

**Memorandum from the City of London Corporation 30 March 2022**  
*Submitted by the Office of the City Remembrancer*

**Overview**

1. As the UK enters a new era of trading, given its departure from the EU, as well as the continued impact of COVID-19, there is a need to build new trading relationships overseas.
2. The City of London and the financial services (FS) sector based in the Square Mile is a national, European and global asset, which helps fuel business development, infrastructure, jobs and growth across the UK, Europe and the world. London has the largest financial services cluster in the world. The financial and professional services (FPS) sector contributes 10% of the UK's GVA and it employs an estimated 2.3 million people (1 in 14 UK jobs). In the financial year to 31 March 2020, it is estimated that the total tax contribution from the financial services sector was £75.6bn, with estimates suggesting that, despite the COVID 19 pandemic, for the year ended 31 March 2021 this figure will be between £71.1bn and £75.7bn.<sup>1</sup> Maintaining and further developing global trade & investment and retaining the City of London's position as a global financial hub are key to the future of the industry.
3. Following the end of the transition period, the UK has on-shored EU equivalence regimes in many areas. The Government and regulators should adapt the EU approach and determine third-countries and firms equivalent using an outcomes-based approach, ensuring that the openness of the UK is not restricted by this overlay of equivalence.
4. The UK's regulatory regime for FS is among the most robust in the world and an important competitive strength. High standards are an asset for the UK and industry does not seek any regulatory 'race to the bottom'. The UK should continue to be a global leader on regulation, promoting open global markets and high international regulatory standards. The UK's leadership of the G7 and COP26 showed global leadership and promoted global standards to address common challenges such as climate change.
5. In formulating regulatory policy, governments and regulators must currently balance a range of different interests and policy objectives. The City Corporation supports the Government's proposal to introduce a new growth and international competitiveness objective as a secondary objective for the PRA and FCA.
6. The City Corporation believes that Parliament should provide appropriate democratic oversight of FS regulations. Parliament's role could be enhanced by bolstering the role of the Treasury Select Committee and/or using other Parliamentary vehicles to provide ongoing scrutiny of regulatory policy.

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<sup>1</sup> City of London Corporation, *The total tax contribution of UK financial services in 2020*  
<https://www.cityoflondon.gov.uk/assets/Business/total-tax-contribution-2020.pdf>

7. The need for the UK to remain an attractive location for financial services talent and business is more important now than ever and the UK needs to get this right at the first attempt. The financial services sector is at an inflexion point. Few are calling for a fundamental change in regulation of the nature of the 1980s “Big Bang”, which opened the City to competition and new technology. However, we need to ensure the framework is appropriate for the UK market and use this opportunity to re-regulate, rather than de-regulate. With the pandemic, and implications of Russia’s invasion of Ukraine, there remains a huge economic challenge facing the country, whilst at the same time the UK’s departure from the EU also brings new opportunity.

### ***Financial services regulatory framework post EU departure***

8. The UK’s global competitiveness is influenced by the design and application of the UK’s regulatory regime for FS. The City Corporation welcomes the proposals set out in the *HM Treasury Future Regulatory Framework Review: Proposals for Reform*. The UK’s departure from the EU offers the UK a unique chance to adapt its financial services regulatory framework so that it remains coherent and agile to appropriately meet the social, economic, climate and geopolitical challenges that are ahead.
9. The City Corporation considers that:
  - The proposal to introduce a new growth and international competitiveness objective as a secondary objective for the PRA and FCA is welcome.
  - The scrutiny and oversight of regulatory policy by Parliament could be strengthened further still
  - The process to transfer relevant retained EU law within the regulatory perimeter, as set out in the Future Regulatory Framework, is a pragmatic response. However, it is important that firms have continuity and certainty. This means that that the transfer process should not be used to make significant changes to the rules. Any significant changes should be clear, consulted on and subject to appropriate cost benefit analysis and impact assessment.
  - The formal changes need to be matches by cultural changes so that the reforms have real traction.

### ***Financial services regulatory regime: openness vs. barriers***

10. The UK’s regulatory regime is one of the best regarded in the world, as it has consistently evolved as business has evolved, and has been framed by the highest global standards. In a recent study, *Global Regulatory Outlook 2021* by Duff & Phelps, most of those surveyed named the UK as the country that has the most favourable regulatory regime for financial services.<sup>2</sup> One of the key features of the UK’s regulatory regime is its openness to international

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<sup>2</sup> <https://www.kroll.com/en/insights/publications/financial-compliance-regulation/global-regulatory-outlook-2021>

business. It is vital for the global competitiveness of the UK that the UK maintains its openness.

