INTERIM REPORT: THE UK REGIME FOR OVERSEAS FIRMS

INTRODUCTION

1. In the financial services sector, an important part of the UK remaining globally competitive will be how easy it is for overseas firms to do business in the UK. This is important not only in terms of overseas firms being able to access UK markets and customers, but also in terms of UK users of financial services being able to access the products and services offered by overseas firms. The aim of this Interim Report is to consider whether the current UK regulatory regime for overseas firms could be improved, with a view to enhancing the UK's global competitiveness.

2. The UK's regulatory regime is one of the best regarded in the world, as it has consistently evolved as business has evolved, and has been framed by the highest global standards. It is vital that the UK continues to evolve as a global financial centre for the benefit of consumers and in order to support the economic recovery. Now more than ever, the challenges that regulators face are global and must be tackled at a global level.

3. This paper is an interim report, pending our understanding of any future arrangements with the EU. The Working Group intends to issue a more detailed report in early 2021, with detailed suggestions for legislative and regulatory changes.

4. The UK has historically followed a relatively open approach to market access. To enhance its global competitiveness in a global environment, and to maximise the benefits to UK markets and UK users of financial services, the IRSG calls for the UK to continue this open approach. The UK approach is generally more open than many other regimes. For example:

   (a) Other exemption-based regimes (e.g. the Canadian international dealer regime and the Belgian "light-touch" regime) may be subject to registration requirements, be limited to "foreign securities" or require compliance with some of the rules applicable to local firms.

   (b) Equivalence-based regimes (e.g. EU Article 46 MiFIR and the German waiver regime) only allow access to firms from specific "equivalent" jurisdictions and may be subject to application for recognition, additional information requirements and compliance with some of the rules applicable to local firms.

   (c) Cross-border licensing regimes based on national treatment (e.g. the US investment advisor regime, the CFTC swap dealer registration regime and the new Australian foreign financial services licence regime) may allow cross-border access but are subject to registration or authorisation and compliance with all or some of the rules applicable to local firms (albeit possibly subject to some exemptions or substituted compliance relief).

   (d) Intermediation-based regimes (e.g. SEC rule 15a-6) require the use of a local intermediary in order to do business with local clients and counterparties.

(e) Reverse solicitation regimes (e.g. a number of EU jurisdictions) only allow foreign firms to transact with or provide services to local clients or counterparties where it can be established that the local client or counterparty initiated the contact between the parties (without any prior solicitation by the foreign firm).

(f) In the UK, unlike other countries, activities such as commercial lending and spot FX are not regulated activities requiring authorisation - even for domestic firms.

5. However the UK's policy vis a vis overseas firms is set out across a number of separate mechanisms, which have evolved separately over time rather than designed holistically. This has led to differences between the various regimes, making them difficult for overseas firms to navigate. For example;

(a) The UK regulatory perimeter for cross-border business is not as clear as it could be. Better guidance would allow overseas firms to understand what services they can provide to UK users of financial services, either with or without authorisation in the UK.

(b) The overseas persons exclusion ("**OPE**") is a valuable element of the UK's regulatory perimeter for cross-border business. There is some scope to rationalise it and make it clearer without adding restrictions which could limit its value.

(c) The regime allowing overseas firms to establish regulated branches in the UK (i.e. without requiring subsidiarisation) could be simplified and the navigability of the regulatory requirements improved.

(d) The EU-derived equivalence regimes are patchy in their scope, do not always use the same criteria and are subject to procedural shortcomings. Through the onshoring of those regimes into the UK law, the UK equivalence regimes have inherited the same problems.

6. This Interim Report considers some of the options and competitiveness levers that the UK could avail itself of to remove perceived barriers to overseas firms and make its approach to market access more clear and coherent. At this stage, we are not suggesting a radical redesign of the UK's regime, but the UK should start exploring the full range of options at this time, and in doing so, should consider whether a more fundamental redesign than that set out in this Interim Report should be considered.

7. Any changes to the UK regime should incorporate the following objectives:

(a) openness to cross-border trade;

(b) appropriate protection for UK users of financial services;

(c) certainty for market participants and users of financial services;

(d) supporting the regulators in the furtherance of their statutory objectives;

(e) transparency; and

(f) coherence, clarity and ease of understanding.

8. We will also consider whether, in addition to the regulatory perimeter and the ability to secure access to the UK, any other aspects of the UK regime could be improved to make the UK more attractive to overseas firms – and, in particular, those rules that apply to overseas firms doing business here.

9. This report analyses the existing regimes, identifies options for the UK to consider and suggests areas for further work. This Interim Report considers, in particular:

   (a) whether any changes need to be made in relation to the UK's regulatory perimeter – see Part A;

   (b) on what basis overseas firms, clients and counterparties should be able to access UK markets and UK users of financial services (and for those UK users be able to access overseas firms, clients and counterparties). In particular, the Interim Report considers the following areas of UK law and how they might be improved:

      (i) the overseas persons exclusion and related issues – see Part B;

      (ii) the rules regarding the establishment of UK branches by overseas firms – see Part C; and

      (iii) equivalence-based access regimes – see Part D; and

   (c) how else the UK rules could be clarified, simplified or improved to make the UK more attractive to overseas firms as a place to do business – see Part E.

10. We have disregarded the question of whether the UK may wish to follow the EU's regulatory regime in order to be equivalent with the EU in any areas where the EU may have made an equivalence determination in favour of the UK. It is not yet clear whether, and to what extent, further equivalence determinations will be made by the EU. These issues may need to be taken into account by policy makers at the relevant time. We recognise that, in some cases, continued alignment with the EU would be more efficient for market participants, but equally there may be benefits in allowing divergence. The Working Group also considers that there are likely to be benefits in following global standards and in proactively helping to shape those standards, and so we have assumed that, as a policy matter, the approach for the UK regime should be consistent with global standards where they exist and where that is appropriate for the UK market.

11. We have not considered in detail in this report whether any of the current powers of the UK regulators need to be changed. Considerations on the UK regulatory architecture is under consideration in another workstream of the IRSG.

Summary

- The UK has historically followed a relatively open approach to market access. To enhance its competitiveness in a global environment, and to maximise the benefits to UK markets and UK users of financial services, the UK needs to continue this open approach.

- The UK should take the opportunity presented by Brexit to make its approach to access its market clearer and more coherent, in order to remove perceived barriers to overseas firms.

- The UK regulatory perimeter is not as clear as it could be. New guidance should be issued in order to allow overseas firms to understand what services they can provide to UK users of financial services, either with or without authorisation in the UK.

