UK Finance

Response to Prudential Regulation Authority on

CP11/24 – International firms: Updates to SS5/21 and branch reporting

October 2024

1. Introduction

1.1. UK Finance is the collective voice for the banking and finance industry. Representing 300 firms, we are a centre of trust, expertise and collaboration at the heart of financial services, championing a thriving sector and building a better society.

1.2. We welcome the opportunity to respond to the Prudential Regulation Authority (PRA)'s Consultation Paper CP11/24 on *International firms: Updates to SS5/21 and branch reporting*.

2. General Comments

2.1. We support the PRA's efforts to update SS5/21 to reflect developments since its publication and to provide detail or clarification on certain aspects of the PRA's approach, whilst maintaining the principle of responsible openness.

2.2. We recognise that many overseas banks or banking groups operating in the UK are significant providers of financial services to the UK economy and welcome the PRA's receptiveness to hosting highly integrated international banking operations, whilst being committed to maintaining safety and soundness.

2.3. The PRA's proposed updates will help to better ensure that the PRA is able to meet its primary objective and mitigate risks to UK depositors and financial stability, whilst supporting its secondary objectives of facilitating competition and the international competitiveness of the UK as a global financial centre and the medium- to long-term growth of the UK economy.

2.4. However, we believe that some aspects of the proposal are unclear or require further consideration. This response provides comments from UK Finance on behalf of our members.

3. Specific Comments

Branch risk appetite

Total retail and small company demand deposit threshold

3.1. When determining whether it would be appropriate for an international bank to operate in the UK as a branch rather than a subsidiary, the PRA is proposing to include an additional indicative threshold of £300 million of total retail and small company demand deposits, as well as maintaining the existing threshold of £100 million of retail and small company demand deposits, but suitably amended to clarify that this threshold applies to amounts under the Financial Services Compensation Scheme (FSCS) deposit limit, not the total amount in any FSCS-eligible account..

3.2. We agree with the need to introduce this new indicative threshold to address cases where a branch is holding material demand deposits over the FSCS maximum compensation limit. This will enable the PRA to identify earlier any growth in a branch's uncovered demand deposit activity.

3.3. However, we consider it difficult to give an opinion and view on the specific level of the thresholds set out in the CP at this stage (particularly those relating to FSCS covered deposits). As noted in the proposal, the PRA and the Financial Conduct Authority (FCA) intend to review the deposit protection limit during 2024. If the deposit protection limit were to increase, (we believe it should) the current £100 million threshold should be reassessed accordingly as the threshold could be exceeded more easily. A decision on the trigger threshold should therefore be delayed until the review of the FSCS limit has been completed in 2025 and its actual impact on the scope of trigger can be more accurately estimated, enabling the thresholds to be calibrated appropriately. Alternatively, the PRA could consider including a mechanism to recalibrate the threshold in proportion to any future changes to the FSCS deposit compensation limit.

3.4. In addition, the current legislative work on the Bank Resolution (Recapitalisation) Bill is another policy initiative relevant to this CP's proposals. UK subsidiaries of international firms are subject to the application of the UK resolution regime. It should be noted that depending on the threshold, more branches may be required to subsidiarise, bringing them within its ambit. This may alter the attractiveness of the UK market to third country banks, impacting competitiveness as well as increasing the potential oversight load on the Resolution Authority and the potential burden on firms funding the FSCS.

3.5. These factors also need to be taken into account when setting the specific level of the thresholds relating to FSCS protected deposits. We believe that once these reviews are concluded, the PRA will be in a stronger position to calibrate this total retail and small company demand deposit. These policy initiatives are interrelated and should therefore be considered together.

3.6. We support the PRA's proposal that the decision of whether to require a branch to subsidiarise should have regard to the efficacy of the branch's global resolution strategy, including the extent to which it limits the risk to the FSCS. As such, we would welcome clarification that, irrespective of the thresholds, subsidiarisation requirements will not be applied to branches of G-SIBs where there is global resolution strategy in place which the BoE considers credibly ensures the UK branch would be preserved from resolution through a single point of entry approach. Branches of G-SIBs that are supported by high quality loss absorbing resources at group level (and that have in place appropriate

mechanisms for ensuring this support will be made available to the branch, as necessary, in resolution) pose limited risk to the FSCS as should be treated as such.

