

## UK Finance response to HM Treasury consultation and call for evidence on Payments Regulation and the Systemic Perimeter

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**Sent to:** PaymentsPerimeterConsultation@hmtreasury.gov.uk

UK Finance is the collective voice for the banking and finance industry.

Representing more than 300 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

UK Finance welcomes the opportunity to respond to HM Treasury's consultation and call for evidence on Payments Regulation and the Systemic Perimeter. This consultation is important for a number of concurrent policy issues in the financial services and payments landscape.

In recent years, the payments market has become an increasingly diverse and complex industry that is evolving at rapid speed. Payments not only provides the foundations for the wider economy but continues to enable innovation and drive changes in technology and society. The UK payments industry continues to enhance how customers and businesses interact, with major changes underway in all parts of the industry.

A number of changes in the UK are world leading and we anticipate they will allow for the development of new types of products and services that will become central to how we interact with banks and financial services providers in the future. The UK is one of the most sophisticated, mature, resilient and innovative payments markets in the world, and this response sets out how we and our members believe it can remain so. Given the level of innovation, it is important that any expansion of the Bank of England's systemic perimeter does not undermine the UK's pro-innovation regulatory environment and long running policy which has fostered the world leading market we describe which delivers benefits to consumers and businesses up and down the country.

We are at a time of fundamental change for the regulatory landscape in the UK. Much of our regulation for financial services, but specifically payments, is EU-retained legislation. Through the Financial Services and Markets (FSM) Bill, we are seeing the introduction of the Future Regulatory Framework (FRF), which we agree will fundamentally change the landscape and powers of the regulators and their ability to make changes.

The biggest challenge to the changes we are seeing is the adoption and rejection of certain aspects of EU retained law into the current UK regulatory framework. UK Finance expect this process will take much more time than the current government is suggesting and for a complex area like payments we would like to see this happen over a period of years. We have concerns that many changes are currently happening in multiple places, through several consultations and pieces of legislation (such as through stablecoin legislation, the FRF, this consultation and other reforms), without a broad underpinning across all of the changes.

Whilst we recognise the overall aims of the different consultations and legislative processes, we have concerns that the end state we are heading for could have many unintended consequences. We would encourage the Bank of England to consult holistically on the proposals for the regulation of future potential systemic entities. This is particularly due to the fact that these expanded powers would cover markets that the Bank of England has no historic experience with. To achieve the 'same risk, same regulatory outcome' approach, it would be useful to have further guidance on the criteria needed to for a firm to become systemic.

In addition to this, consultations for firms that are providers would be necessary in order to understand whether they will likely become systemic; this will help differ firms by business model, role and size. Further, it is important that the competition and consumer protection implications of such changes are well considered before the Bank of England is given (or acts under) a broader scope of powers. This is because the market for payment services is much more dynamic and complex than the FMI ecosystem currently within scope of the Bank of England's regulatory perimeter. Additionally, the powers the Bank of England over designated PSPs and the circumstance in which they can be used should be clear to providers. These powers need to be exercised proportionately, with due regard for their effect on competition and innovation in the broad payment services market.

The proposed approach to systemic regulation goes far beyond any other jurisdiction and while we believe it is a direction other jurisdictions will move to, this may have unforeseen consequences on equivalence and innovation. This is particularly true should firms, when acting in the UK, be potentially subject to further regulation once they become systemic, where they would not in other jurisdictions. Furthermore, any changes will need to be assessed against onshoring EU retained legislation and when considering areas where networks help drive an efficient market, such as payments systems.

To mitigate these concerns, and the potential difficulties that may arise from the loss of the passporting of licenses to operate under EU rules, it would be prudent for HMT's proposals to focus on the key elements that would attract investment, encourage international competitiveness, and show the UK currently as a better place than it was before to invest in payments infrastructure.

As the roles and responsibilities of the regulators get recalibrated, UK Finance believe a clear identification of which objectives and responsibilities take precedence across the UK's payments regulatory landscape is necessary to avoid confusion. Current proposals do contain elements that simplify who does what. For example, the Bank to cover all systemic actors linked to payments systems and the PSR as the competition regulator; but more clarity is needed by industry to understand and plan for future regulatory expectations and resource requirements. We also believe that the statutory objectives of all the regulators in the payments space, but particularly the Bank of England and the PSR, should be reviewed in more detail.

