

THE FINANCIAL SERVICES PRACTITIONER PANEL

**RESPONSE TO HM TREASURY CONSULTATION PAPER 'A NEW
APPROACH TO FINANCIAL REGULATION: JUDGEMENT, FOCUS AND
STABILITY' OF JULY 2010**

18 OCTOBER 2010

EXECUTIVE SUMMARY

- i. This submission is from the Financial Services Practitioner Panel (The Practitioner Panel, a body set up under Financial Services and Markets Act 2000 (FSMA) as an independent Panel to the Financial Services Authority (FSA). Details of the role and remit of the Practitioner Panel are at Appendix 1.
- ii. As stated in its Annual Report, the Practitioner Panel believes that an effective regulator is clearly in the interests of consumers, practitioners and the wider economy and was accordingly glad of the opportunity to engage in this consultation process. In formulating its overall position on the proposed reforms set out the HM Treasury's consultation paper 'A new approach to financial regulation: judgement, focus and stability' of July 2010, the Practitioner Panel undertook extensive consultation with a wide range of stakeholders and interested parties and we believe therefore that this response provides a uniquely broad perspective of views from across the regulated community which the Panel represents. As this response constitutes an agreed position for the Practitioner Panel as a whole, it may not necessarily fully represent the more specific views of individual members of the Practitioner Panel or the position of the firms that they represent. A separate response has been prepared by the Smaller Businesses Practitioner Panel, and so we have not covered specific issues for smaller firms in this document.
- iii. This response should be read in conjunction with the Practitioner Panel's separate submission (attached at Appendix 2) to the Treasury Committee inquiry into financial regulation which sets out our thoughts and observations in relation to a broader range of matters associated with the adoption of the 'twin peaks' regulatory framework and the timing of the transition.

iv. The objectives of the regulatory authorities

We support the notion that each authority should be assigned a single clearly defined objective. This should not however be unconstrained and each authority, including the Financial Policy Committee (FPC), should be legally required to balance its decisions and actions in relation to a range of clearly defined additional factors. Our comments on the nature of these factors are set out in the following pages of this response.

We note the Government is seeking specific feedback on the extent to which these should continue to include reference to potential adverse impacts on innovation and the competitiveness of the UK financial services sector. In this regard, we are strongly of the view that competitiveness, competition and innovation are critical to consumer choice and the long term sustainability of UK financial markets and therefore each of the authorities should continue to have regard to these matters when performing their duties.

We fully support the application of the existing FSMA principles of good regulation, particularly the use of robust cost benefit analysis (which is referred to in the FSMA proportionality principle). We believe further work is required to improve the robustness of the cost benefit analysis and embed this into day-to-day operations and decision making processes. We believe the principles of this discipline are equally relevant to conduct, prudential and financial stability matters and the regulatory reforms provide an opportunity to clearly set out how these factors should be applied in practice.

The new regulatory framework should include adequate challenge of proposed measures and checks to ensure their effective ongoing usage, as well as a need for each authority to disclose how they have discharged their responsibilities in this regard.

v. Enhancement of the Bank's accountability mechanisms

We support the strengthened focus on financial stability. However, given the overall power vested in the Bank of England (the Bank) as a consequence of moving from the existing tripartite regulatory system with an integrated prudential and conduct regulator to a 'twin peaks' model with a focus on financial stability, we are concerned that the current range of accountability and transparency mechanisms proposed are less than those currently applied in the existing regulatory framework.

In order to address this matter and support the FPC and Prudential Regulatory Authority (the PRA) in their decision making processes we are advocating that a range of enhancements be made. These include first, extending the role proposed for a Practitioner Panel from the Consumer Protection and Markets Authority (the CPMA) to include matters falling within the PRA mandate (further information on this matter is set out below); and second, the establishment of a non-executive advisory group comparable to the previous Board of Banking Supervision that will provide commercial and international input, support and expertise to the FPC and broader supervisory decision making processes at the highest level. This will bring several benefits: appropriate commercial input, a forum for discussion on international issues and improved coordination of prudential, conduct and financial stability matters.

We also believe that to successfully implement the proposed reforms it will be important to ensure that the independent members of the FPC are senior, highly regarded and influential industry figures who collectively are able to represent the broader views of the financial services industry and challenge the executive members effectively.

vi. Strengthening the role and positioning of the independent panels

We believe the existing independent panels have provided valuable input, support and challenge to the FSA on a wide range of matters in the past, including the provision of industry insight and expertise on policy related matters and regulatory initiatives, emerging industry risks, as well as the FSA's performance. This input has regularly included a stress on international matters, the need for real cost benefit analysis of proposed regulatory initiatives and appropriate commercial input. We have also provided ad hoc sounding board support on the resolution of a range of other issues and are proactively engaged by the FSA on a wide range of other matters.

Consequently, we advocate that the existing roles of the independent panels are extended beyond the CPMA to act in a similar capacity for the PRA and to support the supervisory decision making processes of both authorities. We believe that the current balance of interests in the Practitioner Panel, Smaller Businesses Practitioner Panel and Consumer Panel is important and should be maintained – with the addition of the SBPP becoming a statutory panel. Therefore all the Panels should work across the regulatory structure.

A Practitioner Panel that spans both authorities will also be better placed to provide guidance, support and industry challenge on the commercial, operational and cost impacts of prudential regulatory matters (particularly any unintended and adverse impacts), the level of coordination across the authorities, as well as the representation

of UK interests internationally. We also believe the Practitioner Panel's position should be strengthened through the creation of a right to raise major concerns on financial stability matters directly with the FPC.

In order to ensure the Practitioner Panel is able to discharge its broader mandate, it will be important to revisit its membership and increase the level of support it currently receives.

In summarising points (iv) and (v) above, we believe that in finalising its reforms the Government should enhance the accountability mechanisms proposed for the Bank in the following three ways:

- Extend the role proposed for the Practitioner Panel to include matters falling within the mandate of the PRA and strengthen its position through the creation of a right to raise major concerns on financial stability matters directly with the FPC;
- Establish an advisory body comparable to the previous Board of Banking Supervision to provide commercial input and support to the FPC and broader supervisory decision making processes at the highest level; and
- Ensure the 'independent' members of the FPC are strong and influential figures who collectively are able to represent the broader views of the financial services industry and challenge the executive members effectively.

vii. The role of the CPMA as a 'consumer champion'

We have a number of suggestions relating to the positioning of the CPMA within the regulatory framework. We would preface these with the observation that conduct and prudential regulation have large areas of overlap and that protecting consumers as whole will involve choices about which regulatory action to take. The first of our suggestions relates to its role as a 'consumer champion'. Whilst we recognise and support the Government's overall consumer protection aims in this regard, we are concerned that currently this term is undefined and there is a real risk that if it were to be narrowly interpreted or viewed as a lobbying or campaigning body on consumer rights, the actions of the CPMA could result in a detrimental impact on consumers and market participants alike.

A regulator such as the CPMA will have to make difficult decisions around which consumers to protect and in what way. Recent examples include the FSA's Retail Distribution Review and the increasing trend in product regulation. Whilst these initiatives have been designed to benefit consumers, there is a danger they will result in a detrimental impact on a far greater proportion of consumers and adversely impact the overall level of market competition and a wide range of firms. Consequently, we believe the CPMA should be more balanced in its outlook and play a key role in helping to maintain healthy and vibrant markets that are to the benefit of consumers and other participants. It would help in this regard if it were to take over from the current FSA the twin statutory objectives of maintaining market confidence and securing the appropriate degree of protection for consumers.

We note the Government intends to engage in a frank and open debate on this matter and makes reference to consumer responsibilities in the consultation paper. We welcome this initiative and would urge early dialogue on this matter, before the CPMA is established, with the outcomes used to clearly set out the balance required

between the regulation and supervision of firms, consumer responsibilities and the role of the state.

viii. The positioning of the CPMA as a ‘second tier’ regulator

The second area of concern in relation to the CPMA is its positioning relative to the PRA. The consultation paper currently refers to the PRA as acting as the lead regulator over the CPMA in the event of any conflicts. We are concerned that this could inadvertently result in the CPMA being regarded as being a ‘second tier’ regulator which in turn could adversely impact its ability to attract and retain high calibre staff, the quality of regulation it provides, as well as its ability to effectively represent UK interests internationally.

In order to allay industry concerns in this regard, we urge the Government to ensure the early appointment of the CPMA CEO, who should be an individual of equal standing as the PRA CEO, together with the announcement of the management structures of the regulatory authorities which should include well regarded individuals within senior positions who are collectively able to represent the broader interests of the financial sector.

ix. Clarity of decision making processes and escalation mechanisms

Given the high degree of collaboration required across the authorities, we recognise and endorse the need for clearly defined mechanisms to support decisions and the resolution of conflicts. We believe that it would be inappropriate for the PRA to have an absolute right of veto over the CPMA in all instances, particularly given that in many instances ‘conduct’ and ‘prudential’ matters are inextricably linked. Examples of this include the recent ban on short selling which involved the use of ‘conduct’ measures that were designed to address ‘prudential’ concerns. Other examples are set out in the following pages of this response. We also believe the Bank’s existing framework for making decisions will need to be enhanced given the difference in the nature and volume of decisions that the PRA will be required to make.

In this context, we would welcome greater clarity on the processes that will be put in place to support decisions involving multiple authorities (including overseas regulators), as well as the mechanisms that will be used to ensure the timely and effective escalation and resolution of issues and conflicts, including where ultimate authority resides for such matters.

x. The positioning and fragmentation of markets regulation

The proposed positioning and fragmentation of markets regulation through the creation of a new tripartite structure is one of the more concerning areas of the proposals, especially the proposal to merge the UKLA with the FRC. We believe the operation of this framework will create significant challenges given the real-time nature of markets supervision that will impede its effectiveness, including the ability of the authorities to intervene in a timely manner. This is particularly relevant to primary and secondary markets regulation where there is a clear need for synergy and close collaboration across the authorities involved in such activities, as well as a high degree of commonality in specialist skills and resources required by both authorities.

