Bank of England PRA

Review of ring-fencing rules

December 2023

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Presented to Parliament pursuant to section 142J of the Financial Services and Markets Act 2000

Presented to HM Treasury in December 2023

Presented to Parliament in January 2024

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Executive summary

This report sets out the conclusions of the Prudential Regulation Authority's (PRA) review of its rules on **ring-fencing**, which has been conducted throughout 2023. Most of the ring-fencing regime is contained in legislation, but there are also some requirements set by the PRA in its **Rulebook**, supported by supervisory statements.[1] It is these PRA rules only that are in scope of this review; however, ring-fenced bodies (RFBs) are subject to the Rulebook as a whole.

The PRA has a statutory duty under the Financial Services and Markets Act 2000 (FSMA) to review the ring-fencing regime it has put in place through its Rulebook every five years, with the first review to take place within five years of the rules coming into force.[2] The ring-fencing regime came into force on 1 January 2019. The PRA must publish a report on the review and provide a copy of its report to HM Treasury (HMT) to be laid before Parliament in due course.

The PRA notes that the regime as a whole was subject to a separate statutory review, which published its final recommendations in the **Independent Review of Ring-fencing and Proprietary Trading** (commonly known as the "Skeoch Review" after its chair, Sir Keith Skeoch) in March 2022. HMT and the PRA consulted in September 2023 on giving effect to these recommendations. The PRA's internal review reported on here is narrower in scope, applying only to rules set by the PRA.

In conducting this review, the PRA has considered the intents of the ring-fencing regime, the PRA's statutory objectives, the ring-fencing requirements set out in statute, and feedback from RFBs chiefly in their responses to a questionnaire sent out as part of the exercise. To assess how the rules are operating in practice, we have considered the historic experience of supervising firms against these rules over the last five years, including instances where RFBs have applied for waivers and modifications,[3] and instances of compliance breaches or delays.

The overall conclusion of this review is that most rules are performing satisfactorily. They remain an important support for the statutory regime, they discharge the

[1] Most notably, SS8/16 – **Ring-fenced bodies** (RFBs) provides additional guidance on this subject.

[2] Section 142J of the Financial Services and Markets Act (FSMA) 2000.

[3] S138A of FSMA gives the PRA power to waive or modify rules on the application, or with the consent of, a firm where it is satisfied that certain conditions are met, including that the unmodified rule would be unduly burdensome or would not achieve the purpose for which it was made.

legislative intentions and they are operating effectively. The rules appear to be well understood by firms, and no significant gaps have been identified.

The report notes some areas where improvements may be made to our rules. Since amendments to our rules cannot be made without first consulting on any proposed changes,[4] we can only indicate in this report the areas where we consider changes may be beneficial, and the possible ways in which the issues identified might be addressed. Accordingly, any discussions in the report as to how the regime might be modified in future should not be interpreted as a final view on changes that should or will be made. The PRA intends to consult in due course on changes to its ring-fencing rules after a fuller exploration of the costs and benefits of the options identified.

The areas where the PRA has identified potential improvements to rules and associated guidance are:

- **Rules relating to the provision of services to RFBs from non-ring-fenced parts of a group.** There is potential overlap with other PRA rules relating to securing operational continuity in resolution and the operational resilience of banks. We consider that the rules could be better aligned with existing processes that banks must follow to identify how important business functions depend on resources and services elsewhere in a group, and to focus more directly on the core activities and essential business of RFBs.
- **Rules relating to arm's length transactions.** The requirement to transact only on an arm's length basis remains essential. However, the frequency with which RFBs must review their internal policies underpinning how this is operationalised could be reviewed on grounds of proportionality. We consider there may be potential to reduce this frequency subject to any necessary safeguards.
- **Modifications of rules relating to governance arrangements.** Rules in this area have been extensively modified to tailor them to the circumstances of individual RFBs. Where further changes are needed, on application from RFBs, we will consider maintaining the modifications for longer periods before the changes expire. In addition, we consider that there may be scope to re-assess the level of consolidation at which some of the governance rules apply with a view to simplifying the requirements on firms.
- **Rules relating to regulatory reporting.** We have identified one annual regulatory report which we think may be unnecessary given the materiality of the amounts that have been reported since the regime came into effect. This relates to tax exposures for which an RFB may be liable in relation to the business of a non-ring-fenced body (NRFB). Some reports will be in scope of the **Banking Data Review** (BDR), as discussed below.

Through the exercise, a number of areas have been identified where minor changes could bring supervisory statements up to date, or provide clarification to firms. For

[4] S138J of FSMA.

instance, regarding the definition of ‘governing body’, our rules are not intended to extend to committees of management below board level. We intend to clarify these aspects firstly in dialogue with firms and may seek to make changes to the relevant supervisory statement.

1: Introduction

Background to ring-fencing and this review

1.1 The ring-fencing regime was one of the regulatory reforms established in response to the financial crisis of 2008-2009. Following these events, the government established the Independent Commission on Banking (ICB) to make recommendations on improving financial resilience. The ICB issued its Final **Report** (the 'Vickers Report') in September 2011, in which it proposed ring-fencing. The government adopted this recommendation through the Financial Services (Banking Reform) Act 2013 (the "Banking Reform Act"). This Act defines 'core activities' as the regulated activity of accepting deposits[5] and requires banking groups that undertake core activities to place these activities into RFBs. To supplement the definition of core activities, the Act also defines three 'core services':

- 'facilities for the accepting of deposits or other payments into an account which is provided in the course of carrying on the core activity of accepting deposits';
- 'facilities for withdrawing money or making payments from such an account'; and
- 'overdraft facilities in connection with such an account'.[6]

1.2 In addition to the Banking Reform Act, the government introduced two statutory instruments under FSMA 2000: the Ring-fenced Bodies and Core Activities Order 2014 (CAO)[7] and the Excluded Activities and Prohibitions Order 2014 (EAPO)[8]. CAO specifies that banks which have more than £25 billion of deposits from individuals and small businesses will be subject to ring-fencing requirements (so called 'core deposits').[9] EAPO sets out the type of activity in which RFBs cannot engage and the types of customers that they cannot service. The ring-fencing regime came into force on 1 January 2019.

