

**Brad Carr**  
Senior Director, Digital Finance Policy & Regulation

March 12, 2018

Financial Conduct Authority  
25 The North Colonnade  
London E14 5HS  
United Kingdom



**Re: Consultative Document – FCA Mission: Our Approach to Authorisation**

Dear Madam/Sir,

The Institute of International Finance and its members (“IIF”) appreciate the opportunity to comment on the UK Financial Conduct Authority’s (FCA) consultation document “FCA mission: Our approach to authorization.” This paper is rather timely, as it touches on several issues that are central to current discussions in the sector related to the emergence of fintech – such as authorization regimes, sandboxing, and promoting effective competition in the sector.

The FCA has taken a lead role among global supervisors in catalyzing innovation in the financial sector and ensuring competition, enhanced market integrity and improved financial services. We admire the FCA’s support of innovation in the financial sector through its experimentation with new technology, its industry-leading sandbox, and supporting institutions in the implementation of regtech and fintech solutions.

We recognize that the scope of this consultation covers the topic of authorization more generally, but we take this opportunity to concentrate our comments specifically on the emergence of fintech competition for sector regulation and supervision.

The FCA has rightly identified innovation in the financial sector as a key enabler to increased financial sector competition and improved financial services. When considering regulatory frameworks, it is important to keep in mind a number of key points to ensure that innovation effectively leads to these benefits to the financial system. We will also include some comments related to your call for comments on establishing a global sandbox.<sup>1</sup>

**A regulatory framework to support innovation while addressing risk**

First, as financial services are increasingly executed by new types of entities, regulatory frameworks could best be based on activities rather than entities to ensure that the same risks, regardless of the entity that harbors them, are subject to the same regulation.<sup>2</sup> As regulatory frameworks, such as capital requirements, are currently entities-based, financial services and risks are developing outside of the regulatory remit. A recent study by the European Banking Authority found that 31% of fintech entities in their EU-based sample were not subject to any regulatory regime. Of those fintechs in the possession of customer funds, 11% were not subject to any regulatory regime.<sup>3</sup>

<sup>1</sup> FCA, “Global sandbox,” February 14, 2018. <https://www.fca.org.uk/firms/regulatory-sandbox/global-sandbox>

<sup>2</sup> BIS General Manager Agustín Carstens recently advocated for this principle to be applied in financial regulation in the context of virtual currencies. See Bank for International Settlements, “Money in the digital age: what role for central banks?” Lecture by Agustín Carstens, Goethe University, Frankfurt, 6 February 2018.

<sup>3</sup> European Banking Authority, “Discussion paper on the EBA’s approach to financial technology (fintech),” EBA/DP/2017/02, August 4, 2017.

The existence of financial services providers outside the regulatory space can unduly expose consumers to financial risks and fraud, create a situation of unfair competition with regulated firms, and through mutual exposures and interlinkages (including from open banking) can expose regulated firms to operational and financial vulnerabilities at unregulated and unsupervised firms.

Authorization and licensing regimes are a key tool to bring entrants into the regulatory space and ensure they meet minimum standards with regards to consumer protection, effective competition and market integrity. Given the need for a risk-based regulatory framework that addresses risk in the system equally across different entities, we do not see merit in a separate “fintech” license. Different licensing regimes would create the possibility for a two-tier regulatory environment and a risk of regulatory arbitrage.

Currently, licenses are inconsistently applied. For example, while PSD2 does put a licensing regime in place, this is missing in other areas. In the context of open banking, this lacks clarity for banks in determining which institutions they can share data with, creating considerable overhead to ensure safe consumer data sharing and due diligence. Where public licensing regimes are lacking in an open banking context, the burden falls on banks to ensure safe conduct. It is therefore important for regulators to assess how different fintech activities not only impact the provision of financial services, but also the financial system as a whole, and to take this into account in the design of licensing regimes.

We would argue for a single licensing regime to be set up, based on proportionality, but also based on the same foundations and addressing the same risks for incumbent, large institutions and smaller, new entrants alike.

### **Sandboxes as a tool to support innovation**

Second, sandboxes as set up by the FCA can be a key instrument for promoting innovation at new entrants and at incumbent institutions. Sandboxes, if structured correctly, are particularly important for new entrants who lack the resources, scale and knowledge to comply with all regulation while setting up their business.

The FCA has recently invited comments to its exploration of a sandbox with global reach. We would welcome such a proposal, which would help firms to launch innovative products and business models simultaneously in multiple jurisdictions and would leverage the FCA’s knowledge to support fintech development even in other jurisdictions. It would support the development of consistent products and services across markets in the best interest of customers, thereby fostering innovation on a larger scale.

We believe that the key to success for a global sandbox would be the degree to which test runs could be set up and agreed promptly across jurisdictions. The current FCA sandbox should continue to form the basis of the application process, yet there should be a mechanism in place to engage regulators in other jurisdictions at an equally early stage.

There will be a number of challenges to a global sandbox, ranging from public policy issues including potential data localization restrictions and consumer protection policies, to more commercial and administrative aspects regarding sharing commercially sensitive information and the application process.

### **Supporting firms manage regulatory change**

Third, the FCA rightly identifies supporting firms adapt to regulatory change as helpful for firms to effectively comply. Chapter five in the FCA’s consultation paper discusses FCA support to help

firms respond effectively to regulatory change. As part of the global regulatory reform process of the last ten years, many new requirements and supervisory measures have been introduced in tandem. Many firms, large and small, have felt that there has not always been sufficient time or scope to implement and assess implications of new regulation. We would be supportive of any measures and action by the FCA that would allow firms to prepare in good time.

The IIF reiterates its appreciation for the FCA's efforts in supporting innovation in the financial sector. Should you need additional information on this topic, please contact myself ([bcarr@iif.com](mailto:bcarr@iif.com)), Conan French ([cfrench@iif.com](mailto:cfrench@iif.com)) and Bart van Liebergen ([bvanliebergen@iif.com](mailto:bvanliebergen@iif.com)).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'BCarr', is positioned above the typed name.

Brad Carr  
Senior Director, Digital Finance Policy and Regulation