

INFORMATION SHARING PROTOCOL
BETWEEN
THE FINANCIAL CONDUCT AUTHORITY (**FCA**) AND
HER MAJESTY'S TREASURY (**HMT**)

1. Purpose of this protocol

- 1.1 An independent investigation has been conducted by Dame Elizabeth Gloster into the regulation by the **FCA** of London Capital & Finance Plc (***the investigation***).
- 1.2 Upon completion of ***the investigation***, the **FCA** is required to make a written report to **HMT** pursuant to section 79 of the Financial Services Act 2012 (this provision is annexed to this protocol). This necessarily involves the disclosure of the draft report made by the independent reviewer by the **FCA** to **HMT** (***the hand over process***). The written report contains the personal data of certain individuals.
- 1.3 Information about ***the investigation*** can be found on the **FCA's** website (www.fca.org.uk/transparency/independent-investigation-london-capital-finance).
- 1.4 The **FCA** and **HMT** have determined that:
- a) the **FCA** is sole controller of any personal data processed in respect of ***the investigation*** prior to ***the hand over process***;
 - b) the **FCA** and **HMT** are joint controllers of any personal data processed during the course of and for the purpose of ***the hand over process***;
 - c) **HMT** is sole controller of any personal data processed in respect of ***the investigation*** after the conclusion of ***the hand over process***.
- 1.5 This means that **HMT** and the **FCA** will jointly determine the purpose(s) and the means of the processing of the personal data during ***the hand over process***.
- 1.6 For the purpose of ensuring that the sharing of personal data between the **FCA** and **HMT** complies with the General Data Protection Regulation ((EU)

2016/679) (**GDPR**)¹ and the Data Protection Act 2018 (**DPA**) (together the **data protection legislation**) this protocol sets out the arrangement and allocation of responsibilities between **FCA** and **HMT** in respect of **the hand over process**.

- 1.7 All data protection terms referred to in this protocol have the same meaning as defined in the **GDPR**.

2. Types of personal data being shared

- 2.1 The types of personal data contained in the report include names, references to employment positions held, actions taken by and communication with such individuals.

3. Legal basis for sharing personal data

- 3.1 The legal basis for sharing personal data is Article 6(1)(e) of the **GDPR** (it is necessary for the performance of a task carried out in the public interest) and Section 8(c) of the **DPA**.
- 3.2 To the extent that the report contains any special categories of data, the legal basis for sharing personal data is under Article 9(2)(g) of the **GDPR** (it is necessary for reasons of substantial public interest) and Section 10(3) of the **DPA**, in that the sharing of the data meets a condition in Part 2 of Schedule 1 of the **DPA** and we have an appropriate policy document covering this processing.

4. Allocation of responsibilities

- 4.1 The **FCA** and **HMT** will comply with all applicable obligations under the **data protection legislation** in respect of **the hand over process**.

Data subject rights and correspondence

- 4.2 **HMT** and the **FCA** shall each be responsible for responding to any correspondence, request, enquiry or complaint from a data subject, regulator or other third party (**correspondence**) related to **the handover process** that it receives. This includes requests made under Chapter III of the **GDPR** (rights of the data subject) and the Freedom of

¹ References in this protocol to the **GDPR** include references to the **GDPR** as retained in national law under section 3 of the European Union (Withdrawal) Act 2018 after the transition period as defined in Article 126 of the EU-UK Withdrawal Agreement comes to an end. The **GDPR** as so retained is referred to as the UK GDPR (see the Regulation 2 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 SI 2019/419).

Information Act 2000 (**FOIA**).

- 4.3 If **HMT** or the **FCA** receives any **correspondence**, it shall promptly inform the other party giving full details of the same. The parties acknowledge that the recipient of the **correspondence** shall be responsible for determining in its absolute discretion how to respond to the **correspondence**.
- 4.4 Each party agrees to provide such assistance as is reasonably required to enable the other party to comply with requests from data subjects to exercise their rights under the **data protection legislation** within the time limits imposed by the **data protection legislation**.

