



24 February 2022

To: The Bank of England's regulation of CCPs and CSDs

Financial Services

HM Treasury

1 Horse Guards Road

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Email: FRF_Review.CCPs_CSDs@hmtreasury.gov.uk

Dear HM Treasury,

Financial Services Future Regulatory Framework Review: Central Counterparties and Central Securities Depositories ("CCP and CSD Reform Proposals")

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers.

FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

We have recently submitted the FIA response to the consultation on the Financial Services Future Regulatory Framework Review: Proposals for Reform ("**FRF Reform Proposals**"). In the response we indicated that we would also be responding to the CCP and CSD Reform Proposals and noted some of our initial thoughts. We are grateful for the continued opportunity to provide our feedback on proposals that directly affect our members, and we therefore provide further detail below on the position of FIA and its members in relation to the two questions raised in the CCP and CSD Reform Proposals.

1 Question 1: Do you agree with the proposed set of statutory objectives and regulatory principles for the Bank, in its capacity as CCP and CSD regulator?

- 1.1** FIA is supportive of the proposal to specify that the Bank should have to consider the financial stability impact of UK CCPs and CSDs on other jurisdictions in relation to the Bank's primary objective. We strongly agree with referring to the importance of international



considerations, reflecting the global role that the UK currently holds in the derivatives clearing market.

- 1.2** We agree that the primary objective should remain financial stability, however, another integral element of the clearing and settlement services which the Bank will be supervising is their international nature. FIA is of the view that this should be recognised within the legislative framework as a key secondary objective which requires the Bank to take into account the international context in which UK CCPs and CSDs operate. FIA believes this is required to ensure the UK maintains a proportionate regulatory framework aligned with international standards. We do not believe it is enough to make reference to the international standards in the regulatory principles, as we believe that ensuring the UK framework is aligned with international principles is essential to the UK retaining a central role in the international clearing and settlement markets and ensuring the smooth functioning of the global CCP and CSD infrastructure.
- 1.3** We also agree with the proposal to give the Bank the secondary objective of facilitating innovation in the clearing and settlement services provided by the UK CCPs and CSDs, subject to certain parameters. As the paper rightly notes, it is important that any innovation conforms with relevant international standards and we therefore believe this is the correct parameter for the objective. We support the drive to improve quality and efficiency which could result in better services for market participants at lower costs.
- 1.4** We note that there is not yet any guidance on what initiatives would be pursued under an innovation objective. FIA would support an approach which ensures the Bank has the resources to respond quickly to new developments, for example with the review and decision-making process for the launch of new contracts for clearing. Having an efficient review process which is open to feedback from the firms it regulates would make the UK regime attractive in an international context. However, in pursuing innovation there must be a focus on ensuring the reliability and the security of the infrastructure, and as noted in paragraph 4.16, the primary objective of financial stability should work to ensure that any innovation by FMIs must guarantee a safe and controlled environment.
- 1.5** An objective to facilitate innovation is also complementary to the 'agile' approach of regulation which has been proposed in both the FRF Reform Proposals and the CCP and CSD Reform Proposals. This will allow the Bank to remain flexible to respond to changes in technology, international standards and in the market.
- 1.6** We note in paragraph 4.17 that the government has decided not to propose a UK competitiveness secondary objective. However, we believe that pursuing innovation subject to financial stability will contribute to a strong international position for the UK and ultimately this will have the effect of making the UK competitive in clearing and settlement.
- 1.7** We also support the proposed addition of a new regulatory principle for the Bank to have regard to the desirability of facilitating fair, reasonable and equitable provision of services by UK CCPs and CSDs to their members, subject to conforming with international standards such as the PFMI. The limited number of CCPs and CSDs, and their often-specialised areas of service provision, make access to this infrastructure integral to a balanced and orderly market. It is also vital that such access is provided on reasonable terms and without unfair discrimination between users, and we would urge HMT to clarify this aspect of the proposed regulatory principle explicitly. The addition of this principle should act as a safeguard to

ensure access to the services on fair, reasonable and equitable terms, and therefore we feel that this is particularly important to include alongside the proposed innovation objective. Broad access for market participants will support the stability and safety of the market which will contribute to the attractiveness of the services regulated by the Bank and in turn we believe this will again put the UK in a strong position internationally (but not at the cost of market integrity).