Reporting transactional accounts for HNWI customers

3.7. The proposal notes that HNWI (High-Net-Worth Individuals) accounts alone are unlikely to determine the PRA's branch risk appetite because these customers are not expected to be dependent on banking services provided by a single firm. This is a welcome recognition that HNWI customers have very different characteristics from typical retail and small company demand deposit holders. Whilst the PRA's clarification is helpful, it could be given effect by providing a waiver to the requirement to report the transaction component of "*demand*" accounts for firms whose deposit base is predominantly made up of HNWI customers. As set out below, this requirement imposes a significant cost on firms while providing information that may be of little value to regulators.

3.8. The proposal defines "*demand*" deposits as consisting of transactional accounts and instant access accounts. We understand however, that the PRA's risk appetite is driven by transactional accounts (defined as accounts that are used more than 9 times over a 3-month period) since this indicates a reliance on banking services provided a firm.

3.9. For most retail customers, transactional and instant access accounts (defined in the branch return guidance as accounts from which customers can withdraw money unconditionally, without providing notice or paying penalties) are functionally similar, if not identical. However, for HNWIs, many customers hold instant access accounts that do not meet the definition of a transactional account because they are used rarely for this purpose, if at all.

3.10. Identifying and reporting HNWI transactional accounts among a significantly larger cohort of instant access accounts is a complex, manual and time-consuming exercise for our members that is, in our view, disproportionate to the value that could be gained by the PRA in having this information.

3.11. So we propose that the requirement to report the transactional component of accounts (rows 21,31,40) is waived where a firm's predominant customer base is HNWIs. This waiver could be offered to firms that had provided appropriate evidence confirming this. Firms would still report their total deposits, and the PRA would be free to interrogate this if needed.

3.12. Additionally, in practice, deposits held for HNWIs can often be held through "non-individuals" such as personal investment companies, trusts, SPVs or similar vehicles. By linking the definition of HNWIs to Article 9 of the FSMA 2000 (Ring-fenced Bodies and Core Activities) Order 2014 (which only captures individuals), it is not clear whether these deposits will also be treated as HNWI deposits. We would ask the PRA to clarify in its final policy that such deposits, when held through non-individual accounts still qualify as deposits from HNWIs.

Implementation timeline

3.13. The PRA proposes that the changes to SS5/21 resulting from this CP would be implemented during 2025 Q2 and the changes to the material relating to branch reporting would be implemented on 31 December 2025.

3.14. The proposal includes new indicative thresholds and reporting elements and clarifies the treatment when using deposit aggregators. Our members note that they will need to assess whether they can identify data that meets these requirements with the current system and, if not, put a new system in place, which is likely to take some time. Some of this burden could be alleviated were the branch reporting requirements to be implemented on 1 January 2026, rather than on at the end of 2025.

3.15. In addition, it is the practice of some of our members that branch return forms are generally prepared centrally, at head office level, and then sent to all branches on a one-size-fits-all basis. If the PRA were to require the additional UK-specific information, our members would need to identify divergences created and consider how to implement the PRA's reporting requirements, possibly by preparing forms separately, which would create operational risk. Where the head office of a UK branch is domiciled in a jurisdiction which the PRA recognises as having equivalent regulatory and supervisory regimes, we request that returns prepared for the branch by the head office be accepted by the PRA.

3.16. As our members will need to analyse the rules, understand their specific impact and consider how to implement them once they have been finalised, we request sufficient time for implementation, preferably at least one year after the final rules are released.

Booking arrangements

Timing of application

3.17. We understand that the proposed desk structure expectations are not retrospective, although this is not explicitly stated in the proposal. So, it will not be necessary to unpick what has already been agreed as part of the desk-mapping review with the ECB and the PRA. We would welcome explicit clarification from the PRA that, in light of this, that firms should only engage with their supervisors about any future intended desk structure changes meeting the criteria in the revised Supervisory Statement.

