

**Memorandum of Understanding between the Financial Reporting Council
(FRC) and the Financial Conduct Authority (FCA)**

Purpose and scope

1. This Memorandum of Understanding (**MoU**) concerns the arrangements for co-operation and co-ordination between the Financial Reporting Council (**FRC**) and the Financial Conduct Authority (**FCA**) (separately, the **Party**, together, the **Parties**) in carrying out their respective regulatory responsibilities, under the Financial Services and Markets Act 2000 (**FSMA**) and the Financial Services Act 2012, for the FCA; and various responsibilities, including statutory responsibilities under the Companies Act 2006 and the Companies (Audit Investigations and Community Enterprise) Act 2004, for the FRC.
2. Its purpose is to assist co-operation and co-ordination between the FRC and FCA by setting out the respective statutory regulatory responsibilities of the FRC and FCA and the arrangements for co-operation and the exchange of relevant information. Its purpose is also to aid, through clarity and transparency, understanding of the above by firms, Parliament and the public.

Legal status and effect

3. Although this MoU is not a contract, nor legally binding, and does not in itself create lawful means for the exchange of information, it has an essential role in documenting the processes and procedures agreed between the organisations.
4. Nothing in this MoU shall, or is intended to:
 - (a) create any legal or procedural right or obligation which is enforceable by either Party against the other;
 - (b) create any legal or procedural right or obligation which is enforceable by any third party against either or both Parties, or against any other third party;
 - (c) prevent either Party from complying with any law which applies to them, for example, applicable statutory or procedure restrictions on disclosure or obligations under applicable Data Protection legislation in force;
 - (d) fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the Party to exercise; or
 - (e) create any legitimate expectation on the part of any person that either the Party will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.
5. Nevertheless, the Parties are committed to pursuing the aims and purposes

of this MoU in good faith, and intend to act in accordance with its terms on a voluntary basis.

Roles and responsibilities of the FRC and the FCA

6. The FRC promotes transparency and integrity in business and is the UK Competent Authority for the regulation and oversight of Statutory Audit in the UK. The FRC sets codes and standards for governance, stewardship, accounting, assurance and actuarial work; oversees the regulation of accountants and actuaries by the professional bodies and investigates misconduct by accountants and actuaries; and through its Conduct Committee, reviews bank, building society, insurer and other listed entity reports and accounts for compliance with the applicable financial reporting framework.
7. The FRC has statutory powers relating to the setting and monitoring of accounting standards, the regulation of statutory audit in the UK and to impose directions and financial penalties on recognised qualifying and supervisory bodies. Other FRC functions, for example, professional discipline of the accountancy and actuarial profession in public interest cases and the oversight of regulation of the actuarial profession, are exercised on a voluntary basis and rely on the co-operation of the professional bodies. A full list of these functions, statutory sources and arrangements is set out in the "FRC Roles, Responsibilities and Schedule of Functions"¹. Applicable statutes and procedures restrict the FRC's handling of information received in the conduct of these functions in some cases and provide 'gateways' for sharing that information in others (see 'Information Sharing' and Annex 1).
8. The FCA is responsible under FSMA for making and enforcing rules governing the conduct of firms authorised and regulated by the FCA, including companies with securities admitted to trading in the UK (**FCA-supervised firms**), regulating standards of conduct in retail and wholesale markets and for supervising the trading infrastructures that support those markets. The FCA is responsible for the prudential supervision of firms that are not regulated by the Prudential Regulation Authority (**PRA**) and is also responsible for the regulation of primary securities markets, including via monitoring market disclosures, reviewing and approving prospectuses and operating the UK listing regime.
9. The FCA has been designated as the central competent administrative authority in the UK for the purposes of the Transparency Directive (**TD**). Under the permission set out in Article 24 of the TD, the UK has designated the FRC as the competent authority in the UK for examining whether information referred to in the TD is drawn up in accordance with the relevant reporting framework, and for taking appropriate measures in cases of discovered infringements.