1.3 The intention of the regime is to ensure that core banking activities – accepting core deposits of most households and small and medium enterprises – are protected from contagion from non-ring-fenced activities and from the wider financial system.[10]

[5] See s142B of FSMA, as amended by the Banking Reform Act 2013.

[6] See s142C(2) of FSMA, as amended by the Banking Reform Act 2013.

[7] SI 2014/1960 The FSMA (Ring-fenced Bodies and Core Activities) Order 2014 [CAO].

[8] SI 2014/2080 The FSMA (Excluded Activities and Prohibitions) Order 2014 [EAPO].

[9] HMT recently consulted on increasing this threshold from £25 billion to £35 billion.

[10] See the Independent Commission on Banking's Final Report ("the Vickers Report")

Therefore, banks are required to house this business in an RFB which must be legally separate from riskier activity that is housed in one or more NRFBs in its wider consolidation group. The regime seeks to ensure that certain activity cannot be undertaken by an RFB, and that the actions or insolvency of the NRFB do not threaten the continuity of core services of the RFB.

1.4 While most elements of the ring-fencing regime exist in the legislation mentioned above, the PRA also sets rules specific to RFBs. The PRA is required to make these rules under FSMA, and in some instances the subject matter and content of rules is largely prescribed by statute.[11] The bulk of the PRA's ring-fencing rules are found in the Ring-fenced Bodies Part of the PRA Rulebook, but additional requirements are found in the Notifications and Regulatory Reporting Parts of the Rulebook, and further guidance is provided in supervisory statements, most notably supervisory statement SS8/16 – **Ring-fenced bodies (RFBs)** which is specific to ring-fencing.

1.5 As noted, the PRA has a statutory obligation to carry out five-yearly reviews of its ring-fencing rules under s142J of FSMA. This document is the report of the PRA's first review, and it is anticipated that it will be laid before Parliament by HMT in due course, in accordance with s142J of FSMA.

1.6 The PRA has approached this review by examining all rules that were introduced by a rule instrument citing s142H of FSMA (ring-fencing rules) or s192JA (rules applying to parent undertakings of RFBs). Some of those instruments create rules which are not related to ring-fencing or which apply to ring-fenced bodies only incidentally. We have therefore taken a principles-based approach when deciding where to focus our review and have included rules for which the primary purpose of the rule was to give effect to the ring-fencing regime. While the review requirement only relates to rules made by the PRA, we have also sought feedback on supervisory statements which support those rules and considered whether these are sufficiently clear and remain appropriate.

1.7 Throughout this internal review, the PRA has been cognisant of several developments in the ring-fencing space. The Banking Reform Act also mandated an independent panel to review the operation of the regime as a whole.[12] The panel was given a mandate to examine, amongst other things, how the ring-fencing regime meets its intended purpose of supporting financial stability and minimising risks to public finances through the effective separation of core banking services (continuous provision of which is vital to the economy and to customers), from other banking

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[11] See s142H of FSMA.

[12] See s8 of the Banking Reform Act 2013.

activities. In March 2022 the **Final Report** of the Independent Review of Ring-fencing and Proprietary Trading (known as 'the Skeoch Review') was published.[13]

1.8 The Skeoch Review concluded that ring-fencing had contributed to a more resilient retail banking system, and made recommendations about reforms which could improve the functioning of the regime while maintaining financial stability. HMT and the Bank have taken forward these recommendations and, in September 2023, both **HMT** and the **PRA** issued consultations to give effect to the recommendations of the Skeoch Review.[14] The Skeoch Review's recommendations sought to introduce more flexibility into the regime, thereby increasing the competitiveness of RFBs, while preserving the fundamental benefits to financial stability that ring-fencing exists to protect. The review of our rules is a separate exercise to meet specific FSMA requirements as discussed in this report.

PRA approach to this review and next steps

1.9 Though this rule review does not create policy itself, the PRA has considered the wider context, including many of the factors which are accounted for when making policy. These include, but are not limited to: (i) the PRA's primary objective of the safety and soundness of firms; (ii) our secondary objectives, including the new secondary objective on competitiveness and growth;[15] (iii) the statutory group ring-fencing purposes set out in legislation;[16] and (iv) feedback from firms that are subject to the ring-fencing rules.

1.10 The review has considered whether there are any areas where there is scope to enhance protection for core activities and core services from risks present in the non-ring-fenced part of the banking group, or alternatively, whether any rules can be modified to give firms more flexibility without undermining their safety and soundness or the PRA's statutory ring-fencing objectives.

1.11 Work conducted through the review has suggested there may be some rules whose operation could be improved to help the PRA achieve its secondary objectives, without undermining its primary objective. Extra flexibility may have benefits for competition (by allowing ring-fenced groups to have arrangements closer to domestic and international groups that are not ring-fenced), and for competitiveness and growth

[13] Ring-fencing and Propriety Trading: Final Report.

[14] A smarter ring-fencing regime: Consultation on near-term reforms (HMT); CP 20/23 - Ring-fenced bodies: managing risks from third-country subsidiaries and branches (PRA)

[15] S2H of FSMA, as amended by The Financial Services and Markets Act 2023.

[16] S142H of FSMA.

(by allowing groups to resource themselves in a manner which promotes their own growth). However, the PRA considers that the majority of rules should be retained as currently constituted, as they are necessary to give effect to the statutory group ring-fencing purposes, make a strong contribution to the overall safety and soundness of major UK banking groups and are found to be working well.

1.12 All banking groups subject to ring-fencing were invited to provide feedback on the operation of the PRA rules and supervisory statements, a process which was completed by the end of August 2023. A review of each rule considered feedback from industry, policy intent, whether the rules and associated guidance are up to date, the statutory basis for each rule, the rule waivers and modifications[17] (if any) requested and granted, and the number and nature of rule breaches.

1.13 As noted above, this report does not create new policy. Instead, it demonstrates that the PRA has discharged its statutory requirement to review its ring-fencing rules. In addition, the report indicates the areas where we consider rule changes may be beneficial and the possible ways in which the issues identified might be addressed. The PRA intends to consult on changes to its ring-fencing rules after further detailed analysis and a fuller exploration of the costs and benefits of the options identified.