3.18. On the other hand, the PRA states that it expects firms within scope of the Supervisory Statement to meet the risk management and control expectations set out therein, within a reasonable timeframe, taking into account the firm's current position and the scale of any change that might be required, and that these firms should provide their supervisors with a planned timeframe for doing so.

3.19. We welcome the recognition that the impact on firms can vary, and that accordingly no single, fixed compliance date has been set across all firms. Firms with more complex global booking arrangements may require more substantial changes to their risk

management and control environment. So sufficient time will be needed for these firms to implement booking models consistent with the new expectations. We would welcome further clarification from the PRA of its expectations about how long firms will have to prepare these plans and present them to their supervisors following finalisation of the Supervisory Statement. For example, it would be helpful to confirm whether firms will be expected to provide a gap analysis on their booking models upon publication of the finalised Policy Statement.

Notification

3.20. The PRA proposes to add an expectation that a firm should notify the PRA when it plans to make material booking model changes, although we understand most firms already discuss any such proposed changes with them anyway. As such, we further understand that the PRA envisages any such notification taking place through the course of the regular supervisor dialogue, which members would welcome as a pragmatic approach. However, 4.25D in the draft amendments to SS5/21 indicates firms will be expected to justify their material booking model changes to the PRA which, if not satisfied by the appropriateness of the changes with reference to factors (a) to (h), may impose conditions or restrictions on a firm's booking model changes. The nature of such conditions or restrictions is not clear from the PRA's proposals.

3.21. Therefore, it would be helpful if the PRA would clarify the purpose and specific requirements of the additional information required. Additionally, we would appreciate further guidance on what the PRA would deem a "material" change to a firm's booking model that would require notification to the PRA. From our perspective, the notification should be focused only on structural changes to a desk (i.e. changing a desk's booking location) rather than organisational changes (i.e. moving staff) that have no or limited impact on risk management.

Scope of application

3.22. We would welcome additional clarity about the scope of application of the booking model expectations. Paragraph 3.1 would suggest that only derivatives are subject to the requirements ("the PRA has developed these principles which focus on the risk management and control of firms' derivatives activity"). Paragraph 3.12 then discusses the expansion of the scope of application to include those "*PRA-authorised banks and designated investment firms that are headquartered in the UK, or are part of a group based in the UK, with investment banking or sales and trading activities in both the UK and overseas*".

3.23. Furthermore, we would welcome further clarity on what elements of the banking book (if any) the PRA is intending to capture. The inclusion of lending exposures and investment banking related exposures would significantly complicate the implementation of the PRA's expectations, in particular in light of the potential impacts of the pending outcomes of the ECB's 'Banking Deep-Dive' review. If the PRA does intend to include these exposures, we would encourage it to defer doing so until the outcome of that review is known and both firms and regulators can further assess the potential application of the PRA's expectations regarding booking models to these activities.

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Terminology

3.24. The PRA proposes to add an illustration of types of booking practice and their definitions. It indicates the key characteristics relating to these terms, whilst leaving it to a firm to define terms more precisely in its own policy statement.

3.25. We welcome the fact that these illustrative examples respond to requests from firms for further clarity and agree they could promote a better common understanding, given the current situation where different firms call the same arrangement different things. However, it should be noted that they should not be prescriptive, as the PRA is open to firms operating a diverse range of booking arrangements provided there are effective systems and controls in place, a position we support. We would suggest that the PRA retains its current case-by-case approach rather than prescriptively trying to fit different fact patterns into a fixed framework (which could also risk conflicting with the existing ECB approach).

3.26. Our members point out that certain of the proposed definitions could be confusing in terms of accuracy and consistency, including as to how precisely they are intended to apply to branches (they appear to be drafted more from the perspective of legal entities). For example, the PRA's indicative definition of "*split or 'multi-hub' booking models*"[1] assumes that the trader location and booking location are in the same place, with an assumption of other support activities also being in the same location, which is not always the case. For example, would trading desks in different locations which book to the same location be considered a "*split desk*" under the PRA's definition?

