Consultation response

PRA CP 32/18: UK withdrawal from the EU: Further changes to 'PRA Rulebook and Binding Technical Standards' and 'Resolution Binding Technical Standards'

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

Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

UK Finance is pleased to respond to the PRA's consultation on CP32/18 Consultation Paper on The Bank of England's approach to amending financial services legislation under the European Union (Withdrawal) Act 2018. We and our members have been greatly helped in its preparation by Clifford Chance. It should be read in conjunction with our responses to PRA Consultation Papers 25/18 and 26/18.

The consultation is directly relevant to the large proportion of our members that are supervised by the PRA, so this response represents the views of a diverse cross-section of UK Finance's members.

MAIN ISSUES

1. Financial Services Contracts Regime (FSCR)

The proposals in CP32/18 will result in a different application of PRA rules for firms under the financial services contracts regime ("**FSCR**").

1.1 Contractual run-off

EEA firms will automatically enter the contractual run-off ("**CRO**") regime if they operate under a FoS passport to carry on regulated activities in(to) the UK immediately before exit day, do

not have a UK branch, do not hold a top-up permission under Part 4A FSMA and do not enter the temporary permissions regime ("**TPR**").

CRO firms will benefit from a limited exemption to the general prohibition to enable them to wind down UK regulated activities in an orderly manner. However, we understand they will ***not*** have a 'deemed' Part 4A permission.

We understand that CRO firms will not be directly supervised by the PRA and therefore they will not be subject to any PRA rules, except for FSCS-related rules for CRO firms that are insurers. We agree with this approach, given the limited scope of the CRO regime, the cross-border only nature of their business and the fact that CRO firms will be regulated and supervised in their home EEA state.

Regulation 55(1) of the draft Financial Service Contracts (Transitional and Saving Provision) (EU Exit) Regulations 2019 ("**FSCR SI**") also provides that the PRA (and FCA) may cancel a CRO firm's exemption from the general prohibition and direct that the SRO regime is to apply to the firm instead, under regulation 28 of the FSCR SI. CP 32/18 does not provide any guidance or other indication of when the PRA might intend to use this power to move a CRO firm into the SRO regime. However, the explanatory memorandum accompanying the FSCR SI gives the following example: "*if a firm with significant UK exposure enters the CRO, but the regulators feel that their statutory objectives would be served better if this firm was supervised in the UK, they can move it to the SRO*". We should be grateful for guidance as to how the PRA would use this power, including any criteria the PRA would consider when taking such a decision and how much notice firms would have to prepare to move from the CRO regime to the SRO regime (bearing in mind this would entail a fairly significant change to the rules applicable to firms and so firms are likely to need a reasonable amount of time to prepare and implement relevant requirements).

1.2 Supervised run-off

The supervised run-off ("**SRO**") regime will act as a backstop to the TPR for EEA firms carrying out regulated activities in the UK via a passport immediately before exit day that:

- did not enter the TPR but held a top-up permission and/or had a passported UK branch immediately before exit day; or
- entered the TPR but exited it without UK authorisation in respect of some or all of their regulated activities.

Unlike the TPR, firms meeting the relevant statutory conditions will enter into the SRO regime automatically by operation of law; they do not need to opt into the regime. SRO firms will have 'deemed' Part 4A permission to allow them to service pre-existing contracts (i.e. contracts that the firm entered into before it entered the SRO regime).

The PRA proposes that SRO firms will be subject to the same obligations and supervisory framework as other Part 4A authorised firms, with certain amendments to ensure they are effective and operable for SRO firms. We agree with this proposed starting point that SRO firms should be treated as third country firms, but with appropriate amendments and transitional relief where it would be challenging for firms to comply immediately upon entry into the regime, or where it would not be appropriate or proportionate to apply certain requirements to SRO firms. In particular, we consider it is appropriate that SRO firms are subject to a more limited supervisory regime than firms with full Part 4A authorisation or TPR firms, given the limited nature of the activities that firms are able to carry on under the SRO

and the fact that the SRO is designed as a run-off regime rather than a transition to full UK authorisation.

Another important distinction between the TPR and the SRO is that firms meeting the relevant statutory conditions will enter into the SRO regime automatically by operation of law; they do not need to opt into the regime. Therefore, it will be important to ensure that affected firms are aware that they will enter into this regime automatically and that they will need to take positive action to comply with new PRA rules, including requirements to provide the PRA with a run-off plan on entry into the SRO and to include a prescribed status disclosure in communications with retail clients. Does the PRA intend to take any additional actions to ensure affected firms are aware of the SRO regime and the practical steps they will need to take to comply?

We note that some SRO firms may enter the SRO regime immediately on exit day, whereas others SRO firms may first enter the TPR and enter the SRO regime at a later date. Therefore, it is important that the transitional relief and other amendments to third country firm rules applicable to TPR and SRO firms are aligned in a way that ensures a smooth transition from one regime to the other (and also reflects the more limited nature of the SRO regime as compared with the TPR).

Finally, we also agree with the proposed approach that SRO firms operating on a purely cross-border basis into the UK ("**SRO Services Firms**") are subject to even more limited requirements than for SRO firms with UK branches ("**SRO Branch Firms**").