11. Within the industry, the Overseas Persons Exclusion (OPE) is widely perceived as a major contributing factor to the success of the UK financial services sector. It enables UK-based firms, institutional investors and large corporates to readily to access the services of overseas firms. It also enables UK firms to provide services to overseas clients and to deal with overseas counterparties, without those clients or counterparties themselves requiring authorisation in the UK.
12. Preserving the openness of the UK to international business is key to the UK's attractiveness as a destination for business. The UK should consider removing the rule that disapplies the OPE and allowing all overseas firms to rely on the OPE in the same way even if an equivalence determination has been made in respect of their home state.
13. *Key recommendations of the IRSG report 'The UK regime for overseas firms.'*<sup>3</sup>
  - The UK regulatory perimeter is not as clear as it could be. New guidance should be issued to allow overseas firms to understand what services they can provide to UK users of financial services, either with or without authorisation in the UK.
  - The OPE is a valuable element of the UK's regulatory perimeter. There is some scope to rationalise it and make it clearer, but the UK should not be considering any changes that would restrict the OPE, at least in relation to wholesale business.
  - The regime for overseas firms to establish regulated branches in the UK should be updated to include, in particular:
    - a clearer framework, particularly regarding the scope of "deference" to the home supervisor of the overseas firms);
    - establishing better processes through which applications will be considered;
    - amending the factors for authorisation to introduce a requirement that the UK regulators 'have regard to' the attractiveness of the UK as an inward investment destination, innovation and applicable international standards; and
    - simplifying and improving the navigability of the regulatory requirements applicable to UK branches.

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<sup>3</sup> The City Corporation co-sponsors the International Regulatory Strategy Group (IRSG) alongside TheCityUK. The IRSG is a practitioner-led group comprising senior leaders from across the UK-based financial and related professional services industry. It is one of the leading cross-sectoral groups in Europe for the industry to discuss and act upon regulatory developments. With an overall goal of promoting sustainable economic growth, the IRSG seeks to identify opportunities for engagement with governments, regulators and European and international institutions to advocate an international framework that will facilitate open and competitive capital markets globally. Its role includes identifying strategic level issues where a cross-sectoral position can add value to existing views. The report '*The UK regime of overseas firms*' can be found here: <https://www.irsg.co.uk/resources-and-commentary/irsg-report/>

- Regarding cross-border access for overseas firms not covered by the OPE regime, the UK should continue to have an equivalence-style regime but based on the concept of “deference” rather than an EU-style detailed analysis of equivalence. It should be considered whether this would be a suitable basis for allowing wider access in relation to retail financial services.

### ***Financial regulations: legislative mechanism, role of Parliament and scrutiny***

14. The City of London Corporation supports the principles of division of responsibilities as described in the HM Treasury Future Regulatory Framework consultation. The City Corporation welcomes the consultation’s recognition that the post-EU framework proposal should enhance policy input from Government and Parliament. This is by ensuring they play a strategic role in FS regulation to set out the key policy issues and outcomes which must be pursued in the formulation of regulatory requirements.
15. It is ultimately for Parliament to determine how it wishes to influence new FS regulation. The City Corporation believes that Parliament has a vital role to play in providing appropriate democratic oversight of FS regulations.
16. The IRSG has advised that there are several ways in which this oversight could be conducted:
  - Establish a new financial services joint committee made up of representatives from both the House of Commons and House of Lords with expertise and/or interest in financial services.
  - Enhance the role of the House of Commons Treasury Select Committee (TSC) or the House of Lords Economic Affairs Committee.
  - Establish a new technical sub-committee of the TSC focused solely on financial services regulation.
17. Ultimately it will be for Parliament to determine how to oversee the framework, but the IRSG recommends that this critical gap in democratic oversight is given further thought along with the resources and expertise needed to support any mechanism.

### ***Equivalence progress and alternative mechanisms***

18. Following the end of the transition period, the UK has on-shored EU equivalence regimes in many areas. However, the EU equivalence-based framework is suboptimal compared to the previous UK national regime, which had a mix of approaches. These included exemptions for certain forms of wholesale market services offered to sophisticated UK customers, outcomes-based targeted recognition for wholesale market infrastructure such as clearing houses, and targeted regimes based on systemic risk criteria, e.g. for major benchmarks. The UK is now free to redesign its approach to overseas services and persons and improve on the EU model.

19. In addition, it was decided that those equivalence decisions that were concluded during the time that the UK was an EU Member State would be inherited by and form part of the UK's on-shored regime. The UK, through HM Treasury, also has the power to find the EU equivalent. This is helpful to firms, but clarity is needed over how this interacts with UK wholesale market exemptions. Furthermore, flaws in the EU process remain to be corrected, for example, the right to withdraw an equivalence finding on 30 days' notice.
20. Nevertheless, the Government should continue to use these powers to find third-country services and persons equivalent using a more outcomes-based approach than the EU rules-based approach. Deeper forms of bilateral mutual recognition should meanwhile also be pursued, such as the ongoing negotiations with Switzerland. Furthermore, the Government should seek, wherever possible, to embed the G20 endorsed deference model into its domestic regime and bilateral agreements, emphasising consumer choice and competition. Lastly, the UK should not adopt a reciprocal approach. Unilateral recognition of overseas services and firms can provide significant benefits to UK customers with no threat to UK financial stability, market integrity or consumer protection.