We can see no benefit whatsoever in the Government’s proposal to merge the UKLA with the FRC and are not aware of any other major European Union country which has split its supervision of primary and secondary markets regulation across different regulators.

Given these issues, the unique and leading position of the UK in wholesale markets, the systemic importance of many firms involved in wholesale markets activity, as well as the strong correlation between ‘conduct’ and ‘prudential’ risks, we would urge the Government to reconsider its proposals in relation to markets regulation.

We believe a more effective framework would keep primary and secondary markets regulation together and involve assigning responsibility for the supervision of wholesale markets to a single authority which has greater oversight of the end-to-end transaction cycle. In this context we consider this would be better undertaken either by a single strong securities regulator (which we recognise will create an additional body and the issues that flow from this) or a separate division of the Bank.

If the current proposals are implemented as drafted, it will be absolutely vital for the Markets Division of the CPMA to be given adequate authority, decision making responsibility and ‘equal’ status to consumer protection.

xi. The dilution of the UK’s international position

Given the increasing role played by the European Union in the regulation of UK financial markets, the limits of UK representation at this level and the significant international regulatory change agenda, it is critical that the UK has a strong and influential voice in EU policymaking.

It is, in our view, unwise that at precisely the same time as the European Union regulatory regime is reformed and three new Authorities are established, that the proposals for the UK reform could result in a mismatch in terms of the representation at this level, or even a dilution of influence.

We believe that the proposed framework for engagement at the international level needs to be strengthened to ensure more effective representation of UK interests and this should be addressed as a matter of priority. One leg of this would be to refrain from separating primary and secondary markets regulation. Another would be to allocate responsibility for all market infrastructure providers (exchanges, trading platforms and clearing houses) to a stronger markets authority. This would help preserve an authoritative voice in EU-level discussions which would directly derive from, and be reinforced by, domestic responsibilities.

CONSULTATION QUESTIONS

The Bank of England and Financial Policy Committee (FPC)

1. *Should the FPC have a single, clear, unconstrained objective relating to financial stability and its macro-prudential role, or should its objective be supplemented with secondary factors?*

- 1.1 In order to help ensure clarity of accountability, we believe that the FPC should be assigned a single clearly defined objective. We advocate that the objective of the FPC should be to maintain financial stability. However, this should not be unconstrained. We have three main comments in this regard:
- Establish clear secondary objectives (see the following comments in this section and section 2);
 - Strengthen the ‘independent’ checks and balances on the FPC (see the following comments in this section); and
 - Establish Practitioner Panels for the PRA (see section 12).
- 1.2 As the FPC’s actions and decisions could result in far reaching consequences for financial markets, businesses more generally, consumers and the economy as a whole, there is a need to ensure that the potential impact of its actions is fully considered in discharging its duties. Therefore we believe that this objective should be supplemented with a series of strong and clearly defined secondary factors that the FPC should be legally required to consider in performing its duties. Our views on the nature and application of these secondary factors are set out below.
- 1.3 Whilst we see clear benefit in the creation of the FPC to address macro-prudential risks, it is plain that when coupled with the PRA and the Bank’s existing monetary policy objective, significant power will be vested in the Bank as part of the ‘twin peaks’ regulatory framework. In this context, we are concerned that despite the presence of ‘independent’ members of the FPC, which we welcome, fewer checks and balances are proposed in relation to these aspects of the new regulatory framework than currently apply to the present regulatory regime.
- 1.4 These concerns include the accountability mechanisms for effective external challenge and consultation with the FPC in relation to its decision making processes. Whilst we recognise that monetary policy is of the utmost importance and not in itself in any way easy, the decisions required of the Monetary Policy Committee and range of tools at its disposal, are narrower and more clearly defined than is currently envisaged for the FPC in respect of financial stability. We also believe the FPC’s decisions are likely to involve a high degree of judgement and, as outlined above, could potentially result in far reaching consequences for individual firms, consumers and indeed society as a whole. We argue that this is particularly important to take into account because many of the tools which are being discussed in respect of macro-prudential regulation are relatively unproven and might have unintended adverse consequences. Therefore, we believe the current range of checks and balances set out in the consultation paper need to be strengthened to provide a greater degree of transparency, scrutiny and challenge.

- 1.5 As the proposals indicate the FPC will comprise of a minority of ‘independent’ members, it will be critical to ensure that these are senior highly regarded and influential figures who are also free of conflicts of interest in relation to their role on the FPC and their other business commitments. As with the MPC, membership of the FPC should be regarded as a substantial role that will require a significant time commitment of its ‘independent’ members and commensurate level of support. It will also be important to ensure that collectively the members of the FPC are able to represent the various sectors of the financial services industry effectively and we welcome the Government’s comments in paragraph 2.43 of the consultation paper in this regard.
- 1.6 Whilst one option would be to revisit the membership of the FPC and ensure this comprises a majority of ‘independent’ members which would bring it into line with good governance practices, we assume this has been considered and regarded as being impractical in the case of the FPC. We would welcome the Government’s views on why this is the case.
- 1.7 To the extent that the FPC may continue to comprise a majority of Bank executives, we would advocate that an independent advisory and consultative body, comparable to the previous Bank of England Board of Banking Supervision, be established within the new regulatory framework to provide independent commercial input, support and expertise to the FPC and broader supervisory decision making processes at the highest level. This body could also provide advice and support in a number of other key areas including:
- the general principles and policy of financial services supervision;
 - the development and evolution of supervisory practice;
 - the development and administration of the related supervisory legislation;
 - the structure and staffing of the regulatory authorities; and
 - overseeing the resolution of potential conflicts and issues within the Bank and across the regulatory authorities, as well as the representation of UK interests at the international level, particularly European Union policy fora.

To help ensure the independence of this body, it should be free to take the initiative in raising matters in these areas and have rights of access to the Chancellor.

To ensure that industry views are appropriately represented in its deliberations, this body should comprise senior and experienced individuals who collectively are able to effectively represent each sector of the financial services industry.

- 1.8 Our comments on role and position of the statutory panels are set out in section 12 below.

2. If you support the idea of secondary factors, what types of factors should be applied to the FPC?

- 2.1 Given the matters set out above and the far reaching impact of its decisions, we support the view that the FPC should be provided with a clear and transparent range of factors that it should be legally obliged to consider and balance in determining a particular course of action in relation to its primary objective.

- 2.2 The consultation paper highlights the need for the FPC to take into account the economic and fiscal impact of its actions on the financial services sector and the economy more widely (e.g. levels of lending to businesses and families and the competitiveness and profitability of UK firms in relation to competitors based elsewhere), as well as the statutory objectives of other regulatory authorities. We welcome these views, as well as the need to reflect these matters in the range of factors that the FPC will be obliged to consider.
- 2.3 We also believe the FPC should have regard to using the resources of the regulatory authorities efficiently and effectively, and ensure that the impact of its judgements on firms, consumers and the economy more broadly are proportionate to the expected benefits. Whilst we recognise the practical challenges associated with the use of devices such as cost benefit analysis in relation to prudential matters (particularly macro-prudential matters), we believe the principles of such approaches provide an essential and structured discipline that should form an integral part of the overall framework within which supervisory decisions, including those related to financial stability, are made.
- 2.4 In addition to considering the competitiveness of UK firms relative to firms based elsewhere in the EEA, we believe domestic competition and innovation are critical to consumer choice and the long term sustainability of UK financial markets. In his report titled ‘UK international financial services – the future’ of May 2009, Sir Winfried Bischoff states ‘perhaps the greatest single factor in the UK’s success as a trading nation has been the adherence by successive governments to the philosophy of open and competitive markets’. He also provides a wide range of examples of positive innovation and sets out a number of areas where society continues to face significant unmet needs which are likely to remain unresolved without financial services innovation. These include provision for the growing retirement needs of ageing populations, financing increasingly expensive and complex healthcare systems, as well as national debt management and improved risk management products. He also states ‘a successful international financial centre needs to be at the leading edge of market developments, and like all forms of economic activity needs innovation to prosper and progress. The Government and the industry should ensure that the financial services industry can remain at the forefront in finding new solutions to emerging financial needs and markets’. We fully support these views and believe the FPC should also be required to consider the potential impact of its actions on these matters when performing its duties.
- 2.5 Finally, we would also advocate there should be a requirement on the FPC to explain how it has discharged these responsibilities.

3. *How should these factors be formulated in legislation – for example, as a list of ‘have regards’ as is currently the case in the Financial Services and Markets Act 2000 (FSMA), or as a set of secondary statutory objectives which the FPC must balance?*

- 3.1 We believe that the factors set out above should be formulated in legislation as a series of strong and clearly defined factors that the FPC must ‘have regard to’ and balance in carrying out its primary function.

- 3.2 We value the importance of all of the FSMA principles of good regulation and have in the past raised concerns relating to their application. We believe the regulatory reforms provide an opportunity to clearly set out how these factors should be applied in practice, as well as the controls that will be put in place to ensure their effective ongoing usage. We are of the view that these factors should not be regarded as being of lesser importance than the primary objective. Instead they should be considered as being an integral part of how the FPC will seek to achieve its primary objective and used to determine an appropriate course of action by the FPC (and PRA and CPMA) in the event that all other required considerations are equal.