- The overseas persons exclusion (OPE) is a valuable element of the UK's regulatory perimeter. There is some scope to rationalise it and make it clearer, but the UK should not be considering any changes that would restrict the OPE at least in relation to wholesale business.

- The regime for overseas firms to establish regulated branches in the UK should be updated to include, in particular:

    - a clearer framework, particularly with regard to the scope of "deference" to the home supervisor of the overseas firms);

    - establishing better processes through which applications will be considered;

    - amending the factors for authorisation to introduce a requirement that the UK regulators 'have regard to' the attractiveness of the UK as an inward investment destination, innovation and applicable international standards; and

    - simplifying and improving the navigability of the regulatory requirements applicable to UK branches.

- As regards cross-border access for overseas firms not covered by the OPE regime, the UK should continue to have an equivalence-style regime, but based on the concept of "deference" rather than an EU-style detailed analysis of equivalence. We should also consider whether this would be a suitable basis for allowing wider access in relation to retail financial services.

- The UK should take this opportunity to reconsider whether any other aspects of the UK regime could be improved to make the UK more attractive to overseas firms. This could include removing some of the elements of EU law that are perceived to have little benefit, as well as making more fundamental changes.

Part A: The regulatory perimeter for cross-border business

1. The keystone of the UK financial services is the so-called

   "general prohibition" in the Financial Services and Markets Act 2000 (FSMA), which says that no person may carry on a regulated activity in the UK, or purport to do so, unless that person is an authorised person (i.e. authorised by the PRA or FCA) or an exempt person.

2. The general prohibition applies where the person is carrying on the regulated activity "in the UK". In producing this Interim Report, one of the themes that emerged from the Working Group was a concern that the regulatory perimeter for cross-border business is not always clear – in that it is not always easy for an overseas firm to determine whether it is regarded as carrying on an activity in the UK in the first place – and therefore whether it may need authorisation in the UK.

3. The question of whether an activity is carried on "in the UK" is not as straightforward as it might sound. Where an overseas firm is providing a service or entering into a transaction with a UK-based customer, some elements of the service/transaction might happen in the UK and other parts might not. In some cases, there may be clear guidance on whether an activity is regarding as taking place in the UK (e.g. for investment advice and insurance distribution). But in other cases the position may be more complex - for example:

   (a) If a UK customer places money on deposit with a bank in Australia, is the regulated activity of "accepting deposits" being carried on in Australia or the UK? The money would be paid to an institution in Australia but the customer would receive repayment in the UK.

   (b) If an Australian insurance company insures a risk for a UK customer, is the activity of effecting and carrying out the contract of insurance carried out in Australia or the UK?

   (c) If a financial adviser based in Australia provides investment management services to a UK-based customer, is the regulated activity of "managing investments" taking place where the adviser is located, where the customer is located, or in both places?

   (d) If a firm in Australia wishes to enter into a derivatives contract with a UK counterparty, is the Australian firm carrying on the activity of "dealing" in the UK as well as in Australia?

   In addition, as technology advances and parties become more sophisticated in the means through which they do business, the question of where activities are carried on can become even more complex.

4. There are over sixty distinct regulated activities. They are subject to different approaches regarding the question of whether they are carried on "in the UK" and each is subject to different exemptions and approaches. In many cases, the regulatory perimeter is unclear. For example:

(a) In some cases, there is no express guidance at all on whether the activity is carried on in the UK in the first place. For example, if a firm wanted to carry out the regulated activities of "dealing" or "arranging deals" in relation to securities, there is no express guidance from the FCA.

(b) In some cases, the guidance can be obscure or difficult to find. For example, in relation to the question of where the activity of "accepting deposits" is carried on, industry practitioners still have regard to guidance that was issued by the former Financial Services Authority (FSA) in relation to the Banking Act 1987. They would also have to have regard to a 2011 paper published by HM Treasury responding to issues raised by Swiss banks. Another example is the guidance on when overseas firms are required to register with HMRC under the UK anti-money laundering legislation, where the relevant guidance is found in a 2007 FSA paper only available in the national archive.

(c) In some cases, the rules involve distinctions that are difficult to justify. For example, in relation to the activity of "dealing" in contracts of insurance, the question of whether an overseas firm is regarded as carrying on the activity in the UK can differ according to the mode of communication used.

(d) The rules can involve concepts which are difficult to understand. For example, a person can be required to have FCA authorisation as a result of "agreeing" in the UK to carry on a regulated activity for the client outside the UK. A person may not be clear about when they would be regarded as carrying on the activity of "agreeing" in the UK.

(e) In many cases, the UK takes a different approach to other jurisdictions – and typically, that means that the UK would not require an overseas firm to apply for authorisation where other jurisdictions would require that in an equivalent situation (e.g. in relation to insurance, deposit-taking, portfolio management and payment services). However, even where the UK takes such an approach and allows access more readily than other jurisdictions, that may not always be obvious to overseas firms and the overseas firms may not appreciate the opportunities available to them.

(f) The UK regime also contains complex "deeming" provisions in section 418 of the Financial Services and Markets Act 2000, in which a person who would not otherwise be regarded as carrying on an activity in the UK is nevertheless to be regarded as carrying on that activity in the UK (and therefore needing authorisation in the UK) in certain situations. For example, if a firm which has its registered office in the UK carries on activities from a location outside the UK but the day-to-day management of those activities takes place in the UK, the firm will be deemed to be doing those activities in the UK.

5. If the UK intends to rationalise its rules relating to the ability of overseas firms to do business in the UK, a sensible first step would be to look at the regulatory perimeter afresh and consider whether we have the balance right. Regardless of whether the regulatory

perimeter needs to be changed, this would also be a good opportunity for the UK to make the perimeter clearer.

6. Any analysis of the current position should include the situation where overseas firms operate through representatives in the UK, and should consider whether the perimeter is appropriately drawn for them.

7. A further barrier that overseas firms face when doing business in the UK is the "financial promotion restriction" – which provides, in summary, that a person can only solicit business from UK customers and counterparties if that person is authorised by the PRA or FCA, the communication is approved by a person that is authorised by the PRA or FCA or the communication comes within one of the exemptions in the FSMA (Financial Promotion) Order 2005 (FPO). This restriction applies even if the person in question is not regarded as carrying on a regulated activity in the UK, and so can act as a barrier to overseas persons wishing to do business with UK customers and counterparties.

8. The exemptions contained in the FPO allow certain kinds of communications to be made to UK customers and counterparties without the communicator needing authorisation in the UK. These exemptions apply to certain types of activity (e.g. deposit taking and insurance, where less onerous rules apply) and to promotions to certain types of customer or counterparty who are not considered to require the same degree of protection (e.g. for securities and derivatives business, many institutional investors).