- 1.8** In line with the approach put forward in the FRF Reform Proposals, we note that the government intends to repeal retained EU law and subsequently grant the Bank rule-making powers for the regulation of UK CCPs and CSDs. In connection with the implementation of new rules, we would encourage the Bank to provide regulatory continuity as far as possible, and that any changes are first subject to a clear public consultation process for stakeholder comment. To ensure that there is regulatory continuity and to avoid the potential for gaps in the legislation, this is an area where the government could implement a 'have regard' that any rules made by the Bank should at a minimum extend to any areas currently covered by retained EU law. We would be supportive of the use of such a 'have regard'. Further use of this approach could be desirable provided it is used appropriately and with clearly defined parameters. Our members would be grateful for further indication of the types of 'have regards' which are being considered for regulation of UK CCPs and CSDs.
- 1.9** We would also caution that innovation should not be at the expense of regulatory continuity. Therefore, as mentioned above, any proposed innovation and changes to the rules and regulations should be subject to consultation and discussion with the UK CCPs and/or CSDs (see our further comments on stakeholder transparency below).
- 1.10** At paragraph 3.16, the paper notes that the Bank should be able to make rules in relation to overseas CCPs and CSDs who wish to provide services into the UK, in order to safeguard UK financial stability. As is noted in the FIA response to the Bank's approach to tiering incoming central counterparties, FIA and our members have long advocated that the best way to manage financial stability risk is to have supervisory and regulatory co-operation and believe that the best approach to cross-border regulation of CCPs relies on regulatory deference. Working together and sharing information between the regulators ensures continuous regulatory oversight across borders, as well as avoiding duplication and reducing burden on FMIs. We therefore have reservations regarding the creation of new rulemaking powers which extend the application of UK rules to the clearing activities of non-UK CCPs. However, we are concerned that the suggestion in paragraph 3.16 would give the Bank the power to make rules that apply extraterritorially to CCPs globally, including those which already meet the relevant international principles from CPMI-IOSCO. This would not be in line with CPMI -IOSCO principles and guidance.
- 1.11** A better approach, which would be in line with international principles, is to rely on regulatory deference and co-operation when looking at cross-border regulation of CCPs. This would allow the Bank to inform the home regulator and other relevant authorities where it identifies issues that may materially affect a CCP or the provision of its services, instead of imposing UK specific rules and regulation on the CCP. Imposing additional, UK specific regulation may duplicate (or in limited cases be contrary to or not aligned with) the primary regulator of the CCP. This could give rise to uncertainties as well as lead to an impression that the UK market is less attractive. FIA supports the government's approach to facilitating open wholesale markets, and we feel strongly that an integral part of this has been demonstrated to be based



around sound regulatory deference frameworks. To impose location specific rules would be a step backwards.

- 1.12** At paragraph 4.4, the CCP and CSD Reform Proposals refer to the recent consultation on proposals to introduce a Senior Managers and Certification Regime for FMI. When the consultation was published, initially it was not clear whether the intention was for the regime to apply to incoming FMIs as well as to UK based FMIs. We feel that this example of uncertainty is a strong case for ensuring there are clear parameters around how the power to make rules for incoming CCPs works, as well as providing clarity in the application of proposed and current rules and legislation. Further information on areas which are being considered for the implementation of UK specific rules would be welcomed by FIA members.
- 1.13** The FRF Reform Proposals emphasised the importance of regulatory deference arrangements, stating that the *'government considers that there is now a case for ensuring the regulators consider the potential impacts on deference arrangements as a matter of course when making rules and when setting general policy on supervision, where relevant and proportionate'*. Paragraph 5.26 of these CCP and CSD Reform Proposals confirms that this should also be the case for the Bank which will need to consider the possible impact on relevant deference arrangements afforded to the UK by overseas jurisdictions when making rules. For CCPs and CSDs, we understand these proposals would involve the Bank consulting with HMT on relevant regulatory deference agreements at the time, however it is not clear whether there is a framework in place for whether it will be HMT or the Bank who will have the final decision, particularly in sensitive areas. We would be grateful for further transparency around how this process will work, and how any equivalence decisions will be considered in this context.

2 Question 2: Do you agree with the proposed enhanced accountability mechanisms to HM Treasury and Parliament, as well as the proposed measures to increase transparency to external stakeholders?

- 2.1** We encourage measures that will enhance transparency for external stakeholders. When government or the Bank is assessing potential changes to rules and legislation, our members appreciate being informed clearly and promptly with detailed explanations through the public consultation process. External stakeholders will include CCPs and CSDs not based in the UK which will be affected by the Bank's rules, particularly if some of the proposals in the CCP and CSD Reform Proposals are implemented. It will therefore be vital that proposals, and the opportunity to comment on them, are also made available to incoming, non-UK based CCPs and CSDs. Trade associations such as FIA will of course have a role to play in publicising proposals to our international members. However, we would encourage HMT and the Bank to be proactive in highlighting where proposals may affect such firms, as well as identifying methods for informing non-UK based entities of consultations and proposals, and making the documents accessible to these firms.
- 2.2** Running public consultation processes ensures that the full range of views across the entities and jurisdictions in which they operate are considered in the decision-making process, however we appreciate that for CCPs and CSDs, the Bank will have a small but diverse set of regulated firms. While a statutory stakeholder panel may not be a feasible approach, we would encourage the Bank to work with small groups of CCP and CSD members, as well as clearing members, in order to provide input on a regular basis in a less formal structure. FIA



feels strongly that the Bank and the CCPs should use the smaller number of firms involved to our combined advantage and facilitate an open and continuous supervisory and regulatory dialogue.

Thank you for the opportunity to comment on the proposals, we would of course be delighted to engage further with HMT or the Bank to discuss any of the points raised above in further detail.