1.14 The report below has grouped the rules thematically. Each section of the report discusses, for each set of rules, the policy intent and legal background, the operation of the rule and industry feedback, and the PRA's assessment and intended next steps. Unless otherwise specified, references to Chapters of the Rulebook are referring to the Ring-fenced Bodies Part. The sections of this report are as follows:

- The application and scope of other rules
- Governance arrangements
- The continuity of provision of services
- The arm's length rules, and intragroup arrangements
- Use of Financial Market Infrastructure and exceptions policies
- Data reports and notifications

1.15 Two annexes follow this report. Annex A summarises the rules, notes which section in the report each rule is discussed, and indicates the PRA's assessment. Annex B is the questionnaire that was sent to firms when seeking their feedback.

[17] S138A of FSMA.

2: The application and scope of Ring-fencing rules

Policy intent and legal background

2.1 The Ring-fenced Bodies Part of the PRA Rulebook contains a number of general rules which define the scope and level at which other rules detailed in this report apply. In particular these are the rules in:

- Chapter 1: Application and definitions
- Chapter 2: Application of rules within a sub-consolidation group
- Chapter 18: Application of certain PRA rules to ring-fenced bodies on a sub-consolidated basis

2.2 These rules exist largely to clarify the level of application, scope and definitions of various rules, thus allowing users of this Part to navigate it more easily, and allowing the rules to operate. Chapter 1 includes a set of definitions and does not set any requirements itself, though rule 1.3 does set out criteria that would disqualify a director from being regarded as independent. Chapter 2 provides further information about responsibilities within a sub-group: for instance, where responsibility lies for compliance with relevant rules.[18] Chapter 18 sets out fourteen provisions within the PRA Rulebook that RFBs are required to comply with on a sub-consolidated basis, such as the Internal Capital Adequacy Assessment Process (ICAAP) rules, the Capital Buffers Part, and the risk control rules.

The operation of the rules and industry feedback

2.3 Overall the rules in this section attracted a low level of feedback, and we do not consider that there is evidence that they are functioning in an undesirable way.

2.4 There was some commentary on the definitions set out in Chapter 1 from firms. One firm suggested alignment of the definition of ‘core activities’ with that of ‘critical services’ in the Operational Continuity in Resolution (OCIR) regime, while one raised an issue on rule 1.3 (discussed below in the section on governance arrangements).

[18] Relevant rules are defined in rule 2.1. They are rules: 3.5, 9.1, and the rules in chapters 11-16.

2.5 There have been a small number of modifications reflecting firm-specific issues. There have been no waivers or breaches, and the review has not suggested any problems with how the rules function.

PRA assessment and next steps

2.6 After reviewing the rules in this section, the PRA's view is that they are functioning adequately. The rules here are intended to assist firms in complying with other PRA rules or aspects of the statutory framework. They seem to achieve this and to be well understood.

2.7 The exercise has, however, identified that various parts of the Ring-fenced Bodies Part contain an out-of-date reference to Article 11(5) of the CRR,[19] which should now read Article 11(6) of the onshored CRR.[20] The PRA intends to update these references. These are rules 2.5, 10.2, 11.3, 18.1, and 18.2.

2.8 Beyond correcting the reference to Article 11(5), the PRA does not see a need to revisit the rules referred to in this section. However, to the extent that the PRA may wish to develop policy, for instance on governance rules (discussed below in the relevant section), any interaction with Chapters 1, 2, and 18 would be considered and consulted upon as appropriate.

[19] Regulation (EU) No 575/2013.

[20] Onshored and amended UK version of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, referred to as the 'CRR'.

3: Governance arrangements

Policy intent and legal background

3.1 The PRA Rulebook contains the following rules relating to governance arrangements for RFBs:

- Rules 3.1 to 3.4[21] set out general rules around RFBs being able to identify and manage any conflicts of interest with other entities in the group.
- Chapter 4 creates requirements concerning the composition of an RFB's governing body.
- Chapter 5 requires an RFB to have an adequately resourced risk management function which is independent of any NRFB.
- Chapter 6 requires an RFB to have an adequately resourced internal audit function which is independent from that of any NRFB.
- Chapter 7 sets requirements around human resources (HR) policy and its separation from the equivalent function for NRFBs.
- Chapter 8 creates requirements for remuneration committees and policies.

3.2 These rules stem from specific legislative provisions which require the PRA as the appropriate regulator to make rules for 'group ring-fencing purposes'.[22] These purposes include governance arrangements to ensure that as far as reasonably practicable, an RFB is able to take decisions independently of other members of its group.[23] The legislation requires that the PRA must develop specific requirements concerning the following: board membership, remuneration policy, HR policy, and policies concerning the identification, monitoring and management of risk.[24]

3.3 Rules on governance remain integral to the ring-fencing regime. Given that ring-fencing seeks to preserve the separation between RFBs and NRFBs, but allows them to be consolidated into the same banking group, it follows that certain rules are needed to ensure the independence of the RFB within its banking group. Rules 3.1-3.4 provide general requirements to this effect: RFBs must be able to take decisions independently of other group members, to identify and mitigate any conflicts of interests that senior

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[21] Rule 3.5 is discussed in section 5 of this report, as it is most relevant to intragroup arrangements and has a particular relation to rule 12.

[22] S142H(4) of FSMA.

[23] S142H(4)(b)(i) of FSMA.

[24] These are detailed in s142H(5)(d-f) of FSMA.

management or the RFB itself might have, and to demonstrate compliance with ring-fencing rules to the PRA. Chapter 4 goes into more granular detail, including requirements about the role of the chair of an RFB's governing body, and how the RFB must advertise for non-executive Director positions.

3.4 As mentioned, FSMA identifies certain areas that need to be covered in PRA rules.[25] The rules in Chapters 5-7 set requirements about specific functions within the RFB and the degree to which these functions must be separated from equivalent functions in the NRFB.

3.5 Chapters 5 and 6 impose requirements for risk management and internal audit respectively: the Risk and Audit Board Committees must have chairpersons on each committee, who must not chair any equivalent committees in the NRFB, and the risk management and internal audit functions must have adequate resource.

3.6 Chapter 7 stipulates that an RFB must ensure that the chair of its nomination committee does not chair an equivalent committee in the NRFB, and that the RFB does not depend on any employee who may cease to be available if an NRFB in its group became insolvent.