Relationship with FCA guide

3.27. As noted in the proposal, the PRA has consulted the FCA in developing these amendments to its expectations.

3.28. In this regard, we consider it difficult to reconcile the PRA's views which are supportive of centralised booking models with **the FCA's guide on international banks** which expresses a preference that firms should service UK customers from a UK firm. Centralised booking models can reduce operational risk and maximise netting opportunities, so we support of the PRA's approach. We understand that the FCA's guide expects firms to contract and book UK customers through a UK entity or UK branch, whereas the PRA's proposal seems more permissive in this regard as a UK entity or UK branch is expected to have some oversight of remote books.

3.29. It would be helpful if the discrepancy could be resolved, and this section made clearer about what both regulators expect of a UK entity or UK branch.

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[1] NB this definition is out of alphabetical order in the Annex on page 26

PRA's expectation on booking arrangement

General

3.30. When evaluating booking structures, we wish to emphasise the practical benefits to firms for the PRA in continuing to retain its case-by-case approach based on risks, merits and proportionality in assessing how a firm should organise its booking arrangements.

3.31. The PRA expects firms to engage the PRA early where it plans to make changes to its booking arrangements that are material in terms of scale, or which increase the complexity of or reducing the effectiveness of its risk management. The PRA provides a list of factors in 4.25B to 4.25E which the PRA will consider when determining materiality on a case-by-case basis. We support the PRA's approach of allowing firms to continue to determine materiality on a case-by-case basis. We would appreciate further two-way feedback from the PRA during ongoing supervisory discussions.

3.32. Furthermore, the proposed expectations may lead to conflict with regulatory expectations in other jurisdictions if the PRA's expectations and those of its counterparts in other jurisdictions do not align. For instance, differences based on the approach to measuring business volumes could lead to differing conclusions about the location of a desk, or differing determinations of the appropriate split of number and seniority of traders for a split desk. Where these differences occur, firms may be in a position in which two regulators hold fundamentally different views on the appropriate location or structure of a given desk, which are impossible for the firm to reconcile. In such instances it will be extremely important for the regulators to have some form of arbitration/dispute resolution mechanism, such as a trilogue with the firm in question and relevant other regulators, to resolve any such discrepancies.

Risk management structure

3.33. The proposal states that the PRA has observed an increase since 2021 in firms operating split desks (where the bank trades the same instrument from more than one location and/or entity or branch, and the management of the product is also split between locations). It would be helpful if the PRA would clarify the distinction made between '*instrument*' and '*product*'.

3.34. The proposal notes that a remote booking structure with all traders remote from the risk hub is unlikely to be acceptable to the PRA. Our members would be grateful if the PRA could clarify if this is referring to any scenario where all trades are booked remotely without any local oversight/supervision responsibilities. Or if the traders are remotely based (in a different geography or employment entity) but there is local ownership and accountability and supervision for the books/portfolios, is such an arrangement acceptable? In this context, it is not clear what the PRA's expectations are for "orphan books".

3.35. The CP states that in proposing to split desks between locations, a firm should ensure that this is justified "*by volume of activity in the 'new' jurisdiction*". It would be helpful if

the PRA clarified if "*by volume of activity*" they mean notional value or the numbers of trades, or if firms should assess which is of more materiality to their business models, which is our preference. Furthermore, are firms required to justify split desk activity by volumes alone or can this be part of a broader economic rationale i.e. in many cases, the launch of a new split desk is likely to be predicted on an expected increase in business, with it taking time for volumes to increase materially. Would firms be required to present their medium/long-term expectations when justifying a split desk?

3.36. The proposed characteristics of an acceptable split desk model include a single consolidated independent risk management oversight across the entities with the ability to reduce offsetting inventory positions by way of periodic inter-affiliate transactions. Our members would be grateful if the PRA could elaborate and/or provide an example of what is considered acceptable regarding the independence of the risk management oversight function.

3.37. In addition, the CP proposes that an individual should manage the risk for each product set traded by a desk. However, it also proposes that the risks to UK-based business should be overseen in the UK. Our members would be grateful for clarity as to how the PRA's concerns around split management of risk fit with the concept of local management for non-UK banks with large UK branches and if this may be affected by the upcoming consultation on the Senior Managers and Certification regime.

