

Memorandum of Understanding between the Bank of England and the Financial Services Authority regarding the oversight of payment systems

Rationale

1. This Memorandum of Understanding (MoU) is intended to help facilitate effective communication and co-operation between the Bank of England ('the Bank') and the Financial Services Authority ('the FSA') in respect of the oversight of payment systems.

Roles and Responsibilities

2. Under the Financial Services and Markets Act 2000 (FSMA), the FSA has statutory responsibilities for regulation of firms with permission under Part 4, and, under Part 18, the recognition and supervision of Recognised Bodies (RBs) (together, "FSA-regulated organisations").
3. The Bank has statutory responsibility for the oversight of payment systems of systemic or system wide importance that have been 'recognised' under Part 5 of the Banking Act 2009. The Bank also provides settlement services and facilities for certain payment systems.
4. Some FSA-regulated organisations have payment systems embedded within them ("embedded payment systems"). Where such a payment system is recognised under the Banking Act 2009, the FSA and Bank both have regulatory functions.
5. The Bank also acts as the designating authority for stand-alone payment systems under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999¹ (the 'Settlement Finality Regulations'), while the FSA is the designating authority for RBs, including the payment systems embedded within them.
6. Under the Payment Services Regulations 2009², the FSA is also the competent authority for Authorised and Registered Payment Institutions (firms providing payment services). The Regulations implement Directive 2007/64/EC of the European Parliament and of the Council on payment services in the internal market.³
7. The Bank does not have responsibilities for consumer protection in this area.

Matters covered

8. This MoU sets out the arrangements for co-operation and division of roles and responsibilities agreed between the Bank and the FSA regarding FSA-regulated

¹ SI 1999/2979

² SI 2009/209

³ The Directive establishes an authorisation regime for non-bank payment service providers, such as money remitters and non-bank credit card issuers, and it sets out conduct of business rules for all payment service providers, including banks, e-money institutions, and payment institutions.

organisations and payment systems, with a particular focus on the division of responsibilities for the regulation of embedded payment systems that have been recognised under the Banking Act. The document is split into four sections:

- 1) Roles and responsibilities regarding FSA-regulated organisations operating recognised payment systems.
- 2) Roles and responsibilities regarding other FSA-regulated organisations and standalone payment systems.
- 3) Roles and responsibilities regarding the Settlement Finality Regulations.
- 4) Arrangements for information sharing and supervisory cooperation.

Section 1 - Roles and responsibilities regarding FSA-regulated organisations operating recognised payment systems

9. The allocation of responsibilities for the regulation of payment systems means that FSA-regulated organisations with embedded payment systems which have been recognised under the Banking Act will be subject to regulation by the FSA and also to oversight by the Bank. With this in mind, the Bank and the FSA are committed to ensuring there is effective coordination and, consistent with their respective statutory duties, minimal duplication between the Authorities.
10. To avoid conflict between the operation of the two regimes, the Bank will ensure so far as possible, consistent with its duties and policies, that it exercises its powers to set principles and publish codes of practice for payment systems in a way that complements and does not contradict the requirements of FSMA, the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001⁴ and related FSA Guidance⁵. Similarly, the FSA will ensure, so far as possible, consistent with its duties and policies, that any Guidance regarding the activities of an FSA-regulated organisation with an embedded payment system complements and does not contradict the Bank's principles or codes of practice for payment systems.
11. Section 192 of the Banking Act provides that, in exercising its powers under Part 5 of that Act the Bank shall have regard to any action that the FSA has taken or could take. Section 192 further provides that the Bank must consult the FSA before exercising its powers under Part 5 of the Banking Act in relation to a system operated by an FSA-regulated organisation or an organisation which has applied to be so regulated. .
12. Subject to the urgency and the nature of the case, the FSA expects to respond to the consultation and notify the Bank within 5 working days as to whether it is considering taking action in respect of the operator. If the FSA gives the Bank such notice, under section 192(3) of the Banking Act the Bank may not take action unless the FSA consents or the notice is withdrawn. The FSA will give such notice only if it reasonably expects that the action it is considering taking would address the Bank's concerns and will confirm as soon as reasonably practicable, and usually within no more than 3 months, whether it intends to take

⁴ SI 2001/995

⁵ The Recognised Investment Exchanges and Recognised Clearing Houses Sourcebook (REC)

action. In this circumstance it is also envisaged that the FSA will provide regular updates to the Bank with regard to the decision-making process and any action being taken.