3.7 Chapter 8 requires RFBs to appoint a remuneration committee, which has a degree of separation from the equivalent functions in the NRFB. It also imposes certain requirements for an RFB's policies, practices, and procedures in this area: for instance, these must be consistent with effective risk management, and must not encourage excessive risk taking. These additional requirements support certain over-arching principles of ring-fencing, such as reducing the potential for risks which originate elsewhere in a banking group to affect an RFB and ensuring that critical functions of the banking system are protected from riskier behaviour elsewhere in the financial system.

3.8 These rules reflect the intention of the ring-fencing regime to preserve a structural separation so the risks facing an RFB are individually considered by appropriate board committees and functions within it, and to ensure that those functions are not threatened by the insolvency of a group NRFB.

The operation of the rules and industry feedback

3.9 The rules relating to governance arrangements attracted a high level of feedback from industry. Comments generally focussed on the burden on firms, but there were

[25] S142H of FSMA.

also points raised around duplication with other parts of the PRA rules, and the clarity of the rules.

3.10 Several firms viewed the rules as overly prescriptive and burdensome. Firms variously suggested that the rules create layers of governance, unintended consequences of increasing board size, impacts on the speed of decision-making, and general complexity. However, one firm noted that the PRA's power to offer firm-specific rule modifications softened the impact in practice.

3.11 One firm proposed that changing to a set of outcomes-based rules might be preferable to the governance rules as currently constituted. This would involve a more minimalist set of principles that seek to achieve the same goals, of RFB independence, a consideration of risks from the perspective of the RFB sub-group itself, and effective governance at subsidiary and group level.

3.12 Other less material comments were raised by individual firms. For instance, individual comments were raised about arguable overlap between rules within Chapter 4, the potential duplication with the Senior Managers and Certification Regime, the clarity of the term 'governing body', the prescriptiveness of the requirements relating to directors set out in rule 1.3, and the option of including a caveat in rule 3.1 about the extent to which firms are required to ensure that decisions are taken independently of other group members.

3.13 Modifications play a greater role for these governance rules than other rules on ring-fencing. All ring-fenced banking groups have at least some modifications in place, and there is at least one such arrangement for rules contained in Chapters 4-8. The wide use of modifications is arguably a strength of the governance rules, as discussed below.

3.14 By contrast, breaches are very rare with the regard to these rules. The rules in Chapter 7 are a partial exception to this: they have seen a handful of breaches since the rules came into force.

PRA assessment and next steps

3.15 The PRA's review of this aspect of ring-fencing regulation has concluded that, overall, the rules are appropriate, necessary to uphold the principles of the ring-fencing regime, and suitable given the specific requirements under legislation. Although there may be ways to improve the functioning of the rules (see below), we do not consider that the fundamental approach should be revisited or that rules should be deleted.

3.16 The PRA has considered industry feedback, and whether there are changes that might introduce flexibility without undermining the safety and soundness of RFBs. We

do not consider that a move to a significantly less prescriptive model of governance regulation for RFBs would be desirable. Such a model would be difficult for supervisors to monitor and enforce the separation of decision-making and governance that ring-fencing entails, and therefore to discharge the PRA’s statutory functions.

3.17 The current approach to governance does allow for proportionality and flexibility in the shape of waivers and modifications, which are common for rules in this space. Adopting this approach allows flexibility which accounts for the differing situations of firms on a case-by-case basis. Further, it offers the PRA oversight of the mechanisms in place to retain structural separation of the RFB from the NRFB, and therefore the insulation of core activities and core services from risk elsewhere in the banking group. The PRA considers that this is a preferable approach to removing rules aimed at preserving a key element the regime.

3.18 Nonetheless, there may be scope to improve the functioning of these rules. While the PRA considers the rules concerning governance arrangements to be appropriate, the PRA is open to granting waivers or modifications over longer time periods in order to reduce the frequency of compliance action and thereby reduce the administrative burden on firms. Such decisions would be taken on a case-by-case basis where the PRA deems appropriate, as the use of waivers and modifications continues to be an important means by which supervisors can periodically assess the arrangements of firms against the need to ensure adequate separation.

3.19 Furthermore, the PRA may consider changes which might generally apply some rules at sub-group level, rather than in respect of each individual subsidiary, where this is not already provided for. The PRA proposes to do further work in this regard and may bring these forward to consultation.

3.20 In response to industry feedback about the definition of the term ‘governing bodies’, the PRA is content to confirm its view that these do not include senior management committees. The PRA intends to ensure this is clear to firms, and may record this in a supervisory statement.

4: Continuity of provision of services

Policy intent and legal background

4.1 The rules in Chapter 9 are designed to ensure that important services, on which the RFB relies to maintain its business, are protected from disruption in the event of failure or other adverse developments in the NRFB. The RFB should have an appropriate degree of independence in order to avoid contagion from the group NRFB. A potential source of contagion is operational risk. If vital operational services were to be provided to the RFB from within the NRFB, and were discontinued due to the NRFB's insolvency, an RFB could be placed at substantial risk. Rule 9.1 seeks to address this. Where an RFB requires services on a regular basis from an entity in its group, that entity must be a permitted supplier: either a ring-fenced affiliate[26] or a group services entity (a legal entity within the same group as the RFB whose only business is to provide services or facilities).

4.2 Chapter 9 provides further safeguards. Under rule 9.2, RFBs must ensure that any agreement for services it requires in relation to the carrying out of core activities must not allow the other party to terminate, suspend, or materially alter the services as a result of an act, omission, or deterioration in the financial circumstances of a group NRFB. Rule 9.3 sets out requirements in scenarios where a permitted supplier (that provides services referred to in 9.2) itself is dependent on services from another permitted supplier.

4.3 Chapter 9 relates directly to areas that the PRA is obliged by legislation to cover in its rules. In particular, the statutory group ring-fencing purposes include a requirement that an RFB 'does not depend on resources which are provided by a member of its group and which would cease to be available to the ring-fenced body in the event of the insolvency of the other member'.[27] The PRA therefore has a statutory obligation to make rules to achieve this outcome.

4.4 SS8/16 offers some guidance about the definition of 'services and facilities', which fall under the scope of rule 9, via a non-exhaustive list that includes data-processing,

[26] A ring-fenced affiliate is any member of the sub-consolidation group of which the ring-fenced body is a member, other than the ring-fenced body itself.

