that reflects good governance and promotes the right culture and behaviours. Having a narrow SMR will also allow the FCA to focus regulatory resources on those responsible for key business areas and

> board committees. We want those senior individuals to be held accountable for the decisions they make and oversee. This is what people inside and outside the banking sector expect.
>
> NEDs play a vital role in providing challenge to and an independent oversight of the executive directors. Including all NEDs in the new regime would risk the unintended consequence of changing the whole nature of this vital role.'

The NED roles that will be in scope of the SMR are:

- Chairman;
- Senior Independent Director; and
- the Chairs of the Risk, Audit, Remuneration and Nominations Committees.

The individuals performing these roles will be subject to all aspects of the SMR, including regulatory pre-approval, the FCA's and PRA's new conduct rules and the presumption of responsibility. Those NEDs who fall outside of the SMR will no longer be subject to regulatory pre-approval, will not be subject to the conduct rules nor the presumption of responsibility.

Within the regime, senior executives will be expected to take accountability for the conduct of the business for which they are responsible. They are in a position to exercise a strong influence on the business and its culture through incentives and the messages that they give to staff.

This clear line of accountability can have a positive effect on the culture of firms and on outcomes for consumers and markets.

This paper also includes general guidance on the role and responsibilities of NEDs as well as consulting on the FCA's approach to NEDs in Solvency II firms, which the FCA proposes to align to the approach being taken for deposit takers and PRA designated investment firms.

The FCA and PRA also published a consultation on proposed whistleblowing rules for banks, building societies, credit unions and insurers. This includes a requirement for firms to appoint a whistleblowers' champion, who will be responsible for overseeing the effectiveness of internal whistleblowing arrangements, preparing an annual report to the board on their operation, and reporting to the regulator where an employment tribunal finds in favour of the whistleblower. The importance of robust internal whistleblowing procedures within firms was a key conclusion of the PCBS's report.

FCA 23.02.15

FCA publishes rules on retirement risk warnings

New rules published by the FCA will help to protect consumers wanting to access their pension savings from 6 April 2015 by requiring firms involved in the sale of retirement income products to give additional warnings tailored to them.

The 2014 Budget introduced new pension freedoms for consumers with defined contribution pension savings at retirement. In January, the FCA announced it would require firms to provide consumers with 'risk warnings' based on an individual's circumstances so that they can make an informed decision on their pension based on the benefits and risks involved.

Christopher Woolard, director of strategy and competition at the FCA, said:

> 'The pension reforms give those people who are nearing retirement greater choice on what to do with their pension pots. We want to ensure that they get the right information so that they can make informed decisions about their future.'

Firms are already required to provide risk warnings. However, these changes will require them to personalise those warnings to the individual and the choice they are making by asking a series of questions and actively engaging with the customer. The FCA's rules achieve a fair balance between protecting consumers and addressing valid concerns from firms about their ability to comply from 6 April 2015.

The new personalised 'risk warnings' must now be given to customers when they contact a firm to access their pension savings. The information will support the guidance by the government's Pension Wise service. One of the key purposes is to encourage people who have chosen not to seek regulated advice, to consider their options carefully before making an irreversible decision.

Firms should consider a number of issues when designing appropriate risk warnings, for example:

- the state of a consumer's health;
- tax implications;
- the impact on means-tested benefits; and
- investment scams.

Firms will need to keep records to show that consumers have received relevant warnings and whether they have taken regulated advice or guidance from Pension Wise.

The FCA is introducing the rules without consultation. However, the regulator has confirmed that it will undertake a review of 'at-retirement' rules in the summer of 2015 and will consult at that time on whether any changes need to be made to the rules published (on 27 February 2015).