In some instances, the current proposals are not clear when mapping out the scope and responsibilities of each regulator. For example, there needs to be a clear engagement model between the FCA, PRA and PSR (and now the Bank of England) when a firm moves to become systemic and falls under a different scope. This is compounded by the broad definition proposed for systemic firms, which could cover any market participant as currently drafted.

The development of the UK's regulatory coordination merits further discussion in this space and engagement on the mandate and direction of regulatory bodies to achieve the opportunities presented whilst mitigating the risks would be welcome.

UK Finance welcome section 2.51 of the consultation that sets out how regulators are required to work together through a memorandum of understating (MoU) to reflect their new supervisory responsibilities. Overall, to ensure the above works effectively and allow the UK to adopt truly innovative choices, we would expect HMT to oversee and review the MoU, so a clear picture of the UK's regulatory framework is produced. We would further propose that given the potential for further complexity, that the MoU is publicly consulted on.

We are unsure why a reference was not included in the consultation to the proposal to extend the regulatory perimeter to include access to cash and wholesale cash providers. Though the consultation predates the publication of the draft FSM Bill, the extension to include cash had been well trailed (and has ultimately been introduced by way of the FSM Bill schedules 8 and 9, amending the Banking Act 2009). The changes bringing in wholesale cash providers are a working example of a significant extension of the perimeter. We are engaging separately on the Bill but note that some of the points we have made in this response, for example, about the lack of clarity that may result from the broad way that providers have been categorised, or concerns about how the use of some powers may distort the competitive landscape.

More broadly than this consultation, UK Finance would welcome greater 'air traffic control' for payments regulation and legislation that goes beyond the 'regulatory initiatives grid'. We therefore propose a new coordinating forum for the payments sector between regulators and industry representatives.

**1. Do you agree that in line with the principle of 'same risk, same regulatory outcome', the Bank of England should have responsibility for supervising systemic actors within payment chains?**

UK Finance broadly agree that the Bank of England should have greater responsibility for supervising additional types of firms that become systemic actors in payment chains. However, we note that the extension of the Bank of England's powers over systemic firms should be proportionate and incremental, and we have some concerns with the broadness of powers currently proposed.

Although HM Treasury will be extending powers to the Bank of England, we expect in reality, this will sit with the PRA which largely oversees other systemic entities at present. We would expect the PRA to ensure it has the appropriate understanding and knowledge of emerging systemic entities through engaging sufficiently with the sector.

There is a huge diversity in terms of the different types of companies active in the payments ecosystem that renders the industry unrecognisable from just a few years ago. The traditional payments value chain has fragmented, unbundled, and lengthened with niche providers identifying links in the chain that they believe they can forge better and more cheaply. This has meant greater competition in the payments space which has led to segments of the payments ecosystem to offer lower prices and more choice for consumers in the way they choose to transact and do business.

Accordingly, innovation in payments has enabled new business models in the wider economy to thrive. Businesses that could not have existed a decade ago, especially in the platform economy, can exist because of innovation in payments. Adding value to our payment chains, through improving and modernising existing infrastructure as well as the introduction of new products, would be of great benefit to the consumer who could tailor their method of payment to a particular product that would enhance their experience when making a transaction.

On a broad basis, UK Finance are of the view that it is incredibly important for the long-term success of the payments sector to ensure that the right incentives and requirements exist for firms to succeed. This means it is vital for firms to have certainty regarding their regulatory expectations. In other words, when and how they may be supervised under the Banking Act, especially if they move from no supervision, or from sole supervision by the FCA (as would be the case for electronic money and payment institutions (EMIs and PIs)).

For payment systems, as it is today, HMT must consult with the firm, notify the Bank, the PSR and potentially the FCA before designation. However, for associated service providers (ASPs), there is currently no set criteria. We suggest ASPs should have a good sense of the possibility that they may be designated based on the criticality of the services they provide.

Regulators should be cautious on balancing the need to ensure proportionate regulation with widespread growth. We welcome the need for greater regulation where a firm poses potential systemic risk but encourage the FCA and the Bank of England to consider a proportionate and staged increase or transition of supervision, regardless of firm type.

Further to this, the FCA and the Bank will need to agree on the approach and practical steps they will adopt to determine how they will transition a firm as they become systemic. Therefore, firms will need to have mapped out the transition process as they make the move from being regulated by the FCA to the Bank of England.