9. If the UK is revisiting questions regarding the regulatory perimeter, it should also consider whether the FPO exemptions need updating as well – for example, to consider whether there is scope to allow a wider range of financial promotions to be made into the UK by overseas firms who are not authorised in the UK. It is also worth noting that some elements of market access – in particular, via the overseas persons exclusion referred to in Part B below – depend on whether the person in question can avoid breaching the financial promotion restriction. It is therefore appropriate to consider the financial promotion restriction as part of the question of how overseas firms can access the UK.

PART B – THE OVERSEAS PERSONS EXCLUSION

1. CURRENT POSITION

1 In addition to the relatively liberal approach that the UK takes in relation to whether an activity is done in the UK in the first place (as discussed in Part A), the UK also has the overseas persons exclusion (OPE), which allows an overseas person (see paragraph 1.2(a) below) to carry on certain regulated activities in the UK without needing UK authorisation.

2 The main features of the OPE are as follows:

(a) It applies for the benefit of an "overseas person" – that is, a person who carries out certain types of activity that are regulated in the UK, but does not do so (or offer to do so) from a permanent place of business maintained by it in the UK.

(b) The OPE only applies in relation to certain types of regulated activity. It covers most types of securities and derivatives business but not, for example, the regulated activities of accepting deposits or effecting or carrying out insurance contracts (although those activities are less likely to be regarded as being conducted inside the UK regulatory perimeter in the first place).

(c) It only applies insofar as the regulated activities in question would be considered to be carried on in the UK in the first place – see Part A. Certain regulated activities, such as portfolio management, would not be regarded as being generally carried on in the UK if they were carried on by an overseas person – which means an overseas firm would not need to use the OPE for those activities, although an overseas person may need to rely on the OPE if it agrees in the UK to provide portfolio management services even if those services are to be provided outside the UK.

(d) In most cases, the ability of the overseas person to rely on the exclusion depends on whether that person is transacting with entities that fall within FPO exemptions (such as UK authorised persons, other "investment professionals" or "high net worth entities"). In practice, this means that the exclusion is mostly limited to wholesale business rather than for business with retail customers.

(e) Overseas firms that can rely on the OPE do not need authorisation in the UK, and they are not required to notify the UK regulators that they are doing so.

(f) Overseas firms that can rely on the OPE are only subject to a limited range of rules when conducting business with UK persons. They are not, for example, subject to the FCA's rules on conduct, record-keeping, transparency, transaction reporting and trading that would apply to a regulated firm.

(g) Overseas firms that are within the scope of the "on-shored" equivalence regime under Article 46 MiFIR cannot rely on the OPE. Firms from jurisdictions determined to be equivalent under the on-shored Article 46 MiFIR would be subject to more restrictions than overseas firms that rely on the OPE would be, because: (i) firms

from those jurisdictions could only rely on the on-shored equivalence regime where they are authorised and supervised in the relevant jurisdiction; (ii) those firms would have to be registered with the FCA before they can make use of the regime; and (iii) those firms would have to comply with certain conduct obligations when dealing with UK clients and counterparties (disclosing their regulatory status and offering to submit any disputes to settlement in a UK forum). Overseas persons that can rely on the OPE are not subject to these requirements.

3 The OPE is considerably more liberal towards overseas firms than the regimes found in many other jurisdictions. Within the industry, the OPE is widely perceived as a major contributing factor to the success of the UK financial services sector. It enables UK-based firms, institutional investors and large corporates readily to access the services of overseas firms and enables UK firms to provide services to overseas clients and to deal with overseas counterparties without those clients or counterparties themselves requiring authorisation in the UK.

4 However, the position is more complex where an overseas firm is authorised in the UK and has a branch here but also conducts cross-border activities with UK persons from offices outside the UK or where it uses that UK branch to arrange transactions that are booked in non-UK offices. The firm will have to determine the extent to which UK conduct or other rules to which the firm is subject as an authorised person apply to those activities (for example, there are specific exemptions from the UK conduct rules for activities that would have fallen within the OPE if those non-UK offices were separate legal entities).

5 Overseas firms may also face added complexities where they conduct cross-border business with UK clients and counterparties if their representatives make temporary visits to the UK or they use agents or intermediaries in the UK. They may have to determine whether their activities in the UK are carried on from a place of business maintained by them in the UK (which can be a source of uncertainty in itself), whether any activities of their representatives during their UK visits themselves amount to regulated activities (such as arranging deals in investments) which fall outside the OPE and whether any agents or intermediaries are appropriately authorised in the UK and the extent of the overseas firm's responsibility for any failures of compliance by those agents or intermediaries.

FUTURE POSITION

6 The OPE in its current form is considered to be a valuable asset in the competitiveness of the UK financial services sector. However, the principal shortcoming of the OPE is that it is widely regarded as complex and difficult for overseas firms to navigate. It would improve the navigability of the OPE if the RAO were amended to include an additional specific exemption making clear that the OPE applies where an overseas firm carries on the regulated activities covered by the OPE with or for authorised persons, other 'investment professionals' and 'high net worth entities' (including with authorised persons acting on behalf of underlying clients). This would also lead to a more uniform approach towards the activities of overseas persons, as the tests are currently different for the different activities; for example, the activity of “arranging deals in investments” is only covered by the OPE if

the deal is done with a UK-authorised person (and so would not apply if the party to the deal was a sophisticated investor but not authorised).

7 It would also be possible to better align the scope of the OPE and the FPO with the domestic investor protection regime by extending the exemptions in the FPO to cover financial promotions to counterparties and clients that are categorised as 'eligible counterparties' and 'per se professional clients' under the FCA rulebook (thus expanding the scope of the OPE to cover regulated activities with these counterparties and clients to the extent that they are not already authorised persons, other 'investment professionals' or 'high net worth entities').

8 We have already seen that the OPE is disapplied in relation to MiFID activities insofar as a firm that might seek to rely on the OPE is from a third country that has been the subject of an equivalence determination more than three years previously. This means that overseas firms from such countries are in a worse position than overseas firms from other countries where no such determination has been made, even though the former are likely to be subject to more similar regulation to the UK that the latter. In order to redress this balance, the UK should consider removing the rule that disapplies the OPE and allowing all overseas firms to rely on the OPE in the same way even if an equivalence determination has been made in respect of their home state.

9 In addition, insofar as the UK decides to make equivalence determinations the basis of access in areas of financial services where they are not currently used (see Part D of this Interim Report), the UK should ensure that such a regime does not encroach upon the areas covered by the OPE. Such regimes should only apply insofar as the OPE does not apply.