FCA 27.02.15

FCA publishes its Business Plan for 2015/16 and announces details of new supervision and authorisation divisions

The Business Plan set out the areas the FCA will be working on in the coming year:

- to examine whether the sales practices of pension providers have improved since the 2014 review into annuities sales;
- to look at how firms were helping consumers make the right choice in relation to their pension given the options soon to be available to people as part of the government's pensions reforms;
- to look at how the mortgage market is working, in particular any barriers to competition and the ability of consumers to switch provider or access credit;
- to implement and review the consumer credit regime and the firms and practices within the sector;
- to take forward the announced wholesale market study into competition in investment and corporate banking;
- to monitor developments in technology and how that affects firms and consumers, including a market study on the use of Big Data in the insurance market;
- to contribute to international benchmark reform;
- to work with firms preparing for the implementation of MiFID II and the Market Abuse Regulation updates;
- to launch a market study on asset management that will examine charges paid by investors and what drives those charges; and
- from April, powers to enforce against unlawful anti-competitive behaviour in the financial services industry concurrent with the Competition and Markets Authority coming into effect.

This year's Business Plan also included the FCA's Risk Outlook which sets out the top seven high-level risks the financial services sector should consider in the coming years.

The FCA will continue to look at:

- technology developments and their impact on firms' investment, consumers and regulators;
- how poor culture and control continues to threaten market integrity;
- the impact of large back-books on how firms deal with existing customers; and
- consumer outcomes for pensions and retirement income products.

Specifically on consumer credit and complex terms and conditions, the FCA will monitor:

- poor culture and practice in consumer credit affordability assessments that could result in unaffordable debt; and
- the impact of the Consumer Rights Act coming into force in the autumn.

There is one new area of forward looking focus:

- firms' systems and controls in relation to financial crime.

FCA 24.03.15

FCA bans and fines

Kenneth Carver

The FCA has fined Kenneth Carver £35,212 for insider dealing. Carver, a retired accountant, purchased 62,000 shares in Logica Plc on the basis of information Ryan Willmott, a family friend, provided to him. Mr Willmott held inside information relating to a potential takeover of Logica through his employment at the group.

On 31 May 2012, CGI Inc publically announced its intention to make a cash acquisition of Logica at a significant premium, which caused the share price to increase by 59.8%. Shortly after the announcement Mr Carver sold all his shares, making a profit of £24,206.70.

FCA 30.03.15

Lloyd Pope and Peter Legerton

Lloyd Pope and Peter Legerton, former directors of advisory firm Tailor-Made Independent Ltd ('TMI'), have been banned from senior positions in financial services by the FCA. Pope has been fined £93,800, Legerton would have been fined £84,000, but for financial hardship.

The FCA found both men failed to ensure TMI assessed the suitability of investments made through self-invested personal pensions ('SIPPs') for its customers, failed to ensure that TMI identified and managed its conflicts of interests and failed to oversee properly TMI's compliance function, which had been outsourced to external consultants. Legerton also benefited financially from poorly managed conflicts of interest between TMI and an unregulated firm that introduced new business to TMI. TMI's customers typically invested in high risk investments and more than half of them invested in overseas property operated by the Harlequin group of companies, which are under investigation by the Serious Fraud Office.

FCA 20.03.15

Sam Kenny

Sam Kenny, the former chief executive of Gracechurch Investments Ltd, a stockbroking firm that is now dissolved, has been banned from holding a position in the financial services industry and fined £450,000 by the FCA. Mr Kenny led Gracechurch when it routinely mis-sold small-capitalised stocks through pressure, misrepresentation and unsuitable advice. Mr Kenny used pressure selling techniques himself.

FCA 13.03.15

EU AND INTERNATIONAL

ECB Announces Publication of a New Guideline on the Implementation of Monetary Policy

The ECB has published a new Guideline (ECB/2014/60) on the implementation of the Eurosystem monetary policy. This Guideline will replace Guideline ECB/2011/14, ie the current framework on Eurosystem monetary policy instruments and procedures, from 1 May 2015.

The new Guideline consolidates, simplifies and improves the clarity of the Eurosystem's existing general framework for monetary policy implementation. For this purpose, it consolidates several amendments to the Eurosystem framework made since 2011 and updates cross-references to several Union legal acts, such as the Capital Requirements Regulation (575/2013), the Capital Requirements Directive IV (2013/36/EU) and the European System of Accounts 2010.