¹ <https://www.frc.org.uk/getattachment/67835f0e-e4c2-4d2a-9aeb-e57feed885be/FRC-Roles-Responsibilities-Schedule-of-Functions-Powers-June-2017.pdf>

10. The FCA has a single strategic objective: to ensure that the relevant markets (as defined in section 6 (1F) Financial Services Act 2012) function well. Three operational objectives support this strategic objective: securing an appropriate degree of protection for consumers (including wholesale consumers); protecting and enhancing the integrity of the financial system; and promoting effective competition in the interest of consumers in the markets for financial services.
11. The FCA does this via oversight and regulation of the UK financial markets which includes:
- (a) authorisation of individuals who carry on regulated activities;
 - (b) a market-based approach to the supervision of firms in the financial services sector;
 - (c) investigation and enforcement activity against firms and individuals who are carrying out or purporting to carry out financial services (with or without authorisation);
 - (d) exercising powers under the Competition Act 1998; and
 - (e) bringing criminal prosecutions, including, in appropriate cases, of market abuse, financial crime and serious unauthorised business.
12. The FCA has powers to authorise, approve, investigate and take enforcement action against firms and individuals, which may interact with the FRC's more specific responsibilities for the regulation of accountants, auditors and actuaries, and financial reporting by banks, building societies, insurers or other quoted entities. The FCA obtains information and intelligence from its supervisory activities which may be relevant to the work of the FRC. The FRC obtains information and intelligence from performing its functions which may be relevant to the work of the FCA.

Information-sharing

13. To the extent permitted by applicable legal and procedural restrictions on the disclosure of information and gateways, the Parties will ensure the timely and focused exchange of relevant information that enables effective co-ordination and co-operation in the necessary areas.
14. Exchange of information will take place at many levels. Information available to one regulator that is relevant to the responsibilities of the other regulator will be shared where requested. In addition, if one regulator considers that information it has gathered will be materially relevant to the other, it will notify the other to enable the other to request disclosure of such information. In particular, information sharing will support the effective identification of risks to each other's objectives, improving the effectiveness of supervision, statutory audit regulation, corporate reporting, corporate governance, professional oversight, policy development and, where appropriate, agreeing a common UK position in relevant international discussions.

15. The exchange of information is subject to the processes set out in paragraphs 16 and 17 and the legal or other constraints that apply to the Parties in relation to the sharing of information. Where disclosure to the other is constrained by agreements with third parties, the Parties will take reasonable steps to secure any necessary consents to disclose the relevant information. The Parties will have regard to the information-sharing gateways set out in Annex 1 that exist to facilitate the exchange of information that is subject to statutory and procedural controls because it is obtained in the exercise of their regulatory functions.

Information requests

16. When making a request for information pursuant to this MoU, the requesting Party shall:

- (a) identify the information sought or, if the information is not yet known or identifiable by the requesting Party, the nature of the information sought;
- (b) identify the intended use or purpose of the information requested; and
- (c) undertake to treat the disclosed information confidentially and in accordance with any applicable statutory or procedural disclosure restrictions which may attach to that information.

17. When responding to a request for information, the receiving Party will use its best endeavours to:

- (a) confirm receipt of the request as soon as reasonably practicable and set out the anticipated scope of work and agree the timetable for a response, where possible;
- (b) provide a full reply and supporting documentation (where applicable) within the time period agreed between the Parties; and
- (c) notify the requesting Party of any anticipated delays to the timetable for a response.

18. When responding to a request for information, the disclosing party will disclose such information which is reasonably considered to be relevant or informative to the pursuit or fulfilment of the requesting party's intended use or purpose as set out in the information request.

Confidentiality and Data Protection

19. The Parties will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from the other, and maintain effective controls designed to minimise the risk of inappropriate disclosures.

20. Where one Party has received information from the other, it may use the information for purposes set out in requests for information or otherwise

agreed, but will obtain consent of the other before passing the information to a third party save in respect of disclosure for compliance with applicable law (for example, but not limited to, the Freedom of Information Act) or order of a body of competent jurisdiction, in which case the disclosing party will use all reasonable endeavours to notify the other Party prior to complying and to assert such appropriate legal exemptions or privileges as may be applicable.

21. Where information generated by a Party is subject to Legal Professional Privilege, the Party will consider whether such information can be shared with the other Party on the basis of a limited waiver of privilege. In considering whether such information can be shared, regard will be had to a range of factors including the potential for the sharing of such information to better deliver the objectives of the other Party. For the avoidance of doubt, that limited waiver will not, unless specifically agreed otherwise by the disclosing Party, or by an order of the court, allow the disclosing Party to pass that information on or otherwise reveal it, in proceedings or otherwise.

22. Where a Party receives information from an external source which is subject to Legal Professional Privilege, the Party will not share that information with the other Party unless that privilege has been or is specifically waived, whether entirely or in favour of the other Party, by all those benefiting from it, or there are sufficient grounds to consider that the information was never truly privileged, whether having regard to the crime or fraud exception or otherwise.