The threshold for firms becoming truly systemic needs to remain high and for the transition to occur it must entail that a failure of the firm's functions would genuinely endanger the financial stability of the UK. We recognise that this is an art and not necessarily a science as a one size fits all approach would not work.

There is ambiguity in the powers granted to the Bank of England. Whilst we appreciate this broadness is a deliberate design principle to 'future proof' the framework, it could have the effect of causing significant market uncertainty about the entities and types of entities that could, at least in the immediate term, be in scope.

## **2. Do you agree with the government's approach that the existing architecture of Part 5 of the Banking Act 2009 should be reflected in any expansion in the scope of Bank supervision – with criteria to determine systemic importance, and recognition by the Treasury?**

UK Finance broadly agree that the Bank of England should have greater responsibility for supervising systemic actors in payment chains, however, we have concern regarding the clarity on what will trigger the recognition and transition process as well as how agile this will be so the UK's payments system can keep up with innovation and the changing landscape. It would be useful architecturally if the review could be further aligned with and take note of the aims of the FRF, particularly around statutory objectives and accountability.

Currently, the Bank has power (where a firm is recognised) to make specific directions, insist on codes of practice, changes to system rules and many others. These powers are very significant and means the Bank of England can exert a substantial amount of control on a firm's business model. This was appropriate in the context of the financial crisis, when this legislation was first passed, but we have concerns regarding how wide reaching these powers are today and whether it is appropriate to extend the full suite of powers to firms that are not payment systems.

UK Finance appreciates this needs a balanced approach as we are seeing non-payment firms (often carrying out outsourcing activities on behalf of other firms) playing increasingly systemic roles. In these instances, there must be some checks and balances to ensure the integrity and resilience of payments systems. As mentioned previously in our response, there needs to be a high threshold for these players to come under the scope of being systemic and it should be carefully considered how recognition and the scope of powers under the Banking Act when used may distort the competitive landscape.

UK Finance believe that HM Treasury should consider whether a 'copy/paste' approach regarding the recognition process of systemic firms relating to non-FMIs is appropriate given the potential unintended consequences of systemic regulation and market distorting effects this could have. Largely, the elements of oversight should be similar however, we do not believe the blanket application of rules and approach the Bank of England takes to the supervision of recognised firms, nor the process for recognition, is sufficiently transparent for firms and we welcome the statement by HM Treasury that more criteria would be put in place in order to appreciate different types of entities.

We would welcome more public consultations on this process to ensure there is better understanding of how the Bank of England intends to regulate non-FMIs and non-financial service suppliers to FMIs. We recognise the complexity in this area and therefore would welcome working with the Bank of England, FCA and HM Treasury to ensure this is calibrated correctly.

### 3. Do you agree with the government's approach to supervising different types of systemic service provider described above?

We agree that it is appropriate for different types of systemic service providers to be supervised in different ways. As payment systems continue to develop with different models and participating entities, it will be essential that supervision should be proportionally equal to the impact and risks that the firm is capable of through its activity in relation to the system, other participants and end users. This will help future proof the regulation to cater for new business models and technologies that may evolve or may be in place at present such as crypto asset exchanges.

More clarity will be needed to define exactly what firms could be deemed to be systemic service providers. At present we presume 206A of the Banking Act will only apply to actors in the payments chain. This all needs to be considered against the evolving discussion of the critical third party (CTP) discussion paper as essentially this is suggesting an entity approach.

As the CTP regime has not yet been agreed and the pace of conversation is moving as quickly and dynamically as this one, any changes could have an impact on firms' recognition under the future Banking Act. Therefore, we may end up with firms that are not captured under either regime despite being of the same systemic importance as others due to their primary purpose and consideration of the comparative requirements under each regime. This may have considerable impacts on competition.

Our understanding of HM Treasury's proposals is that some entities may be judged to be systemic, perhaps due to their market share in a completely new or novel technology and therefore could be under the same scrutiny as a much larger firm, in an established market, whose business have more systemic ramifications.

Essentially a firm may be systemic because it is one of only a small number of entities providing what HMT judges to be a critical service. Policymakers and regulators will therefore need to consider



how to manage this in an emerging system and ensure that systemic designation reflects the size and scale of entities and does not unfairly disadvantage innovators vis-a-vis more established peer firms or the reverse in some emerging markets.

