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Dame Harriett Baldwin MP
Chair
Treasury Sub-Committee on Financial Services Regulations
House of Commons
London
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10 May 2024

Dear Dame Harriett,

RE: Quarterly Consultation CP24/3 No 43

Thank you for your letter of 29 April. Please find below our response to your questions concerning our quarterly consultation on Financial Conduct Authority (FCA) fees and Critical Third Parties.

FCA Fees

The change we consulted on in CP24/3 relates to special project fees for restructuring (SPFRs). Prior to 1 April 2024, firms in the B fee-blocks could not be charged SPFRs. Consequently, no firms in the B fee-blocks have been incorrectly charged SPFRs under FEES 3 Annex 9R as they were not eligible to be charged in the first place.[1] The omission of B fee-block firms from paying SPFRs did not result in other in-scope firms (outside the B fee-blocks) being charged incorrect SPFRs either, as each SPFR applies to specific circumstances, and is never charged without consultation and agreement between the FCA and the firm concerned. To confirm, there are no outstanding SPFRs as a result of this omission.

SPFRs can only be charged when the relevant firm undertakes certain restructuring activities (specified in FEES 3 Annex 9R) which result in costs to the FCA of over £50,000 (for firms regulated by the FCA only) or £25,000 (for firms regulated by both the FCA and Prudential Regulation Authority (PRA)). The benefit of a SPFR is it avoids the costs associated with a specific firm's restructuring activities from being spread across all fee-payers.

Firms in the B fee-blocks were originally excluded from SPFRs. When we introduced the SPFR model in 2009, they paid their annual fees on the basis of our assessment of the cost of regulating each firm. There was no need to charge a separate SPFR because the costs would be added to their fees the following year.

When we changed the way we charge firms in the B fee-blocks in 2017, we based their fees on their revenue rather than our assessment of the annual cost of regulating each firm. We ought, at that point, to have amended FEES 3 Annex 9R to account for this change and make the B fee-block eligible for SPFRs. This was overlooked, and rectified through CP24/3, which ensures that firms in the B fee-blocks are eligible to pay SPFRs on the same basis as firms in the A, G.3, G.10, consumer credit and claims management fee-blocks.

[1] FEES 3 Annex 9 Special Project Fee for restructuring - FCA Handbook

Critical Third Parties

The FCA, PRA and the Bank of England (collectively, "the regulators") are jointly responsible for the oversight of critical third parties (CTPs). Consequently, the regulators have worked together in developing a proposal for a CTP regime published jointly as FCA CP23/30 and Bank of England CP26/23.[2] In this letter, we refer to this publication as CP23/30.

The regulators began extensive stakeholder engagement, including with third parties, before the publication of CP23/30, leading up to and after the publication of Discussion Paper 22/3 in July 2022. We had a significant volume of responses to both consultations providing appropriate engagement with over 100 responses.[3] We continued stakeholder engagements ahead of the December 2023 publication of CP23/30, during the consultation period itself, and have continued to do so as we refine our policy proposals. The regulators have also engaged with the statutory panels in the run up to these consultations. In total, the FCA participated, together with the PRA and the Bank of England, in over 60 engagement events either directly with representatives from industry and third parties or through roundtables arranged by trade bodies. This has helped the regulators to get a better understanding of the third party landscape and to develop a large stakeholder network, including among third party service providers.

Can you explain why you used a quarterly Consultation Paper to set out your enforcement powers in this area, rather than in a full CP, given that the enforcement of critical third parties is a new area of regulation, over companies that may not be financial services firm, and therefore may not be as aware of FCA's Quarterly CPs as traditional financial services providers?

The regulators initially intended to consult on our joint approach to the use of enforcement powers in relation to CTPs within our broader consultation on the proposed CTP regime in CP23/30. However, the PRA and the Bank of England wanted to include this in a broader separate publication on enforcement powers, as a more natural home for this material. We therefore decided to try and align our publication timing as far as possible with the PRA and the Bank of England. The easiest way to do this was to consult on this through a quarterly consultation paper (QCP). We stated this approach in CP23/30.[4] When we published our proposed approach in CP24/3 on 1 March 2024, we signposted that the PRA and the Bank of England would consult on their approach separately, which they did on 28 March.[5] [6]

A QCP is a full consultation, like a CP. QCPs provide a regular series of scheduled publications to consult, among other things, on policy proposals that may not warrant a separate publication, or which relate to smaller, discrete policy proposals.

Some stakeholders replied directly to CP24/3 and some notified us that they would give their feedback via the PRA and Bank of England's publication. As this is a joint approach, we are satisfied that stakeholders' feedback will be captured.

Can you set out how you will make all potential critical third parties service providers aware of this CP?

Firstly, as noted above, we made third party service providers aware that the FCA would consult separately on enforcement related matters by flagging this in CP23/30 itself. Secondly, prior to

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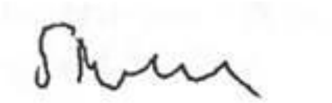
[2] FCA CP23/30 and Bank of England CP 26/23 – Operational resilience: Critical third parties to the UK financial sector
[3] FCA DP22/3 and Bank of England DP3/22 – Operational resilience: Critical third parties to the UK financial sector
[4] FCA CP23/30 and Bank of England CP 26/23 – Operational resilience: Critical third parties to the UK financial sector, paragraph 1.5, pages 5 – 6.
[5] FCA CP24/3, paragraph 3.5, page 8.
[6] The Bank of England's approach to enforcement: proposed changes to statements of policy and procedure following the Financial Services and Markets Act 2023, proposal 4.

publishing CP23/30, and during the consultation period itself, we engaged stakeholders including third party service providers as above. This included flagging plans for consultation on the use of our enforcement powers. Thirdly, on the publication day of CP 24/3, we directly notified by email over 300 stakeholders, including third party service providers from the various prior engagements above, to make them aware. Some stakeholders replied to CP24/3 and some notified the FCA that they would respond to the PRA and the Bank of England publication.

We consider that in this case we have taken appropriate steps to communicate to third party service providers and other relevant stakeholders our proposals on our use of enforcement powers in relation to CTPs.

I hope that this is helpful.

Yours sincerely



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