[27] See s142H(4)(b)(ii) of FSMA.

property management services, information technology, data centres, and back-office functions.[28]

The operation of the rules and industry feedback

4.5 Rule 9 attracted a significant amount of feedback from industry. In particular, firms questioned the clarity of the rule and whether there was overlap with other aspects of financial regulation such as the OCIR and the Operational Resilience (OpRes) regimes. This gave rise to an argument that the goals of these regimes overlapped with rule 9.1 and that therefore the latter's scope could be reconsidered. Moreover, one firm suggested that the rule goes beyond the legislative purposes set out in statute.

4.6 Several firms raised the wording of rule 9.1 to request additional clarification or a materiality threshold of some kind so that services which are arguably low risk are not routinely captured. Firm responses noted that the rule covers 'services and… facilities that it requires on a regular basis from an entity in its group', and suggested that the interaction of the terms 'requires' and 'regular basis' creates operational complexity for the group. Several responses did also note that the PRA has provided some guidance on what services are in and out through SS8/16, but stated that further clarity would be beneficial.

4.7 There have been no waivers or modifications for the rules in Chapter 9, but there have been more breaches than on other rules, and more interaction between supervisors and firms to resolve queries. Most breaches occurred in 2019-2020, in the period immediately after implementation of the regime, and were resolved by firms satisfactorily.

PRA assessment and next steps

4.8 In the PRA's assessment, the fundamental principles behind these rules continue to be relevant to the intentions of the ring-fencing regime, and they remain set out in statute, as detailed above. There is a high risk that failure of one entity in a group could have negative repercussions for other members, and the specific requirements of operational independence for RFBs offers a crucial mitigant to this for the most systemic banks in the UK.

4.9 However, the PRA is mindful of the feedback from industry about the operation of these rules, which mostly centred on rule 9.1. There may be scope to alter the functioning of this rule so that it targets the intended outcomes of the ring-fencing legislation in a way which is easier for firms to comply with, and for supervisors to

[28] SS8/16, para 5.4.

monitor. Any such alteration would need to consider the PRA's statutory obligations, which include making provision for ensuring that RFBs do not depend on resources which would cease to be available if another member of its banking group became insolvent.[29] It would also need to take into account the specific risk of contagion from an NRFB to an RFB, which is not the central intention of other elements of financial regulation concerning operational risk.

4.10 There may be a number of options to modify rule 9.1. These include but are not necessarily limited to: integrating with other regimes such as OpRes; making greater use of modifications to introduce greater flexibility; providing amended guidance through supervisory statements of the types of services which are inside and outside the scope of rule 9.1, or reconsidering language in the rule itself.

4.11 The PRA intends to consider if modifications can achieve the intentions of Chapter 9 in a more targeted way, without undermining the safety and soundness of firms or deviating from statutory obligations. The PRA intends to consult on this in due course.

[29] S142H(4)(b)(ii) of FSMA.

5: The arm's length rules, and intragroup arrangements

Policy intent and legal background

5.1 The ring-fencing regime includes provision for governing the interactions between RFBs and other NRFBs in their group, known as intragroup arrangements. This section discusses the review of these rules, and covers two categories of rules:

- Rule 3.5 and Chapter 12, which cover arm's length transactions. For ease, these are termed 'arm's length rules' here.
- Chapters 10-11 and 13-15, a series of other rules concerning intragroup arrangements. For ease, these are termed 'other intragroup rules' here.

5.2 The arm's length rules stipulate that an RFB must, as far as reasonably possible, treat transactions with and exposures to an NRFB as it would a third party that is not in its banking group (rule 3.5). They also require RFBs to have an arm's length policy that monitors all NRFB transactions, and set out procedures around governance, reporting and dispute resolution (Chapter 12). Chapter 12 also requires at least annual reviews of this policy from the internal audit function and the governing body.

5.3 The other intragroup rules cover a diverse set of areas. Chapter 10 requires RFBs to include intragroup transactions in their own funds requirements for credit valuation adjustment risk. Chapter 11 governs the conditions under which an RFB might make distributions to entities in its group. Chapter 13 stipulates that RFBs must not become income dependent on NRFBs in their group. Chapter 14 creates a prohibition on netting arrangements across the ring-fence. Chapter 15 requires an RFB to ensure that its share of any shared collateral must not cease to be available due to the acts, omissions or insolvency of the NRFB.

5.4 The rules in this section stem directly from specific legislative requirements. FSMA stipulates that ring-fencing rules must include restrictions on the ability of an RFB to enter into contracts with other members of its group on terms other than arm's length terms,[30] and restrictions on the payments that the RFB can make to other members of its group.[31] Furthermore, there is a general requirement that an RFB must be able to

[30] S142H(5)(a) of FSMA.

[31] S142H(5)(b) of FSMA.

take independent decisions and not become dependent on resources from elsewhere in the group.[32]

5.5 These policy objectives were central to the original concept of ring-fencing. When proposing the regime, the Vickers Report stated that 'to achieve the purposes of ring-fencing, retail banking activities should have economic independence'[33] and that for RFBs, 'relationships with other parts of the group should be no greater than regulators generally allow with third parties, and should be conducted on an arm's length basis'. Were an RFB to be dependent on the NRFB, for instance through income streams or through favourable transactions, then its independence and resilience to shocks from the NRFB would be severely brought into question.

The operation of the rules and industry feedback

5.6 The arm's length rules attracted substantial feedback from industry, while the other intragroup rules saw very limited comments.

5.7 On the arm's length rules, three firms questioned the proportionality of the rules and suggested it is excessive relative to the legislative purposes of the regime. One suggested that it could be restricted to contracts only, rather than a wider set of actions also including transactions and activities, as is currently the case. Another firm suggested that materiality thresholds could be introduced.

5.8 One firm suggested that rule 12.1 overlaps with the Related Parties Transaction Risk Part of the Rulebook. They commented that despite this overlap, the definition of transactions is different in each Part, and suggested alignment between the two.

5.9 One firm challenged the requirement for an annual assessment of arm's length policies (rule 12.4), suggesting that the frequency of these could be left to the discretion of firms, in accordance with their own risk appetite and framework.