**4. Do you agree that general IT and technology firms should typically fall within the critical third party framework instead of the Banking Act, and do you have views on if the current reference to these entities in the Banking Act should be modified, and how?**

We broadly agree with this suggestion, but it would be useful to have further transparency on what a general IT and technology firm entails to ensure the split is fair. We note that there could be circumstances where a firm that provides necessary IT infrastructure so a bank can provide a certain product, and it would be wrong to consider this firm a banking provider.

UK Finance note that a definitive opinion on this is difficult to come to until we understand the criteria that will be applied to the critical third-party framework (which is still to be confirmed). We would need to know that the criteria for each regime would capture the systemic and critical firms with no gaps in coverage to prevent the risks from materialising. If some of the services that IT and technology firms provide are not accounted for in the critical third-party framework, then we would not want to discount such firms from the Banking Act where those services are integral to payments.

In other words, our preference is for firms that provide IT and technology infrastructure to banking providers to be under the critical third-party framework. However, until this framework is defined, it would be sensible to think about how those services that are integral to the payments system may be under the scope of the Banking Act should the critical third-party framework not sufficiently plug the gaps in systemic provision.

Finally, it would also be helpful to understand how a firm will be regulated if it falls within the critical third-party framework initially but then develops a role in relation to payments that is considered systemic.

**5. Do you agree with the government's view that the Bank should have the ability to gather information for the purposes of keeping markets under review from the perspective of understanding systemic risk, in the way proposed above? Are there any features that you consider would be important for this to be an effective and proportionate power?**

We believe it makes sense for the Bank of England to have this power, however we ask for greater transparency on what this means in practice. It should also be clear what the consequence of non-compliance would mean here. There should be consideration for alignment with the information gathering powers that are stated in the Financial Services and Markets Act (FSMA).

We agree it is vital that HM Treasury and the Bank of England make decisions on systemic designation based on an up-to-date picture of the market, and therefore have access to contemporary data. Rapid development, including the entry and growth of new players, will be a key feature of the UK payments market. Success in keeping track with developments will ensure that HM Treasury and the Bank of England are operating according to an up-to-date analysis of systemic risk would avoid asymmetry in the market.

As previously mentioned, many PIs and EMLs are already subject to high levels of regulatory scrutiny and supervision and additional oversight from the Bank of England should not be unnecessarily

duplicative or unduly onerous on firms. If a PI or EMI becomes systemic, then the regulatory scrutiny will move from the FCA to the Bank of England. Elements of the current supervisory activity should be supplemented by the added systemic focus and elements that can be merged and/or simplified should be considered. This would help form preparatory work by the regulators.

In this instance, The Bank of England should have defined and transparent powers to collect foundational information from the market so that it can identify in a timely manner entities that might be subject to systemic recognition. Given this data request power could extend to any non-designated entity, a proportionate approach would be to grant the power to collect additional firm-level data only where the firm triggers a systemic indicator.

Bank of England data requests should also be mindful of the regulatory bodies who cover the PIs and EMIs they are requesting the information from (i.e. the Bank of England should closely coordinate with the FCA).

**6. Do you agree with the government's proposal to clarify the Bank's ability to apply limits where necessary for recognised entities within an expanded regulatory perimeter; to specify the circumstances in which they may be relevant; and views on what those circumstances might be?**

UK Finance has concerns regarding the ability for the Bank of England to set limits. Our initial view is that we disagree with this ability and do not believe it is appropriate for the Bank to have the legislative powers to apply limits to the volume or value of payment transactions. While we recognise the Banking Act powers are broad and that limits are already covered in existing powers, we cannot foresee a circumstance in which a regulated systemic firm would not be cooperating with the Bank of England on limiting value or volume limits in the circumstance of an outage or insolvency of a participating firm in a payment system.

Section 5 of the Banking Act is currently very broad in assuming the Bank of England has the power to limit transactions where necessary and in certain circumstances. Our view is that this could set an unbalanced precedent with regards to new payments technologies such as stablecoins and underlines the need for competition to be a key consideration of the Bank of England. Our view is that this may dissuade the industry from being involved with such products. The current proposal may allow the Bank of England to limit the issuance of a stablecoin, which we do not see in line with the principle of 'same risk, same regulatory outcome'.

UK Finance are of the view further guidance, and not legislation, is needed to set transparent parameters on how these limits would be applied proportionately, as well as guidance on the considerations and thresholds that would have to be met to give the market more confidence on this matter. This should be subject to consultation and UK Finance would be happy to work with the Bank of England and HM Treasury on calibrating this correctly.