Prudential Regulatory Authority (PRA)

4. The Government welcomes respondents' views on:

- whether the PRA should have regard to the primary objectives of the CPMA and FPC;***
- whether some or all of the principles for good regulation currently set out in section 2 of FSMA, particularly those relating to good regulatory practice, should be retained for the PRA;***
- whether, specifically, the requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained; and***
- whether there are any additional broader public interest considerations to which the PRA should have regard.***

- 4.1 We support the Treasury's proposal to assign the PRA with a primary objective that will be supplemented by a statutory range of factors that it 'must have regard to' in carrying out its primary function.
- 4.2 The strong interrelationships between 'prudential' and 'conduct' issues and regulation have been widely acknowledged in the consultation paper, as has the potential impact of one authority's actions on the objectives of the others. We endorse these views and support the notion that in performing their duties each authority should 'have regard to' the primary objectives of the other. This will also help to ensure that effective cooperation and collaboration mechanisms proposed in the reforms are maintained across the differing authorities, and the risk of overlap and underlap is managed.
- 4.3 The existing FSMA principles of good regulation provide a useful mechanism that is designed to ensure regulators take into account the impact of their decisions and actions on a range of defined matters and avoid unintended consequences. Therefore, we believe both the PRA and CPMA should 'have regard to' the existing FSMA principles of good regulation in performing their duties.
- 4.4 As outlined above, we believe the competitiveness of the UK financial service industry, competition and innovation are critical to consumer choice, the long term sustainability of UK financial markets and the economy more generally. Therefore, in common with our comments in relation to the objectives of the FPC, we are strongly of the view that both the PRA and CPMA should 'have regard to' the

potential impacts of their actions on these matters when performing their duties. There should also be a requirement for each authority to explain how it has discharged this responsibility in its Annual Report.

- 4.5 As noted above, we have previously raised concerns with the way in which all the principles have been applied in practice. A particular area of concern relates to the use of cost benefit analysis (which is referred to in the proportionality principle), where we believe further work is required to improve the robustness of the analysis performed and embed this into the day to day operations and decision making processes. Industry practitioners believe the effective use of cost benefit analysis is a vital part of a regulator's decision making. As also stated previously, we are of the view that these factors should not be regarded as being of lesser importance than the primary objective and should be considered as being an integral part of how the regulatory authorities will seek to achieve their primary objectives and used to determine a course of action in the event that all other required considerations are equal. The implementation of the proposed reforms provide an opportunity to clearly set out how these factors should be applied in practice, as well as the controls and independent checks and balances that will be put in place to ensure their effective ongoing usage.

5. Is the model proposed in paragraph 3.16 – with each authority responsible for all decisions within their remit subject to financial stability considerations – appropriate, or would an integrated model (for example, giving one authority responsibility for authorisation and removal of permissions) be preferable?

- 5.1 In formulating this response we have assumed we should focus on the operating models proposed in the consultation document for the PRA and the CPMA rather than the broader move from a single integrated regulator to a 'twin peaks' model per se. Our views on the key issues and risks arising from the adoption of a 'twin peaks' regulatory framework have been set out in our separate response to the Treasury Select Committee inquiry (attached) into financial regulation and have not been repeated below.
- 5.2 In our view it is important to keep policy formation and the related supervisory activities closely integrated and we are therefore generally supportive of the idea that each authority should be responsible for policy decisions, granting or amending approvals and permissions, and undertaking supervisory and, where appropriate, enforcement activities in relation to those areas falling within their remit. However, we recognise this approach creates a number of key risks that will need to be managed effectively. These include ineffective communication, coordination and cooperation between the various regulatory bodies in relation to policy decisions and supervisory and enforcement matters, as well as increased cost, duplication and underlap. We are also aware that the heightened nature of these risks is an inevitable consequence of creating the 'twin peaks' regulatory framework.
- 5.3 Whilst we are cognisant that the consultation paper outlines a range of mechanisms that should help to mitigate these risks, there is currently insufficient clarity on how the overall regulatory system will be monitored and where ultimate authority resides for the resolution of conflicts between the regulatory bodies. For instance,

given the PRA is being constituted as an operationally independent subsidiary of the Bank, it is unclear if the FPC has a right of veto over its decisions and the resolution of potentially differing views across the regulatory bodies such as the PRA approval of a change in ownership of a major UK financial institution that potentially had financial stability implications or the findings of the current independent commission on banking etc.

- 5.4 The proposals are at present insufficiently detailed to determine how effective the coordination mechanism will be in practice or how they will impact firms. We are concerned that there is a lack of clarity on how supervisory decisions involving both authorities will be made, as well as the mechanisms that will be put in place to ensure that issues and conflicts between the authorities are escalated and resolved in an effective and timely manner e.g. the granting of approvals and permissions in the event of differing views across the authorities and determining whether an approach which is primarily prudential or conduct or both is required to address matters arising from supervisory activities. If a relatively new macro-prudential regulatory initiative is implemented, it will be vital that the effects on individual firms, groups of firms and consumers are fully considered. Similarly, there is a lack of clarity on how groups and EEA passported firms will be treated within the proposed framework and the extent to which these will also apply to other agencies such as the Economic and Financial Crime Agency, the Competition Commission and the Office of Fair Trading. Given the nature and volume of decisions that will be required of the PRA, we believe that the Bank's existing framework for making decisions will need to be significantly enhanced.
- 5.5 The proposals are also silent on the extent to which an independent appeals process will exist within the new framework (such as that currently in operation under the stewardship of the Regulatory Decisions Committee) and, if so, how this is intended to work. We would welcome further guidance on these points, as well as the controls that will be put in place to monitor and ensure the ongoing effectiveness of the coordination mechanisms. We believe these should include clearly defined responsibilities in this regard and an independent review at least annually.
- 5.6 We note that the Government intends to look closely at the potential creation of a shared services capability for the new authorities and welcome this initiative given the importance of cost effective regulation. We believe the regulatory processes and systems should be harmonised wherever practicable and support the creation of gateways that enable the effective flow of information and decision making across the authorities. Whilst this will help to mitigate the additional regulatory burden the new regulatory approach will inevitably place upon firms, we remain concerned that this will be a direct consequence of the new framework.

6. *Is the approach outlined in paragraph 3.17 to 3.23 for transfer of regulatory functions and rule making sufficient to enable the PRA to take a more risk-based, judgement-focussed approach to supervision?*

- 6.1 Although we do not object to a 'judgement focused approach to supervision' per se, the proposals do not set out the principles upon which the approach will be based. Judgement led regulation is acceptable so long as it is on the basis of clear

and transparent principles which are applied on a consistent basis. These should also be aligned with European and global initiatives, applied to international firms operating in the UK and avoid any arbitrary application of judgement that could disadvantage UK firms.

- 6.2 We would be concerned that the use of predetermined thresholds to drive the point at which supervisory intervention becomes mandatory could be interpreted as rules and potentially result in dysfunctional behaviour.
- 6.3 We believe the transition to the new framework provides an opportunity to rebalance the work performed by supervisors in a way that does not seek to second guess management or replicate the work done in firms, and removes the potential for micro-regulation.

7. Are safeguards on the PRA's rule-making function required?

- 7.1 We advocate that the PRA's rule making function should be subject to the same safeguards as are proposed for the CPMA, including a statutory process, consultation with the statutory panels and wider public consultation, as well as a duty to carry out detailed market failure analysis and robust cost benefit analysis prior to their introduction.
- 7.2 We believe that this is an area where Practitioner Panel input has been of value in the past and used to inform the FSA's policy decisions. We also believe this is an area where the statutory panels can continue to play a mutually beneficial role within the new regulatory framework and set out further details in this regard in section 12 below.
- 7.3 It will be noted from earlier comments that we have in the past raised concerns with the FSA relating to their use of cost benefit analysis and believe further work is required to improve the robustness of the analysis performed and embed this into its decision making processes. These concerns are particularly acute for the FSA's policy decision making processes and we believe this matter should be addressed as part of the implementation of the new regulatory framework.

8. If safeguards are required, how should the current FSMA safeguards be streamlined?

- 8.1 As outlined in paragraphs 7.1 to 7.2 above, we believe the PRA's rule making function should be subject to the same safeguards as are proposed for the CPMA. As will also be noted from these paragraphs, rather than streamlining the current safeguards, we believe certain elements need to be strengthened, particularly the use of cost benefit analysis. Whilst we recognise changes in prudential regulation are increasingly determined at EU or international level, the use of cost benefit analysis will continue to be relevant in instances where, for example, the PRA may wish to implement super-equivalent practices where permissible. Additionally, the existing independent panels can provide useful input and support to the PRA in

formulating its strategy and position in relation to policy decisions made at the international level. Further information in this regard is set out in section 12 below.

9. *The Government welcomes views on the measures proposed in paragraphs 3.28 to 3.41, which are designed to ensure that the operation of the PRA is transparent, operationally independent and accountable.*

- 9.1 Whilst we are generally supportive of the Government's proposals in relation the PRA Board structure, in particular that it will comprise a majority of non-executive members and include the CPMA CEO, we believe that a number of improvements are required. Firstly, in order to help ensure that the functioning of the Board better represents the interests of the financial services industry as a whole, it will be important to ensure that its independent members include senior and experienced individuals from other sectors beyond banking. And secondly, to help ensure its effective operation and independence from the Bank, it will be important to ensure that the external members are able to challenge the views of its executive members effectively. Therefore, the independent members should all be senior, highly regarded and influential industry figures who are also, as far as possible, free of conflicts of interest in relation to their role on the Board and their other business commitments. Mechanisms should be put in place that will ensure potential conflicts of interest are identified and, where appropriate, managed effectively.
- 9.2 Whilst we do not have the details of the proposed management structure at this stage, we believe it will be similarly important to ensure that senior positions within this also include experienced individuals from other sectors beyond banking. We urge the early announcement of these positions which may help to allay industry concerns that, as a banking led regulator, there is a risk that the PRA may inappropriately seek to apply practices adopted in the banking sector to other sectors of the financial services industry. We also believe the early announcement of the proposed structure and the senior positions within this will play a key role in helping to attract and secure appropriate resource and reduce the increasing risk of staff attrition.