23. The Parties undertake to comply with the requirements of applicable law including but not limited to Data Protection legislation² and the Human Rights Act 1998.

24. The Party receiving personal data under this MoU will process such personal data in accordance with the applicable Data Protection legislation and regulatory guidance in force from time to time.

Co-operation

25. The Parties will co-operate to assist each other in the ways set out in this MoU, including, where appropriate, arranging staff secondments.

Co-operation in the area of Standard-Setting

26. The FCA's ability to achieve its objectives is impacted by the standards set by the FRC in the areas of actuarial, audit and assurance, and accounting standards set by the FRC. Many of the FCA's rules and policy materials make reference to FRC codes and standards. Domestically, the FRC is responsible for setting the UK Corporate Governance and Stewardship Codes and standards which include UK GAAP and UK auditing and actuarial standards. Where international standards apply, the FRC contributes to the

² DPA until May 2018, thereafter the General Data Protection Regulation (GDPR).

setting of those standards, and takes the lead in determining a converged UK policy view on these standards.

27. The Parties will co-operate in respect of:

- (a) the development of FRC codes and standards applicable to FCA supervised firms, in the area of corporate governance, actuarial work, auditing, assurance and accounting;
- (b) the development of FCA rules and guidance which reproduce (with or without modifications), interact with or make reference to FRC codes and standards, or implementation of corresponding international standards or requirements; and
- (c) the developments of standards in conjunction with the relevant European and international organisations including those specified in paragraph 41.

28. Co-operation will include, where relevant and appropriate, sharing research, draft consultations and responses, and seeking each other's views, prior to publication.

29. The Parties will consult each other, where appropriate, about proposals for codes and standards relating to the conduct of professional accountants, auditors and actuaries in connection with the provision of financial services by FCA-supervised firms.

Co-operation in Monitoring and Supervision

30. The Parties both have an interest in monitoring and as applicable enforcing compliance with standards by auditors, accountants, actuaries and banks, building societies, insurer or other listed entities in the area of corporate governance and reporting. The Parties will (subject to the applicable constraints on the disclosure of information):

- (a) discuss general concerns to inform the scope of and arising from the FRC monitoring activity;
- (b) co-operate in monitoring the quality of professional accounting, actuarial, and auditing services regulated by the FRC and provided to or in respect of FCA-supervised firms;
- (c) exchange views on matters concerning the behaviour and performance of accounting, actuarial, and auditing professionals working with and for those FCA-supervised firms which are subject to FRC regulation;
- (d) co-operate as necessary where one or both of the FCA and the FRC is or are undertaking a report or inquiry of such a nature (particularly in relation to the same firm) in relation to the FRC's power to undertake supervisory inquiries into the accounts and reports of banks, building societies, insurers or other listed entities or other issues affecting confidence in corporate governance or reporting; and the FCA's duties

under section 73 of the Financial Services Act 2012 to carry out an investigation and report on a possible regulatory failure; and

- (e) co-operate to inform the exercise by the FRC of its enforcement function in relation to statutory audit, and professional discipline in relation to actuarial and accounting, with or for FCA-supervised firms and to inform the exercise by the FCA of its enforcement function in relation to the conduct of FCA-supervised firms, including the specific enforcement co-operation steps set out at para 31-36 below;

Co-operation in Enforcement investigations

31. Where the FRC and FCA consider that it would help the other Party to fulfil its statutory functions and there are no overriding reasons not to share such information:

- (a) the FRC will inform the FCA of any material investigation it intends to conduct or is conducting into the statutory audit, or conduct of, accountants or actuaries in relation to an FCA-supervised firm; and
- (b) the FCA will inform the FRC if an investigation that it intends to conduct or is conducting may include the conduct of an FCA-supervised firm's accountants, actuaries or auditors,

at an early stage, and in any case before enforcement action (including informal action) is taken.

32. Where the issue affects the advancement of the objectives of both Parties and both Parties have the power to appoint investigators or commence an investigation (as the case may be), the Parties will seek to agree (and make appropriate recommendations to their decision makers) whether any investigation should be carried out by the FCA, the FRC, or both.

33. Where the Parties conclude that an investigation should be carried out by both regulators, it will usually be appropriate that both investigations proceed in parallel. However in appropriate circumstances, they will consider whether the particular facts of the matter, as they are known at that time, suggest that one Party's investigation should proceed before the other's.