13. Whenever possible, the FSA will inform the Bank before exercising its powers under FSMA in a way that it judges could have implications for the Bank's objectives in relation to an embedded payment system recognised under the Banking Act.
14. The Bank and the FSA are committed to minimising duplication, so far as consistent with the statutory duties. As discussed in paragraphs 18-20 below, the authorities will aim to meet on a regular basis to share views on issues in relation to embedded payment systems. This will include the potential for reducing any identified areas of overlap, including by taking the oversight of the other authority fully into account (where appropriate) and giving appropriate weight to facts established by the other authority, steps it has taken, verified assurances obtained and other similar verifiable aspects of its oversight.

Section 2 - Roles and responsibilities regarding standalone payment systems and FSA-regulated organisations without embedded payment systems recognised under the Banking Act

15. The FSA has regulatory responsibility for FSA-regulated organisations that do not contain embedded payment systems recognised under the Banking Act, in relation to the regulated activities they carry out. Likewise, the Bank is responsible for the oversight of standalone payment systems that have been recognised under the Banking Act.
16. In the event that the Bank is considering taking any action under Part 5 of the Banking Act⁶ against an FSA-regulated organisation which is not itself the operator of a recognised payment system, the Bank will consult the FSA to the extent practicable in the circumstances with a view to agreeing on what the appropriate action is, and who should take it.
17. In the event that the FSA is considering taking any action against an entity it regulates, and the FSA thinks that the action could affect a standalone payment system overseen by the Bank, the FSA will consult the Bank to the extent practicable in the circumstances before taking the action.

Section 3 - Roles and responsibilities regarding the Settlement Finality Regulations

18. As required by Reg 4(3) of the Settlement Finality Regulations, the FSA will consult the Bank before deciding whether to make a designation order under the Regulations in relation to a system through which both securities transfer orders and payment transfer orders are effected.

⁶ The Bank could use only certain of its powers against such entities. These are Inspection (s193-194 of the Act), if some part of the system is operated on the premises in question; Management Disqualification (s200(2)); Information (s204) and Pretending to be recognised (s205).

Section 4 - Information sharing and supervisory cooperation

19. Although the Bank and the FSA will meet independently with FSA-regulated organisations containing embedded payment systems, they are committed to co-operating in the discharge of their respective responsibilities through coordinated work in circumstances where that would be beneficial given their different areas of expertise. The Bank and FSA will identify opportunities for the reduction of overlap and duplication in their work to the extent it is appropriate to do so. The Bank and the FSA will also work closely in preparation for international cooperative oversight group meetings.
20. If the Bank or the FSA plans to publish an assessment regarding an embedded payment system in a public report, they will share drafts of any material regarding embedded payment systems with the other authority, so that authority may comment.
21. The Bank and the FSA will share all data and other information available to one, where it is relevant to the responsibilities of the other (unless there are legal constraints). For example:
 - should the Bank have concerns regarding an FSA-regulated organisation that the Bank judges should be drawn to the FSA's attention, then the Bank will do so. The FSA will then decide upon the most appropriate regulatory response, if any. Likewise, if the FSA has concerns about any standalone payment system that it judges should be drawn to the Bank's attention, then the FSA will do so. The Bank will then decide upon the most appropriate oversight response, if any.
 - the FSA sharing information to enable the Bank to assess whether new or growing embedded payment systems should be considered for recognition by HM Treasury under the Banking Act; and
 - the FSA informing the Bank if it has concerns that the activities of an FSA-regulated organisation could have an impact on a recognised payment system that it judges should be drawn to the Bank's attention.

*P M W Tucker
Deputy Governor, Financial Stability
Bank of England*

*Sally Dewar
Managing Director, Risk
Financial Services Authority*