Consumer Protection and Markets Authority (CPMA)

10. The Government welcomes respondents' views on:

- whether the CPMA should have regard to the stability of firms and the financial system as a whole, by reference to the primary objectives of the PRA and FPC;*
- whether some or all of the principles for good regulation currently set out in section 2 of FSMA should be retained for the CPMA, and if so, which;*
- whether, specifically, the requirement to have regard to potential adverse impacts on innovation or the competitiveness of the UK financial services sector of regulatory action should be retained; and*
- whether there are any additional broader public interest considerations to which the CPMA should have regard.*

- 10.1 We are supportive of the Treasury's proposal that, in common with the PRA, it will assign the CPMA with a primary objective which will be supplemented with a statutory range of considerations that it must take into account and balance in carrying out its primary function.
- 10.2 Whilst we recognise and support the Government's overall aims in relation to the protection of consumer interests in their purchase and use of financial products and ensuring their fair treatment, we believe the regulator should also play a role in helping to maintain healthy and vibrant markets that are to the benefit of consumers and other public interests. Consequently, we are very concerned at the notion of the CPMA being positioned as a 'consumer champion', particularly as this is an emotive and undefined term and there is a risk of it being narrowly interpreted which could result in a detrimental impact on consumers and market participants alike. We do not believe the CPMA should be positioned as a consumer lobbying or campaigning organisation. For example, actions taken by the CPMA with an undue bias towards consumer interests could restrict the availability and price of financial products, as well as market competition. A recent example of this is the FSA's Retail Distribution Review which may result in improvements for a segment of the market but may potentially have a detrimental impact on a far greater proportion of consumers. This brings out a key aspect of consumer protection which will be relevant to the CPMA: some decisions for the benefit of consumers as a whole may not benefit all consumers. The CPMA will have a difficult task of making choices in this respect.
- 10.3 A further example is the increasing trend in product regulation. Whilst we recognise the intention behind this initiative is designed to benefit consumers, the introduction of such regulation has not been met with a commensurate reduction in the related conduct or sales regulation. The increased regulatory burden this has placed on firms is in danger of stifling industry participants and, if left unchecked, is likely to impact market dynamism and competition as well as the price and availability of products to the detriment of consumers.
- 10.4 We are also mindful that it should be formally acknowledged by regulators that as it is not possible to eliminate all risks relating to financial products (e.g. the level of investment returns), the term 'consumer champion' may inadvertently be

misinterpreted by consumers to give them a false level of assurance over the risks of a range of financial products. This would be an unfortunate consequence.

- 10.5 Consequently, we believe that it will be vital for the CPMA to ensure that the market works effectively for consumers and is balanced in its outlook, in that it gives equal weight to the interests of consumers and financial markets participants. We would therefore recommend that it takes over the interlinked objectives of the FSA maintaining market confidence and securing an appropriate degree of protection for consumers. In discharging its responsibilities it will need to seek a balance between the two objectives. In this context, we welcome the Government's intention to engage in a frank and open debate on this matter, as well as its reference to consumer responsibilities in paragraph 4.25 of the consultation paper. We would urge dialogue on this important matter takes place before the CPMA is established and the outcomes used to clearly set out the balance between the regulation and supervision of firms, consumer responsibilities and the role of the state, for example, the impact of pension provision and long term care. We also believe that it will be important for the regulatory framework to include safeguards that prevent the introduction of undue bias.
- 10.6 The use of consumerist language in relation to the CPMA is also unfortunate as it creates a risk the proposals may be misinterpreted and inappropriately applied to the wholesale markets sector by their Markets Division which will often be dealing with professional wholesale counterparties. In order to help set the tone of future regulation and avoid the introduction of unintended consequences, we believe the proposals should set out some broad guidelines on the expectations of wholesale market participants in relation to their purchase and use of financial products
- 10.7 Given the role of the CPMA in relation to UK representation on international policy fora and the potential for misinterpretation of the term 'consumer champion', we believe that consideration should be given to changing the current working title of this authority to 'Conduct and Markets Regulatory Authority' which would better represent the nature of its mandate.
- 10.8 As set out earlier in this response, the range of considerations that the CPMA is required to 'have regard to' should not be treated as being of lesser importance than its primary objective. Instead they should be treated as an integral part of how the CPMA will seek to achieve its primary objective and used to determine a course of action in the event that all other required considerations are equal.
- 10.9 For the reasons also set out earlier in this response, we believe the range of considerations that the CPMA must have regard to in carrying out its duties should include reference to the objectives of the other authorities and all the matters currently set out in the FSMA principles of good regulation, including competitiveness of the UK, competition in financial services markets and innovation. (See paragraphs 4.2 to 4.5 for further information). Our earlier comments relating to the need to more effectively embed the use of these factors into the regulators' day to day operations and decision making processes are equally relevant to the CPMA, as is the need to improve the related control environment.

11. Are the accountability mechanisms proposed for the CPMA appropriate and sufficient for its role as an independent conduct regulator?

- 11.1 As with the PRA Board, we are generally supportive of the Government's proposals in relation to the CPMA Board structure, in particular that it will comprise a majority of non-executive members and include the PRA CEO as an ex officio member. However, we believe that a number of improvements are required.
- 11.2 In common with our views on the membership of the PRA Board, we believe that it will be important to ensure that the CPMA Board's 'independent' members include senior and experienced individuals from other sectors beyond banking who are able to challenge the views of its executive members effectively. Therefore the independent members should all be senior, highly regarded and include influential industry figures who are free of conflicts of interest in relation to their role on the Board and their other business commitments. Mechanisms should be put in place that will ensure potential conflicts of interest are identified and, where appropriate, managed effectively.
- 11.3 We are concerned that unlike the PRA, the CEO of CPMA is yet to be appointed and the detrimental effect this may have on current staff attrition levels and the ability to attract and retain high quality talent that will transfer to the new authority. In our view this position should be given equal prominence as the PRA CEO and the appointment made as soon as possible. Given the CPMA's proposed mandate, including its role in Europe, we believe that this individual should be a highly regarded and influential figure who has strong wholesale markets knowledge and experience.
- 11.4 We are also somewhat concerned that the proposals suggest the PRA will act as the lead regulator in any conflicts with the CPMA. Whilst we understand the rationale for this, this position is likely to result in the CPMA being regarded as a 'second tier' regulator both domestically and internationally and have a number of adverse consequences. These include a diminished ability to exercise influence in EU policymaking, additional challenges in seeking to attract and retain appropriate resource and an undesirable impact on the quality of regulation. Whilst we recognise the need for clearly defined processes for making decisions across multiple authorities and mechanisms to resolve conflicts, we are of the view that the CPMA should be positioned as being of equal standing as the PRA. This should include the appointment of individuals to other senior positions within its management structure, all of whom should be well regarded and experienced individuals and collectively represent a broad range of financial services sectors. Such a position may also help to give the CPMA greater credibility in its role at the international level.
- 11.5 As with the announcement of the CPMA CEO and PRA structure, we urge the early announcement of the CPMA management structure and appointment of senior positions.
- 11.6 Given that in many areas 'conduct' and 'prudential' risks are inextricably linked (e.g. inappropriate sales practices could have an adverse effect on the quality of a firm's assets and therefore increase its prudential risk), it is conceivable that there may be instances where a 'conduct' led approach or a combined 'conduct' and

'prudential' approach may be the way to resolve issues arising from the other authorities' supervisory duties. We believe that it would be inappropriate for the PRA to have absolute right of veto over the CPMA in such circumstances. Instead, the framework should set out clearly defined mechanisms through which such matters are escalated and resolved in a timely and effective manner, as well as an independent appeals process.

12. The Government welcomes views on the role and membership of the three proposed statutory panels for the CPMA?

- 12.1 We believe the existing independent panels have provided valuable input, support and challenge to the FSA on a wide range of matters in the past and welcome the Treasury's proposal to put the Smaller Businesses Practitioner Panel (SBPP) on the same statutory footing as the existing Practitioner Panel and the Financial Services Consumer Panel.
- 12.2 More specifically, the role performed by the Practitioner Panel has included the provision of industry insight and expertise on policy related matters and FSA initiatives, emerging industry risks, as well as the FSA's performance. We have also provided ad hoc sounding board support on the resolution of range of other issues and are proactively engaged by the FSA on a wide range of matters.
- 12.3 Consequently, we advocate that the existing roles of the independent panels are extended beyond that proposed in respect of the CPMA to act in a similar capacity for the PRA and support the supervisory decision making processes of both authorities. This could be achieved by proposing separate Practitioner Panels for the CPMA and PRA. However, the Government may want to consider streamlining this. Rather than creating separate Practitioner Panels within the CPMA and PRA, we believe that it would be more effective to establish a single Practitioner Panel and Smaller Businesses Practitioner Panel that span both authorities. Such an approach would better enable these panels to provide guidance, support and industry challenge on the commercial, operational and cost impacts of prudential regulatory matters (particularly any unintended and adverse impacts), the level of coordination across the authorities, as well as the representation of UK interests internationally. It also reduces the level of inefficiency that would otherwise arise from the creation of two separate panels. In doing so, the existing membership of the panels will need to be revisited to ensure they have the requisite skills and experience to discharge its revised mandate effectively. It will also be important to ensure that the panels have access to additional secretariat support, including analytical, reporting and other administrative resource.
- 12.4 The reforms also present an opportunity to strengthen the role of the Practitioner Panel and SBPP and clarify their mandate. Currently, the FSA is legally required under FSMA to consider representations made by the Practitioner Panel and, where it disagrees with a view expressed or proposal made in a representation, the FSA is required to provide the Practitioner Panel with an explanation in writing of its reasons for disagreeing. The same also applies to the FSA's relationship with the Consumer Panel. Neither Panel expects that formal representations under the Act will be required often. This is nonetheless an important facility: whilst the Practitioner Panel has no fear the CPMA and PRA administration would ever seek

to sideline the Practitioner Panel or its views, it continues to be important to protect against such a possibility. We believe this facility should be retained within the new regulatory framework and extended to the SBPP. The panels positions should be further strengthened through the creation of a right to raise major concerns about the impact of regulation on financial stability with the FPC.

13. The Government welcomes views on the proposed funding arrangements, in particular, the proposal that the CPMA will be the fee- and levy-collecting body for all regulatory authorities and associated bodies.