PART C: REGULATION OF BRANCHES OF OVERSEAS FIRMS

1. THE CURRENT POSITION REGARDING THE REGULATION OF THIRD COUNTRY BRANCHES

1.1 The starting point is that if an overseas firm wishes to carry on regulated activities from a place of business in the UK, that firm will need to set up a subsidiary in the UK and apply to have that subsidiary authorised by the PRA or FCA. However, there are circumstances in which the UK regulators will allow an overseas firm to set up a branch office (i.e. without creating a separate legal entity) and apply for authorisation. This approach can be beneficial to the overseas firm, in that it may be able to use resources (both financial and otherwise) from its home country to satisfy the UK regulatory requirements.

Authorisation and supervision

1.2 In accordance with the statutory framework for the conduct of regulated activities by way of business in the UK, the PRA and the FCA are responsible for the authorisation of UK branches of international financial institutions to conduct regulated activities in the UK. Since the branch is a part of the legal entity incorporated outside the UK, the authorisation process is an assessment of that legal entity (not just the branch).

1.3 The legislative requirements surrounding the assessment by the regulators for authorisation of a branch are well established, centred on the threshold conditions for authorisation per s.55B(3), FSMA. Compliance with the threshold conditions must be demonstrated at authorisation and on an ongoing basis, and, therefore, links to the supervision (and, more recently, supervisability) of authorised firms.

1.4 Authorisation by the PRA or the FCA will depend on the scope of activities intended to be performed. The PRA, together with the FCA, is responsible for the authorisation of deposit-taking and insurance (save for distribution) in respect of prudential and conduct matters, with the FCA being solely responsible for the authorisation of firms carrying on the balance of regulated activities by way of business in the UK.

1.5 The legislative framework itself does not clearly set out the way in which the UK regulator will assess the compliance of the overall firm in its home state with the threshold conditions capable of being met only on a ‘legal entity’ basis and how in supervisory terms "deference" to the home state legal and regulatory regime will apply. Certain of the threshold conditions (most obviously relating to the adequacy of financial and non-financial resources, and the ability of the firm to be effectively supervised) necessarily require an assessment of the home state jurisdiction’s requirements on the firm (in legal, regulatory and supervisory terms) and the firm’s compliance with those requirements. However, the primary legislation does not provide a determined, structured approach by which either the PRA or FCA should accommodate the particularities of branches and their home state legal entities in connection with the assessments to be made at authorisation.[1]

[1] Section 55D, FSMA requires that the UK regulator "may" have regard to any opinion from a home state supervisor relating to the firm, which appears to be relevant to its assessment of compliance with the threshold conditions. In deciding how much weight (if any) to attach to the opinion, the UK regulator must have regard to the nature and scope of the supervision exercised in relation to the non-EEA firm by the overseas regulator.

1.6 The PRA has a reasonably well-developed position, articulated through its supervisory statements (particularly SS 1/18 and SS 2/18), regarding the assessment to be made at authorisation.

1.7 The PRA's assessment is described as being centred on a "range of factors" including (but, presumably, non-exclusively):

(a) whether the whole firm meets the PRA's Threshold Conditions;

(b) the degree of equivalence of the home state supervisor's regulatory regime in meeting international standards and delivering appropriate outcomes consistent with the PRA's objectives;

(c) the degree of supervisory cooperation with the home state supervisor and the home resolution authority (which usually means that there has to be a memorandum of understanding in place between the PRA and those authorities); and

(d) the extent to which the PRA, in consultation with the Bank of England acting in its capacity as the UK resolution authority, has appropriate assurance over the resolution arrangements for the firm and its UK operations.[2]

1.8 The PRA refers to an "equivalence assessment" which it has conducted in connection with different third countries, and their legal and regulatory regimes for the supervision of financial services firms with branches in the UK. This assessment is dynamic. "Equivalence" will be determined according to the nature of the firm's activities in the UK. Systemically important activity in the UK will require "greater" equivalence. The assessment is described as focusing on the home state supervisor's compliance with Basel principles "in terms of supervisory approach, tools and practices" and takes into account the IMF assessments and FSB reviews. This could be described as a form of deference to the home state prudential regime, and the home state supervisor's supervision of the firm in its home state in this regard.

1.9 Supervisory cooperation between the PRA and the home state supervisor is a key feature of the authorisation process and ongoing supervision for a UK branch conducting deposit-taking or insurance. The PRA states that it will seek to establish acceptance of prudential responsibility by the home state supervisor, for the UK branch *and* an agreement with the home state supervisor in connection with the split of prudential supervision of branches.

1.10 By contrast, the FCA has only recently articulated a strategic approach to international firms seeking to do regulated business in the UK, through CP 20/20. Although the FCA remains in consultation on its approach, it is noteworthy (if unsurprising) that it expects that supervisory cooperation with home state regulators will form a key plank of its decisions around the authorisation of branches of international firms conducting FCA-regulated activities. The FCA has presented its approach as one which seeks to understand the '*risk of harm'* presented by a branch, in contrast to that of a subsidiary. In particular, the FCA

[2] For insurance, consideration is also given to the priority of UK policyholders on an insolvency event, the impact of the failure of the firm with the UK branch and the scale of activity of the branch which would be covered by the FSCS

considers that it will be concerned to understand the potential application of insolvency law in the jurisdiction of the head office to the UK branch, and the extent to which regulatory requirements from the home jurisdiction could cover the branch and 'overlap' with FCA requirements.

1.11 Against this backdrop, it is clear that supervisory cooperation is imperative and that further clarity on how the FCA will approach this assessment, and the factors to which it will have regard when conducting it, would be welcome. The spectre of duplicative regulatory obligations remains one of the key concerns of investment firms operating between the UK/EU. References in the consultation to the possibility of 'overlapping' regulatory requirements are a welcome acknowledgement of the challenges that this poses to regulators as well as firms. Acknowledging that supervisory cooperation has a strong role to play in mitigating barriers to trade and business model inefficiencies, clarity and guidance on matters of territoriality and the application of UK regulatory requirements to head office (e.g. management arrangements, systems and controls) would be valuable.

Requirement to subsidiarise

1.12 There is a presumption that where the factors described at 1.6(b) to 1.6(d) above exceed the PRA's risk tolerance then the firm will be required to establish a subsidiary in the UK in order for the PRA to have sufficient supervisory oversight and control. This is largely a subjective exercise carried out by the PRA/Bank of England. For systemically important wholesale bank branches, the PRA will require a greater degree of supervisory cooperation, for example through regular information exchange and joint supervisory work. The presumption is that the PRA will seek to work with the home state supervisor and/or resolution authority first, to ensure that its supervision of the UK branch meets its expectations. In the event of concern, the PRA may then seek to apply additional requirements to the branch through statutory powers (e.g. additional governance arrangements, local liquidity, operational continuity in resolution requirements and/or restrictions on scope or volume of business) before forming the view that it is necessary to subsidiarise.

