



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



Consultation Paper | FCA15/10***
| PRA9/15

Strengthening accountability in banking: UK branches of foreign banks

March 2015

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We are asking for comments on this Consultation Paper by 25 May 2015.

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This Consultation Paper proposes changes to the PRA Rulebook.

Please address responses, comments or enquiries by: 25 May 2015 to:
CP9.15@bankofengland.gsi.gov.uk

Abbreviations used in this document

The Act	Financial Services (Banking Reform) Act 2013
APER	Statements of Principle and Code of Practice for Approved Persons (Handbook)
APR	Approved Persons Regime
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CF	Controlled Function
CP	Consultation Paper
CR	Certification Regime
CRD	Capital Requirements Directive
CRO	Chief Risk Officer
CRR	Capital Requirements Regulation
EBSM	EEA Branch Senior Manager
EEA	European Economic Area
EMEA	Europe, Middle East and Asia
FCA	Financial Conduct Authority
FIT	The Fit and Proper Test for Approved Persons (Handbook)
FSMA	Financial Services and Markets Act 2000
HSS	Home State Supervisor
MiFID	Markets in Financial Instruments Directive
MLRO	Money Laundering Reporting Officer
NED	Non-executive director
OBSM	Overseas Branch Senior Manager

PCBS	Parliamentary Commission on Banking Standards
PRA	Prudential Regulation Authority
SIF	Significant Influence Function
SMF	Senior Management Function
SMR	Senior Managers Regime
SUP	Supervision manual (Handbook)
SYSC	Senior Management Arrangements, Systems and Controls (Handbook)
WMS	Written Ministerial Statement

1. Overview

Introduction

- 1.1** Following the recommendations of the Parliamentary Commission on Banking Standards (PCBS), the Financial Services (Banking Reform) Act 2013 (the Act) amended the Financial Services and Markets Act 2000 (FSMA) to replace the Approved Persons Regime (APR) for banks, building societies, credit unions and PRA-designated investment firms (collectively referred to as 'Relevant Authorised Persons' in section 71A FSMA)¹ with a new regulatory framework for individuals.
- 1.2** The new framework comprises the following two regimes, which aim to encourage individuals to take greater responsibility for their actions and make it easier for both firms and the regulators to hold individuals to account:
- A 'Senior Managers Regime' (SMR) for individuals who are subject to regulatory approval (Senior Managers). The SMR seeks to promote a clear allocation of responsibilities to key decision-makers and strengthen their individual accountability through a robust initial and ongoing assessment of their fitness and propriety (by firms as well as by regulators) and strengthened powers of approval and enforcement for the regulators.
 - A 'Certification Regime' which will require relevant firms to assess and certify the fitness and propriety of employees deemed capable of causing significant harm to the firm or any of its customers at least annually.
- 1.3** The new regimes are underpinned by a new set of Conduct Rules, which will apply to Senior Managers and also certain employees not subject to regulatory pre-approval².
- 1.4** In anticipation of secondary legislation extending the statutory elements of the new regulatory framework for individuals to UK branches of overseas firms ('incoming branches'), this consultation proposes to extend and, where appropriate, tailor the new regimes to incoming branches.

Statutory background to the new regimes

- 1.5** The current definition of Relevant Authorised Person in Section 71A of FSMA is limited to 'UK institutions', defined as institutions incorporated in, or formed under the law of any part of, the United Kingdom (UK relevant firms), including UK subsidiaries of overseas firms. The

¹ <http://www.legislation.gov.uk/ukpga/2013/33/section/33/enacted>

² As noted in the July 2014 CP, the word 'conduct' in this context relates to professional conduct in an ordinary, wider sense i.e. it is not limited to conduct of business and includes activities relevant to the PRA as well as the FCA.

accountability regimes consulted on by the regulators in July 2014 therefore did not apply to incoming branches.

- 1.6** Section 71A of FSMA enables the Treasury to issue an order extending the definition of Relevant Authorised Person to incoming branches of non-UK institutions, subject to consultation. The Treasury's consultation on the extension of the new accountability regimes to incoming branches launched on 17 November 2014 and closed on 30 January 2015. On 3 March 2015, the Treasury announced in a Written Ministerial Statement (WMS) to Parliament that it would apply the new accountability regimes to UK branches of overseas banks, and also published its response to its consultation. The WMS noted that the regulator's rules will 'help ensure that the [SMR and Certification Regime] is applied in an appropriate and proportionate way to foreign institution operating through branches in the UK'.³
- 1.7** Given the Act's original definition of Relevant Authorised Person, the following prior and current PRA/FCA consultations on individual accountability were limited to UK relevant firms:
- PRA CP14/14 / FCA CP13/14 on *Strengthening accountability in banking: a new regulatory framework for individuals*, published in July 2014 (the July 2014 CP), which consulted on the detailed implementation of the new individual accountability regimes.
 - PRA CP28/14 / FCA CP14/31 on *Strengthening accountability in banking: forms, consequential and transitional aspects*, published in December 2014 (the December 2014 CP), which consulted on a number of technical aspects required to implement the new regimes in UK relevant firms, including forms and transitional arrangements.
 - PRA CP7/15 / FCA CP15/5 on *Approach to Non-Executive Directors in banking and Solvency II insurance firms & Application of the Presumption of Responsibility to Senior Managers in banking firms*, published in February 2014 (the NEDs CP). Among other issues, this is consulting on: i) a PRA Supervisory Statement and FCA guidance clarifying the responsibilities of non-executive directors (NEDs) subject to the SMR; and ii) the regulators' intended application of Sections 64A and 64B of FSMA (referred to as 'the Presumption of Responsibility' throughout this CP). Due to the fact that NEDs without specific responsibilities (Standard NEDs) will not be in scope of the SMR or the Certification Regime, the PRA is also consulting on an assessment and notification process for Standard NEDs to ensure the UK remains compliant with its obligations under CRD4 and MiFID.
 - FCA CP 15/9 on *Strengthening accountability in banking: a new regulatory framework for individuals – Feedback on ***FCA CP14/13 / PRACP13/14 and consultation on additional guidance*, which provides near-final rules⁴ on the SMR for UK relevant firms, together with a steer on our policy intentions for the whole regime, including the Certification Regime and the application of our Conduct Rules.
- 1.8** This CP proposes to extend and, where appropriate, tailor the proposals set out in these four CPs to incoming branches. In developing the proposals in this CP, the regulators have taken into account the following principles:
- **The Single Market:** the PRA and FCA's proposals are mindful of the respective powers and responsibilities of home and host state supervisors under the relevant single market

³ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2015-03-03/HCWS336/>

⁴ By necessity, the rules may still need to be adjusted in line with any changes resulting from the December 2014 CP, this CP, the NEDs CP, PRA rules or further policy consideration

directives.⁵ In the PRA's case this means that the proposals in this CP will only apply to incoming non-EEA branches. Conversely, the FCA has certain direct supervisory powers over incoming EEA branches and is therefore consulting on proposals for both non-EEA and EEA branches.⁶

- **Proportionality:** The proposed accountability regimes for UK relevant firms were designed to be proportionate, and the proposed regime for incoming branches also takes this principle into account. For instance, the regulators expect the number of Senior Managers in a UK relevant firm to reflect its size and complexity. For incoming branches, our proposals also seek to reflect the inherent differences between incoming branches and UK firms. An incoming branch is not a separate legal entity from its overseas head office, which has implications for both its structure and the way it operates, as the ultimate governing body will reside at the home state entity level. The regulators are keen to minimise the risk that the proposed regimes could inadvertently introduce an incentive for overseas groups to restructure themselves (e.g. transferring certain activities from a subsidiary to the branch or vice-versa).
- **Level-playing-field considerations:** Notwithstanding the differences between incoming branches and UK relevant firms, where the same regulated activities are carried out, it is desirable for firms of a comparable size and complexity and carrying out the same activities to compete on a relatively level playing-field regardless of their legal status. Many incoming branches are part of large international groups also comprising UK subsidiaries, which are included in the definition of UK relevant firms and, in many cases, have the same individuals performing the same Senior Management Functions (SMFs) across multiple group entities.

1.9 These principles have informed the development of the policy proposals in this CP and explain the majority of differences between the proposals for UK relevant firms and incoming branches as well as any differences between the FCA's proposals for non-EEA branches and EEA branches respectively.

Context of the regulators' proposals

- 1.10** This CP consults on the individual accountability regimes for incoming branches and includes drafts of the rules that will, subject to feedback received, apply to incoming branches. It should be read in conjunction with the proposals for UK relevant firms in the July 2014, December 2014 and NEDs CPs. To help readers, each section of this CP includes a summary of the relevant proposals in the abovementioned consultations.
- 1.11** Prior industry feedback demonstrated that there was a high level of knowledge about the proposed regime for UK relevant firms among incoming branches. Therefore, to avoid repetition, this CP focuses primarily on those proposals that have been tailored to incoming branches and does not describe all of the features of the proposed regimes in the same level of detail as the CPs listed above. For instance, this CP does not include a chapter covering Fitness and Propriety. Where the proposed application of the regime for incoming branches is identical to that proposed for UK relevant firms, full details of these aspects can be found in the previous and current CPs listed above.

⁵ Markets in Financial Instruments Directive (MiFID) and Capital Requirements Directive (CRD IV)

⁶ EEA branches comprise: EU countries other than the UK (Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden) plus Iceland, Liechtenstein and Norway.

- 1.12** A detailed table of all aspects of the FCA regime for UK relevant firms, and their applicability to non-EEA and EEA branches respectively is set out in Annex 1, including references to other relevant documents.
- 1.13** The PRA and FCA are finalising their rules for UK relevant firms. The FCA has published CP15/9 which provides a set of near final rules on the SMR and a steer on the FCA's policy intentions for the whole regime for UK relevant firms. CP15/9 signposts where the FCA intends to change its original proposals for UK firms and where it intends to also apply the relevant change to incoming branches, and should therefore be read alongside this CP. CP15/9 also includes a consultation element concerning further more detailed guidance on the application of the presumption of responsibility to all relevant authorised persons, including incoming branches. Finally, CP15/9 includes a summary 'road map' of current and planned publications and other key milestones ahead of the new regime.
- 1.14** The PRA also intends to publish a Policy Statement and final rules on most elements of the SMR and Certification Regime for UK relevant firms shortly. The PRA's draft Supervisory Statement on the application of the Presumption of Responsibility, which is set out in Appendix 2 of the NEDs CP, is also intended to apply to Senior Managers in incoming branches.
- 1.15** Where not expressly addressed in this CP, the regulators propose to apply the elements of the accountability regimes as set out in the documents referred to in paragraph 1.16 below in the same way to incoming branches as for UK relevant firms. The regulators are seeking views on the full range of proposals for incoming branches as part of this CP.
- 1.16** Therefore, to understand the proposals in this CP in their totality, interested parties should also have regard to:
- The July CP and the December CP, which set out the PRA and FCA's original proposals for UK relevant firms
 - The NEDs CP, which confirmed the PRA and FCA's policy concerning NEDs in the SMR for UK relevant firms and the PRA's proposed application of the Presumption of Responsibility in Section 66B of FSMA
 - CP15/9, which sets out how the FCA's intends to amend the regime as a whole following responses to the July CP, and where these changes are also relevant to incoming branches.
- 1.17** The FCA's draft Handbook rules in relation to the SMR for incoming branches are based on the near-final rules in CP15/9.
- 1.18** The remaining proposed rules and guidance in this CP are based on the proposed rules, guidance and supervisory statements in the July 2014, December 2014 and NEDs CPs. The PRA and FCA will publish further Policy Statements and final rules on all aspects of the regime over the coming months. In the meantime, these rules may be subject to further changes.

Who does this consultation affect?

- 1.19** The proposals in this consultation relate to incoming branches of relevant authorised persons. The Treasury's s71A order is expected to extend the definition of a relevant authorised person to include incoming branches of non-UK banks and PRA-designated investment firms that have permission to accept deposits in the UK. In addition to the incoming branches themselves, the

proposals will affect a large number of individuals within those firms, including, but not limited to, all their existing Approved Persons.

- 1.20** The proposals in this CP will also be of interest to the Home State Supervisors (HSSs) of incoming branches. As part of our international stakeholder engagement, the PRA and FCA intend to discuss the proposed accountability regimes and the proposals in this CP with overseas regulators.
- 1.21** This CP does not apply to incoming branches of any firms other than relevant authorised persons. The regulator's proposals in relation to the accountability regime for incoming branches of Solvency II firms were set out in PRA CP7/15 and FCA CP15/5.

Is this CP of interest to consumers?

- 1.22** As with the July CP, these proposals will primarily be of interest to firms and the individuals who work in them. Consumers may be interested in how individual accountability is being enhanced within relevant firms, or how staff they interact with will be required to comply with the Conduct Rules, in particular the FCA requirement to treat customers fairly.