- 13.1 We are concerned with the overall cost of funding the FSCS, the budgetary uncertainty this is creating for firms generally and the significant burden this places on smaller well run firms. In this context, we welcome the Government's current review of the FSCS funding arrangements and look forward to hearing its conclusions and proposals in due course.
- 13.2 We also welcome the Government's proposal to make the PRA and CPMA each responsible for setting the fees and making the rules in respect of the activities under their remit in a manner that ensures simplicity, avoids cross-subsidy between the regulators and helps to reduce the cumulative burden placed upon firms. The mechanisms used for determining fees, both individually and in aggregate, should be subject to independent oversight and review.
- 13.3 Similarly, we support the notion that the CPMA should be responsible for making the rules in relation to the funding of the FOS, FSCS and CFEB and act as the sole agency responsible for the collection of fees on behalf of all the regulatory authorities and associated bodies.

14. The Government welcomes views on the proposed alternative options for operating models for the FSCS.

- 14.1 We are of the view that the allocation of responsibility for making rules in relation to compensation and levies, and the choice of FSCS operating models are not inextricably linked and can be dealt with separately. Our comments in relation to the first of these matters are set out above. As the FSCS currently administers a range of different compensation schemes, the arrangements set out above need not result in the demise of the current cross-subsidy arrangements between different classes of levy payers.
- 14.2 Irrespective of where responsibility for making the rules relating to compensation and levies lies, we believe the FSCS should continue to act as the sole independent body responsible for administering consumer compensation schemes on behalf of both the CPMA and PRA. This will help to ensure consistency in the administration of compensation schemes for consumers and firms, as well as reduce overall administration costs.
- 14.3 Given the clear linkage with the work of the Bank in the event of a failure of a firm, we support the notion that the FSCS board should include a PRA executive. Similarly, given the close working relationship with the CPMA, the FSCS board should also include a CPMA executive. This will also help to support the

escalation and resolution of issues and conflicts that could arise between the authorities, without adversely impacting the independence of the FSCS.

Markets and infrastructure

15. The Government welcomes views on the proposed division of responsibilities for markets and infrastructure regulation.

- 15.1 The proposed fragmentation and location of markets regulation is one of the concerning areas of the proposals as we believe the approach outlined will result in more bureaucratic, and balkanised, regulation of wholesale markets, dilute the UK's international position, particularly in relation to policy formulation at the European level and undermine confidence in wholesale markets and the UK's leading global position in this area.
- 15.2 Whilst we welcome the specific focus given to wholesale markets within the revised regulatory framework and the proposal to assign responsibility for the supervision of central counterparty clearing houses (CCPs) and settlement systems to the Bank given their systemic importance, it will result in unnecessary complexity through the creation of a new tripartite model, being:
- the Financial Reporting Council (covering primary markets);
 - the Markets Division of the CPMA (covering secondary markets: exchanges, trading platform providers and other firms engaged in secondary markets trading activities); and
 - the Bank (covering post trade infrastructure providers).
- 15.3 We believe the operation of this framework will create significant challenges in relation to the required level of coordination across the differing authorities and is likely to result in inefficiency and impede timely and effective supervisory intervention, particularly in relation to the real-time decision making that is required as part of market surveillance activities.
- 15.4 The positioning of the Markets Division within the CPMA is also of concern. Whilst we recognise that elements of markets supervision sit well within an overall conduct regulator and there is some synergy in relation to its interface with ESMA, we are concerned that insufficient weighting has been given to the strong correlation between conduct and prudential risks; the systemic importance of many firms involved in wholesale markets activity; and the significant difficulty of making real time decisions in an environment that requires coordination across multiple authorities. In section 11.4 above, we raise a number of concerns in relation to the positioning of the CPMA which include the impact of it being perceived as a 'second tier' regulator on its ability to attract and retain high quality talent. This observation is particularly relevant to the Markets Division where the quality of supervision provided is critically dependent on the availability of high calibre staff that have a comprehensive understanding of how the wholesale markets operate and other specialist skills and expertise. We are also concerned that positioning the Markets Division within the CPMA may result in some cross

contamination of the principles and practices adopted by the Consumer Protection Authority which would be entirely inappropriate for the wholesale markets.

- 15.5 As the European Union is playing a dominant role in the regulation of UK financial markets (e.g. 80% of policy decisions are now made at the European Union level which also has a wider influence over national regulators and the new ESMA will be an important policy making body) and representation is restricted to one vote per territory, we believe that it is critical that the UK has a strong and influential position at this level. However, we are concerned that the lack of alignment between the UK regulatory framework (twin peaks splitting prudential and conduct) and that being established at the European Union level (sector based) coupled with the fragmentation of the UK regulatory structure will dilute the effectiveness of UK representation at this level (e.g. the ability of the CPMA to influence positions will be diminished given its restricted mandate when compared to its European counterparts, particularly in relation to the regulation of central counterparty clearing houses, settlement systems and the regulation of primary markets if the UKLA is merged with the FRC). This could undermine the UK's leading position in global financial markets. This matter is of particular concern given the European Union's regulatory change agenda over the next two to three years which coincides with the distractions that are likely to occur as the UK transitions to the new regulatory framework.
- 15.6 We believe the proposed framework for engagement at the international level needs to be strengthened to ensure more effective representation of UK interests and there is greater transparency on the role of HM Treasury within this. One leg of this would be to refrain from separating primary and secondary markets regulation. Another would be to allocate responsibility for all market infrastructure providers (exchanges, trading platforms and clearing houses) to a stronger markets authority. This would help preserve an authoritative voice in EU-level discussions which would directly derive from, and be reinforced by, domestic responsibilities. In order to ensure the momentum gained by the FSA in raising its profile internationally through initiatives such as the appointment of a Director dedicated to European and international issues is not lost and there is a continued focus on international engagement during the transition period, we would urge the Government to address this issue as a matter of priority.
- 15.7 We also have a number of concerns in relation to the proposed merging of the UKLA and the Financial Reporting Council. These are set out in section 17 below.
- 15.8 We note that in order to reflect the strategic importance of wholesale markets to the overall risk in the financial system, the regulation of wholesale markets is currently undertaken by the Risk Division of the FSA rather than the Supervision Directorate. Additionally, in several other European countries, markets are regulated by a separate authority.
- 15.9 Given the unique position of the UK in wholesale markets, their significant contribution to the City of London and the critical role that effective regulation has played in supporting London's position as a leading global financial services centre, we would urge the Government to look again at the location of markets regulation within the revised framework. We believe that a more effective framework would involve assigning responsibility for the supervision of wholesale markets to a single regulator which has greater oversight of the end-to-end

transaction cycle and better served by a single strong securities regulator, or a separate division of the Bank, rather than the CPMA.

16. The Government welcomes views on the possible rationalisation of the FSMA regimes for regulating exchanges, trading platforms and clearing houses

- 16.1 The consultation paper does not set out the Government's overall aims in relation to the possible rationalisation of the existing FSMA regimes for regulating exchanges, trading platforms and clearing houses, either in terms of the concerns the Government is seeking to address or the benefits sought. Consequently, it is difficult to comment on this specifically.
- 16.2 It is clear that there will need to be some consequential changes required to the FSMA regimes as a result of the split in regulatory oversight arising from the creation of the PRA, CPMA and the allocation of responsibilities between the CPMA, PRA and the Bank for clearing systems, central counterparty clearing houses and payment systems.
- 16.3 However, we understand the Government is actively considering wholesale revision of the existing FSMA Recognised Body regime by way of its abolition and re-designating all Recognised Bodies as authorised persons. We also understand that, in part, some changes are driven by a desire to increase the regulation and supervision of Recognised Bodies by (a) giving the FSA rule making powers, (b) bringing Recognised Bodies within the FSA discipline/enforcement regime, (c) applying a full Approved Persons regime to Recognised Bodies and (d) giving the FSA power to order reports on Recognised Bodies under what is currently Section 166 of FSMA. We are concerned that the consultation does not clearly set out the Government's proposals in this regard, nor the rationale and justification for these.
- 16.4 The justification for the Government's new approach to financial regulation is a failure in the UK regulatory framework, revealed by the financial crisis. Yet however complex a crisis this has been, it has not involved a failure in the market infrastructure. Moreover there is no evidence of any deficiencies in the regulation of the market infrastructure, still less any that had a bearing on the financial crisis. Indeed during the worst market conditions for decades, far worse than any stress test regulators could have devised, the market infrastructure in the UK proved resilient, and assumptions made about its performance in times of stress, and that of the regulatory regime that underpins it, held firm.
- 16.5 We therefore see no rationale for change in this area, and we do not think any proposed change would be consistent with a credible impact assessment. We would need an articulation of the perceived problems with the current regulatory regime before offering any substantial input. What we can say is that there would be significant knock-on effects on other legislation if the regime were to be dissolved, and equivalent provisions would need to be found in order to preserve any features carried over to the new regime.
- 16.6 Recognised Bodies perform an important function in ensuring that markets operate in a neutral, efficient and orderly manner. Recognised Bodies are a part of the frontline regulatory regime in the UK, setting standards and ensuring that market

participants act in accordance with the rules of the market. The Recognised Bodies are all different, operating in different ways and covering different activities; the Recognised Body regime allows for this, recognising that these bodies need to act with a degree of autonomy. Whilst the growth of Multi-lateral Trading Facilities (MTFs) in the equity sector could be viewed as breaking down the distinction with Recognised Investment Exchanges (RIEs) (as they can be run by investment banks and take on some of the activities of an RIE), MTFs perform only a small proportion of the range of activities of an RIE and it would be inappropriate to treat Recognised Bodies as being synonymous with MTFs or investment firms. It should also be noted that the Recognised Body regime is recognised internationally and is consistent with the approach taken in MiFID and in the European and US jurisdictions. We believe the changes outlined above in relation to the existing Recognised Body regime create a real risk of unintended adverse consequences, including detrimental impact on the reputation of the Recognised Bodies as neutral, trusted bodies and less flexibility for regulatory oversight

- 16.7 Given the concerns outlined above, and our belief this aspect of the proposed reforms is in itself a significant undertaking (particularly the legislative change process) that will increase the regulatory burden placed on firms further without obvious benefit, we would urge the Government to consult separately and more fully on the nature of its proposals, including the issues that it is seeking to address and the benefits sought.