1.13 There are also certain activities for which the PRA has stated that, in general it will not be content for an international bank or insurer to operate as a UK *branch*:

(a) where branch liabilities to the FSCS in respect of covered deposits or protected insurance claims exceed £500m;[3] or

[3] The £500m FSCS limit arguably imposes an artificial demarcation between international and UK domestic business which could lead to market distortion. Firms with smaller FSCS liabilities are given a competitive advantage to those with larger exposures, as the small firms can save costs by being able to operate through a branch structure instead of having to subsidiarise. This will potentially reduce the willingness of larger firms to continue writing business in the UK market (in particular, for lines of business which operate with low margins) and thus weaken innovation, competition and investment in the UK. One way to address this concern would be to allow the firms the option to split liabilities between individual and commercial customers.

(b) where the branch undertakes retail and small-company deposit-taking of more than £100m, or has more than 5,000 retail and small-company customers with transactional accounts.

1.14 Whilst noting that the FCA's approach to international firms remains (at the time of this draft) in consultation, the direction of travel appears to afford less certainty as to when the FCA will be content to authorise an international firm branch, and when it considers that the various identified 'harms' (i.e. 'retail harm', 'client assets harm' and 'wholesale harm') are insufficiently mitigated by the firm and/or its jurisdiction of incorporation, such that a subsidiary would be required in order for FCA authorisation to be granted. Clarity on this area would be welcome in the final policy statement.

Operational requirements

1.15 There are operational elements of the PRA and FCA rulebooks that differ from each other and could be made clearer.

1.16 In relation to conduct of business requirements in connection with some aspects of consumer protection legislation, the FCA supervises UK branches of overseas firms. In view of the branch's legal status as a UK establishment incorporated in another jurisdiction, there are necessarily bespoke provisions for branches in many areas of the FCA Handbook, such as the Senior Managers Regime and general organisational requirements. There are, however, more complicated application provisions for certain market integrity obligations, for example in relation to transparency.

1.17 The navigability of specific branch requirements within the PRA Rulebook is generally less easily achieved, in part due to the differing nature of the regulatory requirements and the deference to home state supervisors referred to above. The FCA Handbook does not maintain a comprehensive approach to branch requirements, though there are particular application provisions for certain rules.

1.18 Branches of insurance undertakings are required to calculate capital requirements separately for the branch activity and are required to hold assets covering the notional capital requirement in the UK.[4] An internal model that has been approved by the home state regulator for determining capital requirements can only be used for this purpose if it has been separately approved by the PRA (with ongoing major changes also requiring duplicate approval).[5]

2. FUTURE REGULATION OF BRANCHES OF OVERSEAS FIRMS

2.1 This Interim Report sets out initial principles to support the preparation of more detailed policy work in relation to the future regime for the regulation of UK branches of overseas firms. The summary below refers to overseas firms in general although it begins to draw

[4] From 1 January 2021

[5] For reinsurers, the model is based on a single capital pool and the need to split UK requirements would be an additional regulatory burden. In addition, it would be a burden for overseas firms operating in the London Market which already have approved models to have to have those models approved by the PRA as well. At the very least, some kind of grandfathering of approvals should be permitted.

some sectoral distinctions. In due course, it is likely that there will be a greater focus on particular regulatory requirements to be met by UK branches which will vary between institutions depending on the nature of their UK business[6].

2.2 The Working Group has identified four discrete areas where the regulatory regime for UK branches could be improved beyond the transition period. They are:

(a) a clearer and more transparent framework relating to the approach of UK regulators to the division of responsibility between home state supervisory authorities, and the UK regulatory authority/ies (i.e. the scope of "deference");

(b) establishing a process which the UK regulator(s) should adopt when making assessments of the home state legal, regulatory and supervisory regimes which may be set out in statute, or may be achieved through other means;

(c) amending the UK regulators' "have regard to" factors to introduce a requirement that they "have regard to" the attractiveness of the UK as an inward investment destination, innovation and applicable international standards; and

(d) simplifying and improving the navigability of the regulatory requirements applicable to UK branches of banks, investment firms, payment service providers and other firms providing services to UK consumers or retail clients (e.g. non-bank consumer credit lenders etc.).

Further detail on each of these issues is set out below.

A clearer framework

2.3 As noted above, it is important that the FCA regime which emerges from CP20/20 creates sufficient certainty for investment firms on the precise criteria by reference to which a branch rather than a subsidiary will be acceptable. The following points relate to both regulators.

2.4 Section 55D, FSMA permits either regulator to "have regard to" any opinion notified to it by an overseas regulator, when determining whether or not the UK branch is satisfying, or will satisfy the threshold conditions for authorisation. This approach could be enhanced, to create a framework of deference by the UK regulatory authorities in connection with either:

(a) prudential matters – be they capital, liquidity or local control, for example the requirement that insurance undertakings maintain assets representing a notional capital requirement for the branch in the UK; and

(b) UK conduct of business requirements where an assessment has been carried out of the "equivalence" of the legal, regulatory and supervisory regime to which the firm is subject in the home jurisdiction. Whilst, generally conduct of business requirements would be reserved to the UK regulators, there may be some scope

[6] Examples include the use of internal models by insurers and approval to use the IRB approach by banks which currently require approval by both the home state regulator and the PRA as branch regulator.

for certain matters to be within scope of deference. For example, certain organisational requirements which sit with the legal entity in the home jurisdiction as a matter of company organisation, might accommodate UK requirements without the need for separate UK bodies/functions.

2.5 There may be a case to accommodate a degree of deference in respect of the resolution of branches of overseas firms, whilst not reducing the formal powers of the PRA or FCA in this regard.

2.6 A principle of seeking to eliminate duplicative requirements and minimise overlapping requirements (in each case, between the UK requirements and those in the home state where deferral would be appropriate) could guide the creation of the statutory framework, in a way which is consistent with the regulators' existing (overriding) statutory objectives.

2.7 Overall, the framework should be transparent, so that firms understand the "base case" parameters of regulatory requirements for a UK branch conducting particular types of business; and the circumstances in which the UK regulators will have the powers to exert greater local control of branches in particular (as distinct from general powers). If this principle is accepted, further consideration should be given to whether the changes are implemented at a statutory level or through revised, detailed guidance to be issued by the PRA or FCA.