34. Where either Party carries out any subsequent investigation and proceedings alone, that Party will keep the other regularly updated on material aspects of the progress of the investigation.

35. Where the Parties determine that both should carry out an investigation, the Parties will use their best endeavours to agree if the investigations, and any subsequent proceedings, should be co-ordinated (including with respect to obtaining and sharing of information, interviews of witnesses and what the co-ordination mechanisms should be).

36. If a decision is made by either Party to take action against a subject, the Parties should consider whether it is possible and would be appropriate to co-ordinate publication of applicable enforcement announcements so that

both Parties publish the outcome of their investigations simultaneously. In any event, the Parties will endeavour to give the other appropriate notice of any press release or other public statement it intends to make relating to enforcement cases in which the other may have an interest, no later than 24 hours prior to publication unless there are overriding reasons which prevent or delay such notice.

Co-operation in the area of FRC's oversight responsibilities

37. The FRC is responsible as competent authority for the oversight of audit regulation and by arrangement for oversight of the professional regulation of accountants and actuaries by their professional bodies. The FRC is also responsible for the registration of third country auditors, namely auditors of issuers of securities from outside the EEA that have issued securities admitted for trading in the UK.
38. The FCA will alert the FRC to any material concern it may have about the way in which one or more professional bodies are regulating their members or statutory auditors or audit firms are carrying on their activities. In some cases it may be appropriate for the FRC and the FCA to co-ordinate public statements intended to encourage behavioural changes or the exercise for their respective enforcement powers.
39. The Parties will share information and work closely together to support discussions with the professional accounting and actuarial bodies in the UK and internationally.

International co-ordination

40. An MoU on International Organisation³ between the Bank of England (including the PRA), the FCA and HM Treasury sets out a framework for consultation and co-ordination to support the ability of the UK authorities to take a coherent and consistent position, wherever possible, in discussions with international partners and for the UK to be an effective participant. Paragraph 5 of the International Organisations MoU states that the principles in it should apply to the management of mutual interests between the UK authorities and other independent domestic bodies (including the FRC). As such, the FRC and the FCA will apply the principles set out in the MoU wherever possible.
41. In particular, the Parties will, where permitted, on an ad hoc basis exchange information in connection with:
- (a) accounting and financial reporting where the FCA is a member of the International Organisation of Securities Commission (IOSCO) and the European Securities and Markets Authority (ESMA); any Committee or

³ MoU on international organisations between the Bank of England, the FCA and HM Treasury:
<http://www.bankofengland.co.uk/about/Documents/mous/statutory/mouintorg.pdf>

group of the IFRS Foundation body⁴ of which the FRC is a member and of the European Financial Reporting Advisory Group (EFRAG);

(b) auditing and assurance standards and regulation where the FCA is a member of IOSCO and ESMA; and the FRC participates in the activities of the Committee of European Auditing Oversight Bodies (CEAOB) and the International Auditing and Assurance Standards Board (IAASB); and

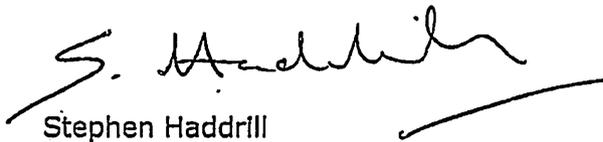
(c) Actuarial Standards and regulation of actuarial work, including dealings with the International Association of Insurance Supervisors (IAIS) and the European Insurance and Occupational Pensions Authority (EIOPA); the Actuarial Association of Europe (AAE); and the International Actuarial Association (IAA) for which the FRC is a member of the standard-setters round table.

42. The Parties will keep the effectiveness and efficiency of co-ordination and co-operation under this MoU under regular review.

Termination

43. A Party may terminate its participation in this MoU at any time by giving at least 30 days prior written notice to each other Party. In the event of termination, the parties will continue to observe such confidentiality and information handling arrangements in connection with information already received under this MoU as set out in paragraphs 16-24 and Annex 1.

Dated: 20 December 2017



Stephen Haddrill

For the FRC



Mark Steward

For the FCA

⁴ For matters relating to International Financial Reporting Standards (IFRS), the UK's Department for Business, Energy & Industrial Strategy (BEIS) and the Treasury (HMT) will also be included.