17. The Government would welcome views on whether the UKLA should be merged with the FRC, as a first step towards creating a companies regulator under BIS.

- 17.1 We have outlined a number of significant concerns and likely impacts arising from the fragmentation and positioning of markets regulation (including primary markets regulation) within the proposed framework in section 15 above. These concerns would become particularly acute if the UKLA were to be merged with the FRC and, as the activities of the UKLA and FRC are fundamentally different, the benefits of this proposal are unclear. Therefore, we strongly oppose this aspect of the Government's proposed reforms.
- 17.2 As noted in the consultation paper, primary markets activities are a fundamental part of the City of London and are pivotal to the UK's position as a leading global financial services centre. Effective regulation of these markets has played a key role in ensuring confidence in the stability, integrity and efficient operation of these markets and we are concerned that the Government's proposals will significantly weaken this position. It is not clear to us as practitioners why the Government feels there is a need to reform markets regulation and we would welcome further guidance on the problems the reforms are seeking to address.
- 17.3 As part of its supervisory responsibilities the UKLA monitors the conduct of those market participants engaged in the issuance of securities and is required to make real-time decisions in relation to matters that arise from its live market surveillance, including the need to suspend or remove securities and take enforcement action. The real-time supervision and enforcement of primary markets activity undertaken by the UKLA has clear synergies with the secondary market

supervision and enforcement which, under the current proposals, will be undertaken by the CPMA. Unlike the UKLA, the supervisory activity undertaken by the FRC is not real-time. The FRC review the accounts of UK companies and, of the 20,000 securities admitted to the Official List, only 6 per cent represent equity securities. A further area of synergy relates to the specialist skills and resources required for effective primary and secondary markets regulation which are largely comparable across both areas. We believe the fragmentation of this structure across the FRC and CPMA, coupled with the lack of clarity on the split of responsibilities and authorities across these bodies, will undoubtedly have an adverse effect on their ability to make timely supervisory decisions and, where necessary, intervene effectively.

- 17.4 As will be noted from paragraph 15.2 above, the proposals fragment the regulation of markets through the creation of a new ‘tripartite’ framework and are therefore inconsistent with the Government’s aims in relation to the move to a ‘twin peaks’ approach that will avoid the problems associated with such an approach.
- 17.5 We have experienced a number of instances that indicate the UKLA is currently insufficiently sensitive to the highly competitive nature of global financial markets and the commercial impact of its decisions on the broader interests of UK financial markets participants. We are concerned that this position would be exacerbated through a merger with the FRC and result in a detrimental impact on its decision making as well as the position of those firms who are directly and indirectly impacted by its decisions.
- 17.6 We also note that no other major European Union country has split its supervision of primary and secondary markets across different regulators.
- 17.7 We have also previously highlighted the likely difficulty of attracting and retaining high calibre individuals in the event the authority was perceived to be a second tier regulator, as well as the detrimental effect this would have on the quality of the regulation provided. As will be noted from our earlier comments, the activities of the UKLA are fundamentally different to those performed by the FRC (which centres on company reporting, audit and corporate governance). Consequently, we believe the proposed merger of the UKLA and FRC is likely to result in particularly difficult challenges in securing appropriate resource.
- 17.8 The importance of having effective representation at the international (particularly European Union) level has been set out in earlier sections of this response (see paragraph 15.5), as have our concerns relating to the likely impact of the reforms on the ability to influence policy decisions taken at this level effectively and protect the UK’s position. Given the highly competitive nature of primary markets and the concerns we have raised previously relating to the ability of the CPMA to represent the interests of this sector effectively at the European level, we are particularly concerned that this position may be exploited to the detriment of the UK.
- 17.9 For the reasons outlined above we strongly believe that the UKLA would be better positioned alongside other aspects of markets regulation.

18. *The Government would also welcome views on whether there are other aspects of financial market regulation which could be made more effective by being moved into the proposed new companies regulator.*

- 18.1 As will be noted from the above, we do not support the proposed merger of the UKLA with the FRC and have raised a number of broader concerns in relation to the fragmentation of regulation more generally. Consequently, we do not support the notion of creating further fragmentation through the transfer of other aspects of financial market regulation to the FRC.

Crisis management

19. *Do you have any overall comments on the arrangements for crisis management?*

- 19.1 We recognise the need for flexibility within the crisis management arrangements and are generally supportive of the Government's overall proposals in this regard.
- 19.2 The consultation paper highlights how the fragmented structure of the existing tripartite system coupled with the ill defined responsibilities and powers of the authorities were proven to be ineffective in seeking to address the challenges posed by the last financial crisis. It also sets out the high-level role of the Bank and the Treasury in relation to crisis management activity and stresses the paramount importance of effective coordination between the regulatory bodies in the event of a crisis. Notwithstanding these points, we are not convinced that the measures set out in the consultation paper will prove to be more effective in the event of a future crisis. Key areas of concern in this regard relate to the creation of the 'twin peaks' regulatory framework and the fragmentation of markets regulation will require a greater need for more effective coordination and, separately, the responsibilities and powers of the various authorities likely to be involved in a crisis are insufficiently detailed, particularly those of the CPMA and FSCS which are currently undefined. We believe further clarity is required on these matters, as well as how international coordination will work in the event of a crisis and the interests of UK markets, firms and consumers protected in such circumstances.
- 19.3 To the extent that a body is created to oversee and coordinate the management of a crisis, it will be critical to ensure that this includes senior and influential members who have strong industry expertise and experience that can support its role in making critical decisions at a time of distress.
- 19.4 In our view, the FSA in response to the banking crisis has tended towards a read-across of policy proposals from different sectors with a seeming preference for a 'one-size-fits all' approach. We are concerned that this may persist or potentially increase with the new regulatory framework, particularly given the role and positioning of the PRA. We believe additional checks and balances are required within the new regulatory framework which ensures such instances do not recur.

20. *What further powers of heightened supervision should be made available to the PRA and the CPMA, and in particular would there be advantages to mandatory intervention, as described in paragraph 6.17?*

- 20.1 Given the circumstances in which heightened powers of supervision and the use of OIVOPs are typically required, we would advocate the existing safeguards and related governance arrangements be retained, including an independent appeals process such as that currently in operation under the stewardship of the Regulatory Decisions Committee.
- 20.2 As will be noted from earlier comments in this response, we would be concerned that the use of predetermined thresholds to drive the point at which supervisory intervention becomes mandatory could be interpreted as rules and potentially result in dysfunctional behaviour.

21. *What are your views about changes that may be required to enhance accountability within the SRR, as described in paragraphs 6.21 to 6.24?*

- 21.1 The Panel welcomes the Government's proposal to put in place arrangements to ensure conflicts do not arise in relation to the Bank's role as lead resolution authority and the Bank's new responsibilities in relation to the PRA.

Impact assessment

22. *Annex B contains a preliminary impact assessment for the Government's proposals. As set out in that document, the Government welcomes comments from respondents on the assumptions made about transitional and ongoing costs for all types of firm. In particular, comments are sought from all types and size of deposit-taking, insurance and investment banking firms (including credit unions and friendly societies), and from groups containing such firms.*

- 22.1 The preliminary impact assessment considers two options in relation to the proposed reforms; 'do nothing' and 'proceed'. For the latter, the consultation paper notes that whilst there are many variants mainly relating to the allocation of particular functions between the PRA and CPMA, these have not been considered further in the preliminary impact assessment but may be re-examined in the final impact assessment. In this respect, we can see clear benefit in the establishment of the FPC to address macro-prudential risk, but believe other reforms could be achieved as an addition to the current regulatory structure which would mitigate the risks and costs inherent in the transition to the 'twin peaks' regulatory framework.
- 22.2 As will be noted from earlier sections of this response, we have raised concerns that the fragmentation of the regulatory framework could result in weaker domestic regulation and dilute the UK's position at the international level (particularly European Union). Ultimately this could undermine confidence in the UK's

financial markets, reduce competition amongst firms and weaken the UK's leading position in global financial markets. We have also raised concerns relating to the CPMA being positioned as a 'consumer champion' and the potential impact of this being interpreted too narrowly on consumers and firms alike. Each of these areas could result in significant indirect costs. Whilst we appreciate the difficulty in accurately quantifying such costs, these matters do not appear to have been appropriately considered in the preliminary impact assessment as the assessment states in a number of areas the reforms will have no impact on competition or other economic or social impacts.

- 22.3 Additionally, in section 16 of this response, we raise a number of observations relating to costs and benefits associated with the possible rationalisation of the existing FSMA regimes relating to the regulation of exchanges, trading platforms and clearing houses and would welcome further clarity on these matters within the impact assessment.
- 22.4 The risks inherent in the proposed regulatory framework, particularly those arising from the fragmentation of regulatory responsibilities and the lack of clarity on the crisis management arrangements, may dilute its effectiveness both in supervising stable market conditions, and in preventing or tackling a crisis. The preliminary impact assessment is silent on the extent to which these matters may have been considered.
- 22.5 The transition to the new regulatory framework also creates a number of significant risks including the dilution of the UK's position in Europe, the continued loss of high calibre staff, as well as management stretch and distraction resulting in weaker domestic supervision. These risks are heightened given the timing of the transition coincides with a significant international regulatory change agenda and an increased need to support the economic recovery and manage the increased risks this presents. Again, the extent to which these risks have been appropriately considered in the impact assessment is unclear.
- 22.6 The assessment of costs in the impact assessment relating to rule changes assumes that, beyond those driven by changes in EU law, other rule changes will be the subject of cost benefit analysis before they are made, and therefore the current costs of the 'proceed' option are overstated. Whilst we welcome the suggestion that the cost benefit analysis will be undertaken before rule changes are made, we have previously raised concerns with the FSA relating to their use of this discipline and believe further work is required to improve the robustness of the analysis performed and embed this into its day to day operations and decision making processes. Consequently, until such time as this matter is adequately addressed, we are concerned that this may prove to be an inappropriate assumption.
- 22.7 Overall, we believe that increased costs will be an inevitable consequence of moving from a single unitary regulator to a 'twin peaks' model, not only in the transition, but also in the structure of the separate regulatory bodies, the introduction of new requirements, the high level of coordination required between the authorities and the need for firms to deal with two supervisors. Ultimately, these costs will be passed onto consumers. We also recognise that any pressure to maintain overall regulatory costs at the current levels could have a detrimental impact on the quality of regulation which is an undesirable outcome.