3.38. In this regard, whilst the CP acknowledges the usefulness of back-to-back and hedge structures in a centralised booking model, our members would also be grateful if the PRA could clarify that this continues to include cross-location back-to-backs as part of the legitimate movement of risk within the bank.

3.39. Similarly, and remembering the failure of Barings in 1995[2], our members would be grateful for clarity as to how the proposals for an individual trader controlling the booking process (including trade capture and modification) are intended to fit with first- and second-line division of responsibilities.

3.40. Also, the proposal states that the firm should ensure that trade capture and trade modification are preferably the responsibility of one individual, and that this would normally be the trader, and that the PRA expects the delegation of booking activities to non-trading staff to be tightly controlled and does not expect the actual booking responsibility to be delegated to them.

3.41. In this regard, the "*booking*" of trades into the system is generally an administrative function, e.g. making an entry into the system - so would normally be performed by middle office functions, albeit the overall trade accountability remains with the trader or local supervisor. For clarity, middle office employees are not involved in making decisions committing the firm to a risk position.

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[2] Report of the Board of Supervision in to the failure of Barings Bank

3.42. We think that the PRA's expectation in relation to this arrangement could be more proportionate such that it should be acceptable for non-trading staff to provide administrative support in the trade booking process (i.e. system entry), if overall trade accountability is clearly defined to the trader or local supervisor. This may already be the PRA’s intention; - if so we would appreciate appropriate clarification .

3.43. Notwithstanding the above, if the PRA retains this approach, we would welcome clarity on the type of trading role that the PRA envisages as being appropriate to act as the individual responsible for ensuring the correctness of bookings i.e. whether it should be the trader, the desk head, or the book owner.

Sound economic rationale

3.44. In any proposed material change to a firm’s booking arrangements, the PRA proposes that a firm will need to ensure that it has a sound economic rationale for a proposed change. The PRA is particularly concerned about remote risk management.

3.45. In this regard, we are concerned that the PRA does not consider that the underlying currency of denomination of an instrument is sufficient rationale, of itself, to warrant the fragmentation of prudential risk management of a desk that is either large-scale and/or where the risk is complex. Our members point out that often global business lines have mixed locational responsibilities, in that liquidity is managed locally, but risk management can be undertaken on a separate desk on a global basis, so that different time zones can be taken into account. Our members suggest that this would further justify the PRA continuing its existing practice of case-by-case analysis, rather than taking a more a prescriptive approach.

3.46. There are also potential concerns in relation to conducting periodic inter-affiliate transaction. While such transactions can be a useful risk management tool, there can also be restrictions on such transactions from other regulators, where these are interpreted to be indicative of insufficient local risk management capability. Additionally, the requirement to have “*the ability to pool collateral between entities for centralised financing and short-covering purposes*” could for US banks lead to conflict with Regulation W under the sections 23A and 23B of the US Federal Reserve Act where the transactions are conducted between the bank chain and the broker chain. It would be helpful for the PRA to specifically acknowledge such limitations, and to include consideration that such circumstances will not result in a split desk model being ruled out as unacceptable.

Pre-existing systems and control weaknesses

3.47. The proposal states that if a firm has a “*pre-existing control weakness*” in the relevant area, these should have been remediated before it proposes further booking changes in that area. Our members would like to ask whether the PRA expects firms to formally confirm within notifications for material changes to the booking model that there is no pre-existing control weaknesses identified through independent internal audit assurance reviews for example.

3.48. The condition of there being no pre-existing control weaknesses may be impractical in some circumstances. There may be instances where changes to a firm's booking model are required due to changes in a firm's strategy of the commercial environment. In such circumstances, impeding the firm's ability to implement changes to respond to events may heighten risks to the firm, their clients or the markets in which they operate. Given the reference to "any" pre-existing weaknesses, this impediment may manifest even where those weaknesses are minor.

3.49. In addition, in line with our general comments above, there may be circumstances in which another regulator requires a change to a firm's booking models in an area in which there are pre-existing control weaknesses, in a timeframe which does not allow for remediation of the PRA's concerns.

Pre and post-trade controls

3.50. With regard to 4.25L in the draft amendments to SS5/21, the language of "*pre-trade checks and post-trade checks*" has been replaced by "*pre-trade trading controls*".