2.8 In particular, due weight should be given to decisions of colleges where the UK regulators have been able to be active participants in the college, and the use of colleges for internationally active groups should be encouraged.

A formalised process for the assessment of home state legal, regulatory and supervisory regimes

2.9 In order to deliver certainty to firms seeking to establish a UK branch, and from the perspective of UK competitiveness, the process by which the regulators will make assessments of home state regimes, and of firms' compliance with the Threshold Conditions in the home state should be set out in secondary legislation. This gives HM Treasury flexibility to adjust the parameters of the assessment without the need for primary legislation.

2.10 The process should be guided by a principle that assessments are referable to certain international standards. This would assist in delivering greater harmonisation at an international level. The precise standards to which assessments would have regard, in considering home state regimes/supervisory approaches could in principle include: the Basel Standards; the FSB Principles; certain IOSCO standards; the FATF Recommendations and the Insurance Core Principles of the International Association of Insurance Supervisors. The power to set the applicable standards may be reserved to HM Treasury, to provide flexibility as well as accountability.

2.11 This ambition has an obvious read-across to the cross-border workstream, and the examination of the current equivalence-based mechanism for cross-border trade in financial services.

Amending the regulators' principles of good regulation

2.12 The Working Group saw the benefit of an amendment to the regulators' principles of good regulation[7] in connection with competitiveness of the UK regime and a drive to deliver innovation amongst participants. This approach may be in line with HMT's developing policy approach. Questions for exploration and analysis include the way in which the objective is framed ("have regard to" etc.) and its interaction with other objectives (i.e. hierarchy).

2.13 It is possible that, in framing the principles, there is a more specific tie across to the supervisory activities of the regulators in connection with branches, and the supervisory split between home and host regimes and supervisors. For example, when considering competitiveness, the UK branch regulator may be required to consider certain known areas of interest or concern – such as the existence (or not) of depositor or policyholder preference in the home state.

Simplifying the regime for UK branches

2.14 In order to enhance the attractiveness of the UK as a host jurisdiction for branches, recognising their inherent capital efficiency (but also the consequent financial stability risks of hosting) the Working Group agreed that transparency of regulatory requirements was key.

2.15 The legal and regulatory requirements applicable to branches could be more coherently set out, to encourage branch organisation in the UK. This includes the PRA Rulebook/FCA Handbook, but is a principle applicable to wider legal and regulatory requirements. For example, both the PRA Rulebook and the FCA Handbook could be reordered, with branch-specific parts applicable to different businesses (rather than the current approach, which is to modify or amend individual parts of the rulebook, or individual rules for application to branches of overseas firms). In addition, the rulebooks should make clear where requirements apply to an overseas firm with a UK branch with respect to its activities conducted from non-UK offices and to the overseas firm as a whole. There is a particular concern that the PRA Rulebook is not well organised from a branch business perspective.

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[7] See the FCA principles of good regulation.

PART D: EQUIVALENCE-BASED REGIMES

CURRENT POSITION

1 The EU currently has equivalence-based regimes (known as third country regimes or "**TCRs**") under which firms from countries outside the EU are able to do regulated business with EU-based counterparties and customers. Under the TCRs, access for those firms is permitted as long as the regulatory and supervisory framework in the firm's home country has been determined to be equivalent to that of the EU.

2 The main problems with the EU's current TCRs have been documented by the IRSG in a previous report.[8] Those problems are that: the TCRs only apply to a limited range of regulated activities and services (mostly around investment business and market infrastructure); there is a lack of consistency and coherence between the different TCRs; there is a lack of clarity around what "equivalent" means; and there is a lack of procedural protections under the TCRs (which means, for example, that access for the third country firm can be withdrawn with little or no notice).

3 As a consequence of the UK's approach of "onshoring" EU law into UK legislation and rules, each of the TCRs that currently exists under the EU regime will become a feature of the UK regulatory regime – save that, after the end of the implementation period, the test will be whether the regulatory and supervisory framework of the firm's home country is equivalent to that of the UK, not the EU. In this Part, we have referred to these TCRs as the "**Onshored TCRs**".

4 The UK should consider the extent to which future access to the UK should involve an equivalence-based regime like the TCRs, and if it does, what that regime would look like. This could involve removing Onshored TCRs from the UK regime, or retaining them and addressing their shortcomings. It could also mean using an equivalence-based regime more widely than the Onshored TCRs do – for example, by extending them to cover financial services that are not currently covered by the Onshored TCRs. As noted in the introduction, in preparing this Interim Report we have disregarded the question of the UK's future relationship with the EU.[9]

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8 IRSG Report on the EU's Third Country Regimes and Alternatives to Passporting (23 January 2017): https://www.irsg.co.uk/resources-and-commentary/irsg-report-on-the-eu-s-third-country-regimes-and-alternatives-to-passporting/.

9 From the EU's perspective, the UK will be a third country and so the UK would need to be determined to be equivalent under the EU's TCRs in order to access the EU. Any review by the EU of the UK's equivalence may include consideration of whether the UK itself has TCRs that are equivalent to that of the EU. This criterion is expressly included in EMIR and MiFIR and might apply in relation to other TCRs too. It creates a question mark over the extent to which the UK (i) could expand its own TCRs without losing the benefit of any equivalence decision made by the EU or (ii) would need to amend its own TCRs to remain consistent with the EU TCRs if the EU TCRs were to change in the future. We have assumed for the purposes of this Interim Report that the UK will not allow such considerations to constrain its relationship with other third countries.

5 In this Part of the note we have approached the question of equivalence regimes by asking: regardless of the relationship with the EU, should equivalence-based regimes be a part of the UK's arrangements for market access, and if so, what should they look like?

FUTURE POSITION

6 If the UK does have its own equivalence regime, there is concern regarding the approach that the EU and UK currently follow in relation to the TCRs and Onshored TCRs. That approach tends to involve a very detailed, granular consideration of the extent to which the rules of the third country are equivalent to that of the EU/UK. This issue was identified as a concern in the IRSG's previous report, in 2017, and it continues to be a concern in 2020.

7 The trend at an EU level is towards even the analysis becoming even more granular and on EU standards being applied on an extra-territorial basis: for example, the overall effect of the EU's proposed EMIR 2.2 amendments is that systemically important third country CCPs have to adhere closely to certain specific requirements that apply to EU CCPs.

8 The Working Group is concerned that a granular assessment of equivalence based around one set of rules (e.g. the UK rules) is likely to act as a disincentive to firms from outside that jurisdiction. Instead, the UK should apply a looser test based around a concept such as deference.

