

By Email: retailbanking@cma.gsi.gov.uk

CHAPS Co

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From CHAPS Co, Legal & Regulatory Affairs

Cc: PSR (by email); Bank of England Financial Market Infrastructure Directorate (by email)

CMA RETAIL BANKING MARKET INVESTIGATION – UPDATED ISSUES STATEMENT

NON CONFIDENTIAL VERSION

CHAPS Clearing Company Ltd (hereinafter “CHAPS Co” or “the Company”) welcomes the opportunity to respond to the CMA Retail Banking Market Investigation – Updated Issues Statement (hereinafter “*the CMA Statement*”).

CHAPS Co is the UK electronic Payment System for high value and systemically important transactions which settle across the Bank of England’s Real Time Gross Settlement (RTGS) system, thereby achieving irrevocable finality at the point of settlement.¹ Daily average settlement values exceed £280 billion with a direct participant base of twenty-one major financial institutions whom, in turn, service over 5,000 other financial institutions on an indirect basis (primarily via international Correspondent Banking relationships).

The CHAPS System is a central bank money settlement system and wholesale payments system. As such it processes 93% of the value of all Sterling payments, but only 0.04% of the volume of all Sterling payments. Whilst the major volumes of Sterling payments are predominantly processed by the retail payment and bulk payment clearing systems, there are no prohibitions to CHAPS Co being used for retail transactions. Additionally, because it removes settlement risk from payments, it is the preferred mechanism within the house conveyancing market.

CHAPS Co is a Recognised System under the 2009 Banking Act² and is thereby supervised by the Bank of England in its statutory supervision capacity. Since 1 April 2015, CHAPS Co is also

¹ Finality of settlement is underpinned by CHAPS’ designation as a “system” by the Bank of England, as the relevant designating authority under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (the “SFRs”), which implement the EU Settlement Finality Directive 98/26/EC in the United Kingdom.

² Recognition Order issued by HM Treasury on 5th January 2010.

supervised by the Payment Systems Regulator (PSR) by virtue of HMT's Designation Order of 19 March 2015.

At a governance level, CHAPS Co operates as a standalone Company which is limited by shares. These are issued on an equal basis to each of the financial institutions which directly participate in the CHAPS system. CHAPS Co's Board is comprised of an Independent Chairman, two Independent Directors, an Executive Director (the CHAPS CEO) and Participant Directors nominated by their respective shareholding institution (having first been considered by the Appointments and Remuneration Committee which is Chaired by an Independent Director).

Introduction

CHAPS Co welcomes the CMA Statement and the clarifications it provides on a number of issues regarding the retail banking market. We also look forward to further receiving the CMA's working paper "*Barriers to entry and expansion: regulation, IT systems and payments systems*" later this summer. With that in mind, we would like to draw CMA's attention to the following points:

- Unlike the rest of the Interbank payment systems designated by the Treasury in the UK, in CHAPS Co's case it is the Bank of England ("*BoE*") that has the full ownership, control and operation of the settlement system – the RTGS – that CHAPS Co utilises for the settlement of its Participants' transactions. [X] [X].
- CHAPS Co's access and technical requirements (which are publicly available) can be found at <http://www.chapsco.co.uk/> and are reviewed in consultation with the Bank of England. [X] [X].
- With regard to the costs of joining CHAPS Co, this year we have experienced a substantial increase in our operating costs, which are in turn being allocated to our direct Participants. This increase is a direct result of the regulatory fees that the PSR has introduced to the payment systems identified in their relevant consultation documents.^{3,4,5} [X] [X]. Although we have not received specific feedback from potential direct Participants, we are concerned about the potential effect that this increase of costs is going to have on them, particularly with respect to new market entrants.
- Finally, we believe that another upcoming regulatory intervention that the CMA should consider in its investigation as a potential barrier to entry is the regulatory framework on Ring Fencing. Although not finalised yet, we are concerned about the effects that it may have on

³ FCA Consultation "FCA Regulated Fees and levies: Rates proposals 2015/16" (CP15/14), <https://www.fca.org.uk/static/documents/consultation-papers/cp15-14.pdf>.

⁴ FCA Consultation "*Regulatory fees and levies: policy proposals for 2015/16*" (CP14/26), <https://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-26>.

⁵ PSR Supplementary paper with respect to the March 2015 CP 15/14 consultation PSR fee, <https://www.psr.org.uk/supplementary-document-fca-cp-1514-psr-fees>.

both our direct and indirect Participant base. Of particular note, according to Article 13 of the SI 2014/2080 Order (*Excluded Activities*), “a ring-fenced bank (“RFB”) is prohibited from using services provided through a recognised inter-bank payment system indirectly by an intermediary, unless the RFB in question is a direct participant in the payment system”. The article provides for an exemption for which specific conditions must be satisfied. However, both the exemption and the respective conditions have been subjected to a number of (sometimes conflicting) interpretations, which have generated the urgent need for clarification in order to provide the market with certainty to proceed to implementation solutions.

- Additionally, the relevant regulatory authorities (PRA/FCA) have not yet clarified the types of agreements that RFBs would be allowed to form (both with regard to intra-group and third parties). Currently, there are two consultations expected that we hope would clarify the above-mentioned concern.
- From CHAPS Co’s perspective, it is vital to understand if every RFB has to become a direct Participant and to what extent it would be allowed to offer payment services to indirect Participants. [X] [X], we are concerned about the potential access barrier effect that Ring Fencing may impose, (a) in the event that every RFB will have to become a direct Participant ([X] [X]) and (b) in the event that a RFB will not be allowed to offer payment services to indirect Participants (as this will limit the number of direct Participants that will be able to offer payment services).

Should you have any queries in relation to this submission, please do not hesitate to contact us.