**7. Do you consider that providing greater clarity as to the nature of the Bank's supervisory powers would provide greater transparency? If so, do you have views on how this should be provided, for example directly in the legislation, or as a supplementary annex, or in some other form?**

Broadly, UK Finance agree that there needs to be greater transparency on the Bank's supervisory powers and the recognition process. We welcome HM Treasury acknowledging the need for further transparency and UK Finance is of the view that this should not be placed in legislation given the very limited ability to alter primary legislation. We also feel a legislative approach does not provide

sufficient consultation with the industry, nor other stakeholder where it is appropriate for public discourse.

Engagement on the above could form part of the HM Treasury response to this consultation and would support the Bank of England's actions to set out its powers and approach on these issues; again, UK Finance would be happy to work with the Bank of England and HM Treasury on this.

We would note though, that only the courts can currently test the powers of the Bank of England, and so far, there has been no case law on this for Part 5 of the Banking Act. We view that operating with transparency and integrity should be the main principle of the Bank of England's remit, which would help to ensure that clarity is achieved and that any stated powers would then be appropriately reflected in case law should such a situation arise.

**8. Do you agree with the government's proposed approach to requirements for establishment under the Banking Act and the rationale provided? What are your views on the adequacy of the existing requirements under the Payment Services and Electronic Money Regulations?**

The policy and regulatory regime for payments in the UK has to a large extent created an environment that fosters innovation, competition, and diversity in the sector, combining this with an effective and comprehensive regulatory framework where issues have arisen.

In the specific area of payments and e-money regulation, the UK has, to date, broadly struck a balanced approach, which has fostered innovation thus facilitating the emergence of firms with different business models, and the establishment of regulated non-banks with a form and function that differs significantly from credit institutions. We have a world-leading regime that is resilient, innovative and where firms broadly know their regulatory expectations.

We also agree with clarifying, in law, the Bank of England's existing discretion to impose a location requirement and keeping in place the existing establishment requirements within the FCA's regulatory perimeter. We note, however, that the exercise of a power regarding location should be taken only in exceptional circumstances. Practically, location requirements should differ depending on the type of entity in question, their role in the market and their criticality to the wider industry and customers.

More broadly, we would encourage the government and regulators to preserve and enhance the existing payment institution and electronic money institution frameworks and ensure that there remains a distinct regulatory classification which enables and supports responsible innovation.

**9. Do you support the co-supervisory model proposed between the regulatory authorities, allowing the Bank of England to take primacy for systemic entities for reasons of financial stability? Do you support the principle of the primacy of the FMI SAR for systemic payments entities?**

UK Finance welcome the need for greater regulation where a firm poses potential systemic risk but encourage regulators to consider this in a graduated and proportionate way, regardless of firm type.

Whilst we recognise the overall aim of the different consultations and legislative processes, we have concerns that the end state we are heading for could have many unintended consequences. We would encourage the Bank of England to consult holistically on the proposals for the regulation of potential systemic entities that we may see in the future. This is particularly due to the expanded



powers covering markets that the Bank of England has no historic experience with dealing with on a general basis.

Given this and the potential for further regulatory complexity being introduced into the system, we view the co-supervisory model and how it works in practice to be particularly important. UK Finance is therefore of the view that a more fundamental review of the overlap between regulators in the payments space should be undertaken. This should also ensure statutory objectives are well calibrated.

Our view is that the Bank of England should have a secondary competition objective to ensure it does not create competition bubbles or arbitrage in the market where it does recognise a firm as systemic or where it intervenes in the market. The impact on consumer protection given the proposed expanded powers should also be reflected on carefully.

It does appear that considerable thought is being given as to how a systemic stablecoin operator or service provider might be under both the Bank of England and the FCA's oversight by disapplying FCA rules within the Bank of England's prudential regime. This would need cooperation between regulators to consider how this would apply. We agree that HMT would need to consult with all relevant regulators.

The potential for a transitional regulatory arrangement may be required. It will also be necessary for the FCA to monitor firms in potential scope of this dual oversight, as they grow, to ensure that the Bank of England and, where appropriate, other regulators are aware of emerging systemic issues. It would also be helpful to understand if dual supervision would remain the norm once the firm had fully transitioned to systemic status.