(a) SRO Branch Firms

We note that the PRA is considering the use of transitional relief for SRO Branch Firms, including in relation to:

- PRA remuneration rules where they go beyond the minimum CRD IV requirements; and
- certain reporting obligations where they involve the segregation of branch data and the reporting and review of this data where this is not already required:

We support the use of transitional relief in both those situations.

Please see sections 2 and 3 of our response below for our comments on the proposed application of the SMCR requirements and FSCS depositor protection rules to SRO Branch Firms, respectively.

(b) SRO Services Firms

As far as we are aware, the PRA has not previously authorised third country firms that do not have a UK branch. Therefore, there is no current precedent for how the PRA's rules would apply to SRO Services Firms. The same issue arises in respect of the TPR, as noted at section 7(b) of our response to CP 26/18. Our comments and request for greater clarity about when PRA rules would apply to an TPR Services Firm's activities are applicable equally in respect of SRO Services Firms.

Our comments at section 7(b) of our response to CP 26/18 about which rules the PRA proposes to apply to TPR Services Firms also apply in respect of SRO Services Firms, with the following exception: We understand the PRA proposes that the Certification Regime would not apply to SRO Services Firms (as per paragraph 2.17 of CP 32/18).

We agree with this proposed approach for SRO Services Firms and suggest that the same approach should also be taken for TPR Services Firms.

We agree with the proposal that deposit-takers without UK establishments (including SRO Services Firms) would not be members of the FSCS and that PRA rules in the Depositor Protection Part would not apply to them.

2. Application of SMCR requirements to SRO firms

We note that the PRA's proposed application of SMCR requirements to SRO firms differs from the FCA's proposed approach for TPR firms (where the current requirements applicable EEA branches under the SMCR and the approved persons regime will continue). We do not think it is helpful for the PRA and the FCA to take different approaches and we would encourage the PRA to consider whether it could align its approach with that of the FCA.

If the PRA does take a different approach to the FCA, we have the following comments on the PRA's proposals relating to the SMCR in CP32/18:

(a) We agree that a more limited version of the regime should apply to SRO firms as compared with TPR firms. We therefore appreciate the PRA's proposal to apply a more streamlined version of the regime, whereby SRO firms will need to appoint someone to the SMF19 function with a single responsibility to 'oversee the orderly run-off of the firm's UK-regulated activities' and will not need to comply with the usual Prescribed Responsibilities requirements.

(b) However, we think that the SMF19 function (Head of Overseas Branch) should be renamed, at least for SRO Services Firms, so that it does not refer to a branch. Alternatively, the PRA may wish to consider creating a separate senior management function specifically for SRO firms (for example, called 'Head of UK Run-off'). This alternative approach may have a few advantages as it would make clear that the senior manager is not subject to the usual SMF19 Prescribed Responsibilities and would allow for clearer and more consistent terminology between SRO Branch Firms and SRO Services Firms.

(c) We welcome the 12-week grace period following entry into the SRO regime for firms to obtain deemed (or full) approval for their SMF19. For firms that enter the SRO regime via the TPR, we should be grateful for confirmation as to whether their TPR SMF19 would be automatically (deemed) approved for the purposes of the SRO regime requirements or whether a new SMF19 application would be needed when the firm moves from the TPR to the SRO regime.

(d) Paragraph 2.17 of CP32/18 states that the Certification Regime will continue to apply only to firms operating in the UK as a branch via an establishment passport. We understand this means that the Certification Regime would not apply to SRO Services Firms. We should be grateful if the PRA would clarify whether this statement is also intended to mean that the Certification Regime would not apply to SRO Branch Firms (since they no longer operate via an establishment passport) and/or whether the same approach will apply for firms in the TPR as well.

3. FSCS depositor protection

We agree with the proposed approach under which FSCS depositor protection will only apply to eligible deposits held by UK establishments of firms, for the reasons set out at section 8 of our response to CP26/18.

Under this proposed approach, SRO Branch Firms would become members of the FSCS and the PRA rules in the Depositor Protection Part would start to apply to them. We understand that the PRA does not intend to grant transitional relief under its temporary transitional power in respect of these changes. However, as noted in our response to CP26/18, the communication and notification requirements are challenging within the proposed timescale and SRO Branch Firms may need additional time to comply with the requirements, particularly with regard to:

- the Single Customer View ("**SCV**") requirements;
- other disclosure requirements to customers; and
- the provision of information to the FSCS and to the PRA/FCA.

We understand the importance of depositor protection disclosures and suggest that some of this implementation could be achieved in coordination with the FSCS itself (e.g. a cross-industry communication). However, it is unrealistic to expect affected firms to be able to make IT and other systems changes to implement UK SCV requirements by exit day and so it be appropriate to introduce transitional measures for SCV requirements.

4. Other general comments

4.1 Approach to reporting and disclosure

We understand the PRA and Bank's approach to reporting and disclosures is intended as a temporary, interim measure only and do not have substantive comments on it, on that basis. However, there is a risk that firms may find the proposed approach confusing or cumbersome as it would require them to consult multiple sources to work out how to complete their reports. Therefore, it will be important that the interpretive guidance is clearly signposted and linked to on the PRA / Bank of England's website.

