

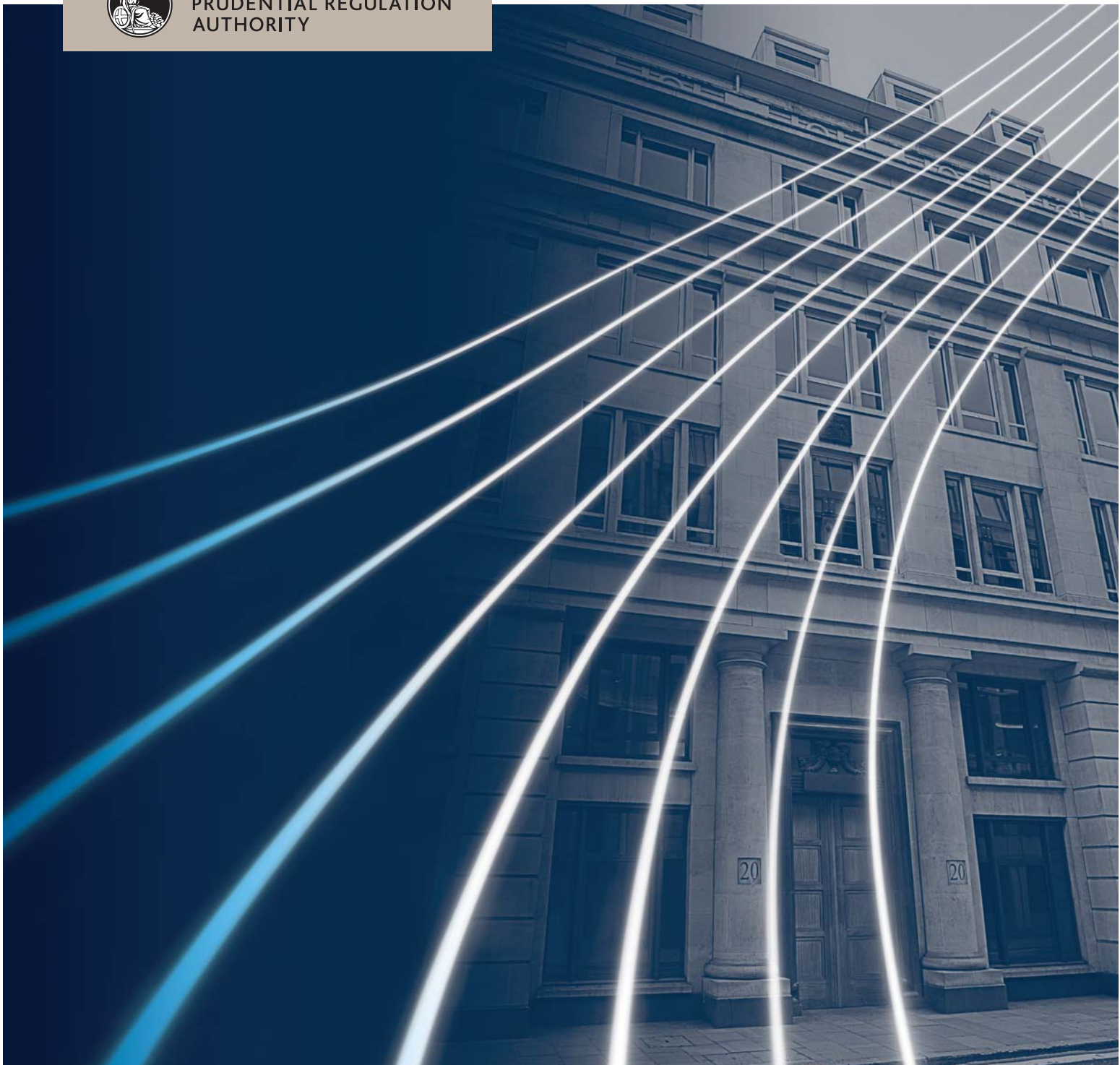
Statement of Policy

The financial stability information power

June 2014



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



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Introduction

1. The Prudential Regulation Authority (PRA) may exercise, under section 165A of the Financial Services and Markets Act 2000 (FSMA), the power to require certain persons to provide (i) specified information or information of a specified description; or (ii) specified documents or documents of a specified description, that it considers are, or might be, relevant to the stability of one or more aspects of the UK financial system (the financial stability information power).

2. This statement of policy may be relevant to authorised persons⁽¹⁾ and unauthorised persons, in particular persons whose activities are or may be relevant to the stability of one or more aspects of a relevant financial system.⁽²⁾

3. This statement of policy is issued pursuant to section 165B(6) of FSMA which requires the PRA to prepare a statement of its policy with respect to the exercise of the financial stability information power. It has been approved by HM Treasury, as required under section 165B(7).

Information use

4. Section 250 of the Banking Act 2009 imposes a duty on the PRA to collect information that it thinks is, or may be, relevant to the stability of individual financial institutions or to one or more aspects of the UK financial system. Some information relevant to UK financial stability will be accessible to the PRA through authorised persons' regular reports to the PRA, from other UK or international authorities or through information gathered by the PRA under other information gathering powers, such as section 165⁽³⁾ of FSMA or section 250(2) of the Banking Act 2009.

5. The PRA may require additional information relevant to UK financial stability which cannot be obtained through means specified in paragraph 4 above. In such cases, the PRA may use the financial stability information power to gather additional information. This information may relate to the exercise of the PRA's functions, or the PRA may collect the information in order to disclose it to another person or authority, for example the Bank of England, the Financial Policy Committee (FPC)⁽⁴⁾ or HM Treasury. In urgent cases, it may be appropriate for the PRA to exercise these powers without delay.