5.10 One firm commented on the clarity of Chapter 12, suggesting that the application of the term 'arm's length' in practice can be imprecise, but noted the guidance provided in policy statement (PS)20/16 – **The implementation of ring-fencing: prudential requirements, intragroup arrangements & use of Financial Market Infrastructures**, which highlighted that this is a well-established principle.

[32] S142H(4)(b) of FSMA.

[33] **The Independent Commission on Banking (2011)**. Final Report: Recommendations, p12.

5.11 The other intragroup rules attracted almost no feedback, although one firm suggested that rule 15.1 creates monitoring requirements that are disproportionate to the risks associated with shared collateral.

5.12 Waivers and modifications are not a feature of the rules in Chapter 12. There have been a relatively large number of breaches of rules 12 and 3.5 (often a single incident will represent a breach of both). However, on the whole firms have taken swift action to return to compliance with the regime upon discovery of a breach.

5.13 The number of waivers, modifications, and breaches for the other intragroup rules are negligible.

PRA assessment and next steps

5.14 The PRA's assessment of the arm's length rules has included consideration of the comments from industry. Substantial amendments to the rules would be difficult given the centrality of operational independence of RFBs to the regime, and the clear legislative basis for Chapter 12.

5.15 The PRA does not consider that restricting the scope of the arm's length rules to contracts only would be desirable. RFBs are required to transact on arm's length terms with group members for both regulatory purposes (such as continuity in resolution under the OCIR regime) and non-regulatory purposes (such as the implications for tax and transfer pricing).

5.16 The PRA does not intend to amend the guidance on the term 'arm's length', given that it is a well understood term with a long-standing basis in domestic and international tax law.

5.17 The PRA is mindful that the requirement in Chapter 12 to review arm's length policies on an annual basis could potentially be disproportionate. We intend to consult on the appropriate frequency at which firms would be required to review these policies.

5.18 The PRA has also reviewed the other intragroup rules. The PRA considers that they remain an important component of the ring-fencing regime, up-to-date, and within the PRA's statutory purposes. There is little evidence that they are a source of friction for firms, and therefore it is unlikely that these will be reconsidered in the near term.

6: Use of Financial Market Infrastructure and Exceptions policies

Policy intent and legal background

6.1 One key purpose of ring-fencing is that RFBs are shielded as far as possible from riskier activity and more complex components of the financial system. Given that the legislative elements of the ring-fencing regime do allow for some exposure to non-retail financial products (for instance, RFBs may use derivatives to hedge their own risk, and offer some very simple and mainstream derivatives to their clients within certain limits), provisions to ensure that this is done in a safe way is consistent with the intentions of the ring-fencing regime.

6.2 Given this, the Ring-fenced Bodies Part contains a number of rules to govern how RFBs can operate:

- Chapter 16 covers how RFBs can use Central Counterparties (CCPs) and Central Securities Depositories (CSDs).
- Chapter 17 sets requirements around the internal policies that RFBs must maintain to differentiate permitted transactions from prohibited ones.
- Chapter 19 sets out the process by which RFBs can apply for indirect use of Inter-Bank Payment Systems.

6.3 Chapter 16 concerns the interaction between RFBs and CCPs and CSDs. It sets requirements about how RFB positions are to be clearly separated from positions of other users of the CCP or CSD. This applies both where the RFB accesses the CCP or CSD indirectly via a third party, and where it accesses them directly. SS8/16 clarifies that the PRA generally expects firms to access the CCP or CSD directly, to mitigate the operational risk of a third-party intermediary failing and having a knock-on impact on the RFB.

6.4 Chapter 17 concerns the RFB's policies concerning permitted and prohibited transactions. A number of transactions could raise questions about whether they are permitted under EAPO or not: for instance, an RFB may deal as principle in a derivative for the purpose of hedging its own risk, but it may not deal as principle in the same derivative for the purpose of generating its own profit (so-called proprietary trading). Distinguishing the two purposes may be open to debate, and without robust internal policies to ensure compliance with legislation throughout an RFB, breaches could be far more likely. Chapter 17 therefore stipulates that RFBs must establish and maintain

these policies, and sets requirements about the frequency of reviews by management and the internal audit function. The Chapter is not prescriptive about what products are excluded or how the RFB must set out this policy, but it creates certain minimum requirements about the contents of these policies.

6.5 Chapter 19 concerns how RFBs apply for indirect use of inter-bank payment systems. Under Article 13 of EAPO, banks are only allowed to use these indirectly under certain circumstances. In particular, it stipulates that indirect membership is only permitted if the PRA grants permission due to 'exceptional circumstances'.[34] Chapter 19 contains a rule which requires firms to submit forms if applying for this permission, and requires firms to fill out the relevant form and provide the required information. It is accompanied by guidance in SS8/16 on what the PRA considers might count as 'exceptional circumstances': for instance, if an RFB requires use of an inter-bank payment system only infrequently then direct membership of the system may present a disproportionate burden.

The operation of the rules and industry feedback

6.6. There were no comments from RFBs on Chapter 16 concerning use of CCPs and CSDs.

6.7 Two firms raised issues on Chapter 17. One questioned whether it goes beyond the legislative purposes, and the clarity of rule 17.1. However, the more notable feedback raised by both firms concerned the frequency of required review periods for exceptions policies. The rule stipulates that these policies must be reviewed annually by the internal audit function, and that the governing body must receive internal reports at least annually. The internal audit function is also required, every three years, to produce a report which includes all exceptions and all specified factors. Firms debated the proportionality of the above, and queried whether less frequent reporting might be appropriate. Industry feedback only related to frequency, rather than the requirements about what must go in an exceptions policy.

6.8 A review of waivers, breaches, and modifications for the rules under scope in this section did not suggest material problems in how the rules operate.