Summary of PRA and FCA proposals for incoming branches

Senior Managers Regime

Non-EEA branches

- 1.23** The PRA's high-level approach to the application of the SMR to incoming non-EEA branches was discussed but not formally consulted on in Chapter 6 of the July 2014 CP and Supervisory Statement 10/14, which set out the PRA's approach to branch supervision.⁷
- 1.24** The PRA proposes to require all incoming non-EEA branches to have at least one individual pre-approved as a *Head of Overseas Branch* who will typically be performing activities akin to those of a CEO in relation to the branch. It will be possible for incoming branches to have more than one individual approved as *Head of Overseas Branch*; for instance, where the branch is jointly headed by more than one individual. The individual(s) approved as this SMF should, however, have the highest degree of individual decision-making authority within the branch over activities subject to UK regulation.
- 1.25** In addition:
- If another individual, who may be based in another UK group entity, has direct management and/or decision-making responsibility over the incoming non-EEA branch's UK-regulated activities, the PRA's rules will require this individual to also be pre-approved as *Group Entity Senior Manager* of the branch in addition to the *Head of Overseas Branch*.
 - If an incoming non-EEA branch has dedicated individuals performing certain executive SMFs (i.e. *Chief Finance*, *Chief Risk* and *Head of Internal Audit* functions), the PRA will require them to be approved. The PRA expects this to be the case in large, complex branches.

⁷ Supervisory Statement SS10/14, *Supervising international banks: the Prudential Regulation Authority's approach to branch supervision*, September 2014 www.bankofengland.co.uk/pr/Documents/publications/ss/2014/ss1014.pdf

- 1.26** The FCA proposes to apply a new SMF to incoming non-EEA branches, the *Overseas Branch Senior Manager (OBSM)* function. This role captures the senior individuals (other than the *Head of Overseas Branch*) with local responsibility for a business area, activity or management function of the branch and who will typically report to the Head of Overseas Branch. The creation of this SMF specific to non-EEA branches reflects the fact that these individuals, while performing a senior manager role in relation to the branch, may not necessarily exercise the same level of responsibility in relation to the overall firm that is expected from Senior Managers in UK relevant firms. Therefore the OBSM has been defined to apply to the individual's responsibilities in relation to the branch only. The FCA will also require incoming non-EEA branches to appoint a Senior Manager to the functions of Money Laundering Reporting Officer (MLRO) and Compliance Oversight.
- 1.27** Neither the PRA nor the FCA intend to bring any NED functions into scope of the SMR for incoming branches.
- 1.28** In the July 2014 CP the PRA consulted on a list of Prescribed Responsibilities which UK relevant firms will need to allocate among their Senior Managers. The PRA acknowledges that applying all these Prescribed Responsibilities to the Senior Manager(s) of an incoming non-EEA branch would be neither feasible nor proportionate. Consequently, the PRA is proposing a customised set of Prescribed Responsibilities for incoming non-EEA branches. The FCA is proposing to specify a subset of the PRA's customised list of responsibilities for non-EEA branches, which will be shared with the PRA. The FCA is also proposing two FCA-only responsibilities concerning CASS and financial crime which will apply to both UK relevant firms and non-EEA branches. More detail on this is provided in Chapter 2.

EEA branches

- 1.29** Under EU law, the Home State Supervisor (HSS) of an EEA firm that operates as a branch in another EEA country is responsible for the prudential supervision of the whole firm (including the branch). As a result, where the PRA is the host supervisor of an EEA branch, it is not responsible for its prudential supervision; this is the role of the HSS. Consequently, none of the PRA's proposals in this CP apply to incoming EEA branches.
- 1.30** Conversely, the FCA has certain direct supervisory powers over incoming EEA branches in relation to conduct of business. The FCA currently applies a subset of controlled functions to EEA branches to reflect the split of home/host state responsibilities under the relevant single market directives. This includes the Money Laundering Reporting function (CF11) the Significant Management function (CF29), and the Customer function (CF30), with certain limitations⁸. In line with the regime for UK relevant firms, individuals currently performing CF30 roles are not considered to meet the definition of a Senior Manager but may be captured by the Certification Regime. The FCA will require incoming branches to appoint a senior manager to the MLRO function. In addition, the FCA proposes to apply a tailored 'EEA Branch Senior Manager' (EBSM) to capture the individual(s) responsible for the management and conduct of the business of the incoming branch and which reflects our current coverage of senior individuals in EEA branches under the APR.

Certification Regime

- 1.31** Consistent with the approach proposed for UK relevant firms, the PRA intends to align the scope of its Certification Regime for non-EEA branches to that of the Remuneration Rules. Consequently, the PRA will base the definition of a 'certification function' on the definition of a Material Risk Taker (MRT) in its proposed Remuneration Rules (other than those MRTs who are

⁸ SUP 10A.1.11R (2) and (3)

performing Senior Management Functions in respect of the branch and, where relevant, any NEDs the branch may have).⁹

- 1.32** The FCA also proposes to align the scope of its Certification Regime for both non-EEA and EEA branches with that for UK relevant firms, where this is applicable under EU legislation for EEA branches. The proposals in this CP also reflect the policy set out in CP15/9, which sets out the FCA's intention to extend the scope of the Certification Regime to more consistently capture individuals involved in wholesale activity, where these individuals could pose a risk of significant harm to the firm or its customers.

Conduct Rules

- 1.33** The PRA proposes to apply the Conduct Rules to individuals who perform SMF and PRA Certification functions in relation to non-EEA branches in line with its proposed scope for individuals who perform such functions in UK relevant firms. That is to say, the PRA will apply all of its Conduct Rules to persons performing an SMF specified by the PRA or FCA in a relation to a non-EEA branch, and apply a narrower set of individual Conduct Rules to employees in incoming branches within the PRA's Certification Regime.
- 1.34** For both non-EEA and EEA branches, the FCA will apply its Conduct Rules to individuals within the FCA's SMR, Certification Regime, and all other employees other than ancillary staff whose role is not specific to the financial services business of the firm. This also mirrors the approach taken for UK relevant firms. The proposals in this CP also reflect the policy set out in CP15/9, which sets out the FCA's intention to look further at the requirements in regard to the reporting of conduct rule breaches.

Equality and diversity considerations

- 1.35** The regulators have considered the equality and diversity issues that may arise from their proposals in this CP. As with the proposals for the UK regime, the regulators have identified the following aspects of the regime with potential equality and diversity implications:
- The proposals will allow more than one individual to perform a Senior Management Function or a function in scope of the Certification Regime at the same firm, thereby accommodating individuals working under a job-share arrangement.
 - The assessment of prospective and current Senior Managers and individuals within the Certification Regime will consider their fitness and propriety to carry out their function. For some roles, such as the *Head of Overseas Branch*, this assessment may involve consideration of the individual's experience, which can only be acquired with time so could favour individuals in certain age groups. However, this does not depart from existing practice and is offset by the requirement to take into account other assessment criteria not directly related to age, such as qualifications.
 - The proposed regime may occasionally apply to some individuals located outside the UK. This, however, will depend solely on the nature of these individuals' roles and the extent to which they are directly involved in or responsible for the incoming branch's UK-regulated activities, rather than their nationality.

⁹ Draft Remuneration instrument, Chapters 3.1(2)-3.3 in CP15/14, *Strengthening the alignment of risk and reward: new remuneration rules* (CP15/14), Appendix 3.1: www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1514.pdf

- 1.36** Overall, the regulators do not consider that the proposals in this CP raise concerns with regards to equality and diversity issues. The regulators do not consider that the proposals in this consultation result in discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, nationality, race, religion and belief, sexual orientation and transgender.
- 1.37** The regulators will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules. In the interim, any input respondents to this consultation have on such matters is welcomed.

Next steps

- 1.38** The regulators are asking for feedback on the proposals set out in this CP.
- 1.39** The PRA is seeking feedback on:
- all PRA and joint PRA/FCA questions in the main body of the CP and as listed in Annex 6
 - the draft PRA rules in Appendix 1
- 1.40** The FCA is seeking feedback on:
- all FCA and joint PRA/FCA questions in the main body of the CP and as listed in Annex 6, and
 - the FCA draft instrument at Appendix 2
- 1.41** Please note that the consultation includes questions specifically posed by only one regulator as well as joint questions from both regulators. You should note that responses to:
- PRA only questions will be considered by the PRA only
 - FCA only questions will be considered by the FCA only, and
 - responses to joint questions will be discussed by the PRA and FCA

What do you need to do next?

- 1.42** Please send your responses to: both regulators at the following addresses CP9.15@bankofengland.gsi.gov.uk and cp15-10@fca.org.uk. The regulators will share responses with each other and publicly, unless you specifically ask for them to remain confidential.

What will we do?

- 1.43** The PRA and FCA each plan to publish Policy Statement(s) containing our respective final rules relating to incoming branches in summer 2015.
- 1.44** A 'road map' of current and planned publications and other key milestones ahead of the new regime is in CP15/9.

2. Senior Managers Regime

Introduction

Overview of the legislative framework for the SMR

- 2.1** Section 59ZA of FSMA, which was introduced by the Act and will apply to incoming branches once the Treasury's order under section 71A of FSMA is made, defines an SMF as:

'A function that will require the person performing it to be responsible for managing one or more aspects of the relevant firm's affairs, so far as relating to regulated activities, and those aspects involve, or might involve, a risk of serious consequences for the authorised person, or for business or other interests in the UK.'

- 2.2** Senior Managers in UK relevant firms and the firms themselves are subject to the following statutory provisions aimed at clarifying the extent of the individual responsibilities of Senior Managers and strengthening their individual accountability:
- A requirement for applications for approval as a Senior Manager to contain, or be accompanied by, a 'Statement of Responsibility', which must be resubmitted whenever there is a 'significant change' in the Senior Manager's responsibilities.
 - New statutory powers for the regulators to impose conditions and time limits on approvals of Senior Managers, both at the initial approval stage and subsequently through a variation of approval.
 - The 'Presumption of Responsibility'; where a Relevant Authorised Person contravenes a relevant requirement, the Senior Manager with responsibility for the management of any of the firm's activities in relation to which the contravention occurred is guilty of misconduct unless they satisfy the regulators that they took such steps as a person in their position could reasonably be expected to take to avoid the contravention occurring (or continuing).
- 2.3** All the FSMA provisions listed above will also apply to incoming branches and their Senior Managers. Conversely, the criminal offence in Section 36 of the Banking Reform Act relating to a decision causing a financial institution to fail will not apply to incoming branches; this applies only to Senior Managers of UK relevant firms.

SMR for incoming non-EEA branches

Scope of the SMR for incoming non-EEA branches

- 2.4** The proposed list of SMFs in UK relevant firms covers the top layer of executive management and some, but not all, members of the board. However, the board of an incoming branch is located in its home state and it is uncommon for any of its members to be subject to pre-

approval in the UK under the APR. In line with their role in supervising the activities of an incoming branch, the PRA and FCA are concerned with the governance of the branch itself, rather than of the institution as a whole. In supervising the branch, the PRA and the FCA place reliance on the supervision of the wider firm by the home state regulator. So the PRA and FCA do not propose to capture the boards of incoming branches within the SMR, but are instead seeking to capture the individuals responsible for the day-to-day running of the UK branch.

- 2.5** The FCA Handbook includes a guidance provision relating to the current APR¹⁰ which states that, where an individual based overseas has responsibilities in relation to an incoming branch that are limited to setting strategy only, such individuals would not generally be captured as approved persons. However, where an individual is responsible for implementing that strategy in the UK, they are likely to be performing a controlled function and will require approval by one or both regulators. This principle will remain under the new regime for incoming branches.
- 2.6** The table below sets out the PRA and FCA's proposed scope of SMFs in non-EEA branches.

Table 1

PRA Senior Management Functions¹¹	
Head of Overseas Branch	SMF19
Chief Finance function (if applicable)	SMF2
Chief Risk function (if applicable)	SMF4
Head of Internal Audit (if applicable)	SMF5
Group Entity Senior Manager (if applicable)	SMF7
FCA Senior Management Functions	
Money Laundering Reporting Officer	SMF17
Compliance Oversight	SMF16
Overseas Branch Senior Manager (OBSM)	SMF20

- 2.7** **PRA Senior Management Functions**
The PRA's approach to the application of the SMR to incoming non-EEA branches was discussed but not formally consulted on in Chapter 6 of the July 2014 CP and Supervisory Statement 10/14, which set out the PRA's approach to branch supervision.¹²
- 2.8** As noted in these documents, the PRA proposes to require all incoming non-EEA branches to have at least one individual approved as a *Head of Overseas Branch* who will typically be performing activities akin to those of a CEO in relation to the branch. The PRA proposes to describe this SMF as 'the function of having responsibility, alone or jointly with others, for the conduct of all activities of the UK branch of an overseas firm which are subject to the UK regulatory system'.