Scope

6. The PRA's general objective is to promote the safety and soundness of PRA-authorised firms, primarily by seeking to minimise the adverse effect their failure could have on the stability of the UK financial system, and by seeking to ensure

that firms carry on their business in a way that avoids any adverse effect on the stability of the UK financial system.

7. Consistent with this objective, the PRA may require any person in the categories listed below to provide information or documents that the PRA considers are, or might be, relevant to the stability of one or more aspects of the UK financial system:

- (a) a person who has a legal or beneficial interest in any of the assets of a relevant investment fund⁽⁵⁾ whose assets consist of or include financial instruments which are traded in the United Kingdom or were issued by a body incorporated in the United Kingdom;
- (b) a person who is responsible for the management⁽⁶⁾ of a relevant investment fund;
- (c) a person (a 'service provider') who provides any service⁽⁷⁾ to an authorised person;
- (d) a person prescribed by an order made by HM Treasury under section 165C of FSMA or any person of a description prescribed by such an order; or
- (e) a person who is connected with a person specified in (a) to (d) above.

HM Treasury orders

8. HM Treasury may prescribe additional persons, or descriptions of persons, in respect of whom the financial stability information power contained in section 165A of FSMA can be exercised. The conditions for making such an order are contained in section 165C of FSMA.

Deciding to impose a requirement

9. In deciding whether to impose a requirement on a person using the financial stability information power (information requirement) the PRA will:

- (1) review the material before it;

(1) For the definition of 'authorised person' see section 31 of FSMA.

(2) In accordance with section 169A(5) of FSMA, a financial system includes: (a) financial markets and exchanges; (b) activities that would be regulated activities; and (c) other activities connected with financial markets and exchanges.

(3) Section 165 confers on the PRA the power to require in writing from authorised persons specified information or specified documents of a specified description.

(4) The FPC is charged with a primary objective of identifying, monitoring and taking action to remove or reduce systemic risks with a view to protecting and enhancing the resilience of the UK financial system. The PRA may use the financial stability information power to require firms to provide information at the request of the FPC.

(5) A relevant investment fund refers to an arrangement that may constitute an investment fund even if there is only one person participating in the arrangements. The reference to 'financial instruments' has the meaning given by article 4.1(17) of the Markets in Financial Instruments Directive 2004/39/EC.

(6) 'Management' includes any of the activities listed in Annex II to the UCITS directive.

(7) 'Service' includes facility.

- (2) consider any representations received from the proposed recipient of an information requirement; and
- (3) take into account:
 - (a) the nature and extent of the risks to financial stability;
 - (b) whether the information is more readily available from another source, taking into account the likely time and cost implications of seeking information from that source; and
 - (c) whether the information may assist the PRA in fulfilling its functions, for example if the information relates to the exercise of the PRA's statutory powers.
- (b) the reasons for imposing the information requirement;
- (c) whether the person is likely to wish to seek legal advice;
- (d) whether the person is an authorised person; and
- (e) any cost implications for the person.

14. The PRA will consider a request by a person to make oral representations and will take into account whether oral representations would be likely to:

- (a) improve the PRA's understanding of the representations;
- (b) be more convenient or less costly than written representations; and
- (c) assist the PRA in making a decision more quickly.

15. In accordance with the Disability Discrimination Act 1995, the PRA will take into account any reason relating to the disability of the person which would mean that they could not otherwise have a fair hearing.

16. Once the period for making representations has expired the PRA will determine within a reasonable period whether to impose the information requirement. If the PRA does not receive any representations during the period specified in the notice it will determine whether to impose the information requirement based on the information available to it.

Prior notice

10. The PRA will give a person notice in writing if it proposes to impose a information requirement unless the PRA is satisfied that information or documents are required without delay. The notice will include the reasons why the PRA proposes to impose the information requirement and the period in which the person may make representations to the PRA in respect of the proposal.

11. The PRA may give a notice to a service provider, or to a person who is connected with a service provider, only if the PRA considers that the service or the way in which it is provided or any failure to provide the service, poses, or would be likely to pose, a serious threat to the stability of the UK financial system.

12. Information or documents required under notice must be provided or produced before the end of such reasonable period and at such place as specified by the PRA.

Right to make representations

13. If the PRA is satisfied that it is appropriate to give notice in writing before imposing a information requirement, the recipient of the notice will have the right to make representations to the PRA. The PRA will specify in the notice a reasonable period in which to make representations and will determine a reasonable period for representations taking into account all the circumstances. The PRA will generally invite the recipient of a notice to make representations in writing to the address provided in the notice. In determining the period for representations the PRA will take into account the following:

- (a) the nature, type and amount of information likely to be required;
- (b) the extent of the risk to financial stability;
- (c) whether it is fair to impose the requirement without notice; and
- (d) whether the information sought may lead to prompt action by the PRA.

Without prior notice

17. The PRA may impose the information requirement on a person without prior notice if it is satisfied that the information or documents to be provided or produced are required without delay. The PRA will determine whether to impose a information requirement without prior notice based on the facts of each case and after taking into account the information before it concerning:

- (a) the nature of the risk to financial stability and whether the risk appears to be increasing rapidly;
- (b) the extent of the risk to financial stability;
- (c) whether it is fair to impose the requirement without notice; and
- (d) whether the information sought may lead to prompt action by the PRA.

18. A person who receives a information requirement without prior notice should consider whether to contact the PRA concerning the requirement. The person should raise any proposal to make representations with the PRA as soon as possible.

Form and authentication

19. The PRA may require information provided pursuant to the exercise of the information requirement to be provided in a particular form or verified or authenticated. The PRA may, where it is reasonable to do so, require the information or documents to be verified or authenticated in any manner. When deciding the form or whether to require verification or authentication the PRA will take into account the circumstances of each case.