PRA assessment and next steps

6.9 The PRA's review of the rules suggest that they are still relevant to the regime's purpose of insulating RFBs from the complexity and risk of the wider financial system. The rules appear up to date and proportionate. However, it was noted during the review

[34] EAPO, Article 13(2)(d).

that SS8/16 would benefit from being updated so it distinguishes UK from non-UK Financial Market Infrastructures (FMIs) (rather than EEA from non-EEA FMIs) – updating this would bring the language in line with the language in Chapter 16, which was updated due to the UK's exit from the EU. These minor amendments were put to consultation in CP20/23 – **Ring-fenced bodies: managing risks from third-country subsidiaries and branches.**

6.10 The PRA has reviewed feedback about proportionality, particularly with reference to the reporting frequency in Chapter 17. The PRA considers that the rules on frequency remain appropriate as currently constituted. Given the nature of derivatives and other transactions which could breach EAPO, the best way to mitigate against breaches is for the rules to ensure that RFBs regularly review their policies to distinguish permitted and prohibited activities and exposures, and that these reviews are embedded through consideration by governing bodies and internal audit functions. Where there is a change in business activity that might bring an RFB's compliance with EAPO into question, frequent review periods would be helpful in preventing breaches. Where there is no such change, the process is unlikely to impose excessive burdens on firms.

7: Data reports and notifications

Policy intent and legal background

7.1 The PRA has included in this review an assessment of its requirements that concern ring-fencing, but are outside the Ring-fenced Bodies Part of the PRA Rulebook. These are chiefly the requirements around data reporting and notifications.

7.2 The PRA requires specific data reporting on ring-fencing as general reporting templates do not always capture information related to the specific requirements of the ring-fencing regime. The data reports allow the PRA to supervise the compliance of the UK's largest banks with the regime, and to fulfil its duty to include an assessment of this in the PRA's Annual Report.[35] Furthermore, legislation also clarifies that the group ring-fencing purposes include 'provision requiring the disclosure to the appropriate regulator of information relating to transactions between a ring-fenced body and other members of its group'.[36]

7.3 The ring-fencing reports are:[37]

- RFB001 – Intragroup exposures: identifies counterparties and details exposures to said counterparties (quarterly).
- RFB002 – Intragroup funding: identifies intragroup funding (quarterly).
- RFB003 – Intragroup Financial Reporting: reports assets, liabilities, profit and loss (core) (quarterly).
- RFB004 – Intragroup Financial Reporting: provides a more detailed breakdown of RFB003 (annual).
- RFB005 – Joint and Several Liabilities Arising from Taxes: reports on VAT and bank levy data for group and RFB (annual).
- RFB006 – Excluded Activities Entities: reports on excluded activities such as dealing as principal, and financial institution exposures (annual).
- RFB007 – Use of Financial Market Infrastructure: reports use of interbank payment systems, CSDs and CCPs (annual).
- RFB008 – Excluded Activities and Prohibitions, derivatives: reports on trade finance, risk management (annual).

[35] Under Schedule 1ZB(18)(1a) of FSMA.

[36] S142H(5)(c) of FSMA.

[37] See further PS3/17 – **The implementation of ring-fencing: reporting and residual matters**, paragraph 3.1.

7.4 The first four of these reports (RFB001-004) are adapted from wider reports that all banks need to produce, but the RFBs must report on a sub-consolidated basis. As these are part of the wider reporting requirements, they will be considered through the upcoming Banking Data Review (BDR).[38] The latter four (RFB005-008) are specific to RFBs.

7.5 Requirements set out in Chapter 12 of the Notifications Part also fall under scope of this review, as it was introduced under s142H of FSMA. This stipulates that firms are required to notify the PRA within 30 days if they have breached the core deposit threshold or is likely to breach it within three years. It also requires RFBs to notify the PRA where it is using an exception in Article 6(4)(e-f) of EAPO, or where it has incurred or closed a financial exposure which is allowed by exception under EAPO.

Operation of the rules and industry feedback

7.6 The majority of firms raised general comments about the detail and granularity of the reports, suggesting that they pose excessive burdens. Five firms suggested that a materiality threshold for reporting should be included. In addition, two firms suggested that aspects of the reporting templates and guidelines are unclear.

7.7 One firm argued that ongoing supervisory engagement would be an adequate replacement for the reporting as currently constituted.

7.8 Several firms raised issues on the requirements about notifications, both through supervisory engagement prior to the review, and through the review's questionnaire. In particular, firms raised the significant number of breaches that they need to report, a number of which are small in value and therefore are arguably limited in terms of the prudential risks that they pose.

7.9 The rules in this section are not generally subject to waivers or modifications themselves. Breaches of EAPO which were reported under the Notifications Part of the PRA Rulebook mostly related to exposures to relevant financial institutions (RFIs).[39]

PRA assessment and next steps

7.10 Given the PRA's statutory requirement to monitor RFBs' compliance with the ring-fencing regime, and to report on this through its Annual Report, the ring-fencing reports under this section remain necessary to allow for adequate supervision. The PRA does not intend to introduce materiality thresholds on reporting.

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[38] DP4/22 – **The Prudential Regulation Authority's future approach to policy**, paragraph 5.23, September 2022. See also the PRA's announcement on the **Banking Data Review**.

[39] See further, Article 2(2) of EAPO,.

7.11 We also note the distinction between RFB001-RFB004 (which are adaptations of general reports and therefore fall in scope of the BDR) and RFB005-008 (which are specific to ring-fencing). Given that the BDR will consider the former, no actions emerge from this review on these. However, the review has considered the necessity of the latter four.

7.12 We have given particular consideration to the template RFB005. The tax liabilities that it captures are immaterial compared with the Tier 1 Capital of the firms in scope, suggesting that the prudential risks associated with its removal are limited. Furthermore, other regulatory processes such as the Pillar 2 ICAAP allow monitoring of tax and pension risks. The PRA intends to consult on whether to remove the reporting obligations for RFB005.

7.13 For RFB006, RFB007, and RFB008, the PRA consider that these remain necessary to assess firms' compliance with ring-fencing legislation, in line with our statutory duties. The PRA has no intention to abolish these reporting templates.

7.14 On notifications, the PRA recognises that there has been significant feedback from industry that many breaches, that may be considered as low materiality, need to be reported. However, much of this compliance burden stems from the fact that exposures to RFIs are breaches of EAPO which therefore need to be reported to the PRA.[40] As the prohibition on exposures to RFIs is set out in legislation, it is therefore outside the scope of this review. There is a general principle that firms must report breaches of legislation to the PRA and the PRA is not intending to introduce materiality thresholds for reporting legislative breaches as a result of this review. However, we note that HMT is considering responses to its consultation on changes to EAPO, including adding a de minimis threshold for what is classed as an RFI exposure. If a de minimis threshold for RFI exposures is introduced in legislation, it will automatically result in exposures below that threshold no longer needing to be reported to the PRA.