9 The IRSG has long advocated that a policy of mutual regulatory deference is central to well-functioning cross-border regulatory regimes.[10] While the UK authorities require appropriate powers to supervise UK firms, the distinction between UK firms and overseas firms is critical. Using an approach of mutual deference between the UK regulators and the home country regulators of an overseas firm can allow the UK to avoid imposing conflicting, inconsistent or duplicative requirements on overseas firms who wish to do business in the UK. Mutual deference reduces financial stability risk[11] and market fragmentation.

10 Regardless of what name is used to describe the assessment that would be made, it will be critically important to define what that test will be. The UK should follow a genuinely outcomes-based approach, which focusses on delivering comparable outcomes rather than strictly "equivalent" outcomes (in the sense used in the EU's TCRs). Different jurisdictions will naturally have different requirements for a number of reasons, including legal regime, market structure, and trading practices. The test needs to be flexible enough to allow this.

11 In relation to deference:

(a) An approach based on deference is also consistent with the direction of travel at a global level. We note, for example, that IOSCO recently published a report on Good

[10] *See, e.g.*, IRSG Report on Mutual Recognition a Basis for Market Access after Brexit (April 2017), at https://www.irsg.co.uk/resources-and-commentary/irsg-report-on-mutual-recognition-a-basis-for-market-access-after-brexit/.

[11] See Financial Stability Oversight Council, 2019 Annual Report 10, at https://home.treasury.gov/system/files/261/FSOC2019AnnualReport.pdf., *supra* note 3 at 116.

Practices on Processes for Deference[12] which includes practices that regulators could consider to make deference determinations more efficient.

(b) A recent example of this kind of approach involving the UK is the joint statement issued by the UK and Switzerland on 30 June 2020 declaring their ambition to conclude a Mutual Recognition Agreement. The aims of this cooperation are to:

(i) work towards mutual recognition of each other's regulatory and supervisory regimes in the fields of insurance, banking, asset management and capital markets;

(ii) reiterate both countries' commitment to an outcomes-based approach to mutual recognition;

(iii) on the basis of recognition, reciprocity and enhanced regulatory and supervisory cooperation, seek to improve access for the cross-border provision of financial services for wholesale and sophisticated clients as well as to reduce or remove ongoing frictions applying to cross-border activity between the two jurisdictions; and

(iv) avoid market fragmentation and build an open global financial system, with both countries noting their willingness to defer to each other's national regimes and supervisory practices where they achieve comparable overall outcomes with regard to market integrity, financial stability and the protection of consumers and investors.

Both countries will seek to deepen their cooperation in international fora, by cooperating on both the design and implementation of robust international standards, as well as on innovation and the role of technology in financial services. The UK and Switzerland also announced their intention to create a clear, transparent and managed process in the event that recognition is withdrawn in the future or re-established after a withdrawal.

12 Members of the Working Group have noted that there is a natural tendency for the regulators who are responsible for making equivalence assessments to err on the side of seeking detailed comparisons. Better guidance should be available to the regulators and their staff to assist them in making genuinely outcomes-based assessments.

13 The Onshored TCRs only apply to a limited subset of financial services. It is likely that any extension of the UK approach towards deference will take place gradually, in relation to specific areas of financial services. The aim should nevertheless be to find a regime that allows access as broadly as possible.

14 A further issue to consider is whether any equivalence-based approach should be pursued on a reciprocal basis only. While there is a positive case for the UK to grant equivalence to other jurisdictions without necessarily requiring a quid-pro-quo response, such an

[12] IOSCO report on Good Practices on Processes for Deference. (June 2020).

approach may not be sustainable in all areas. In cases relating to bilateral business, the ability of UK firms to find the best commercial partner either in the UK or another country with equivalent measures would be enhanced if the UK offered access on a non-reciprocal basis. However, for multi-lateral business and network-based infrastructures (such as trading venues, markets, CCPs and CSDs), granting access of a non-equivalent basis creates the risk that these infrastructures, through lack of access to clients in such a non-reciprocating jurisdiction, could be encouraged to move/set-up there (rather than in the UK) so as to access the broadest possible client base. Therefore, while a presumption of openness is the recommended approach, a case-by-case approach will need to be taken.

15 Any decisions on deference should take into account any appropriate international standards – such as (as discussed in Part C of this Interim Report) the Basel Standards, the FSB Principles, certain IOSCO standards, the FATF Recommendations and the Insurance Core Principles of the International Association of Insurance Supervisors. This would assist in delivering greater harmonisation at an international level. The power to set the applicable standards may be reserved to HM Treasury, to provide flexibility as well as accountability.

16 Insofar as the Onshored TCRs, with their equivalence-based tests, continue to be part of the UK law, the Working Group is in favour of the UK taking steps to address the known shortcomings in those regimes – in particular, the lack of procedural protections. In particular, the UK should:

(a) publish clear criteria for allowing access – both at the level of agreeing a deference arrangement with the relevant third country and (if applicable) for the approval of individual firms from that country;

(b) have a clear, predictable process for termination of the arrangement (either at a national level or for individual firms), with objective criteria;

(c) commit to having an adequate notice period for withdrawal of the arrangement, so that affected firms have the opportunity to make alternative arrangements; and

(d) establish an independent tribunal to determine whether the criteria are satisfied.

PART E: OTHER BARRIERS TO OVERSEAS FIRMS

1. This Part of the Interim Report seeks to identify elements in the UK's regime that could be amended to make the UK more open to overseas firms.

2. The UK's ability to set its own regulatory rules has been limited while it has been within the EU. Once the implementation period ends, the UK is in theory able to set out its own rules. If the UK wishes to remain equivalent to the EU in relation to those areas where the UK is able to benefit from an equivalence determination under the EU's TCRs (see Part A), it may not wish to make changes which would mean that it ceases to be aligned with the EU.

3. We asked the Working Group to identify rules which they think could be amended to make the UK more open to international firms and globally competitive. The UK-based financial service industry has no desire for a bonfire of regulations and is calling for the high regulatory standards that the UK is renowned for to be maintained. Nevertheless, the UK's regulatory regime contains inconsistencies and has the potential to be streamlined.

4. To identify all such rules would be a considerable task, and one well beyond the scope of this paper, but the Working Group identified a number of high-level comments and principles. In particular, they identified a number of areas where they felt that the rules imposed a disproportionate burden on firms and could be streamlined without reducing standards.

5. The main examples identified were as follows:

   (a) **Regulatory perimeter**

   The UK should consider simplifying the RAO to remove the need for considering EU law investment services and activities/exemptions. This could make the UK regulatory perimeter more readily understandable both to UK firms and overseas firms considering doing business in the UK. See also the comments in Part A, above.