- 22.8 We note that based on preliminary estimates, transition costs are expected to amount to circa £50 million spread over a three year period. We would welcome further guidance on the breakdown of this estimate, particularly the property and other infrastructure costs, as well as the checks and balances that will be implemented in relation to the overall management of transition costs.
- 22.9 We would also advocate that a series of check points be used both during and after the transition period to determine the effectiveness and cost of the new regulatory framework and whether any changes are required. Practitioner insights should be used to inform the thinking of regulators and the Treasury on these points.

APPENDIX 1

ROLE AND REMIT OF THE PRACTITIONER PANEL

1. The role of the Practitioner Panel is to advise the Financial Services Authority on its policies and practices from the point of view of the regulated community. It has statutory status under the Financial Services and Markets Act 2000 (FSMA). As such, the Practitioner Panel is given access to the FSA's plans for new regulatory policies, and so is able to provide an important sounding board for the FSA before the ideas have been made public.
2. Members of the Practitioner Panel are drawn from the most senior levels of the industry, with the appointment of the Chairman being formally approved by the Treasury, to ensure independence from the FSA. The members are chosen to represent the main sectors of the financial services industry as regulated by the FSA. The Panel currently has senior practitioners from the retail and investment banks, building societies, insurance companies, investment managers, financial services markets, custodians and administrators.
3. The Chairman of the FSA's Smaller Businesses Practitioner Panel (SBPP) sits *ex officio* on the Practitioner Panel to ensure co-ordination, but debate on issues specifically affecting smaller firms are covered by that Panel. The SBPP is submitting separate evidence to this Inquiry.
4. The names of the members of the Practitioner Panel as at 1st October 2010 are as follows.

<i>Panel Member</i>	<i>Position</i>
Iain Cornish (Chairman)	Chief Executive, Yorkshire Building Society
Richard Berliand	Head of Global Cash Equities & Prime Services, JP Morgan Securities Ltd
Simon Bolam	Principal, E H Ranson & Co (Chairman, SBPP)
Russell Collins	Head of Deloitte UK Financial Services Practice
Mark Hodges	Chief Executive, Aviva UK
Simon Hogan	Managing Director, Institutional Equity Division, Morgan Stanley
Roger Liddell	Chief Executive, LCH.Clearnet Group Limited
Helena Morrissey	Chief Executive Officer, Newton Investment Management
Xavier Rolet	CEO, London Stock Exchange Group
Andrew Ross	Chief Executive, Cazenove Capital Management Limited
Malcolm Streatfield	Chief Executive, Lighthouse Group plc
Helen Weir	Group Executive Director Retail, Lloyds Banking Group plc

APPENDIX 2

FINANCIAL SERVICES PRACTITIONER PANEL

SUBMISSION TO THE TREASURY COMMITTEE INQUIRY INTO FINANCIAL REGULATION

SEPTEMBER 2010

EXECUTIVE SUMMARY

1. This submission is from the Practitioner Panel, a body set up under FSMA 2000 as an independent Panel to represent the interests of practitioners to the FSA. Details of the role and remit of the Practitioner Panel are at Appendix 1.
2. This submission answers to the questions as set out by the Committee. The key points which we would draw out from our answers are:
 - a. Overall we do see clear benefit in the establishment of an FPC to address macro-prudential risks, but we believe that this could have been achieved as an addition to the current regulatory structure.
 - b. The move from a single integrated regulator to a “twin peaks” model risks losing some of the good work done by the FSA since the crisis and has an inherent risk of lack of communication and coordination between the various regulatory bodies (in this case the CPMA, PRA and FPC) and potential cost, duplication, overlap or underlap.
 - c. The proposals recognise the need to minimise the risks of splitting the regulator, but with insufficient detail to be assured of their effectiveness. There must be a system of coordination at every level, as changes in the conduct and prudential areas within firms are inextricably linked.
 - d. There is a significant risk of increased costs, not only in the transition, but also in the structure of the separate regulatory bodies and the inevitable introduction of additional requirements such as for macro prudential regulation.
 - e. None of the proposed bodies map directly onto the relevant EU bodies, on which the UK has only one vote. The scope for dilution of the UK’s voice in Europe is therefore very significant.
 - f. There is much power vested in the Bank of England via the FPC and PRA, and potentially with fewer checks and balances than the present regulatory regime. All the regulators must be transparent and accountable, with the appropriate consultative mechanisms. As part of this, we are advocating an increased role for the independent panels across the regulatory structure.
 - g. The new regulators must all retain an objective to take account of the impact of their actions on the competitiveness and innovation in the financial services industry. We are opposed to the CPMA being positioned as a “consumer champion”, as this is too emotive and ill defined as a role for a regulator.
 - h. Although we do not object to a ‘judgement led’ approach for the PRA, the Treasury Consultation does not indicate the principles on which such judgements will be based. Judgement led regulation is only acceptable on the basis of clear and transparent principles which are applied on an equal basis.

- i. The proposed tripartite approach to markets regulation, with the separation of primary markets, secondary markets and post-trading is unlike the approach in any other jurisdiction. We are not convinced that the CPMA is the best location for markets regulation. We recognise the difficulties of this decision, but believe that Markets regulation, including the UKLA, should be a standalone function, or with the PRA.
- j. We await the specific proposals on enforcement, which has been an important component of the existing regime.

TREASURY COMMITTEE QUESTIONS

3. **Will the Government's financial regulation proposals improve the framework for financial stability in the UK? Will they work in a crisis? Do the Government's proposals get the balance right between tackling the problems of the last crisis and preparing the UK financial system for the next one?**
4. We think that the creation of the FPC has the potential to improve the effectiveness of financial services regulation in the UK. However, the FSA has progressed far since the last crisis, and other aspects of the changes introduce additional complexities which create the need for additional safeguards and coordination. This therefore may reduce the effectiveness of the regulatory framework in preventing or tackling a crisis.
5. The transition process itself creates a risk of the erosion of the effectiveness of the regulator, at a time when there is a need for the regulator to be focused on other issues. We believe the implementation risks are very significant, especially at the current time:
 - a. We have already seen a significant loss of senior FSA personnel.
 - b. Whilst the crisis may have lessened in intensity, the FSA is dealing with major regulatory change and supervisory issues. To overlay a protracted period of fundamental organisational upheaval raises a material risk of management distraction.
 - c. We perceive there to be a considerable risk of dilution of focus on the international agenda at a time when such focus is imperative.
6. The potential problem of coordination is clearly recognised in the Treasury Consultation, but there is little detail on the effective mechanisms for ensuring coordination throughout the regulatory system. The prudential and conduct aspects of a firm's business are inextricably linked, and so it is difficult to see how the regulators will act independently of each other.
7. **How do the Government's proposals dovetail with initiatives currently being undertaken at European and the global level?**
8. There is recognition in the Treasury Consultation of the need to link in to initiatives at European and global level. We want the UK to be in a strong position to negotiate, both at Government level and at regulatory level. We do not want the fragmentation of the UK regulator to dilute the UK's voice. We have urged the

FSA to take a high profile role, and would not like the FSA's initiative in appointing a Director dedicated to European and International issues to be lost.

9. The new UK structure does not dovetail into European structures any better than the current system, and risks fragmentation and dilution of the UK's messages with the split of regulatory responsibilities. This is particularly pronounced in the proposed division of markets regulation which does not tally with ESMA.
10. The reference to the PRA using its 'judgement' in many parts of the consultation could conflict with European and global initiatives unless the judgement is against clear standards. International firms operating in the UK cannot be expected to conform to judgement decisions which are not based on clear policy statements and procedures, and UK firms should not be disadvantaged by any arbitrary application of judgement.
11. **What costs will the regulatory structure place on consumers?**
12. Consumers, through increases in fees and charges, ultimately pay for all the costs of the regulatory structure. There are potentially significant costs in the transition to the new system as a one-off cost. The new system itself is likely to cost more in regulatory fees and in the resources of firms in dealing with two regulators.
13. There may be further consumer costs if the CPMA's role as consumer champion is interpreted too narrowly. If it restricts firms from developing new products and working the market effectively, there may be less choice available, with consumers paying more for products which are less suited to their requirements. One example of this is the Retail Distribution Review, which may improve standards, but it will also reduce the availability of advice for consumers.
14. **Do the Government's proposals appropriately assign roles and responsibilities between the different regulatory institutions?**
15. The roles and responsibilities of the different regulatory institutions seem generally to be appropriately assigned. We have a number of specific considerations, as follows.
16. **Location of markets.** We have found it difficult to identify what the government is trying to achieve with the changes proposed for markets. It seems it would be better to have Markets in a stand alone regulator, or as part of the PRA, rather than the CPMA.
17. Confidence in the markets is fundamental to the strength of London and those institutions that trade there: a failure in the markets would have an immediate effect on the UK's financial stability. We note that within the FSA, the regulation of markets does not take place within the Supervision Directorate of the FSA, but is located in the Risk Division, indicating its strategic importance to overall risk in the financial system. In many other European countries, markets are regulated by a separate authority. If the current FSA Markets Division, with all its responsibilities, was transferred to a separate markets regulator, the firms affected

would only be supervised by the new regulator, so it would not cause further fragmentation for practitioners.