¹⁰ SUP 10A.7.4G

¹¹ Subject to FCA consent

¹² Supervisory Statement SS10/14, *Supervising international banks: the Prudential Regulation Authority's approach to branch supervision*, September 2014: www.bankofengland.co.uk/pr/Documents/publications/ss/2014/ss1014.pdf

- 2.9** The individual(s) approved as *Head of Overseas Branch* should have the highest degree of individual decision-making authority within the branch over activities and areas subject to UK regulation.
- 2.10** The PRA considers that, from a prudential perspective, holding a single individual responsible for all the regulated activities of a UK branch should provide an adequate and proportionate level of individual senior management accountability for small, less complex non-EEA branches.
- 2.11** Firms will, however, have the ability to have more than one individual approved as *Head of Overseas Branch*; for instance, if the branch is jointly headed by two individuals. Where this is the case, the firm should clearly set out the specific responsibilities of each individual approved to the *Head of Overseas Branch* function in their respective Statements of Responsibilities. Moreover, consistent with the proposed approach for UK firms, where two or more individuals share an SMF, each will be individually responsible for all the responsibilities conferred by that function. It follows that, if a firm breaches a relevant requirement (as defined in section 66B(4) of FSMA) relating to that SMF's area(s) of responsibility, every individual approved to perform it will be potentially liable unless they can individually satisfy the PRA that they took reasonable steps to prevent, stop or remedy the breach (as set out in section 66B of FSMA). However, the particular circumstances regarding the division of tasks between individuals sharing an SMF may have a bearing on whether one or both can satisfy the 'reasonable steps test'.
- 2.12** Moreover, when it comes to large, complex incoming non-EEA branches, the PRA believes that as a practical matter, they are likely to have more persons performing key management roles and hence being able to approve only one Senior Manager might be impractical and fail to capture the appropriate individuals.
- 2.13** Consequently, to ensure an appropriate level of accountability, incoming non-EEA branches will be required to put forward additional senior managers for approval by the PRA in the following circumstances:
- If another individual has direct management and/or decision-making responsibility over the incoming non-EEA branch's UK-regulated activities i.e. a UK country head or head of Europe, Middle East and Africa (EMEA). Where this is the case, the PRA will require this individual to be approved as a *Group Entity Senior Manager* (SMF7) of the non-EEA branch in addition to the *Head of Overseas Branch*. In practice, it is common for these individuals to be based in another UK group entity but they may occasionally be based overseas.
 - If the branch has dedicated individuals performing certain executive SMFs namely *Chief Finance*, *Chief Risk* and *Head of Internal Audit* functions. It is common for large overseas firms to have UK or EMEA-wide heads of finance, risk and/or internal audit with responsibility for all UK the entities in the UK group, including the branch. Where this is the case, the PRA will require these individuals to be approved as their relevant SMFs in relation to the branch.
- 2.14** Although in rare circumstances an incoming branch may have NEDs sitting on its decision-making committee, neither the PRA nor the FCA intend to bring any NED functions into scope of the SMR for incoming branches. There may, however, be situations where individuals employed by a branch's head office or another group company are approved as a NED (CF2) of the branch under the APR. Where this is the case, these individuals will commonly be deemed to be performing the *Group Entity Senior Manager* function in respect of the branch and required to be approved accordingly.
- 2.15** As is the case under the current APR, the PRA will require the FCA's consent before approving an individual to perform any PRA SMF.

FCA Senior Management Functions

- 2.16** The FCA intends to specify a tailored list of Senior Management Functions for non-EEA branches which captures the senior individuals responsible for the management of the business operating out of the branch.
- 2.17** The FCA will continue to require non-EEA branches to have individuals approved to the *Money Laundering Reporting* and *Compliance Oversight* functions, as defined in the regime for UK relevant firms.
- 2.18** The FCA will also specify a new *Overseas Branch Senior Manager (OBSM)* function, which will apply to individuals who have local responsibility for the activities, business areas and management functions of the branch.
- 2.19** Very small branches may have no individuals approved to the OBSM function and responsibility will lie solely with the *Head of Overseas Branch*. However, in larger branches, individuals with local responsibility for a business line or function will generally require approval to perform the OBSM function.
- 2.20** The OBSM will therefore apply to the most senior layers of the branch management structure. Individuals performing the *OBSM* will generally be members of the branch's highest decision-making body (or equivalent) or report directly to it. It is likely that individuals performing the *OBSM* will either report to the *Head of Overseas Branch* or to another member of the local governing body of the branch, although they may also have separate reporting lines to individuals and bodies outside the branch structure.
- 2.21** The regime for UK relevant firms requires Senior Managers to have overall responsibility for their area of responsibility in the firm. As incoming branches are not distinct legal entities, the *OBSM* has been created to apply only in relation to the regulated activities of the UK branch.
- 2.22** Generally the FCA expects responsibilities to be allocated to Senior Managers within the management structure of the UK branch. However, incoming branches may allocate responsibilities to individuals that sit elsewhere. This may be because the firm has organised itself such that a particular function of the branch is being managed outside the branch's management structure. The firm may also allocate responsibilities to individuals based outside the UK. Therefore there is not a territorial limitation to the scope of the FCA's SMR for non-EEA branches, and the scope of the *OBSM* will not be limited to those individuals within the branch management structure. Where tasks are delegated, the relevant Senior Manager(s) will remain accountable in line with the Senior Manager Conduct Rule SM3.
- 2.23** In response to feedback received to the July CP, the FCA is also consulting on further more detailed guidance on the application of the presumption of responsibility as part of CP15/9. This guidance will apply to all senior managers in UK relevant firms and incoming branches, so incoming branches may wish to consider and respond to the proposed more detailed guidance in Chapter 5 and Appendix 2 of CP15/9.

Q1: **[PRA]:** Does the proposed list of PRA Senior Management Functions for UK branches of non-EEA firms capture the appropriate set of roles? If not,

- are there any other roles which the PRA should consider specifying as SMFs for incoming branches?
- are there any proposed SMFs which the PRA should consider excluding?

Q2: [FCA]: Do you agree with the proposed list of FCA Senior management Functions for non-EEA branches? If not,

- are there any other roles which the FCA should consider specifying as SMFs for incoming non-EEA branches?
- are there any proposed SMFs which the FCA should consider excluding?

Allocation of responsibilities to Senior Manager in incoming non-EEA branches

2.24 The below table shows the combined PRA and FCA proposed list of specific responsibilities which must be allocated to PRA or FCA Senior Managers in non-EEA branches:

Table 6

Shared PRA and FCA responsibilities ¹³
1. Responsibility for the branch’s performance of its obligations under the Senior Managers Regime, including implementation and oversight
2. Responsibility for the branch’s performance of its obligations under the certification rules
3. Responsibility for compliance with the branch’s obligations in relation to its management responsibilities map
4. Responsibility for management of the branch’s risk management processes in the UK
5. Responsibility for the branch’s compliance with the UK regulatory regime applicable to the branch
6. Responsibility for the escalation of correspondence from the PRA, FCA and other regulators in respect of the branch to the governing body and/or the management body of the firm or, where appropriate, of the parent undertaking or holding company of the firm’s group
7. Responsibility for the maintenance of the integrity, independence and effectiveness of the branch’s policies and procedures on whistleblowing and for ensuring staff who raise concerns are protected from detrimental treatment ¹⁴
PRA responsibilities
8. Responsibility for management of the branch’s systems and controls in the UK
9. Responsibility for the allocation of all UK branch prescribed responsibilities
10. Responsibility for management of the branch’s liquidity or, where a liquidity waiver is in place, the submission of information to the PRA on the firm’s liquidity position
11. Responsibility for the production and integrity of the branch’s financial information and its regulatory reporting in respect of its regulated activities, including the annual attestation of compliance to the PRA of the branch’s compliance with its obligations under SYSC
FCA responsibilities
12. Responsibility for the branch’s policies and procedures for countering the risk that the branch might be used to further financial crime
13. Responsibility for the branch’s policies and procedures for compliance with CASS

¹³ The PRA and FCA Prescribed Responsibilities set out in the draft instruments at Appendices 1 and 2 refer to the functions being performed in respect of the activities of the branch

¹⁴ The PRA and FCA are currently consulting on regulatory rules on whistleblowing in FCA CP15/4 / PRA CP6/15: *Whistleblowing in deposit-takers, PRA-designated investment firms and insurers*. That consultation proposes minor changes to the wording of the Prescribed Responsibility on whistleblowing for UK firms. Any changes to the final wording of this Prescribed Responsibility rule for UK firms will be reflected in the wording of the corresponding responsibility for incoming branches.

PRA approach to responsibilities

- 2.25** In the July 2014 CP, the PRA consulted on a list of Prescribed Responsibilities which UK relevant firms will need to allocate among their Senior Managers. The PRA acknowledges that applying all of these Prescribed Responsibilities to the proposed Senior Manager(s) of an incoming non-EEA branch would be neither feasible nor proportionate.
- 2.26** Consequently, the PRA is consulting on a customised, shorter set of Prescribed Responsibilities for incoming non-EEA branches. These Prescribed Responsibilities can be allocated to any PRA or FCA-specified SMF in respect of non-EEA branches.
- 2.27** As noted above, the PRA and FCA do not propose to specify any non-executive functions as Senior Management Functions in respect of incoming non-EEA branches. So the PRA expects that Prescribed Responsibility 7 should be allocated to a suitably independent and senior individual in the branch management structure such as the Head of Internal Audit function (where applicable) or the Compliance Oversight function.
- 2.28** Subject to the outcome of this consultation, the PRA will update its draft Supervisory Statement on the PRA Senior Managers Regime (set out in Appendix 9.1 of the July 2014 CP) to reflect its expectations on the scope of the SMR for incoming non-EEA branches and the allocation of responsibilities to Senior Managers in such branches as set out above.

FCA approach to responsibilities

- 2.29** The FCA proposes to specify responsibilities 1-7 of the PRA's list of prescribed responsibilities for non-EEA branches. This approach is also consistent with the subset of the PRA's prescribed responsibilities specified by the FCA for UK relevant firms, where applicable.
- 2.30** The FCA has also set out in CP15/9 its intention to specify two new FCA-only specific responsibilities for UK relevant firms relating to financial crime and client assets. The FCA also proposes to specify these for non-EEA branches.
- 2.31** The regime for UK relevant firms requires responsibilities to be allocated to the most senior person with responsibility in the firm. Applying this directly to incoming branches would mean capturing the most senior individuals in the legal entity as a whole. So non-EEA branches responsibilities should be allocated to the most senior individual responsible for the day-to-day management of the function or area of responsibility of the branch.
- 2.32** The FCA considers that a transaction booked, negotiated or arranged in an incoming branch should be treated as a transaction of that branch, even though other elements of the transaction may take place elsewhere in the wider firm, perhaps in a separate entity or outside the UK. Therefore, where any element of a transaction takes place in the UK branch, there should be a Senior Manager that has been allocated responsibility for such transactions.

Q3: **[PRA]:** Does the proposed list of PRA Prescribed Responsibilities for non-EEA branches capture an appropriate and proportionate set of areas? If not,

- are there any other areas the PRA should consider including in the list?
- are there any areas which the PRA should consider omitting or clarifying?

Q4: [FCA]: Does the FCA's proposed approach to the allocation of responsibilities for non-EEA branches capture an appropriate and proportionate set of areas? If not,

- are there any other areas the FCA should consider including in the list?
- are there any areas which the FCA should consider omitting or clarifying?

Responsibilities maps

2.33 The PRA and FCA propose to require incoming branches to prepare, submit and, where appropriate, update a management responsibilities map. However, bearing in mind the governance and organisational characteristics of incoming branches, the regulators intend to tailor the responsibilities map requirements to make them appropriate for non-EEA branches. For instance, as incoming branches do not have a UK board, their responsibilities maps must set out matters reserved to the governing body (or equivalent) of the branch, rather than the ultimate overseas governing body. However, incoming branches will generally be expected to provide a detailed explanation of how their management and governance arrangements fit together with those of its overseas head office and the wider group.

2.34 Consistent with the CP15/9, the FCA considers that the proposed responsibilities map requirements are inherently proportionate and that incoming branches with a simple allocation of responsibilities will only need to produce simple maps. For non-complex branches, for example those with a limited number of business lines or which do not rely on the wider firm or group governance arrangements, the FCA would expect the map to be a simple document summarising the allocation of responsibilities within the firm and the firm's governance arrangements.