   (b) **Capital Requirements**

   The UK's implementation of EU and global rules has seen some 'gold plating' which could reviewed in order to have a more proportionate approach to prudential requirements – for example, in relation to asset managers.

   (c) **Liquidity**

   In order to maintain the UK's attractiveness as a booking centre and attract large international firms, the UK could re-review rules that might otherwise act as a barrier in relation to international firms – such as in relation to inter-company risk weights, inter group exemptions and credit valuation adjustment risk

(d) **Regulatory reporting obligations**

The current regulatory regime contains a multiplicity of duplicative and often inconsistent reporting requirements. For example, a single transaction can require different data to be reported, and by multiple parties. These obligations are particularly burdensome for non-financial entities which are subject to reporting alongside financial institutions.

The UK could consider again whether all of these reporting requirements are necessary and proportionate or made more rational (e.g. by aligning financial reporting for insurers - currently quarterly - with the frequency of insurers' financial statements – which are currently half yearly).

However, in doing so, the UK should not seek to introduce different requirements which would have the overall effect of increasing the regulatory burden for cross-border businesses.

(e) **Market abuse**

Some of the obligations under the market abuse rules are arguably unnecessary or disproportionate – for example, where rules require information to be presented to a certain standard even though the recipients of the information would not otherwise have expected it to be provided to that standard. It is also felt that the MAR market soundings regime is not fit for purpose.

Asset management

In the asset management sector, there are a number of areas where the rules are currently felt to operate unfairly or to impose disproportionate requirements – for example in relation to the financial Services Compensation Scheme (FSCS) 'look through' requirements and the restrictions on the ability of depositaries to limit their liability.

The EU sustainable finance ("**SF**") reforms also set standards that will be difficult in practice for many market participants to comply with if implemented by the UK in a similar way as the taxonomy prescribes. It would be beneficial for market participants and consumers if the UK took a more proportionate approach in its version of the SF package and ESG reforms generally. However, equally the UK regime should be mindful of and allow for substituted compliance with the EU SF package (particularly when it comes to defining a UK Taxonomy) to avoid firms have to comply with two differing sets of regimes.

The UK approach to processing material change requests for alternative investment funds could be simplified and streamlined.

Investment business

A number of provisions that were introduced under MiFID II are perceived as being onerous and not achieving their objectives to an appropriate degree. In particular, there are concerns regarding:

(i) the MiFID Share Trading Obligation (STO) and the Derivatives Trading Obligation (DTO);

(ii) best execution reporting;

(iii) costs and charges disclosure (particularly for wholesale clients);

(iv) the application of product governance requirements across all product types;

(v) the current EU position relating to identifying "traded on a trading venue" (ToTV) instruments;

(vi) pre-trade transparency requirements for certain non-equities instruments;

(vii) the Double Volume Cap (DVC) mechanism; and

(viii) post-trade transparency requirements.

It is also felt that capital rules proposed for certain firms (e.g. “adviser/arranger” firms) under the Investment Firms Directive/Regulation require significant increases in regulatory capital with little purpose or benefit for these firms which present no systemic and limited customer risk.

EMIR

EMIR imposes various requirements in relation to derivatives transactions – in particular, reporting requirements, the clearing obligation, and certain margin requirements for uncleared derivatives. There are exemptions available for intragroup transactions, but they are subject to complex rules as regards their application, and require detailed information to be provided to regulators. The current process for benefiting from the exemptions is extremely cumbersome and could be streamlined.

Insurance

There are a number of areas where the UK could consider making changes – for example, in relation to:

- the way in which similar standards are applied to both retail and wholesale business – which could be addressed by adopting a more proportionate approach in the case of wholesale business;

- disproportionate data requests and reporting requirements to align with IFRS 17;
- duplication of regulation on cross-border transactions;
- treatment of illiquid assets;
- calibration of the risk margin to reduce sensitivity to interest rates;
- certain Solvency II rules – such as those relating to risk margins, the matching adjustment and the operation of internal models; and
- the application of the UK's client money rules in the context of insurance business.

Payment services

The payments industry evolves at a rapid pace. Although PSD2 brought in significant change, it was partly intended to respond to business models and products which were new when the first Payment Services Directive was reviewed in 2012, and is itself at risk of being outpaced by businesses seeking to introduce new business models and products. Instead of waiting for a "PSD3", Brexit provides an opportunity for the UK to implement more suitable regulation at a swifter pace.

Some of the changes the UK could consider include:

- introducing more flexibility to the requirements around execution times and value dating payment transactions;
- merging the regulations on payment and e-money to produce a clearer and more coherent regulatory framework;
- revising the definition of e-money to reflect how it is used in practice;
- including stablecoins within the scope of payment services regulation;
- improving the regulation around account information services to suit use cases that are more advanced than simplistic account aggregation;
- producing more regulation to support innovative open banking services, e.g. broader liability frameworks; and
- introducing a more flexible approach to the strong customer authentication (SCA) requirements.

Consumer credit

Consumer credit regulation in the UK is complex and can be difficult for firms to navigate, in part because it combines elements of EU law and pre-existing UK

requirements. If the regulated agreement in question is a mortgage contract, the regulatory framework becomes even more complex.

The UK could replace the existing regime with a new Act to encompass all regulated lending. This could:

- introduce more consistency in treatment across different regulated products;
- remove burdensome or unnecessary requirements;
- re-calibrate the level of consumer protection; and
- build upon helpful provisions derived from the EU's Consumer Credit Directive ("**CCD**").

The UK could also depart from the CCD requirements for pre-contract information and introduce more generous exemptions for lending to high net worth individuals.

Change of control requirements could be simplified for consumer credit brokers, particularly for the acquisition of minority holdings in groups whose core activity is not financial services.

Benchmarks Regulation

The regime was broadly introduced in response to manipulation of critical benchmarks such as LIBOR. However, the regulation itself applies to a vast range of benchmarks and indices that are not subject to the same risks as LIBOR was. This has created a large compliance burden for firms.

The International Regulatory Strategy Group (IRSG) is a practitioner-led group comprising senior leaders from across the UK-based financial and related professional services industry. It is one of the leading cross-sectoral groups in Europe for the industry to discuss and act upon regulatory developments.

With an overall goal of promoting sustainable economic growth, the IRSG seeks to identify opportunities for engagement with governments, regulators and European and international institutions to advocate an international framework that will facilitate open and competitive capital markets globally. Its role includes identifying strategic level issues where a cross-sectoral position can add value to existing views.