18. Whilst we appreciate that there are pros and cons, we also believe that the UK Listing Authority (UKLA) should stay with the rest of Markets regulation and not be moved to the FRC as suggested in the Treasury Consultation. If the UKLA moved to FRC, it would be too far away from financial services regulation, and so insufficiently aware of the competitiveness and wider pressures of the financial markets. Splitting the UKLA off from the rest of Markets would also weaken our voice in Europe.
19. **Governance.** We are concerned about the accountability mechanisms for effective challenge and consultation in the regulatory system. Overall, there is much power vested in the Bank of England, with little external accountability, whilst its actions will have an increased impact on how firms operate and the UK economy as a whole.
20. The FPC is extremely powerful and yet does not seem to have enough external checks and balances. One option is that the FPC has a majority of independent members so that the industry and consumer viewpoint is fully taken into account, although we recognise this might not be practical. An alternative might be for an advisory and consultative body similar to the previous Bank of England Board of Banking Supervision, which gave industry input before FSMA replaced the Banking Act. Another alternative would be to establish a Practitioner Panel for the PRA, perhaps with additional powers for the Practitioner Panel, or a sub group of it, to interact with the FPC.
21. **Independent Panels.** The current system of the Independent Panels (Financial Services Practitioner Panel, Smaller Businesses Practitioner Panel, Financial Services Consumer Panel) providing guidance and checks and balances in the development of policy is important. It should be maintained, not only in the structure of the CPMA, but in the PRA as well, with possible input into the FPC.
22. These changes also present an opportunity to strengthen the powers of all the Panels. Currently the only onus on the FSA is to explain why they are not responding to challenges from the Panels. We would welcome more formality in the responsibility of the regulator to consider our views, with less discretion to ignore representations without evidence that the opinions have been fully taken into account. We would like all the Panels to have the right to raise major concerns about the impact of regulation on financial stability with the FPC.
23. **Decision making and crisis management.** We do not believe that there is enough clarity of ultimate authority and escalation of conflicts in the current proposals. For instance, if the PRA cleared a change of ownership of a major UK financial institution to a company based in a country with whom the UK had a difficult political or economic relationship, would the FPC be able to step in on financial stability grounds to stop such a takeover?
24. **Costs and benefits of regulation.** There is not enough reference in the Treasury consultation to the need for any new developments in regulation to be challenged

on the basis of costs versus benefits. This is an area where we have criticised the FSA for not paying enough attention to cost benefit analysis (CBA), or not always undertaking a rigorous CBA when changing procedures. We will urge that all parts of the new regulatory system must adhere to strict cost benefit analysis for implementation of new regulatory requirements.

25. ***Structure of regulators.*** At this stage, we do not have the details of the proposed structures of the PRA and CPMA, but they must have a breadth of sector representation which will be critical for ensuring appropriate resources are employed. There must be equal standing between the CPMA and the PRA, and a chief executive should be appointed to lead the CPMA as soon as possible. We are also concerned about the lack of clarity on the future of parts of the enforcement function. This is a key part of the regulatory system, and must be strong, but with appropriate appeals mechanisms.
26. ***Consumer champion role for CPMA.*** We do not believe that the CPMA's main role should be as a consumer champion and have indicated the cost implications in paragraph 13. We are particularly concerned about such an emotive and ill-defined description which may allow undue bias into the role of regulator.
27. **Will there be unintended consequences of the Government's proposals for regulation on the prospects for non-bank financial institutions**
28. We note that paragraph 3.34 of the Treasury Consultation refers to the PRA benefitting from the expertise, experience and credibility of the central bank, but it is unclear that this will help the regulation of companies in insurance and other sectors. It is essential that senior staff with non-banking expertise are appointed at the PRA. There should also be a consideration of specifying certain independent members of the FPC are from non-banking backgrounds to counter-balance the banking members.
29. In addition the FSA in response to the banking crisis has tended towards a read-across of policy proposals from different sectors with a seeming preference for 'one-size-fits all' approach. Once the PRA is part of the Bank of England there is a danger that this will increase with banking driven interests taking over the agenda.
30. **Should the FPC have a statutory remit? If so, what should that remit be?**
31. We would welcome a statutory remit for the FPC which would give it clear accountability. We advocate that the remit should be to maintain financial stability, with due regard to maintaining the competitiveness of the financial services industry in the UK.
32. We also believe that there should be some statutory challenge to the FPC's opinions on behalf of industry practitioners. There must be practitioner membership within the independent members and an external monitoring/advisory role for part of the Practitioner Panel or another independent practitioner dominated grouping.

- 33. How should the success of the FPC, both in and out of crisis, be measured?**
34. The measure of financial stability which will guide the FPC needs to be defined. With that in place, the transparency of decisions and six monthly reports as recommended in the consultation paper should allow the success of the FPC to be measured.
35. However, the MPC is dealing with more measurable objectives and a narrower range of clearly defined tools than the FPC will have. Therefore the FPC will need to base its views on judgements and so will need a greater level of transparency, scrutiny and challenge, with publication of measures taken to avoid any crisis after an appropriate interval.
36. We would argue that the FPC should be measured on the basis of regulatory stability in addition to maintaining financial stability. It is important for the industry and for consumers that the regulatory agenda does not lurch between policy priorities, and provides a consistent and certain regulatory environment.
- 37. Given the international regulatory framework, what macro-prudential tools should be granted to the FPC?**
38. The detail of macro-prudential tools is not within our expertise, but we would urge that any implementation of macro-prudential requirements from the FPC which impact on firms should still be subject to full consultation through the PRA and CPMA.
- 39. Has enough been done to mitigate the risk of conflict between the FPC and the Monetary Policy Committee (MPC)?**
40. The MPC has a clear inflation target, whereas the FPC's more general objective of financial stability is less easy to measure. We would not support any proposals where the MPC's views could over-ride that of the FPC, with regulation of financial services firms potentially manipulated via the FPC to help achieve inflation targets.
- 41. Is the FPC appropriately structured in terms of the balance between internal and external members and the size of the Committee?**
42. We are concerned about the balance of FPC membership. As well as 6 out of 11 members from the Bank of England, the chief executive of CPMA is counted as an external member. This means 7 out of 11 are officials from the regulatory structure. This committee must be seen as independent, and also in tune with current industry practices. The FPC will have such an impact on the financial services industry, that one option would be to have a majority of independent members on the FPC or a specialist advisory body (see paragraph 20).
43. Independent membership of the FPC must be seen as a substantial role which requires time commitment between meetings. Members will need to be provided with resources and back up to ensure they operate with credibility and their opinions are not ignored.

44. What characteristics, experience and qualities should the Government look for when appointing external members of the FPC?

45. There must be people with detailed knowledge of the financial services industry as external members of the Committee. Most people currently working in a regulated firm will have conflicts of interest. Instead, independent members could work alongside the industry, or be only recently retired and be well regarded and of high standing in the financial services industry.

46. There should also be members of the Committee with wider experience than that of banking to ensure that the interests of the whole financial services industry, and particularly that of other firms regulated by the PRA, are taken into account.

47. Should the PRA be the lead authority over the Consumer Protection and Markets Authority (CPMA)?

48. Although we understand the need to resolve potential conflicts, it is essential that the CPMA is seen as being as important as the PRA. If the CPMA is seen as junior, it could harm how the CPMA is regarded by firms, and the CPMA's position in EU and international negotiations. It could also damage its ability to attract the highest quality staff. We would not want this to happen. There is already an imbalance in the appointment of Hector Sants as Chief Executive of the PRA, but no appointment to the head of the CPMA – who must be a credible person of similar standing to Hector Sants.

49. One could argue that the CPMA should be the lead regulator, as under the current arrangements, all firms will be regulated by the CPMA, but a smaller number of firms will be regulated by the PRA.

50. Is it appropriate for the PRA (and CPMA) to adopt a judgements-based approach to financial regulation and supervision?

51. Any judgements-based approach must be referenced against clear principles, with consistent application across sectors, groups and firms, and with reference to the requirements in other jurisdictions. It is unclear in the Treasury Consultation what transparency and accountabilities are proposed around the adoption of a judgement-based approach.

52. We disagree with paragraph 3.9 of the Treasury Consultation that excessive concern for competitiveness was the cause of regulatory failure leading up to the recent crisis. The regulator must take account of the need for financial services firms to operate successfully in the market place.

53. We believe that PRA rule-making must be subject to similar requirements to the current FSA consultation requirements.

54. Do the reforms and the creation of the CPMA provide adequate protection for the consumer?

55. The CPMA's proposed role as 'consumer champion' is too emotive, too ill-defined, and fundamentally inappropriate for a regulator to hold. We advocate a role for the CPMA to ensure that the market works effectively for consumers. Consumers must take some responsibility for their own decisions and we welcome the reference to consumer responsibility in paragraph 4.25 of the Treasury Consultation.
56. The remit of the CPMA must also guard against any inadvertent extension of consumer protection measures into the wholesale market, where such restrictions would stifle the market.
57. At the moment the balance between product and sales regulation for the CPMA seems unclear. If greater product regulation is introduced, there should be a commensurate reduction in the regulation of sales practices.
- 58. To what extent will the regulatory and administrative burden increase for those firms who now have to deal with two regulators?**
59. There are significant increases in the costs of the new model, both in direct regulatory fees and for firms who will have to deal with two rulebooks, two sets of requirements, and two teams of supervisors coming to visit. There may also be unnecessary duplication and potentially conflicting regulatory demands from the two bodies.
60. As overall support costs are likely to increase, with a corresponding pressure to contain costs, we would not like this to result in a reduced effectiveness of supervision.
- 61. Should any of the proposed bodies be given responsibility for promoting competition in the banking and financial services sector?**
62. We believe it is vital that all the new proposed bodies should have to pay regard to the need to maintain competitiveness in the banking and financial services sector. It is not a regulator's role to promote competition.
- 63. Should any of the proposed bodies have a role in promoting the City of London?**
64. We believe the regulator has a role to promote the effectiveness of the UK in its EU and international relations, but not in promoting London.