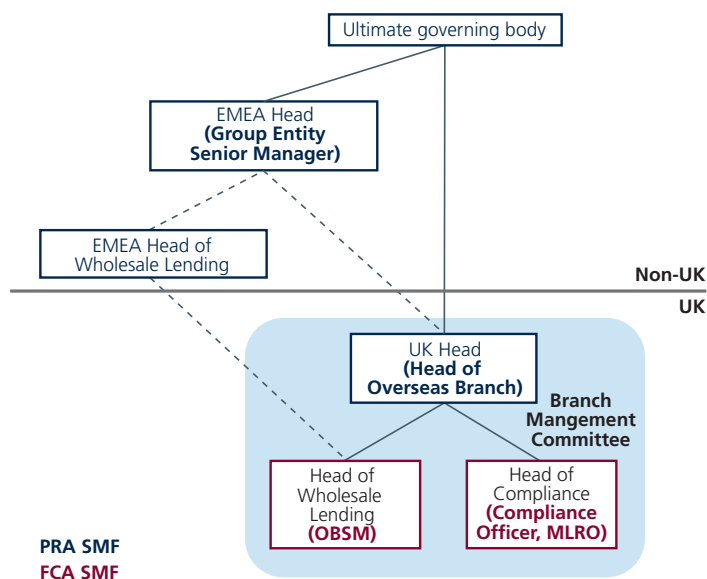
2.35 In line with the July 2014 CP and FCA CP15/9, the management responsibilities map may be a single document or folder containing several files or items. Where a group headquartered overseas operates in the UK through a combination of a branch and subsidiaries, it will need to have individuals approved in relation to each entity, however it will be possible for that firm to submit a single document covering all its UK relevant firms as long as the governance arrangements of each entity in scope are clear, complete and appropriately signposted.

How will the PRA and FCA's SMR for non-EEA branches operate together in practice?

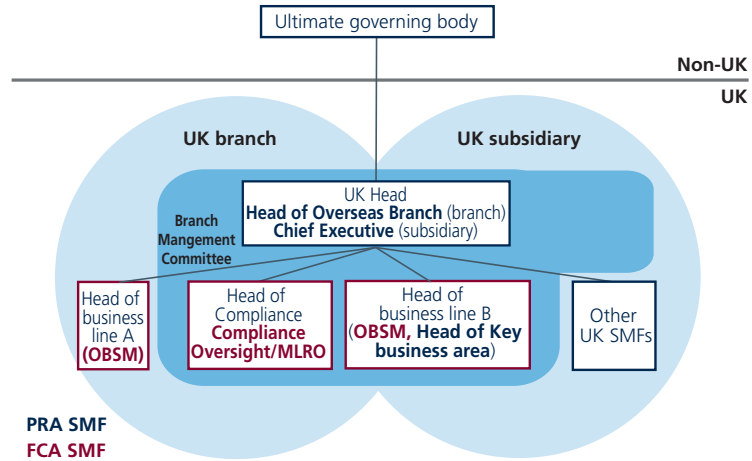
2.36 As for UK relevant firms, and in line with the FCA's duties under s59A of FSMA, the regulators are seeking to minimise any overlap between the PRA and FCA SMRs. Therefore, the overlap rules for UK relevant firms explained in paragraphs 2.48 and 2.49 of the July 2014 CP will also apply to incoming non-EEA branches. These rules seek to ensure that where an individual is required to be approved to perform both a PRA and FCA function, they will in practice only need to seek approval for the PRA function, although considerations will be given in the approval process to the full scope of their responsibilities.

2.37 For instance, where a *Head of Overseas Branch* also heads a UK business line (which, on its own, would normally require FCA approval as an *OBSM*) the individual will only need to obtain approval as the *Head of Overseas Branch*, and this will encapsulate approval for the overlapping *OBSM* function. The individual's Statement of Responsibilities will, however, need to reflect all relevant responsibilities which they may have both in their capacity as head of the branch and as UK head of a business line.

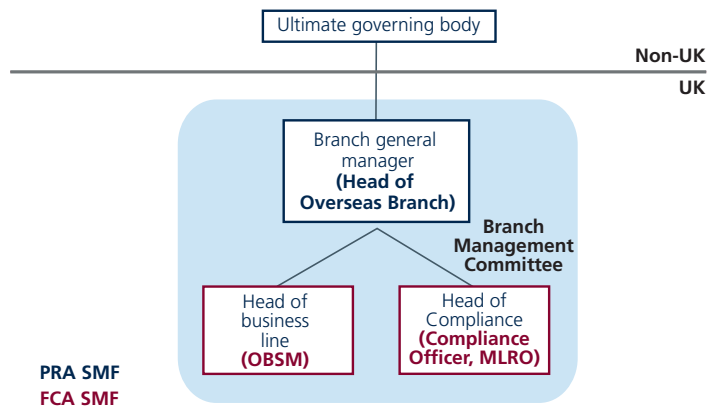
- 2.38 As the PRA is not proposing to apply any elements of the regime to EEA branches, the overlap rules are not relevant for these firms.
- 2.39 Some illustrative examples of how the PRA and FCA’s new branch SMFs may interact in practice are provided below. These examples are not intended to indicate how firms should structure themselves and should not be interpreted as guidance on the draft rules. What is a reasonable SMF structure will in practice depend on the structure, activities and governance arrangements of a branch.
- 2.40 **Scenario 1:** A large overseas bank has a UK branch led by a UK country head, who is approved by the PRA as *Head of Overseas Branch*. The UK country head reports to a Head of EMEA based overseas who makes direct management decisions in respect of the UK branch and is therefore approved as *Group Entity Senior Manager* by the PRA. He also reports to the firm’s board which is based overseas.
- 2.41 The main activity undertaken by the UK branch is wholesale lending. The UK Head of wholesale lending is approved by the FCA as an *OBSM*. She reports to both the *Head of Overseas Branch* and the EMEA Head of Wholesale lending (who is not approved) who in turn reports to the PRA-approved *Group Entity Senior Manager*.



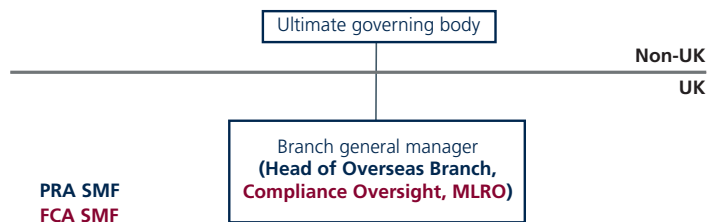
- 2.42 **Scenario 2:** A large bank has both a subsidiary and a branch in the UK. Both are led by the same individual who is approved by the PRA as both the *Head of Overseas Branch* function in relation to the branch and *Chief Executive* function in relation to the subsidiary. The UK Head leads the UK branch’s management committee and sits on the board of the subsidiary. Both the branch and subsidiary undertake a certain activity, B, and the same individual has responsibility for this activity in respect of both entities. The Head of business line B is approved to the *OBSM* function in relation to the branch and a UK relevant firm SMF, such as the *Head of Key Business Area*, in relation to the subsidiary, and sits on both the UK branch’s management committee. The branch also undertakes activity A; the Head of business line A is also approved to the *OBSM* function and reports to the branch management committee about activity A.



2.43 Scenario 3: A small branch undertakes only wholesale lending and the branch management committee has delegated authority for all lending decisions. The branch management committee is comprised of the branch general manager (approved as *Head of Overseas Branch* by the PRA), the head of wholesale lending (approved to the *OBSM* function by the FCA) and the Head of Compliance.



2.44 Scenario 4: A very small branch employs five staff members and books transactions in the UK which are arranged by the overseas head office. There is one individual approved by the PRA as *Head of Overseas Branch* who is responsible for all transactions booked in the UK branch.



2.45 In all the scenarios above, the individual performing the Compliance Oversight and MLRO functions would be approved by the FCA.

The SMR for EEA branches

Scope of the SMR for EEA branches

2.46 For EEA branches, the FCA currently applies a subset of controlled functions to reflect the split of home/host state responsibilities under the relevant single market directives. Therefore, in the new regime the FCA intends to specify a separate, tailored list of Senior Management Functions for individuals in EEA branches covering:

- the Money Laundering Reporting function
- individuals with responsibility for the conduct of certain regulated activities of the EEA branch

Table 4

FCA Senior Management Functions for EEA branches

EEA Branch Senior Manager (EBSM) (SMF21)

Money Laundering Reporting Officer (SMF17)

2.47 The Money Laundering Reporting function will be defined in the same way as for non-EEA branches and UK relevant firms.

2.48 The EBSM function will apply to individuals that meet the definition of an SMF in relation to the business operating out of the branch, with the same conditions as the current Significant Management function (CF29) for EEA branches, which are that the individual must be involved in:

- a. designated investment business other than dealing in investments as principal or
- b. processing confirmations, payments, settlements, insurance claims, client money and similar matters, in so far as this relates to designated investment business and
- c. accepting deposits from banking customers and activities substantially connected with that activity, to the extent to which it does not fall within a. or b.

2.49 In making a determination of fitness and propriety for an individual applying to perform the EBSM, the FCA will not assess the competence of these individuals, as this is a matter reserved to the home member state.

Q5: [FCA]: Do you agree with the proposed list of FCA Senior management Functions for EEA branches? If not,

- are there any other roles which the FCA should consider specifying as SMFs for incoming EEA branches?
- are there any proposed SMFs which the FCA should consider excluding?

Allocation of responsibilities to senior managers in EEA branches

2.50 Allocation of responsibilities is a matter reserved to the home member state, and therefore the FCA's responsibility framework will not apply to EEA branches. For similar reasons the

obligations on Senior Managers to provide Handover Certificates when leaving a role will not apply to EEA branches.

- 2.51** The approach set out above at paragraphs 2.33-2.35 for non-EEA branches also applies to the FCA's responsibilities map requirements for EEA branches. In addition, EEA branches will only be required to include in the responsibilities map the information necessary to identify the responsibilities of the approved persons and how these fit with the management and governance arrangements of the branch as a whole.

Q6: [FCA]: Do you agree with the FCA's proposed approach to the allocation of responsibilities in EEA branches? If not, how should the regime be amended?

Territorial application of the Senior Managers Regime

- 2.52** As noted in Chapter 1, one of the key challenges of extending the proposed accountability regimes to both subsidiaries and incoming branches of firms headquartered overseas is the fact that the senior management of these entities and other individuals involved in their regulated activities are more likely to be physically based outside of the UK than their counterparts in UK relevant firms.
- 2.53** A number of responses to the July 2014 CP questioned and/or challenged the extent to which the SMR may apply extraterritorially; i.e. the extent to which individuals located overseas may be subject to regulatory approval as Senior Managers (in particular as *Group Entity Senior Managers* (SMF7)) and the enhanced accountability requirements in FSMA.
- 2.54** Under the APR, when dealing with groups headquartered overseas and their senior management, the regulator(s) distinguished those individuals responsible for setting the group's strategy, which would not commonly be required to undergo approval in the UK, from those responsible for implementing that strategy in the United Kingdom, which commonly would (particularly when they had not delegated that responsibility to an appropriate local member of senior management). This approach and philosophy are, we believe, well understood and the PRA and FCA therefore plan to maintain this under the SMR.
- 2.55** Under Section 59ZA of FSMA, in order for a function to be capable of being designated as an SMF, it must involve the management of one or more aspects of the firm's affairs relating to the regulated activity and which might involve a risk of serious consequences for the firm or for business or other interests in the UK. This therefore also applies when considering whether individuals are performing an SMF, including those based in the head office or another group entity based overseas.
- 2.56** However, the fact that an individual is physically located outside the UK does not automatically mean that they cannot perform an SMF. If the individual is actively and directly involved in the management of a UK subsidiary or incoming branch or takes direct decisions about how these entities should conduct their regulated activities, it is highly likely that they will require approval as a *Group Entity Senior Manager* or another SMF.
- 2.57** Conversely, it does not automatically follow that if a senior individual is physically based in the UK that they will necessarily also be a Senior Manager in relation to the branch. This will depend on whether they are part of the branch management structure and if so, their role in relation to the branch.

2.58 The PRA and FCA will assess whether there are any individuals located overseas who should be approved as Senior Managers of an incoming branch or a subsidiary of a group headquartered overseas on a case-by-case basis. In doing so, they will take into account the organisational structure of the firm, reporting structures and whether any UK-based Senior Managers have an appropriate and proportionate degree of accountability, autonomy and responsibility.

- Q7:** **[PRA/FCA]:** Do the combined FCA and PRA proposed SMFs branches cover the key decision-makers for the regulated activities of incoming branches?
- Q8:** **[PRA/FCA]:** Are there any other aspects of the Senior Managers Regime that should be applied differently for non-EEA branches? If so, how should the regime be amended?
- Q9:** **[FCA]:** Are there any other aspects of the Senior Managers Regime that should be applied differently for EEA branches? If so, how should the regime be amended?

3. Certification Regime

Overview and summary of the Certification Regime for UK relevant firms

- 3.1** The Act introduced a requirement to FSMA for firms to certify that employees who are capable of causing significant harm to the firm or any of its customers ('certification functions') are fit and proper to perform their roles.
- 3.2** Individuals performing certification functions will not be subject to regulatory pre-approval. However, firms must take reasonable care to ensure that no employee performs any of these functions without having been certified as fit and proper to do so, and that this certification is renewed annually. In determining whether an employee is fit and proper to perform such a function, an incoming branch will need to have regard to any rules the regulators have made for this purpose.