### ***CPP Equivalence***

21. The City Corporation welcomes Commissioner McGuinness' announcement to extend the equivalence decision on CCPs to June 2025. It is important that any final decision on clearing achieves the best outcomes for customers and clients operating in the EU, the UK and globally.
22. The EU's decision to extend access to UK clearing houses for EU banks to June 2025 is also to be welcomed. With 90% of euro-denominated derivatives handled in the UK, this move will ensure financial stability for all sides.

### ***EU model for scrutiny of financial services legislation***

23. The EU approach to regulation of FS involves detailed regulatory standards being set in legislation applying across Member States in order to facilitate a single market in financial services. While the European Commission proposes legislation after public consultation, as co-legislator, the European Parliament – in particular, the Committee on Economic and Monetary Affairs (ECON) – plays a crucial role in the scrutiny of this legislation.
24. The EU's model of legislative scrutiny is also designed to balance the interests of 27 Member States. This means that the system is necessarily built on compromise and can fall captive to wider political debates and tensions between groupings in the Parliament. It also means that decision making, or indeed changing legislation that has been passed, can be a time consuming and difficult process. There may be an advantage to the UK that it can now be nimbler in its regulatory approach.
25. One concern with attempting to replicate the EU's system is whether the UK Parliament has the resources and experience to manage the volume of work

that will come with scrutinising the volume of legislation. There is no current UK Parliamentary committee that replicates the work of the ECON Committee in the European Parliament. Creating one with sufficient resources may be challenging.

26. While not recommending replicating the EU scrutiny mechanism, there are two important features of the EU approach that the UK should replicate:
  - Elected politicians should be closely involved in settling the key trade-offs between the different policy objectives of financial services regulation; and
  - Regulators should be accountable for regulating in a way that is consistent with the legislature's overall intentions, both through amendments to their primary objectives and through improvements to scrutiny and accountability mechanisms (whether those mechanisms be in Parliament, outside Parliament, or some combination thereof).

### ***Memorandum of Understanding***

27. The City Corporation welcomes that the UK and EU have reached an agreement on a Memorandum of Understanding on financial services, and looks forward to further progress being made. This is an important stepping stone towards defining the future relationship and laying the foundations for a close and continuous dialogue.
28. It is envisioned that the future UK / EU Dialogue, the first official Regulatory Forum, will help to remove uncertainties for both sides. The Forum can also help regulatory authorities across Europe rebuild trust and grow insights which will be a major benefit to financial stability. It is vital that the Forum serves its purpose for consumers and businesses on both sides of the Channel.
29. It is also to be welcomed that the MoU commits the UK Treasury and DG FISMA to meet at least twice a year through the Forum, leaving open the option to meet more often than that if considered necessary. Industry actively supports and endorses the call for stakeholder engagement in the Forum.
30. It is positive that cooperation is to be based around a mutually agreed work plan, something that industry asked for, and that the MoU includes allowing for 'transparency and appropriate dialogue' around decisions to adopt, suspend or withdraw equivalence.
31. The UK's withdrawal from the EU has made the relationship very difficult in the past few years. Nonetheless, the UK/EU relationship continues to be a very important one. We both have a number of shared challenges and agendas, such as tackling climate change and responding to the increasing digitalisation of the economy.
32. It is hoped that the Forum can act as an important mechanism to discuss our respective approaches to these substantive challenges, bring order to the

relationship and ensure regulatory changes in each jurisdiction do not lead to unintentional fragmentation or market access barriers.

33. The MoU is only one element of a broader relationship for financial services with the EU. It puts in place necessary political cooperation and serves as part of the effort to establish a positive post-Brexit working relationship between the UK and EU, including through supporting ongoing cooperation between supervisors and regulators in both jurisdictions.
34. This is why strong regulatory and supervisory dialogue and cooperation will be so important as our respective regulatory regimes evolve over time. It is vital to have a mechanism to discuss our respective approaches to these common challenges and avoid unintentional fragmentation or divergence. Regulatory dialogue would allow each side to discuss their legislative plans and to assess the impact as the process develops.

### ***Data adequacy***

35. The industry welcomes the European Commission's adoption of an adequacy decision for the UK, which recognises the UK's high data protection standards and will allow data to continue to flow freely between the UK and the EU. This is a positive decision for UK and EU businesses and consumers.

