

May 25, 2015

Comments on Consultation Paper
Strengthening accountability in banking: UK branches of foreign banks
issued by the Prudential Regulation Authority and the Financial Conduct Authority

Japanese Bankers Association

We, the Japanese Bankers Association (“JBA”), would like to express our gratitude for this opportunity to comment on the consultation paper: *Strengthening accountability in banking: UK branches of foreign banks* issued on March 6, 2015 by the Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority (“FCA”).

We respectfully expect that the following comments will contribute to your further discussion on finalising the rule.

<General Comment>

We understand the necessity of the regimes related to accountability of individuals such as executives with a view to enhancing a code of conduct, corporate culture, corporate governance and other elements.

In light of governance in the UK, however, if local management adequately exercises its governance function over a subsidiary or branch of a foreign bank, it is considered that such regimes should not necessarily apply to individuals of its parent company or head office. Additionally, applying the regimes to individuals of a non-UK parent company would lead to regulating foreign entities beyond the jurisdiction of UK, which may be inappropriate from a standpoint of international cooperation. These views were already stated in our comment letter dated October 31, 2014 on the PRA and FCA’s consultation paper *Strengthening the alignment of risk and reward: new remuneration rules* issued on July 30, 2014.

In view of this, we expect the PRA and FCA to make a careful consideration on the proposed rules that are intended to be applied to UK branches of foreign banks.

<Specific Comments> (Our responses to questions)

Question 1

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

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

(Our response)

We consider the proposed list to be appropriate; however request to clarify the following:

- Senior individuals and other individuals responsible for implementing the strategy of an incoming branch are those within the incoming branch. It is therefore requested to clarify that the senior individuals and other individuals, who are in the home country, registered in the UK since they are responsible for setting the strategy of the incoming branch under the current Approved Person Regime (APR) would not be required to register as SMF7 (Group Entity Senior Manager) under the new regime (refer to the table in paragraph 6.2 in Appendix 1.7, paragraphs 2.6, 2.13 and 5.3 of the consultation paper).
- The consultation paper states that the criminal punishments (imprisonment and fines) do not apply to Senior Managers of branches of overseas banks. It is requested to clarify whether this would be limited to bankruptcy.

Question 2

[FCA] Do you agree with the proposed list of FCA Senior Management Functions for non-EEA branches? If not.

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

(Our response)

We generally agree with the proposed list. However, the definition of “Overseas branch senior manager (SMF20) (OBSM) function” is unclear (refer to the table in paragraph 6.2 in Appendix 1.7, paragraphs 2.6 and 5.3 of the consultation paper). For example, for “the senior individuals with local responsibility for a business area, activity or management function of the branch” (refer to paragraph 1.26 on page 10 of the consultation paper), it is requested to clarify that all senior individuals within the

incoming branch are not required to be registered as SMF.

Moreover, for the OBSM, there may be cases where the Executive Committee and other bodies function as merely an advisory body, and decision-making rights reside with the branch manager alone. In these stances, since it is considered sufficient if the function of overseas branch manager is captured, in certifying the OBSM, differences in governance structures in place at individual banks should be considered through a dialogue with regulators.

Question 3

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

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

(Our response)

We generally agree with the proposed list. We however have some concerns regarding the scope (content) of the PRA responsibility 11 (refer to Table 6 in paragraph 2.24 of the consultation paper).

This responsibility covers financial reporting, regulatory reporting, and Senior management Arrangements, Systems and Controls (SYSC) attestation. In reality, responsibility for these different types of reporting is spread across various areas of the bank (for example Finance, Operations, Compliance, Risk management), and stakeholders also varies. Whilst responsibilities can be allocated to more than one individual, since the scope (content) of responsibility is not divided into sub-categories, this could result in individuals allocated with responsibility over which they have little or no control, and the method to allocate the scope of responsibility to individuals may become unclear. For example, the Chief Finance Officer may have direct responsibility for financial reporting but may not have any control over or not involved in regulatory reporting.

We therefore request PRA to further break this responsibility down to ensure more accurate allocation of this responsibility.

Question 4

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

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

(Our response)

We consider that the proposed approach is appropriate.