4.2 Status disclosure for TPR firms

In general, we welcome the PRA and FCA taking a consistent approach to rules that would apply to dual-regulated TPR firms, such as in relation to the disclosure of a firm's authorisation status.

4.3 Clarity on securitisation-related technical standards not yet subject to consultation

CP32/18 sets out proposed amendments to certain BTS relating to the EU securitisation framework. However, we understand that the FCA is taking the lead on drafting amendments to other securitisation-related BTS, which we have not yet seen. It will be important for the industry to have clarity on all of these amendments as soon as possible and so we intend to raise this issue directly with the FCA.

We also request the PRA to confirm its intended approach to exercising its powers to make technical standards under the onshored Securitisation Regulation (such as in relation to resecuritisation).

4.4 Clarity on use of temporary powers

In some places in CP32/18, the PRA or Bank says that it is "considering" exercising the temporary transitional powers in the event that there is no Implementation Period (e.g. in relation to remuneration rules going beyond CRD IV, reporting requirements that need segregated branch data and in relation to reporting templates under BTS 2018/1624). This still leaves some uncertainty for firms in relation to:

(a) whether it will in fact exercise those powers; and

(b) how it will exercise those powers – i.e. exactly what the nature of the transitional relief will be; and

(c) how long any transitional relief will last for.

We appreciate that the PRA and Bank are having to formulate their approaches within very short timescales, but it also creates uncertainty if the industry cannot anticipate exactly what the approach will be. In relation to each of these issues, we would encourage the PRA and Bank to determine its approach and either consult on or publish the details as soon as possible.

In particular, we note that the Bank is considering delaying the application of onshoring changes that will alter the reporting templates in BTS 2018/1624 but states that "*[f]irms should, however, bear in mind that changes to underlying regulatory requirements arising as a result of the UK's withdrawal from the EU may necessitate amendments to the information reported*". The Bank seems to be drawing a distinction between "onshoring" (or "NtA") changes, which may be delayed, and other "underlying" changes which would be relevant from exit day. However, it is not clear which changes would fall into which category.

For example, some of the amendments to BTS 2018/1624 set out in Annex I update obsolete references to the BRRD and so we expect they should apply from exit day. Other changes in Annex I are more substantive and change the level of consolidation of information required (from Union parent undertakings to UK parent undertakings). We expect that the Bank is considering using its transitional powers to delay the application of these substantive consolidation level changes – and would support such use of its transitional powers – but would be grateful for clarification.

As also stated in our responses to CPs 25/18 and 26/18, our members generally support a period of transitional relief of two years, unless there is an international development relevant to the individual policy area that is likely to be implemented after its expiration. Where this is the case, the transition period should be extended to avoid sequential changes that may arise.

COMMENTS ON DRAFT AMENDMENTS TO THE PRA RULEBOOK AND BTS EXIT INSTRUMENTS

If a specific Part of the PRA Rulebook or BTS EU Exit Instrument is not identified in the table below, we have no specific comments to make in relation to it.

5. Comments on PRA Draft Rulebook Amendments (Appendix 2 of CP 32/18)

Rulebook Part	Annex	Comments
Glossary	A	Definition of "certification function": • The new amendment extends the definition of "certification function" to relate to the "activities in the UK" of a third country CRR firm with no UK establishment. • This is inconsistent with paragraph 2.17 of the CP which states that the PRA "*proposes that the Certification Regime continue to apply to the extent that it currently does pursuant to FCA rules, ie to firms currently operating in the UK as a branch via an establishment passport but not to any other firms*". Definition of "UK firm": • Point (1) of the definition still refers to Schedule 3 FSMA (EEA Passport Rights). However, Schedule 3 FSMA will be deleted from exit day.
Senior Management Functions Part	S[1]	In relation to Rules 7.4 and 7.5, please see paragraph 2(b) of our main comments.
Senior Managers Regime – Application and Notifications Part	T[2]	In relation to Rules 2A and 2B, we should be grateful for clarification as to whether firms that initially enter the TPR would need to submit a new section 59ZZA application if the firm subsequently moves from the TPR to the SRO regime (see paragraph 2(c) of our main comments).
Supervised run-off	U	The proposed Supervised Run-Off Part does not specify how firms are to submit their run-off plans to the PRA and make notifications and annual updates (e.g. via email or Connect). We should be grateful for confirmation.

6. Comments on Bank of England Draft BTS EU Exit Instrument (Appendix 4 of CP 32/18)

Title	Annex	Comments
Resolution planning	I	As noted at paragraph 4.2 of our main comments above, we support the use of the Bank's transitional powers to delay application of changes to the required level of consolidation of resolution plan information. However, we should be grateful for

[1] Similar comments also apply in respect of Annex N for insurers.

[2] Similar comments also apply in respect of Annex O for insurers

Title	Annex	Comments
		express confirmation as to exactly which amendments the Bank is considering delaying.

If you have any questions relating to this response, please contact Parisa Smith, Principal, Prudential Policy: parisa.smith@ukfinance.org.uk

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