### ***Business movement***

36. There has been impact on services provided by UK firms into the EU. There is necessary shift in some financial activities as euro-denominated activities have to move "onshore". ESMA regulated stocks previously traded in the UK had largely shifted to EU venues (Amsterdam, Paris and Dublin). Share of UK-based liquidity dropped from 25% pre-Brexit to 3% post-Brexit.
37. Reports estimate that around 7,400 FS jobs have relocated to Europe in response to Brexit.<sup>4</sup> While this level is only around 10% of the estimations by consultancies (PwC: 70-10k, Oliver Wyman: 75k), since the referendum firms have publicly declared that they will transfer almost £1.3trn of UK assets to the EU.
38. However wider concern comes not from jobs leaving the UK, but new jobs in the EU being created in future that might otherwise have been created in the UK. As such, the City Corporation supports efforts to ensure the UK remains open and globally competitive, to maintain the industry as a strategic national asset, and ensure its continued success.
39. The impact of the UK's departure from the EU is two-way, and the end result is yet to be observed. The loss of passporting rights affects EU firms too. Around 1,500 firms are using the FCA Temporary Permissions Regime, which allows EEA firms that were previously passporting into the UK to continue to operate here until December 2023 and around 1,000 will be setting up

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<sup>4</sup> [https://www.ey.com/en\\_uk/news/2021/12/ey-financial-services-brexit-tracker-brexit-activity-muted-over-2021-with-total-relocations-revised-down-and-few-major-operational-announcements](https://www.ey.com/en_uk/news/2021/12/ey-financial-services-brexit-tracker-brexit-activity-muted-over-2021-with-total-relocations-revised-down-and-few-major-operational-announcements)

offices for the first time. This includes almost 230 firms currently domiciled in Ireland: more firms than from any other European country. 186 were from France and 168 from Germany.<sup>5</sup> It remains to be seen how many will decide to apply for authorisation in the UK.

40. Both sides will have to adapt to this new relationship. This is a consequence of the new relationship between the EU and the UK with the UK outside the Single Market. However, the extent of the recent relocation activity means that most firms in the UK that need continued access to clients and markets in the EU now have it.
41. With that access in hand, this is an opportunity to draw a line in the sand and move on to focus on recalibrating the UK framework. We hope that through good regulatory and supervisory dialogue that the EU-UK relationship can be conducted in a cooperative manner.

### ***New global trade environment***

42. The UK has huge strengths in international trade. It stands fifth in the world in total exports and second in the world in total services exports. The UK's world class FS offer is a key underlying factor and its international financial reach is unmatched. In 2020, the UK's net financial services exports amassed £64bn and were higher than the value of Singapore, Hong Kong, and Germany's net financial services exports combined.
43. Financial services firms located in the UK benefit from an ecosystem recognised for its openness, global connections and culture of collaboration. This ecosystem underpins the UK's strengths as a services exporter as firms from around the world turn to the UK for its expertise, talent, supportive regulatory environment and access to capital. The UK FS sector also plays a vital role in supporting and enabling firms in all sectors of the UK economy to trade internationally. Four recommendations are outlined below regarding how the UK can take advantage of its strong position and the new trading environment.
44. Businesses need as much certainty as possible in order to invest. The UK Government's 'A new chapter for financial services' provides a welcome long term vision on financial services policy. A long term vision on trade controls would help ensure maximum compliance by businesses – including sanctions, bribery laws, money laundering and terrorist financing. The FCA's regulatory initiatives grid is an example of good practice that could be adopted more widely. The primacy of English law is an essential component of the UK FPS sector's support of exporting firms. It is also the international medium of many commercial agreements. Maintaining its advantages is a benefit to business around the world. Mechanisms should be put in place to track domestic and international regulatory developments which may jeopardise market access. The impact of regulatory developments on trade negotiations should also be considered.

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<sup>5</sup> <https://www.bovill.com/almost-90-paris-based-financial-firms-apply-to-open-a-uk-office-post-brex/>

### ***Financial services priorities in free trade agreements***

45. The City of London Corporation supports the UK Government's ambition to include services and digital provisions in new free trade agreements (FTAs) with global markets. The UK should continue to explore opportunities to break new ground by developing agreements that evolve with technological change in the markets and address wider societal challenges. In digital trade, for example, the increasing prevalence of data localisation measures is a cause for concern.<sup>6</sup> Mandating companies to store data in specific jurisdictions weakens firms' capacity to combat cybercrime and meet regulatory requirements. FTAs can and should be used to counter data localisation requirements and ensure free flows.

**March 2022**

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<sup>6</sup> Further information on data localisation and financial services can be found in the IRSG report *How the trend towards data localisation is impacting the financial services sector*, <https://www.irsg.co.uk/resources-and-commentary/irsg-report-how-the-trend-towards-data-localisation-is-impacting-the-financial-services-sector/>