The PRA's Certification Regime for incoming non-EEA branches

- 3.3** In the July 2014 CP, the PRA proposed to define certification functions in Capital Requirements Regulation (CRR) firms based on the criteria used to define Material Risk Takers (MRTs) for remuneration purposes in Commission Delegated Regulation (EU) No 604/2014. The PRA considers that the concepts of MRT and 'significant harm function' are broadly equivalent.
- 3.4** Commission Delegated Regulation (EU) No 604/2014 does not apply to incoming third country branches. However, the PRA's proposed Remuneration Rules require third-country firms to identify employees who would meet the Regulations as if it did apply to them and treat them as MRTs.
- 3.5** Consequently, the PRA proposes to base the scope of its Certification Regime for incoming non-EEA branches on their UK MRT population. However, as with UK firms, not all MRTs will be performing certification functions – some MRTs will be carved out of the Certification regime by virtue of their being Senior Managers.
- 3.6** Likewise, individuals whose functions are not related to the regulated activities of the branch and therefore do not meet the statutory test for a Certification function will also fall outside the scope of the PRA's Certification Regime.

Q10: [PRA]: Do you agree with the PRA's proposed approach to defining certification functions?

The FCA's Certification Regime for incoming branches

Non-EEA branches

- 3.7** In addition to MRTs, (who can cause harm to both the firm and consumers), there is a wider population of individuals capable of causing significant harm to consumers only. So the FCA's proposed scope of certification functions is wider than the PRA's for UK relevant firms. The FCA intends to apply the Certification Regime to non-EEA branches in broadly the same way as we proposed for UK relevant firms, where necessary restricting the functions so that they apply only in relation to the branch.
- 3.8** CP15/9 clarifies the FCA's view on an aspect of the territoriality of the Certification Regime. Some respondents to the July CP questioned the breadth of the regime, which, as a general principle, involves all line managers of certified persons being certified themselves, leading to the inclusion of chains of middle managers.
- 3.9** The intention of this policy is to ensure that a certified person cannot face pressure to act inappropriately from supervisors who are not themselves held equally accountable. In practice, it means that if a firm employs a customer-facing financial adviser, for example, every manager above them in the same chain of responsibility will have to be certified (until the senior manager approved under the SMR is reached).
- 3.10** This issue is linked to the question of how our regime applies where the individuals in question may be outside the UK (i.e. where a certified person has a reporting line to a manager in another country). Respondents to the July CP questioned whether this would have the effect of also capturing the management chain of the overseas individual (for example capturing all the way up to the Board of the overseas entity). This may be particularly relevant for non-EEA branches, as they are not separate legal entities, and often operate using extensive matrix management. This issue is not relevant for EEA branches, as a territorial limitation will restrict the Certification Regime to individuals based in the UK (see paragraph 3.14 below).
- 3.11** The regime for UK relevant firms includes an overarching territorial principle that certified people must be either based in the UK or dealing with a UK client. This measure is intended to prevent individuals from being captured that do not have a substantial link to the UK business or customers. Where a certified person has dual or multiple reporting lines, the Certification Regime will apply where the relevant manager is either based in the UK or involved in dealing with a UK client. Therefore in some cases the regime may capture only the manager who is based in the UK, unless the overseas manager would also be a certified person in their own right.
- 3.12** So where a certified person has a reporting line overseas, the overseas manager will be subject to the Certification Regime only if the manager is dealing with clients in the UK. However, our approach to responsibility means that firms must ensure that one or more SMFs ultimately have overall responsibility for all of the activities, business areas and management functions of the branch. Therefore, the relevant Senior Manager(s) will remain responsible and accountable for the performance of all activities, business areas and management functions of the branch, even in the event that the Certification Regime does not capture all individuals in the reporting chain of a particular area.

Q11: [FCA]: Do you agree with the FCA's proposed approach to the Certification Regime for non-EEA branches?

EEA branches

3.13 The FCA also intends to apply its Certification Regime, which includes MRTs, to EEA branches, where necessary restricting the Certification functions so they apply only in relation to the branch. In addition, EEA branches should note that:

- The CASS oversight function will not apply, as the CASS rules do not apply to EEA branches.
- The function concerning individuals performing functions requiring qualifications will apply to EEA branches. Individuals in EEA branches that are performing functions which would require qualifications if that individual were performing the function from a UK relevant firm will be included in the Certification Regime.

3.14 A territorial limitation will apply such that the Certification Regime will only apply to individuals that are based in the UK.

Q12: [FCA]: Do you agree with the FCA's proposed approach to the Certification Regime for EEA branches?

Alternative options for the FCA's Certification Regime for incoming branches

3.15 The policy and rules that we are consulting on in this CP, in relation to the FCA's Certification Regime for incoming branches, are based on the rules consulted on for UK relevant firms in the July CP. However, respondents should note that we may subsequently amend these proposals to reflect any changes that we may make to the FCA's Certification Regime for UK relevant firms, as detailed in CP15/9. These are discussed below in more detail, and we would welcome views on their application to incoming branches.

3.16 Since issuing our consultation in July, we have become aware that the proposals we consulted on result in an inconsistent approach to individuals involved in wholesale activities, including traders. The proposals included a requirement to certify individuals in customer-facing roles that are subject to qualification requirements and we also explained that those proprietary traders who would currently fall under the Significant Management (CF29) function would be subject to the regime.

3.17 In practice, it seems likely that some, but not necessarily all traders individuals involved in wholesale activities, such as trading, would fall within the scope of the regime – for example, individuals trading on behalf of clients classified under MiFID as 'eligible counterparties' would not necessarily be covered (such as if they are dealing as agent in that capacity or where the broker is executing orders on behalf of clients by dealing on own account). Some respondents to the July CP highlighted this anomaly. Respondents also highlighted that not all individuals currently approved under the customer-dealing function (CF30) function would necessarily be covered.

3.18 Having considered this matter, we believe that many of these individuals could be thought of as performing roles that could pose 'significant harm' to the firm or its customers. As a result, we are considering extending the scope of the certification regime to ensure that these individuals are captured within the regime. We would plan to consult on any changes to this effect for both UK relevant firms and incoming branches in the spring/summer.

- Q13: [FCA]:** What are your views on the potential changes to the scope of the FCA's Certification Regime described above for incoming branches? In particular, do you agree that the scope of the Certification Regime should include all individuals involved in wholesale activity, where these individuals are capable of causing significant harm to the firm or its customers?
- Q14: [PRA/FCA]:** Are there any other aspects of the Certification Regime that should be applied differently for non-EEA branches? If so, how should the regime be amended?
- Q15: [FCA]:** Are there any other aspects of the Certification Regime that should be applied differently for EEA branches? If so, how should the regime be amended?

4. Conduct rules

Introduction

- 4.1** This chapter sets out the regulators' proposals for the scope and content of a new set of enforceable Conduct Rules for incoming branches. These rules will replace the existing APER principles and guidance which currently apply to Approved Persons.
- 4.2** Chapter 5 of the July CP explained the background to the Conduct Rules and how these enforceable rules will be an important tool for both regulators in influencing the behaviour of individuals. Through their impact on the actions of individuals, Conduct Rules can shape the culture, standards and policies of a firm as a whole and act to promote more positive behaviours that actively support the regulators' statutory objectives. The possibility of enforcement should also act as a deterrent against actions or omissions that could damage a firm's prudential position, harm its customers or undermine the integrity of financial markets.
- 4.3** The Conduct Rules proposed by the PRA and FCA in the July CP are:

Table 6

First tier – Individual Conduct Rules

Rule 1: You must act with integrity.

Rule 2: You must act with due skill, care and diligence.

Rule 3: You must be open and cooperative with the FCA, the PRA and other regulators.

Rule 4 (FCA only): You must pay due regard to the interests of customers and treat them fairly.

Rule 5 (FCA only): You must observe proper standards of market conduct.

Second tier – Senior Manager Conduct Rules

SM1: You must take reasonable steps to ensure that the business of the firm for which you are responsible is controlled effectively.

SM2: You must take reasonable steps to ensure that the business of the firm for which you are responsible complies with relevant requirements and standards of the regulatory system.

SM3: You must take reasonable steps to ensure that any delegation of your responsibilities is to an appropriate person and that you oversee the discharge of the delegated responsibility effectively.

SM4: You must disclose appropriately any information of which the FCA or PRA would reasonably expect notice.

The PRA's approach to Conduct Rules in incoming non-EEA branches

- 4.4** In the July 2014 CP, the PRA proposed to apply Conduct Rules to all Senior Managers subject to approval by either the PRA or FCA and to employees who fell within the PRA's Certification Regime. Senior Managers would also be subject to additional Conduct Rules SM1-SM4.
- 4.5** The PRA noted that these individuals had been identified as being able to cause significant (prudential) harm to a firm and thus be able to impact on the PRA's safety and soundness objective. Therefore, the PRA deemed it appropriate to apply its Conduct Rules only to these individuals.
- 4.6** The PRA considers that the scope of its Conduct Rules for UK relevant firms and the rationale behind it are equally appropriate for incoming non-EEA branches. Consequently, the PRA proposes to apply its Conduct Rules in the same way as for UK firms. Consequently:
- individuals performing an SMF specified by the PRA or FCA will be subject to all of the Conduct Rules in Table 6 and
 - employees performing a PRA Certification function (who, as noted above, will be a subset of the branch's UK MRTs) will be subject to the first tier Conduct Rules

The FCA's approach to Conduct Rules in incoming branches

- 4.7** The FCA considers that the intention behind the Conduct Rules applies equally to incoming branches. The FCA therefore intends to apply the Conduct Rules to non-EEA branches in the same way as for UK relevant firms.
- 4.8** Due to the structure of a branch, branch staff may also be subject to a Code of Conduct which is set by the legal entity. However, the Conduct Rules are drafted at a high level and the FCA does not expect them to be inconsistent with any separate standards set by head office or the home state regulator.
- 4.9** For EEA branches, the Conduct Rules will apply, although the FCA intends to retain the current limitation in APER which will provide that Conduct Rules apply only to the extent that they are compliant with EU legislation. In addition, for Conduct Rules staff that are not Senior Managers there will be a territorial limitation so that the Conduct Rules will only apply to individuals based in the UK. This territorial limitation will not apply to Senior Managers in EEA branches.

Q16: [PRA]: Do you agree with the PRA's proposed approach to conduct rules for non-EEA branches? If not, why not?

Q17: [FCA]: Do you agree with the FCA's proposed approach to Conduct Rules for incoming branches? If not, why not?

Alternative options for the FCA's Conduct Rules for incoming branches

- 4.10** The policy and rules that we are consulting on in this CP, in relation to the FCA's approach to the Conduct Rules for incoming branches, are based on the rules consulted on for UK relevant firms in the July CP. However, respondents should note that we may subsequently amend these proposals to reflect any changes that we may make to the FCA's approach to the Conduct Rules for UK relevant firms, as detailed in CP15/9. These are discussed below in more detail, and we would welcome views on their application to incoming branches.

- 4.11** The Act requires firms to notify the regulators when they are aware or suspect that a person has breached the Conduct Rules, or when a firm has taken formal disciplinary action. In the July CP the FCA proposed that actual or suspected breaches by a Senior Manager should be reported within seven days. For other individuals, we proposed reporting on a quarterly basis, with firms compiling an aggregated list of the actual or suspected individual breaches, the identities of those to whom the notification relates and the disciplinary action that they need to report for that quarter. Firms responding to the consultation felt that our threshold for reporting breaches was too low, creating a potentially disproportionate burden on them.
- 4.12** We understand firms' concerns in this area and, as we prepare our final rules for publication in the spring/summer, we will consider what adjustments can be made particularly to the frequency and method by which firms are required to report breaches to us. We will consider whether further guidance would be helpful, and we will also take account of responses received in this area in response to the December CP. However, we will need to keep in mind that the Act requires notification of suspected or known breaches of the Conduct Rules.
- Q18: [FCA]:** What are your views on the potential changes to the reporting of Conduct Rule breaches for incoming branches as described above?
- Q19: [PRA/FCA]:** Are there any other aspects of the requirements associated with the Conduct Rules that should be applied differently for non-EEA branches? If so, how should the regime be amended?
- Q20: [FCA]:** Are there any other aspects of the requirements associated with the Conduct Rules that should be applied differently for EEA branches? If so, how should the regime be amended?

5. Transitional arrangements

Commencement of the regime for incoming branches

- 5.1** The Treasury has announced the timeline for commencement of the new individual accountability regime for both UK relevant firms and incoming branches:
- The new regime will commence on 7 March 2016. The SMR (and the relevant enforcement powers) and the Conduct Rules (for Senior Managers and Certified Persons) will take effect from this date. The requirement to issue Certificates to Certified Persons will commence on a subsequent date to be appointed by the Treasury.
 - Firms will be required to notify the regulators by 8 February 2016 of the approved persons who are to be senior managers under the SMR (grandfathering notifications).
- 5.2** The Treasury has made an Order under section 146 of the Act to provide for transitional arrangements and grandfathering of existing approved persons employed in UK relevant firms. We expect that the Treasury will provide for similar arrangements for grandfathering existing approved persons in incoming branches. As with UK relevant firms, the PRA and the FCA will specify the detail of the transitional arrangements for incoming branches, including how individuals in existing approved persons roles will be grandfathered to the new SMR. This CP does not seek views on this approach to commencement.