Regarding the FMI SAR, we view it is broadly sensible to reuse the FMI SAR in the circumstance for recognised and systemic firms but note that further attention should be given to how this may apply to varying business models.

We would expect the FMI SAR to be capable of covering systemic payment entities and note that it could be practical for the Bank to take the lead were there to be regulatory conflict and apply the FMI SAR regime in the event of a systemic insolvency. We note that the Banking Act may apply to more than just the systems or FMIs in future. This is important in the context of the SAR as the FMI SAR may not be appropriate to apply to other service providers in the market that are not payment systems or stablecoin issuers and could therefore have unintended consequences unless reviewed in detail.

The Bank of England should clarify what this means and whether it would (or should) reduce the scope of other regulators' powers. It needs clarifying that once a firm becomes systemic and potentially dual supervised by the Bank and the FCA, whether the former would lead if such firm would need to be overseen by the FMI SAR.

#### **10. Do you consider that the government should apply the FRF accountability framework to the Bank of England in its supervision of a wider payments perimeter?**

UK Finance agree that the government should apply the FRF accountability framework to the Bank of England. It should also be considered whether other aspects of the FRF should also apply to the Bank of England given its proposed expanded role.

UK Finance are strongly of the view that introducing a secondary objective for competition is important given the impacts that the proposed expanded regime may have, where the Bank of England will be potentially intervening in the payment services market for the first time it should ensure its powers are exercised in such a way that they do not harm or hinder competition.

It is for this reason that we feel an innovation objective would not give sufficient depth of consideration to the Bank of England. This part of the industry is complex with many drivers of competition that do not have parallels with the proposed objective for Central Counterparties and Central Securities Depositories (CCPs and CSDs). The scope of the powers proposed in this consultation could have substantial implications for the sector. Should they be used in the way they have for existing payment systems, it could have impact on a number of business models as well as the long-term regulatory landscape in the UK. We therefore feel a secondary objective for competition may give some assurance regarding the competition concerns that have arisen because of the Bank of England's primary objectives and allow for a framework that fosters a competitive and resilient environment that can bring future payments systems and technologies into the wider payments ecosystem.

#### 11. Do you have views on the government's proposed approach to aligning the FRF Review with the regulatory landscape for payments?

We are supportive of the proposed approach to align the FRF review with the regulatory landscape for payments. We believe that this will remove hurdles for regulators to make changes to payments regulation more efficiently without having to change legislation.

This will ideally enable an adaptive and flexible regulatory model that aligns payments regulations with other types of financial regulation that the FCA is responsible for. Removing the legal basis of existing payment regulations and handing responsibility for setting regulatory expectations to Parliament will require strong independence from the FCA to ensure that any new regulations and supervisory powers will provide equivalence or enhanced coverage to the framework we currently have, and that firms and consumers are not 'worse off' under new regulations.

While we support the direction, much of the future detail is very important to the sector and so we look forward to engaging with HM Treasury and the regulators as we move to review specific pieces of EU-retained law. We believe that this is best done on a gradual basis over a number of years.

UK Finance do remain of the view that a review of regulatory overlap and powers should be undertaken in payments; this will help to coordinate views as we move towards reviewing EU-retained law, including what should remain in primary legislation versus what is more appropriate in regulatory rulebooks. We do not wish to see de-regulation in the payments sector necessarily but would seek to work with HM Treasury and regulators on fine-tuning the regime to balance the competing demands of competition, innovation, confidence and safety.

As the roles and responsibilities of the regulators get recalibrated, UK Finance believe a clear identification of which objectives and responsibilities take precedence across the UK's payments regulatory landscape is necessary to avoid confusion. Current proposals do contain elements that simplify who does what. For example, the Bank of England to cover all systemic actors linked to payments systems, but more clarity is needed by industry to understand and plan for future regulatory expectations and resource requirements. We also believe that the statutory objectives of all the regulators in the payments space, but particularly the Bank of England and the PSR, should be reviewed in more detail.

**12. Do you think that the Senior Managers & Certification Regime should apply to recognised payments entities within the Bank of England's regulatory perimeter, including if this is expanded?**

UK Finance supports the government and regulators aims to ensure the right culture of accountability in FMIs, given the sector's systemic importance to the UK. However, we support a more nuanced approach that does not replicate the existing SM&CR as applied to banks, insurers and other FSMA firms in the 'enhanced' category'. The SM&CR regime was set up after the financial crisis to mitigate very specific risks in banks and investment firms, who perform activities like client dealing, proprietary trading, and the lending and holding of client funds. These functions do not exist in payment systems. Extending the SM&CR regime, as is currently proposed, would impose significant costs on UK based businesses and such a move would also be at a great cost to UK payment systems, placing them at a direct competitive disadvantage to international competitors.