Question 7

[PRA/FCA] Do the combined FCA and PRA proposed SMFs branches cover the key decision-makers for the regulated activities of incoming branches?

(Our response)

It covers the key decision-makers for the regulated activities of incoming branches. It is however requested that our request for clarifications stated in Question 1 be clarified.

Question 8

[PRA/FCA] Are there any other aspects of the Senior Managers Regime that should be applied differently for non-EEA branches? If so, how should the regime be amended?

(Our response)

We consider that there is no other aspect to be applied differently.

Question 10

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

(Our response)

We agree with the PRA's proposed approach.

Question 11

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

(Our response)

We generally agree with the FCA's proposed approach; however, we would like to comment on the following:

- We believe that the proposed approach should be adequately applied to individuals outside the UK who are dealing with UK clients to ensure that regulatory responsibilities are allocated according to the degree of involvement. For example, for large transactions with wholesale clients, it is expected that a UK branch would wish for someone senior from outside the UK to be in attendance for relationship purposes. In such a case, because they would not, in practice, have a material role in the business with the client and hence in some cases, it would be disproportionate to apply the Certification Regime to them.
- It has been a supervisory policy in the UK to treat large branches as quasi-subidiaries and require these branches to be fully accountable for the control of the business within those branches. Therefore, the application of the proposed regime to individuals outside the UK should be minimal.
- It is requested to clarify whether a criminal record check should be carried out not only under the Senior Managers Regime (as set forth in page 14 of the consultation paper) but also under the Certification Regime.

Question 13

[FCA] What are your views on the potential changes to the scope of the FCA's Certification Regime described above for incoming branches? In particular, do you agree that the scope of the Certification Regime should include all individuals involved in wholesale activity, where these individuals are capable of causing significant harm to the firm or its customers?

(Our response)

We generally agree with the proposed scope. We however believe that if the regime is to be extended to all individuals involved in wholesale activity, then the FCA should clarify the scope of risks which are intended to be captured. For example, even the most junior trader could, through day-to-day operations, cause significant harm if they breach the rules as a result of breaching limits due to unavoidable reasons such as system failures. Since holding individuals responsible for significant harm caused as a

result of such unavoidable reasons would be unreasonable, it is requested to clarify that the Certification Regime does not extend to, and not intend to capture, such instances.

Question 14

[PRA/FCA] Are there any other aspects of the Certification Regime that should be applied differently for non-EEA branches? If so, how should the regime be amended?

(Our response)

We consider that there is no other aspect to be applied.

Question 16

[PRA] Do you agree with the PRA's proposed approach to Conduct Rules for non-EEA branches? If not, why not?

Question 17

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

(Our response)

We agree to the proposed approach. Conduct Rules described in "Table 6" however lack specific details. It is requested to provide an illustrative example, in particular for cases deemed to be misconduct.

Question 18

[FCA] What are your views on the potential changes to the reporting of Conduct Rule breaches for incoming branches as described above?

(Our response)

The consultation paper requires that a breach by a Senior Manager should be reported to PRA/FCA within seven days after misconduct is detected. Given time necessary to confirm facts and carry out other procedures, a period of seven days is considered to be too short. In cases where misconduct is detected but a person who committed such misconduct could not be identified, investigation may take time, and hence a report could not be made within seven days.

We also request to clarify procedures, standard and reporting method after detection of misconduct.

Question 19

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

(Our response)

We consider that there is no other aspect to be applied.

Question 21

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

(Our response)

We generally agree with the PRA and FCA's proposed approach. However, we believe disapplication (grandfathering) of CF29 (refer to the table in paragraph 6.2 in Appendix 1.7, paragraph 5.3 of the consultation paper) to OBSM should be sufficiently implemented, reflecting the governance arrangements of respective firms. (This also relates to our response in Question 2.)

Question 22

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

(Our response)

We consider that there is no other aspect to be applied.

Question 24

[PRA/FCA] Do you agree with the proposed changes to the new forms?

(Our response)

We agree with the proposed changes.

Question 25

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

(Our response)

We agree with the proposed changes.

Question 27

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

(Our response)

We have no comment.

Question 28

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

(Our response)

We have no comment.

[Other comment]

Punishments imposed upon a breach of rule should be further clarified.