Confidentiality

- 4.5 Both the **FCA** and **HMT** will take steps to ensure any personal data is kept confidential during **the hand over process**.

Security incident response

- 4.6 **HMT** and **FCA** will ensure appropriate technical and organisational measures to protect the personal data processed for the purposes of **the handover process** against the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the personal data (a **security incident**).
- 4.7 In the event of a confirmed **security incident**, **HMT** or **FCA** (depending on the circumstances) will:
- a) notify the **security incident** to the other party in the most expedient time possible under the circumstances and without undue delay;
 - b) where required under the **data protection legislation**, report the **security incident** to the Information Commissioner's Office;
 - c) provide the other party with any information that may be required in relation to the **security incident**;
 - d) take action immediately to investigate the **security incident** and make reasonable efforts to mitigate the effects of the **security incident**; and
 - e) provide the other party with all such assistance as it may require in order to enable it to fulfil any regulatory or data subject notification responsibilities it may have under the **data protection legislation** or other applicable law.

Appointment of processors

- 4.8 **HMT** and the **FCA** may appoint third party processors to process personal data for **the hand over process**, provided that such processors:
- a) agree in writing to process personal data in accordance with **HMT** or **FCA's** written instruction;
 - b) implement appropriate technical and organisational security measures to protect the personal data against a **security incident**; and
 - c) otherwise provide sufficient guarantees that they will process the personal data in a manner that will meet the requirements of the **GDPR** and the **DPA**.

Transparency to data subjects

- 4.9 The **FCA's** Privacy Notice can be found on its website (www.fca.org.uk/privacy).
- 4.10 **HMT's** Privacy Notice can be found on its website (www.gov.uk/government/publications/hmt-privacy-notice-for-the-investigation-into-the-fcas-regulation-of-london-capital-and-finance-plc).
- 4.11 Each controller is responsible for ensuring its privacy notice covers **the hand over process**.

Data Transfers

- 4.12 Neither **HMT** nor the **FCA** shall process any personal data relating to **the hand over process** in a territory outside of the United Kingdom.

Data Retention

- 4.13 The retention periods for holding the personal data relating to **the hand over process** are:
- a) 25 years, in the case of the **FCA**;
 - b) 20 years, in the case of **HMT**.

5. Duration of this protocol

- 5.1 This protocol takes effect on the date on which it has been signed by the **FCA** and **HMT**, and solely covers **the handover process**.

6. Contact point for data subjects

6.1 In respect of **the hand over process** the point of contact for data subjects is the **FCA's** Data Protection Officer (dataprotection-individualsrightsrequests@fca.org.uk). The **FCA** has an online form², which should be used for requests made under **FOIA**.

7. Publication schemes under the Freedom of Information Act 2000

7.1 The **FCA's** publication scheme can be found on its website (www.fca.org.uk/freedom-information/fca-publication-scheme).

7.2 **HMT's** publication scheme can be found on its website (www.gov.uk/government/organisations/hm-treasury/about/publication-scheme).

8. Publishing this protocol

8.1 The **FCA** is responsible for publishing this protocol.

Signed for and on behalf of the **FCA**: [signed electronically]

Name: Andy Cobbett

Position: Data Protection Officer

Date: 24 November 2020

Signed for and on behalf of **HMT**: [signed electronically]

Name: Adrian Yeo

Position: Deputy Director, Banking and Insurance Team. Treasury Legal Advisers

Date: 24 November 2020

² This online form can be found here: www.fca.org.uk/freedom-information/request-form

ANNEX

Financial Services Act 2012

2012 CHAPTER 21

PART 5

INQUIRIES AND INVESTIGATIONS

Investigations

79 Conclusion of investigation

On completion of an investigation required by section 73, 74 or 76A or under section 77, the regulator must make a written report to the Treasury—

- (a) setting out the result of the investigation,
- (b) setting out the lessons (if any) that the regulator considers that it should learn from the investigation, and
- (c) making such recommendations (if any) as the regulator considers appropriate.