UK Finance would support a more proportionate approach that can be introduced more rapidly, allow for greater flexibility and for the regime to ensure greater individual accountability. This should take into account the fact that FMIs:

- Operate to very different business models compared to banks and insurers.
- Predominantly operate B2B services, compared to the B2C type relationships adopted by banks and insurers.
- Minimise, rather than actively take on risk.
- Some do not always have direct control over the resilience of operations relevant to financial stability.
- Have remuneration structures for their employees that are not the same as Material Risk Takers in banks and insurers.

Overall, we believe that the evidence base supporting such a move is set out clearly first and following this step, a voluntary and more flexible solution is found which takes into account the investment and recognition that the proposals go beyond a set of internationally accepted (and implemented) rules, imposing additional regulations on UK firms, stifling innovation and growth, and putting them at a competitive disadvantage.

**13. Do you consider that a SM&CR regime would be beneficial within the FCA's sphere of supervision, and on what basis?**

UK Finance has not had the chance to fully consult our EMI and PI members on whether an FCA SM&CR is appropriate, and we will return to HM Treasury with further detail once this has been discussed in more detail.

However, at a broad level we have some concerns regarding resource requirements, and if an SM&CR was to be implemented for EMIs and PIs, assurances should be given that the FCA is adequately resourced to react to and oversee changes to the current regime. We would also note that the detail of the regime's application would be very important.

**14. Do you agree with the government's proposals to simplify the regulatory regime governing access to payment systems?**

UK Finance agree that a simplification is needed. However, the wider space related to access to payment systems is heavily interlinked with the development of the New Payments Architecture

(NPA), as well as the wider issue of de-risking and anti-money laundering rules and needs careful thought. UK Finance has not been able to discuss this section in detail with members given the broadness of the consultation and so will return to HM Treasury with more fully formed views in due course.

However, broadly, the move to FSBRA regulation provides greater clarity for firms to understand access requirements. The access approach under FSBRA seems to better acknowledge the rationale for underlying access, which is to ensure access to infrastructures that are essential rather than the current regime through the PSR's approach which mandated access to all players in scope, irrespective of whether or not their infrastructure is essential.

**15. Do you consider that there is merit in the PSR being able to impose a penalty on designated systems and their participants for 'misleading information', where a person knowingly or recklessly provides the PSR with false or misleading information? Do you have any views on what would be a fair and effective route of appeal?**

UK Finance believe that it is fair for the PSR to have the ability to impose a penalty on designated systems and their participants for 'misleading information'. This seems fair as it ensures discipline in information sharing and highlights when a firm has failed in its obligations to help regulators achieve their statutory objectives and perform their functions to help ensure the payments ecosystem is efficient and robust. However, any rules on penalties should be proportionate and strictly limited to what is necessary to achieve the legislative goal.

Given the proposal to align PSR to the CMA appeal process, it seems appropriate that a firm could appeal the PSR's decision. There would need to be a fair and effective route of appeal to ensure that there is consideration for the possibility of resolutions from a firm providing misleading information inadvertently (unless this is a repeat offence).

**16. The government would welcome views on any of the issues identified above in relation to the operation of FSBRA.**

We would also support the PSR being given similar powers to the FCA. For example, to require supervised firms to pay specifically calculated amounts to victims by way of redress for their misconduct and to be granted restitution powers by allowing the regulator to apply to the court for a restitution order. This is similar to the FCA's own administrative powers and would formalise the PSR being in scope of the investigation of complaints section of the Financial Services and Markets Act.

Clarity is also needed to determine whether the PSR has discretion over its own powers to decide which are the most appropriate to enforce in each given case. We support this being changed as it impacts the PSR's ability to act in the most appropriate way relating to the circumstance and under which route this is determined by the applicant.

If you have any questions relating to this response, please contact [will.lee@ukfinance.org.uk](mailto:will.lee@ukfinance.org.uk) or [david.song@ukfinance.org.uk](mailto:david.song@ukfinance.org.uk)