Moreover, all provisions previously laid down in Annexes I and II to Guideline ECB/2011/14 (in particular Annex I, widely known as the 'General Documentation') have now been incorporated into the enacting terms of the new Guideline.

The new Guideline introduces some changes to the framework, including:

First, the provisions on open market operations have been revised to better align them with recently adopted practices and the Eurosystem's flexibility in the conduct of open market operations (Guideline, Title I, Ch 2). In addition, the timeframe for the execution of standard and quick tenders has been amended to allow for more time for the publication of tender announcement and allotment messages.

Second, the former classification of 'international or supranational institutions' has been replaced with the concept of 'multilateral development banks and international organizations' in order to align them with the definitions in other regulatory frameworks (Guideline, art 69);

Third, several changes have been made to the eligibility criteria of asset-backed securities ('ABS') aimed at enhancing the security and transparency of the debt instruments accepted by the Eurosystem, which will also contribute to improving the functioning of the ABS market, namely:

(1) exclusion of ABS comprising receivables with residual value – with a four-month grandfathering period for those ABS that will be on the list of eligible assets on 1 May 2015 (Guideline, art 73.7);

(2) introduction of additional criteria for the place of incorporation of mortgage trustees or receivables trustees in ABS transactions – with a one-year grandfathering period for those ABS that will be on the list of eligible assets on 1 May 2015 (Guideline, art 74.3);

(3) enhancement of the framework on ABS surveillance reports requirement (Guideline, art 88.2);

(4) further specification of the rules governing the provision of liquidity support in respect of ABS – these provisions shall apply as from 1 November 2015 (Guideline, art 142); and

(5) removal of the requirements for counterparties to inform the Eurosystem of modifications to the ABS that took place in the preceding six months and of any planned modification to the ABS.

Fourth, changes have been made to the rules governing the own-use of multi-cédulas issued after 1 May 2015 along with the clarification that the Eurosystem will consider the relation between each of the underlying cédulas issuers and respective counterparties for determining the existence of close links (Guideline, art 138).

Fifth, provisions restricting the own-use of government guaranteed unsecured debt instruments have been clarified (Guideline, art 139).

Guideline ECB/2014/60 is published on the ECB's website for information purposes. The Guideline in 23 official EU languages is expected to be published in the course of April 2015 in the Official Journal of the European Union.

ECB 20.02.15

Revisions to Implementation of Margin Requirements for Non-centrally Cleared Derivatives Issued by the Basel Committee and the International Organization of Securities Commissions

The Basel Committee on Banking Supervision and the International Organization of Securities Commissions ('IOSCO') released (on 18 March 2015) revisions to the framework for margin requirements for non-centrally cleared derivatives. The revised framework is available on the websites of the Bank for International Settlements and IOSCO.

The framework was originally published in September 2013, after two public consultations. Recognising the complexity of implementing the framework, the Basel Committee and IOSCO have agreed to (i) delay the implementation of requirements to exchange both initial margin and variation margin by nine months; and (ii) adopt a phase-in arrangement for the requirement to exchange variation margin.

Relative to the 2013 framework, the revisions published (on 18 March 2015) delay the beginning of the phase-in period for collecting and posting initial margin on non-centrally cleared trades from 1 December 2015 to 1 September 2016. The full phase-in schedule has been adjusted to reflect this nine-month delay. The revisions also institute a six-month phase-in of the requirement to exchange variation margin, beginning 1 September 2016.

These changes are summarised in https://www.bis.org/bcbs/publ/d317_summarytable.pdf.

Consistent with their mandate, the Basel Committee and IOSCO will continue to monitor progress in implementation to ensure consistent implementation across products, jurisdictions and market participants. This includes monitoring domestic rule-making as well as considering guidance on the validation and backtesting of models for margining.

The Basel Committee and IOSCO will also liaise with industry as market participants continue their work to develop initial margin models that will be required to comply with the margin requirements. This engagement will help ensure that emerging quantitative initial margin models are consistent with the framework but will not provide an explicit review or approval of any initial margin model.

BIS 18.03.15

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