The Senior Managers Regime

Grandfathering existing approvals

- 5.3** As with UK banks, the regulators propose to allow individuals currently approved to perform a significant influence function, whose role is not substantively changing, to be grandfathered into a corresponding senior management role. The regulators propose that existing approvals will be eligible to be grandfathered in accordance with the table below. The first column shows existing controlled functions. The second and third columns show the set of Senior Management Functions into which a person performing the controlled function in the first column could be eligible to transfer.

Non-EEA branches

Current Controlled Function	Applicable PRA SMF To Grandfather To	Applicable FCA SMF To Grandfather To
CF1 – Director	SMF7 – Group Entity Senior Manager SMF18 – Head of Overseas Branch	SMF19 – Overseas Branch Senior Manager
CF2 – NED	SMF7 – Group Entity Senior Manager	
CF3 – Chief Executive	SMF18 – Head of Overseas Branch	
CF10 – Compliance Oversight		SMF15 – Compliance Oversight
CF11 – Money Laundering Reporting		SMF16 – Money Laundering Reporting
CF28 – Systems and Controls	SMF2 – Chief Finance Function SMF4 – Chief Risk Function SMF5 – Head of Internal Audit	SMF19 – Overseas Branch Senior Manager
CF29 – Significant Management	SMF18 – Head of Overseas Branch	SMF19 – Overseas Branch Senior Manager

EEA branches

Current Controlled Function	Applicable PRA SMF To Grandfather To	Applicable FCA SMF To Grandfather To
CF11 – Money Laundering Reporting		SMF16 – Money Laundering Reporting
CF29 – Significant Management		SMF20 – EEA Branch Senior Manager

Q21: [PRA and FCA]: Do you agree with the PRA and FCA’s proposed approach to grandfathering existing approved persons into Senior Management Functions in incoming branches?

Q22: [PRA and FCA]: Are there any other aspects of the requirements associated with transitional arrangements that should be applied differently for non-EEA and/or EEA branches? If so, how should the regime be amended?

Q23: [FCA]: Are there any other aspects of the requirements associated with transitional arrangements that should be applied differently for EEA branches? If so, how should the regime be amended?

6. Forms and consequential changes

- 6.1** This chapter sets out proposed changes to the new or updated forms for relevant authorised persons, to reflect the proposals in this CP.

New forms

- 6.2** In the December CP the PRA and FCA produced new template forms reflecting the new statutory and regulatory requirements relating to:
- the Senior Managers Regime
 - the notification of conduct rules breaches by, and disciplinary action taken against Senior Managers, Certified Persons, in the case of the FCA, other Conduct Rules staff.
- 6.3** The regulators think many of these forms will be applied to incoming branches with no changes required. However, some changes will be required to the Statements of Responsibilities form. The proposed updated form can be found in Appendix 3.

Statements of Responsibilities (Form J)

- 6.4** As discussed in Chapter 2, the PRA and FCA's approach to the allocation of responsibilities has been tailored for incoming branches. For non-EEA branches, the PRA has developed a customised list of Prescribed Responsibilities for Senior Managers in incoming non-EEA branches. For EEA branches, the FCA responsibilities framework does not apply, as allocation of responsibilities is a matter for the home member state. So the regulators propose changes to the Statements of Responsibilities form to clarify which sections of the form apply to non-EEA and EEA branches respectively. This includes:
- creating separate sections for non-EEA branches to set out the allocation of the branch prescribed responsibilities
 - dis-applying the sections relating to the allocation of prescribed responsibilities and key functions for EEA branches
- 6.5** The free text section will apply to UK relevant firms and all incoming branches, and EEA branches in particular should use this section to set out how responsibilities have been allocated to the senior managers, including where they are shared or divided with other senior manager(s). For all incoming branches, the PRA and FCA view it as essential to ensure the Statements of Responsibilities are as clear and succinct as possible, and further detail on the PRA and FCA's expectations is set out in Chapter 3 of the December CP.
- 6.6** The regulators have also proposed changes to include the proposed Senior Management Functions for incoming branches to the list of Senior Management Functions, and to include

any relevant additional Handbook references for incoming branches, in line with the draft rules proposed in this CP.

- 6.7** The FCA notes in CP 15/9 that we are in the process of considering responses to the December CP in respect of the Statements of Responsibilities form for UK relevant firms, and our publication of our final rules in the spring/summer will include a revised template. This CP presents the relevant changes for incoming branches as a separate Statements of Responsibilities form for incoming branches only. This is based on the Statements of Responsibilities form as consulted on in the December CP and may therefore subsequently change in line with the final form for UK relevant firms.

Q24: [PRA & FCA]: Do you agree with the proposed changes to the new forms?

Updates to existing forms

- 6.8** The regulators propose changes to the versions of Forms A (Application to perform a Senior Management function) and E (Internal transfer of an approved person (for firms and individuals subject to the senior management regime)) in the December CP. These changes will add the new proposed Senior Management Functions for relevant incoming branches where there is a list of senior management functions; and include any relevant additional Handbook references for incoming branches, in line with the draft rules proposed in this CP. These updated forms can be found in Appendix 3.

Q25: [PRA & FCA]: Do you agree with the proposed changes to these existing forms?

- 6.9** Currently there is a separate long and short Form A for EEA branches. The regulators propose to amend these to reflect both the changes proposed to the Form A as for UK relevant firms in the December CP and the changes described in paragraph 6.8 above. This form can be found in Appendix 4.

Q26: [FCA]: Do you agree with the proposed changes to the Form A for EEA branches?

Consequential changes

- 6.10** The PRA and FCA have considered the additional amendments needed to existing rules and guidance as a result of the proposals set out in this CP, and the changes are included in the proposed PRA and FCA rules in Appendices 1 and 2.
- 6.11** These changes are minor technical amendments needed to clarify the application or dis-application of certain rules and guidance, and to ensure rules and guidance are also appropriately amended to reflect the application of the Banking Reform Act to non-EEA branches and, for the FCA, EEA branches.

Q27: [PRA]: Do you have any comments on the PRA's proposed consequential Rulebook changes, or think more are needed?

Q28: [FCA]: Do you have any comments on the FCA's proposed consequential Handbook changes, or think more are needed?

Annex 1:

Full summary of the FCA regime for UK relevant firms and application to incoming branches

Aspect of the regime for UK relevant firms	Application to non-EEA branches	Application to EEA branches
Senior Managers Regime: The July CP, Chapter 2 This CP, Chapter 2 CP15/9, Chapter 2		
Scope and definition of Senior Management Functions	Tailored application (see paragraphs 2.16-23 of this CP)	Tailored application (see paragraphs 2.46-49 of this CP)
Ability of regulators to approve Senior Managers with time limits or conditions	Applies	Applies
The Presumption of Responsibility for Senior Managers	Applies	Applies
The Criminal Offence for Senior Managers	Does not apply	Does not apply
Statements of Responsibility for Senior Managers	Applies	Applies
Allocation of Prescribed Responsibilities	Tailored application (see paragraphs 2.29-32 of this CP)	Does not apply
Allocation of key functions	Applies	Does not apply
Responsibilities map	Applies	Tailored application (see paragraphs 2.51 of this CP)
Annual certification of compliance	Applies	Applies
Handover arrangements	Applies	Applies
Certification Regime: The July CP, Chapter 3 This CP, Chapter 3 CP15/9, Chapter 3		

Aspect of the regime for UK relevant firms	Application to non-EEA branches	Application to EEA branches
Scope of the FCA significant harm functions	Tailored application (see paragraphs 3.7-12 of this CP)	Tailored application (see paragraphs 3.13-14 of this CP)
Requirement to assess the fitness and propriety of Certified Persons at appointment and at least annually thereafter, and issue certificates as appropriate	Applies	Applies
Fitness and propriety: The July CP, Chapter 4		
Requirement to assess Senior Managers and Certified Persons in line with the rules and guidance in FIT	Applies	Applies
Requirement to undertake criminal records checks for Senior Managers	Applies	Applies
Requirement to request and provide regulatory references for Senior Managers and Certified People	Applies	Applies
Conduct Rules: The July CP, Chapter 5 This CP, Chapter 4 CP15/9, Chapter 4		
Scope of Conduct Rules staff	Applies	Applies
Individual Conduct Rules, including FCA-only Individual Conduct Rules	Applies	Tailored application (see paragraph 4.9 of this CP)
Senior Manager Conduct Rules	Applies	Applies
Requirement to notify staff of the Conduct Rules which apply to them and take all reasonable steps to ensure they understand how those rules apply in relation to them	Applies	Applies
Requirement to notify the FCA of known or suspected breaches of Conduct Rules within seven business days for Senior Managers	Applies	Applies
Requirement to notify the FCA of known or suspected breaches of Conduct Rules on a quarterly basis for other Conduct Rules staff	Applies	Applies
Regulatory lifecycle The July CP, Chapter 7		
Regulatory lifecycle in respect of Authorisations, Supervision and Enforcement	Applies	Applies
Transitional arrangements The December CP, Chapter 2 This CP, Chapter 5		

Aspect of the regime for UK relevant firms	Application to non-EEA branches	Application to EEA branches
Commencement of the Senior Managers Regime, the application of the Conduct Rules to Senior Managers and Certified Persons and the requirement to issue certificates on a date or dates to be determined by the Treasury	Applies	Applies
Grandfathering of current SIFs to a corresponding SMF	Tailored application (see paragraph 5.3 of this CP)	Tailored application (see paragraph 5.3 of this CP)
Requirement to submit grandfathering notifications to the FCA	Applies	Applies
The process for submitting grandfathering notifications, including the approach in respect of regulatory references, criminal records checks, statements of responsibilities and the responsibilities map	Applies	Applies
The approach to applications made and approved between the date the rules are made and the commencement date	Applies	Applies
The approach to in-flight applications	Applies	Applies
The approach for employees already performing a Certification role at commencement	Applies	Applies
The approach to applications during the transitional period that will no longer require pre-approval following commencement	Applies	Applies
Forms and consequentials The December CP, Chapter 3 This CP, Chapter 6		
Forms H, I, J, K, L	Applies	Applies
Statement of Responsibilities template	Tailored application (see paragraphs 6.4-6.7 of this CP)	Tailored application (see paragraphs 6.4-6.7 of this CP)
Form A	Tailored application (see paragraph 6.8 of this CP)	Tailored application (see paragraph 6.9 of this CP)
Forms B, C, D	Applies	Applies
Form E	Tailored application (see paragraph 6.8 of this CP)	Tailored application (see paragraph 6.8 of this CP)
Form G	Applies	Applies

Annex 2: PRA Cost benefit analysis

Overview

1. The PRA is required under section 138J of FSMA to carry out and publish a cost benefit analysis (CBA) when proposing draft rules.
2. The PRA's CBA for this CP has been informed by the PRA's CBA and accompanying analysis by Europe Economics in the July 2014 CP and HM Treasury's Impact Assessment on the extension of the statutory elements of accountability regimes to foreign branches, which was also based on Europe Economics' analysis¹⁵.
3. A large number of overseas banks operate in the UK through branches. While incoming non-EEA branches vary significantly in terms of size and complexity, the majority focus predominantly on wholesale banking activities.
4. The PRA proposes to implement the Senior Managers Regime, Certification Regime and Conduct Rules ('accountability regimes') in a way that takes into account both:
 - a. the differences between incoming non-EEA branches and UK relevant firms; and
 - b. the diverse array of sizes and business models among incoming non-EEA branches.
5. Overall, the PRA considers that its proposed extension of the accountability regimes to incoming non-EEA branches is appropriate, proportionate and meets its statutory obligations.
6. Through the implementation of the accountability regimes, the PRA intends to help encourage individual accountability. This will, in turn, help bring the benefits of an increased deterrent against negligent or reckless management and decision making.
7. The accountability regimes are intended to align the interests of Senior Managers and employees deemed capable of causing significant harm to a firm to those of the PRA in reducing the risk of firm failure and thereby avoiding the disruption that could ensue.
8. We estimate that the costs of implementing the proposed accountability regimes for the majority of incoming non-EEA branches will be guided by the costs incurred by small UK banks.
9. However, for a minority of large, complex incoming non-EEA branches, the implementation costs are likely to be guided by those of large UK banks.

¹⁵ HM Treasury Impact Assessment (IA) on Senior Managers & Certification Regime: extension to foreign branches. Full report is available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/370428/document2014-11-03-201947.pdf.

10. The PRA's estimates endorse the assumption in HM Treasury's Impact Assessment that the costs of implementing the new accountability regimes in small and large incoming non-EEA branches (both one-off and ongoing) will be 25% of the costs that small and large UK banks and investment firms will face respectively. Moreover, the PRA does not expect the incremental ongoing implementation costs of the new regimes to be substantially higher than those of the current Approved Persons Regime (APR).
11. Cost estimates being broadly attributable to the PRA's proposals for large and small incoming non-EEA branches on a one-off and ongoing basis are set out in Table 1.