3.51. However, as there is no explanation of why this change is proposed or associated costs analysis, it is not clear how this differs from the previous wording and whether this is a new requirement for pre-trade preventative controls to enforce the booking model. Our members do not wish to create new work for themselves, or their supervisor, so more clarity on this point would be appreciated. In particular, it would be useful if the PRA provided examples of what they mean by "*controls*" – e.g. are technological measures required, or are organisational measures such as approval processes and trader mandates sufficient?

3.52. The language of "*entity*" is also used in the same sentence and others. We understand that "*entity*" is not intended to extend the subject to branches and so therefore assume that it is not applicable to branches.

3.53. The term "*foreign parent*" is also used to in reference to branches. A branch forms part of the same legal entity as its head office and so its head office would not be its parent. We suggest this terminology be used in reference to subsidiaries only.

3.54. We continue to support the expectation for booking arrangements that firms "*should have a mix of detective and preventative controls*" as per SS5/21. In the draft amendments to SS5/21, the language "*booking models should typically be controlled"…"when trades are first booked"* may not be suitable to the diverse range of booking arrangements, for example where booking arrangements are principles-based, rather than rule-driven.

3.55. Therefore, we would like to ask the PRA for clarification on these points.

Branch reporting rule and Branch Return Form

Whole-firm liquidity data

3.56. The CP states that the PRA is proposing to change the way it collects whole-firm liquidity data from third-country firms, thus introducing the new Part 9: Whole-firm liquidity data section to the Branch Return. Further, in the proposed guidance for the Part 9, the PRA indicates that the reporting firms should rely on the definitions contained within their home state supervisor's (HSS) rules.

3.57. The proposal states that the PRA expects some third-country firms to submit additional and/or more frequent whole-firm liquidity information via email to their usual supervisory contact, including daily in a stress. Some factors the PRA may have regard to in determining whether to request more and/or more frequent whole-firm liquidity information are listed in the proposal.

3.58. We request that the PRA provides further clarification on the specific criteria that would constitute a situation of stress, thereby triggering the requirement for daily stress reporting. Additionally, we recommend that the criteria be aligned with that of the home state supervisor and that submission of full NSFR and LCR returns under stress should be aligned to the regulatory requirements set by the home state supervisor. This will prevent any divergence between regulatory authorities and avoid potential conflicts in interpretation.

3.59. In addition, given the difficulties arising from the potential mismatch of the local UK liquidity reporting requirements and the home state requirements of third country parent, it would be important for the PRA to clarify and provide flexibility to respect the reporting period of the parents' home state requirements. It would also be important for firms to be able to report according to the same reporting period in their home jurisdictions. This would be helpful in ensuring the quality of data and avoiding additional overburden and fragmentation in reporting timelines for firms operating on a global basis.

LCR inflows and outflows

3.60. In the light of the reliance on the HSS rules we would like to clarify the PRA expectations related to the reporting of inflows and outflows "*over 30 days*" in rows 030-050.

3.61. For EU firms LCR reporting is based on HSS rules and includes inflows and outflows within the next 30 calendar days. HSS rules do not require reporting of inflows and outflows beyond 30 calendar days (i.e. from the calendar day 31 onwards).

3.62. We understand that the new requirement is to report the same LCR inflows and outflows as are submitted currently and understand that "*over 30 days*" means "*the next 30 calendar days*".

3.63. We would like to propose clarificatory changes to the guidance for rows 030-050 by removing the text "*over 30 days*" and specify that rows 020-060 are to include inflows

and outflows for the period of the next 30 calendar days following the reporting date, e.g. for the reporting date 30.06. LCR is to be calculated for 01.07. – 30.07.

3.64. If our understanding is incorrect, we would appreciate clarification of the term "*over 30 days*" in the new guidance.

3.65. Of course, UK Finance would be pleased to facilitate any further discussion with members on the issues we have raised in this response.

3.66. UK Finance is content for the fact of its response to CP11/24 to be recorded publicly on the list of respondents that the PRA publishes.

Responsible UK Finance executive

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