7.15 The process of reviewing industry feedback suggests that there may be some inconsistency in how firms apply rule 12.7 of the Notifications Part. This requires firms to notify the PRA within 30 days in the event of a certain category of breach (RFI exposures covered under Article 19B of EAPO – where the counterparty only became an RFI after the exposure was incurred). For these instances, the requirement is to notify within 30 days, and this supersedes rule 2.4 of the Notifications Part which would require immediate notification.

7.16 The PRA also notes that rule 12.2 concerns firms breaching the core deposit threshold, and refers to the current threshold level of £25 billion. Given that HMT is

[40] Rule 2.4 of the Notifications Part.

currently consulting on raising this to £35 billion, the PRA intends to monitor the outcome of the consultation and amend its rules as appropriate.

Annex A: Summary of rules

Unless otherwise specified, 'Rulebook Chapter' refers to the Ring-fenced Bodies Part of the PRA Rulebook

Rulebook Chapter	Section within this report	PRA assessment
1. Application and Definitions	2	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation.
2. Application of Rules within a Sub-Consolidation Group	2	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation. Out of date references to CRR were identified.
3. General Rules	3 (rule 3.1-3.4) 5 (rule 3.5)	3.1-3.4: rules on governance remain appropriate and necessary. The PRA intends to reconsider the consolidation level at which they apply. 3.5: this rule is considered to be adequate in its present form.
4. Board Composition and Membership	3	Rules on governance remain appropriate and necessary. The PRA intends to reconsider the consolidation level at which they apply.
5. Risk Management	3	Rules on governance remain appropriate and necessary. The PRA intends to reconsider the consolidation level at which they apply.

6. Internal Audit Policy	3	Rules on governance remain appropriate and necessary. The PRA intends to reconsider the consolidation level at which they apply.
7. Human Resources Policy	3	Rules on governance remain appropriate and necessary. The PRA intends to reconsider the consolidation level at which they apply.
8. Remuneration Policy	3	Rules on governance remain appropriate and necessary. The PRA intends to reconsider the consolidation level at which they apply.
9. Continuity of Provision of Services	4	This rule remains fundamental to the regime, but the PRA is likely to reconsider the requirements of rule 9 and associated guidance through consultation.
10. Intragroup Credit Valuation Adjustment Risk	5	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation. Out of date references to CRR were identified.
11. Distributions	5	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation. Out of date references to CRR were identified.
12. Arm's Length Transactions	5	The PRA may consider the frequency of reporting requirements.
13. Income Dependence	5	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation.

14. Netting Arrangements	5	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation.
15. Availability of Shared Collateral	5	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation.
16. Access to Central Counterparties and Central Securities Depositories	6	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation. Some out-of-date language in the related guidance in SS8/16 was identified.
17. Policies Regarding Use of Exceptions to Excluded Activities and Prohibitions	6	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation.
18. Application of Certain PRA Rules to Ring-Fenced Bodies on a Sub-Consolidated Basis	2	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation. Out of date references to CRR were identified.
19. Application for Permission for Indirect Access to Inter-Bank Payment Systems	6	This rule is functioning adequately and remains necessary. It is not likely to be reconsidered through consultation.
Reporting Frameworks (Chapter 7 of the Regulatory Reporting Part)	7	Most reports are necessary; however, the PRA may consider the necessity of RFB005.

Notifications Requirements (Chapter 12 of the Notifications Part)	7	These requirements remain appropriate, and the potential challenge around notification requirements may be mollified by legislative changes.

Annex B: Questionnaire

The questionnaire that was sent to firms subject to ring-fencing rules as part of the review exercise.

Introductory remarks

This questionnaire is to support the PRA in conducting its review of rules made to support the ring-fencing regime as required by Section 142J of the Financial Services and Markets Act 2000. The PRA will use this information, in conjunction with its own assessment, to prepare a report to give to HM Treasury before the end of the year.

The PRA will not refer directly to individual firms or their information directly in the report. Information submitted by firms as part of this request will be treated as confidential and held securely.

Please confine your answers to matters related to the PRA ring-fencing rules, as defined by s.142H(3) Financial Services and Markets Act 2000, and the supporting supervisory and policy statements related to the PRA's ring-fencing rules. The review covers the rules in force since 1 January 2019. Other aspects of the ring-fencing regime, such as the Core Activities Order or the Excluded Activities and Prohibitions Order in secondary legislation are outside the scope of this review.

PRA assessment and next steps

Question 1: Does your firm consider that the current ring-fencing rules are in general effective in achieving their intended legislative purpose?

The 'group ring-fencing purposes' are defined in s.142H(4) of the Financial Services and Markets Act 2000 ('FSMA').

Question 2: Taking into account your answer to question 1, please identify any specific rule that your firm does not consider currently achieves its intended legislative purpose.

Please provide detail and information on why your firm considers that this is the case.

Question 3: Taking into account the intended legislative purposes of the ring-fencing rules, does your firm consider that the current rules are generally proportionate?

Question 4: Taking into account your answer to question 3, please identify any specific rules which your firm considers disproportionate, which may place undue burden on

your firm's operations or which your firm finds difficult to comply with (for instance in terms of implementation and ongoing monitoring). Please provide detail and information on why your firm considers that this is the case.

Question 5: Taking into account developments in areas such as your firm's business model and operations and wider developments in the market, the sector, and technology since the implementation of the ring-fencing regime on 1 January 2019, please identify any areas where gaps or redundancies in the current ring-fencing rules may have arisen.

Question 6: Please include comments on any rules which, in your view, include drafting errors, unintended consequences, or ambiguities. The PRA would be grateful for any comments on these, or similar issues you may be aware of.

Question 7: Please provide any comments that you have on the expectations and guidance that the PRA has set out in the relevant Supervisory Statements and Statements of Policy listed in Annex A below. Does this guidance help your firm understand the PRA's expectations under the rules? Are there any areas of ambiguity or uncertainty which the PRA may need to clarify?

Question 8: In relation to any waivers and modifications to the ring-fencing rules that your firm has been granted by the PRA, please provide any comments on how these impact on your firm's judgement on matters such as whether the ring-fencing rules are effective in achieving their intended legislative purposes, and are proportionate.