Annex 1

Statutory confidentiality requirements and Gateways

The FCA

Restrictions on Disclosure

1. Section 348(1) of FSMA prevents the FCA from disclosing any 'confidential information' it receives except in certain circumstances as provided for under FSMA. Confidential information is defined in section 348 of FSMA broadly as any information which is not in the public domain, relating to the business or other affairs of any person, which was received by the FCA for the purposes of, or in the discharge of, its statutory functions (see section 348(2) of FSMA). Where the information has lawfully been made available to the public or is in the form of a collection or a summary so that it cannot be attributed to a particular firm or individual, that information is not confidential information (see section 348(4) of FSMA).
2. The restriction on the disclosure of confidential information under section 348 of FSMA does not apply where the person from whom the information was received (and, if different, the person to whom the information relates) has consented to the disclosure of the material.
3. Section 349 of FSMA allows HM Treasury to make regulations to permit the disclosure of confidential information in certain circumstances. The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 (SI 2001 no. 2188) (the **Disclosure Regulations**) set out the circumstances in which disclosure may be made. Disclosure outside of the Gateway Regulations is a criminal offence.

Gateways

4. The Disclosure Regulations permit the disclosure of confidential information to the FRC under the following gateways:
 - (a) Regulation 3 – where the disclosure is made for the purposes of enabling or assisting the FCA in discharging any of its public functions;
 - (b) Regulation 4 – where the disclosure is for the purposes of any criminal investigation or proceedings which are or may be in process in the UK or elsewhere, including for initiating or bringing to an end any such investigation or proceedings;
 - (c) Regulation 9 – where the disclosure is of information specified in Regulation 9, for the purpose of enabling or assisting the FRC and its operating bodies to discharge their supervisory functions in relation to the exercise by an actuary of his professional duties, the conduct of disciplinary proceedings and determining whether to institute or terminate such proceedings (as listed in Schedule 1 of the Disclosure

Regulations). Disclosure must not be in contravention of any single market restriction; and

- (d) Regulation 12 – where the information is not subject to section 9 restrictions, disclosure is permitted to the FRC for the purpose of enabling or assisting the FRC and its operating bodies to discharge their supervisory functions in relation to the exercise by an actuary of his professional duties, the conduct of disciplinary proceedings and determining whether to institute or terminate such proceedings (as listed in Schedule 1 of the Disclosure Regulations). Disclosure is also permitted for information specified in Regulation 12, for the purposes of any prescribed disciplinary proceedings (see Schedule 3 of the Disclosure Regulations).

The FRC

Restrictions on Disclosure:

5. The FRC is subject to various applicable statutory and procedural confidentiality provisions:
- a) Corporate Reporting Review (**CCR**) function: Section 460 of the *Companies Act 2006 (CA)*, s15C of the *Companies Audit, Investigations and Community Enterprise Act 2004 (CAICE Act)* and para 52 of the *Conduct Committee Operating Procedures*⁵ prohibits the disclosure of information obtained in pursuance of a requirement or order under s 459 of the CA that relates to the private affairs of an individual or to any particular business.
 - b) Statutory Audit function: Section 1224A of the CA restricts disclosure of information relating to the private affairs of an individual or relating to any particular business that is provided to the FRC in connection with the exercise of its functions.

Gateways

6. The following statutory and procedural gateways are expected to apply to the sharing of confidential information with the FCA, subject to any reasonable limitations which may apply:
- a) Section 461 Companies Act - permits disclosure of information obtained under compulsory CRR powers in certain cases;
 - b) Schedule 11A Companies Act- permits disclosure of information obtained under statutory audit powers in certain cases, particularly S5, Part 1, Schedule 11A (permitted disclosure for the purposes of s1224A) Companies Act;

⁵ Conduct Committee Operating Procedures for Reviewing Corporate Reporting, see <https://www.frc.org.uk/getattachment/fb5437a7-641b-4c18-b9f8-8baa7f36c7a5/Conduct-Committee-Operating-Procedures-April-2017.pdf>

- c) Paragraph 55 of the Conduct Committee Operating Procedures (permitted disclosure of information obtained under s461 Companies Act);
- d) S15(D)(3)(e) (permitted disclosure of information obtained under compulsory powers) (Companies Audit, Investigations and Community Enterprise Act 2004);
- e) Sections 19 and 48(c) of the Accountancy Scheme and Accountancy Regulations;
- f) Sections 18 and 46(c) of the Actuarial Scheme and Actuarial Regulations; and
- g) Paragraph 21(1) of the Auditor Regulatory Sanctions Procedure.