Table 1: Average costs per firm for the sample studied by Europe Economics (£000s)¹⁶

Regime	Large incoming non-EEA branches, one-off costs	Large incoming non-EEA branches, ongoing costs	Small incoming non-EEA branches, one-off costs	Small incoming non-EEA branches, ongoing costs
SMR	137.5	32.5	20	2.5
Certification	4	Negligible	3.3	Negligible
Conduct Rules	375	0.5	1.5	Negligible
Total	516.5	33	24.8	2.5

12. Compared to the APR, the number of individuals subject to pre-approval by the PRA under the SMR will either be reduced or stay the same. Hence, the overall administrative cost to both firms and the PRA is likely to be reduced.

Senior Managers Regime (SMR)

13. The PRA proposes to require the most senior individual in every incoming non-EEA branch to be approved as a bespoke Senior Management Function (SMF) referred to as *Head of Overseas Branch*.
14. In addition, incoming non-EEA branches which have certain dedicated executive SMFs namely a CFO, CRO and Head of Internal Audit (who, in many cases, will already be approved as the same SMF in relation to the firm's UK subsidiary) will be required to have these individuals pre-approved. The PRA expects this situation to arise primarily in large, complex branches.
15. The FCA is specifying a number of additional SMFs for incoming non-EEA branches. However, in line with the proposed approach for UK firms, where an individual is seeking approval for overlapping PRA and FCA SMFs, approval for the PRA SMF will be deemed to encompass approval for the corresponding FCA SMF, thereby eliminating the need for and corresponding cost of multiple applications.

¹⁶ These estimates have been obtained by applying the assumption that costs to incoming non-EEA branches are 25% of the costs to corresponding UK firms implementing the regime. This percentage has been applied to figures 12, 13, and 14 of the PRA's CBA in CP 14/14.

16. The PRA is also consulting on a customised set of Prescribed Responsibilities for incoming non-EEA branches which reflects the areas of a non-EEA branch's activities subject to UK regulation and is shorter than the equivalent list for large UK firms.
17. The PRA will pre-approve a smaller number of individuals under the proposed regime than that under the current Approved Persons Regime. The set of prescribed responsibilities aim to promote great clarity. This should help encourage individual accountability by facilitating the PRA's ability to hold individuals to account when a failure occurs. This could help bring the benefits of an increased deterrent against negligent or reckless management and decision making.
18. Under the current APR, individuals seeking to perform a Significant Influence Function (SIF) in incoming non-EEA branches must be pre-approved by the PRA and/or FCA. The incremental costs to the PRA of implementing the SMR will, therefore, not be significant as the operational processes for assessing candidates are already in place.
19. Moreover, for banking groups that operate in the UK through both subsidiaries and an incoming non-EEA branch, the adoption of a single approval regime should facilitate implementation across all deposit-taking and dual-regulated investment firms in the group. The implementation of a single regime for firms carrying out similar financial activities should, also, reduce the potential for regulatory arbitrage

Certification Regime and Conduct Rules

20. Consistent with the approach for UK relevant firms, the PRA proposes to align the scope of the Certification Regime in incoming non-EEA branches to that of the Remuneration Rules to the fullest possible extent.
21. By doing so, the PRA expects the incremental cost of identifying employees in scope of the Certification Regime to be minimal, as these individuals will have already been identified under the Remuneration Rules. The proposed scope will also enable firms to integrate the annual assessment of fitness and propriety and Certification process of these employees with their performance assessment for variable remuneration purposes if they so wish.
22. A large number of individuals who will be in scope of the PRA Certification Regime are pre-approved under the current Approved Persons Regime. The costs of pre-approval are higher than the estimated cost of assessing and certifying an individual on an annual basis. Therefore, although the number of employees in scope of the PRA's Certification Regime will, for some firms, be greater than their current number of Approved Persons, we do not expect the incremental costs to be significant.
23. The PRA proposes to apply the Conduct Rules only to SMFs and employees in scope of the PRA Certification Regime in incoming non-EEA branches.

Certification Regime and Conduct Rules

24. Consistent with the approach for UK relevant firms, the PRA proposes to align the scope of the Certification Regime in incoming non-EEA branches to that of the Remuneration Rules to the fullest possible extent.

- 25.** By doing so, the PRA expects the cost of identifying employees in scope of the Certification Regime to be mitigated, as these individuals will have already been identified under the Remuneration Rules. The proposed scope will also enable firms to integrate the annual assessment of fitness and propriety and Certification process of these employees with their performance assessment for variable remuneration purposes if they so wish.
- 26.** A large number of individuals who will be in scope of the PRA Certification Regime were pre-approved under the Approved Persons Regime. The costs of pre-approval are higher than the estimated cost of assessing and certifying an individual on an annual basis. Therefore, although the number of employees in scope of the PRA's Certification Regime will, for some firms, be greater than their current number of Approved Persons, under the APR, the combined cost of the new accountability regimes is likely to be lower.
- 27.** The PRA proposes to apply the Conduct Rules only to SMFs and employees in scope of the PRA Certification Regime in incoming non-EEA branches.

Annex 3: FCA Cost benefit analysis

Overview

1. The FCA is required to carry out and publish a cost benefit analysis (CBA) when proposing draft rules (sections 138I and 128J FSMA refer). The FCA considers that the CBA set out below meets the FSMA CBA requirements.
2. This CBA sets out the costs and benefits of applying the UK Senior Managers Regime, Certification Regime and Conduct Rules (together the 'accountability regime') to the UK branches of foreign relevant firms ('incoming branches'). This CBA is based on the FCA's CBA for the implementation of the accountability regime to UK relevant firms¹⁷, and the analysis provided by Europe Economics for that CP. It also draws from the Impact Analysis performed by the Treasury in November 2014, which was also based on Europe Economics' analysis.¹⁸
3. The FCA's proposals on which this CBA is based are set out in chapters 1 to 6 of this CP. The FCA intends to apply, in as far as possible, the full set of UK measures to incoming branches. In practice this means that the full accountability regime will generally apply to non-EEA branches, tailored where necessary to ensure the regime is appropriate and proportionate. For EEA branches, we are limited by EU single market directives on the extent to which the UK, as host state regulator, can apply the UK regime. The proposals for EEA branches reflect these constraints.

Compliance costs

4. The policy proposals may result in increased compliance costs for incoming branches. Europe Economics estimated the compliance costs for a range of UK firms: banks and investment firms (large¹⁹ and small), building societies (large and small) and credit unions. Given that incoming branches generally have a wholesale focus and do not have a large retail branch network, it is reasonable to assume that the costs to incoming branches would be reflected, on average, by the estimates for 'small' firms, adjusted to reflect the difference in these proposals as described in paragraph 3 above. However, as a small number of incoming branches have annual income figures in excess of £1 billion, for completeness the FCA has also estimated compliance costs using the 'large' costs for those firms. The average set-up and ongoing compliance costs for both large and small incoming branches are shown below. These use the Europe Economics

¹⁷ FCA, CP14/13: *Strengthening accountability in banking: a new regulatory framework for individuals*, July 2014. See www.fca.org.uk/your-fca/documents/consultation-papers/cp14-13.

¹⁸ Treasury, *Regulating individual conduct in banking: UK branches of foreign banks: Impact Assessment*, November 2014. See www.gov.uk/government/consultations/regulating-individual-conduct-in-banking-uk-branches-of-foreign-banks.

¹⁹ 'Large' banks and investment firms were defined by Europe Economics in our July CP as having annual incomes greater than £1 billion.

cost data for UK banks and investment firms (covering the Senior Managers Regime, the Certification Regime and the Conduct Rules).

£000s	Large incoming branches	Small incoming branches
One-off (set up) costs	16,960	115
Ongoing costs	605	35

5. FCA data indicates there are 447 incoming branches (excluding insurance firms). Of these, 273 incoming branches do not yet have any approved persons and so are unlikely to be active. We will contact these branches to clarify whether they need to become subject to the regime or should cancel their authorisation or passport.
6. We expect most of the branches without an approved person will cancel their passport or apply to cancel their authorisation rather than become subject to the new individual accountability regime. But for illustrative purposes, we have used the 447 to estimate an upper range in the cost estimates. For the lower range, we have used the 174 incoming branches that currently have at least one approved person. But again, this may be an overestimate of the costs as some of these incoming branches may choose not to transition to the new regime.
7. Therefore, the cost estimates for incoming branches are presented in the table below as a range between a total number of 174 and 447 incoming branches.

£ million	Applying 'small firm' costs only	Applying 'small' and 'large' costs
One-off costs	20-51	104-135
Ongoing costs (per annum)	6-16	9-19

FCA costs

8. The proposals contained in this consultation will affect the FCA's existing authorisations, supervision and enforcement processes and systems. In keeping with the approach for UK firms as outlined in our July CBA, the impact on resources is expected to be minimal as existing capacity is likely to be deployed.

Indirect costs

9. A quantitative analysis of the impact of the indirect costs has not been undertaken as part of this exercise because (as was the case for our July CP) it is not considered to be reasonably practical to do so given the high degree of complexity and uncertainty surrounding the nature of such impacts.
10. Regarding qualitative impacts, the potential indirect costs of behavioural change identified for the UK accountability regime by Europe Economics in the July CP would also apply to incoming branches. These include: adjustments to wage structures to compensate individuals for increased accountability and a possible increase in operational inefficiencies brought about by (for example) delays in decision-making processes.

Impact on competition

11. As incoming branches can do the same kinds of business with the same kinds of customers as UK banks, it was felt that the accountability regime should apply equally to incoming branches, wherever possible. However, in drawing up these proposals, the FCA has been mindful of the potential impacts on competition and potential barriers to entry. Like the accountability regime for UK relevant firms, the proposals for incoming branches are intended to be proportionate, for example we expect that the number of senior managers will be proportionate to the size and complexity of the branch. We have applied the regime to incoming branches in line with the aims and objectives of the regime for UK relevant firms, while tailoring the regime where necessary to accommodate the structure of an incoming branch and EU legislation. This should help limit the scope for regulatory arbitrage in UK banking, to the extent possible, while not placing undue burdens on incoming branches seeking to do business in the UK.
12. As noted in paragraph 6, the introduction of the new regime may encourage a significant number of branches to withdraw from the UK regime. However, as these branches do not currently have any approved persons and are therefore assumed not to be undertaking regulated business in the UK, this will not have any impact on competition.

Benefits

13. The proposals will achieve consistency in the accountability regime as far as possible across UK relevant firms and incoming branches, while applying the regime to incoming branches in a proportionate way and remaining within the scope of our responsibilities under EU law for EEA branches. The key benefits of the proposals are, therefore, to:
 - a. make decision-making within incoming branches more transparent and more considered
 - b. enhance the accountability of the most senior individuals in incoming branches, coupled with enhanced enforcement powers, to improve branch governance and
 - c. avoid the scope or incentive for regulatory arbitrage depending on where a firm is headquartered
14. Based on calculations by the Treasury and Europe Economics, the direct benefits to incoming branches from the proposals are estimated as £1-2 million a year. The upper end of the range may only apply to those larger branches with a substantial number of Approved Persons.
15. The Europe Economics analysis for UK firms in our July CP also provided illustrative indirect benefits in the form of reduced harm (from, for example, mis-selling) of £0.04 billion to £0.6 billion per year. As noted by Europe Economics, this illustrative figure considers only harm that has already been identified; there would be additional benefits of reducing unidentified harm. As the risks of misconduct associated with trading activities for this population of largely wholesale banks are of a similar kind and significance as comparable risks for UK banks, some benefits of the same kind would also apply to the proposals for incoming branches.
16. A further quantitative analysis of the benefits of the proposals has not been undertaken as we did not consider it reasonably practicable. The nature of the assumptions that would have to be made to estimate these benefits make it very difficult to obtain sufficiently reliable estimates to inform a decision.

Annex 4: PRA Compatibility statement

1. This Annex sets out how the proposals in this CP are compatible with the general duties and regulatory principles of the PRA.
2. The PRA is required, by section 138J(2)(d) of FSMA to explain its reasons for believing that making the proposed rules is compatible with its duty to act, as far as reasonably possible, in a way which:
 - advances its general objective (i.e. to promote the safety and soundness of PRA-authorised persons) and
 - as a secondary objective, facilitates effective competition in the markets and services provided by PRA-authorised persons in carrying on regulated activities
3. The Banking Reform Act and the July CP set out a new regime for individual accountability that aims to help promote firms' safety and soundness. The new regime improves the clarity of firms' governance arrangements and changes the incentives for senior individuals by making them more personally accountable for failures in their firm. Section 71A of FSMA enabled the Treasury to issue an order extending the definition of Relevant Authorised Person to non-UK institutions, including incoming branches.
4. The proposals in this CP set out the tailored approach of the Senior Managers Regime that will apply to incoming branches. These proposals are compatible with the PRA's general duty in that they set out and ensure expectations for the operation of the accountability regime to incoming branches.
5. In developing the proposals in this paper, the PRA has had regard to the eight Regulatory Principles in section 3B of FSMA.
 - (a) **The need to use the resources of each regulator in the most efficient and economic way**
6. The PRA has used its internal and external resources in a way it believes to be considered to be both effective and commensurate with the impact and magnitude of the proposals in this CP. In particular, the PRA and FCA have collaborated in devising the proposals, shared forms and systems, to take advantage of synergies and promote efficient use of both regulators' resources.
 - (b) **The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction**
7. The aim of the PRA's proposals is to promote efficiency in governance, and strengthen individual accountability amongst Senior Managers in incoming non-EEA branches.

8. In developing its proposals, the PRA has taken into account the principle of proportionality, especially given the variations in the size and complexity of incoming non-EEA branches. Consequently, the proposed rules apply in a way that reflects the impact of different types of firms on the PRA's objectives.
 9. Moreover, the PRA has given careful consideration to the relative costs and benefits of its proposals in light of its statutory objectives.
 10. For more information please see the CBA sections (Annexes 1 and 2).
- (c) The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term**
11. The PRA does not consider this to be directly relevant for this paper.
- (d) The general principle that consumers should take responsibility for their decisions**
12. The PRA does not consider this to be relevant for this paper.
- (e) The responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements**
13. The key objective of the PRA's proposals in this paper is to promote individual accountability of Senior Managers in incoming non-EEA branches by extending, and where appropriate tailoring, the Senior Managers Regime to incoming non-EEA branches. This objective is directly related to this Regulatory principle.
- (f) The desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act [FSMA]**
14. The PRA has given appropriate recognition to the varying nature and objectives of activities carried out by PRA-authorized persons, and has allowed for a proportionate and flexible approach to be undertaken.
- (g) The desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information, as a means of contributing to the advancement by each regulator of its objectives**
15. The PRA has the power to publish certain information relating to investigations into firms and individuals. The Statement of the PRA's Approach to Publicity of Regulatory Action (April 2013) deals with the PRA's approach to publication of disciplinary and other enforcement actions. The proposals contained in this paper do not provide for any changes in this regard.
- (h) The principle that the regulators should exercise their functions as transparently as possible**
16. In this CP, which is to be read in conjunction with the July CP, the December CP (CP28/14), and the February CP (CP7/15), the PRA sets out all the key information relevant to its proposals, and gives respondents the opportunity to comment on the proposals, the specific rules and guidance on the new regime.

Mutuals

17. The PRA has a statutory requirement under section 138K(2) of FSMA to state whether the impact on mutual societies will be significantly different from the impact on other firms. The PRA considers that mutuals are not expected to be affected differently, or in a disproportionate way, from other firms by the proposals in this CP. The rules in this CP have given due consideration to the size and complexity of firms, and have created a proportionate and flexible regime. The rules in this CP will, also, extend the regime proposed in the July CP, where proportionality considerations and the particular circumstances of mutuals were taken into account in the design of the underlying accountability regime.

Annex 5:

FCA Compatibility statement

Compatibility with the FCA's general duties

1. This Annex sets out how the proposals in this CP are compatible with the general duties and principles of the FCA. The FCA is required, by section 138I of FSMA, to explain why making the proposed rules is compatible with its strategic objective, advances its operational objectives, and has regard to the regulatory principles in section 3B of FSMA.
2. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with our duty, so far as is compatible with acting in a way which advances the consumer protection or market integrity objectives, to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA).

The FCA's strategic objective and regulatory principles

4. The proposals set out in this consultation are compatible with our strategic objective of ensuring that the relevant markets function well. They will clarify responsibilities in incoming branches and enhance the regulators' ability to hold individuals in such firms to account. This should, over time, result in improved governance within this sector of the industry.
5. In preparing the proposals set out in this consultation, we have had regard to the regulatory principles set out in s.3B FSMA. We set out below how our proposals demonstrate such regard for each of the regulatory principles.

The need to use our resources in the most efficient and economic way

6. The proposals set out in this consultation will affect the FCA's existing authorisations, supervision and enforcement processes and systems. The one-off costs have been identified and are not likely to have an impact on resources as existing capacity is likely to be deployed. In the medium to long term we expect the proposals may lead to a natural reduction in the need for some other kinds of supervisory activity. We believe this will result in more effective supervision over the longer term, resulting in better outcomes. We believe that the proposals in this consultation paper would use our resources in an efficient manner.

7. The introduction of the Certification Regime removes a large number of individuals from the regulatory approval process and places more responsibility on relevant firms for the fitness and propriety of their staff. This also frees up more regulatory resource to focus on the key decision makers in the SMR.

The principle that a burden or restriction should be proportionate to the benefits

8. The proposals set out in this consultation paper seek to enhance individual accountability and so advance our strategic objective and operational objectives. The proposals are intended to result in beneficial changes in behaviour and reduce non-compliance, misconduct and excessive risk taking. In addition, we have tailored the framework proposed for UK relevant firms to make the proposals appropriate and proportionate for incoming branches.
9. Firms are likely to incur both direct and indirect compliance costs, but our cost benefit analysis shows that these are not excessive, compared to the potential benefits to consumers. We therefore believe the proposals in this consultation paper are proportionate to the benefits.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

10. As outlined in the compatibility statement of the July CP, the costs to the economy of UK bank failures have been significant (a cash outlay peaking at £133 billion, equivalent to more than £2,000 for every person in the UK).²⁰ Our proposals for incoming branches have regard to the desirability of sustainable growth in the medium and long term. The proposed changes are intended to have a positive impact on behaviour in branches, which will contribute the advancement of this objective.

The general principle that consumers should take responsibility for their decisions

11. The proposals we have made concern the internal organisation of incoming branches and requirements applying to their staff. These are not matters over which consumers can have any influence. Extending the regime (in a proportionate way) to incoming branches enhances the confidence that consumers can have that whatever firm they chose to deal with, the new requirements will apply to all.

The responsibilities of senior management

12. The main objective of the proposals contained in this consultation paper is to ensure that senior managers within incoming branches are clear about the responsibilities they hold and can therefore be more effectively held accountable for the performance of these responsibilities.

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons

13. We believe our proposals do not undermine this principle. The Treasury has confirmed its intention to extend the regime to incoming branches, and the PRA and FCA have agreed to apply the regime in an appropriate and proportionate way to incoming branches. The FCA considers that the key elements of the regime should apply in broadly the same manner to incoming branches because the risks to consumers in dealing with a badly governed incoming branch could be just as great, from the consumer's point of view, as if they dealt with a badly governed UK bank. However in considering the SMR we have been mindful of the different legal structures of incoming branches, the need to maintain a level playing field as far as possible and, for EEA branches, the single market and so have tailored our proposals accordingly.

²⁰ House of Lords, House of Commons, Changing banking for good, Report of the Parliamentary Commission on Banking Standards, 12 June 2013, p. 82, para. 1.

The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA

14. We have the power to publish information relating to investigations into firms and individuals. However, as set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter or any of our findings or conclusions of an investigation public except in the circumstances described in chapter 6 of the Guide. The proposals contained in this consultation paper do not provide for any changes in this regard.

The FCA's operational objectives

Consumer protection and market integrity

15. The objective of the proposals contained in this consultation paper is to ensure that Senior Persons within incoming branches are held accountable for the roles they perform. This is intended to create a structure that will make it more likely that individuals and roles are appropriately matched and that high standards of conduct are observed. We therefore consider that these aims and objectives support our consumer protection and market integrity objectives.

Promoting competition

16. In preparing the proposals as set out in this consultation, we have had regard to our duty to promote effective competition in the interests of consumers under section 1B(4) FSMA. We have kept the competition objective in mind when framing how these proposals should be implemented, with a particular focus on whether there is a risk of weakening competitive pressure, disadvantaging smaller incoming branches, small UK relevant firms or potential new entrants. The proposals seek to maintain a level playing field as far as is possible and appropriate for UK relevant firms and incoming branches, taking into account differing legal structures and the single market.

Mutuals

17. The FCA considers that mutuals are not expected to be affected differently, or in a disproportionate way, from other firms by the proposals in this CP. The potential impact on mutual was considered as part of the July CP and the proposals in this CP are designed to be proportionate for the firms affected.

Annex 6: List of questions

- Q2: [PRA]:** Does the proposed list of PRA Senior Management Functions for UK branches of non-EEA firms capture the appropriate set of roles? If not,
- are there any other roles which the PRA should consider specifying as SMFs for incoming branches?
 - are there any proposed SMFs which the PRA should consider excluding?
- Q2: [FCA]:** Do you agree with the proposed list of FCA Senior management Functions for non-EEA branches? If not,
- are there any other roles which the FCA should consider specifying as SMFs for incoming non-EEA branches?
 - are there any proposed SMFs which the FCA should consider excluding?
- Q3: [PRA]:** Does the proposed list of PRA Prescribed Responsibilities for non-EEA branches capture an appropriate and proportionate set of areas? If not,
- are there any other areas the PRA should consider including in the list?
 - are there any areas which the PRA should consider omitting or clarifying?
- Q4: [FCA]:** Does the FCA's proposed approach to the allocation of responsibilities for non-EEA branches capture an appropriate and proportionate set of areas? If not,
- are there any other areas the FCA should consider including in the list?
 - are there any areas which the FCA should consider omitting or clarifying?

- Q5: [FCA]:** Do you agree with the proposed list of FCA Senior management Functions for EEA branches? If not,
- are there any other roles which the FCA should consider specifying as SMFs for incoming EEA branches?
 - are there any proposed SMFs which the FCA should consider excluding?
- Q6: [FCA]:** Do you agree with the FCA's proposed approach to the allocation of responsibilities in EEA branches? If not, how should the regime be amended?
- Q7: [PRA/FCA]:** Do the combined FCA and PRA proposed SMFs branches cover the key decision-makers for the regulated activities of incoming branches?
- Q8: [PRA/FCA]:** Are there any other aspects of the Senior Managers Regime that should be applied differently for non-EEA branches? If so, how should the regime be amended?
- Q9: [FCA]:** Are there any other aspects of the Senior Managers Regime that should be applied differently for EEA branches? If so, how should the regime be amended?
- Q10: [PRA]:** Do you agree with the PRA's proposed approach to defining certification functions?
- Q11: [FCA]:** Do you agree with the FCA's proposed approach to the Certification Regime for non-EEA branches?
- Q12: [FCA]:** Do you agree with the FCA's proposed approach to the Certification Regime for EEA branches?
- Q13: [FCA]:** What are your views on the potential changes to the scope of the FCA's Certification Regime described above for incoming branches? In particular, do you agree that the scope of the Certification Regime should include all individuals involved in wholesale activity, where these individuals are capable of causing significant harm to the firm or its customers?
- Q14: [PRA/FCA]:** Are there any other aspects of the Certification Regime that should be applied differently for non-EEA branches? If so, how should the regime be amended?
- Q15: [FCA]:** Are there any other aspects of the Certification Regime that should be applied differently for EEA branches? If so, how should the regime be amended?
- Q16: [PRA]:** Do you agree with the PRA's proposed approach to conduct rules for non-EEA branches? If not, why not?

- Q17: [FCA]:** Do you agree with the FCA's proposed approach to Conduct Rules for incoming branches? If not, why not?
- Q18: [FCA]:** What are your views on the potential changes to the reporting of Conduct Rule breaches for incoming branches as described above?
- Q19: [PRA/FCA]:** Are there any other aspects of the requirements associated with the Conduct Rules that should be applied differently for non-EEA branches? If so, how should the regime be amended?
- Q20: [FCA]:** Are there any other aspects of the requirements associated with the Conduct Rules that should be applied differently for EEA branches? If so, how should the regime be amended?
- Q21: [PRA and FCA]:** Do you agree with the PRA and FCA's proposed approach to grandfathering existing approved persons into Senior Management Functions in incoming branches?
- Q22: [PRA and FCA]:** Are there any other aspects of the requirements associated with transitional arrangements that should be applied differently for non-EEA and/or EEA branches? If so, how should the regime be amended?
- Q23: [FCA]:** Are there any other aspects of the requirements associated with transitional arrangements that should be applied differently for EEA branches? If so, how should the regime be amended?
- Q24: [PRA & FCA]:** Do you agree with the proposed changes to the new forms?
- Q25: [FCA]:** Do you agree with the proposed changes to the Form A for EEA branches?
- Q26: [PRA & FCA]:** Do you agree with the proposed changes to these existing forms?
- Q27: [PRA]:** Do you have any comments on the PRA's proposed consequential Rulebook changes, or think more are needed?
- Q28: [FCA]:** Do you have any comments on the FCA's proposed consequential Handbook changes, or think more are needed?

Appendix 1

PRA Draft Rules

Appendix 2

FCA Handbook text

Appendix 3

PRA and FCA forms

Appendix 4

FCA-only forms



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



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