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With the welcome return of spring this month, the slightly warmer weather has seen the Financial Conduct Authority ("FCA") and the Prudential Regulation Authority ("PRA") embark on a number of public speaking engagements, discussing prudential policy, leadership and conduct, and the takeover of responsibility for consumer credit regulation, amongst other things. Both regulators have also been busy publishing important papers over the past month. The FCA published its Business Plan for the next 12 months, as well as four new supervisory guides for firms, and the results of a thematic review on independent advice. The PRA has consulted on new remuneration provisions. As usual, it has been a busy month with regard to enforcement. Most notably, Santander received a £12.4 million fine for widespread failings in providing investment advice. For an update on developments in the European Union, please see this month's bulletin here.

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SPEECHES

1. MARTIN WHEATLEY DISCUSSES ETHICS AND ECONOMICS

Martin Wheatley, Chief Executive of the Financial Conduct Authority ("FCA"), gave a speech on ethics and economics to the Worshipful Company of International Bankers in London on 4 March 2014. He stated that the FCA has a very short window of time in which to ensure that cultural change within financial services firms sticks before the memories of the financial crisis fade. Two issues would be key to ensuring this: (a) the need and importance of creating effective, future-proofed regulation, and (b) proper self-regulation in firms.

With regard to effective future-proofed regulation, Mr Wheatley reiterated a desire that the FCA must anticipate issues better and be more forward looking in its approach. It must be prepared to prevent customer-focused culture within firms from degenerating as the pressure for higher profit returns. He provided the example of the FCA working with banks in relation to interest only mortgages and alerting home owners to the importance of having capital repayment plans in place as a good indication of the FCA's determination in this regard.

He also stated that it was crucial that there must be the correct balance between ethics and rules in relation to the regulatory world. He explained that prior to the financial crisis, the explosion of rules, regulations and laws largely took away the industry's ability to decide what was right and to act for itself. Guidance provided by the Financial Services Authority, the FCA's predecessor, between 2005 and 2008 increased by 27%, and this was precisely the period in which "the most explosive crisis" from which the world is still reeling today came about. Mr Wheatley stated that, whilst rules are indeed crucial, stricter ethical standards will play a much more important role for firms going forward.

On good self-regulation, Mr Wheatley explained that firms must create a culture strong enough to "resist short termism" and short term gain. He said that many firms within the industry had taken steps to reform or replace their incentives schemes. However, the key issue which remains is for firm boards to ensure that these positive signals from the top are not corrupted as they move further down into the fabric of a firm. Senior management communication would be key to this and there is still a very long way to go to make it better. Mr Wheatley did express his gratitude to boards for having begun this difficult internal conversation already.

2. FCA SPEAKS ABOUT IMMINENT CONSUMER CREDIT TAKEOVER

Christopher Woolard, Director of Policy, Risk and Research at the FCA spoke at Frontier Economics in London on the FCA's imminent takeover of the consumer credit regime from 1 April 2014. The text of the speech was published on 5 March 2014.

He explained that the consumer credit industry had become one of great importance to the UK economy, but that the current regime, policed by the Office of Fair Trading ("OFT") had failed to protect consumers. The evolution of the UK consumer credit industry has out-paced its current level of regulation. He stated that the FCA has listened to responses from the industry in relation to its consultation on the new rule book and has made a number of changes which are reflected in the policy statement published in February (PS14/3). Mr Woolard stated that the FCA would be publishing further information on fees for firms and a guide to help firms prepare for the transfer of regulation from the OFT to the FCA. There would also be video tutorials and more webinars to provide extra help for firms struggling with the transition.

He reiterated that firms would need to register for interim permission from the FCA prior to the end of March, since OFT consumer credit licences would expire on 31 March 2014. The FCA will be contacting firms with interim permissions to remind them of the need to apply for full authorisation in May.

Mr Woolard stressed that for many firms this would be the first time they have been regulated by the FCA, a principles-based regulator. He highlighted Principle 6 of the FCA's Principles for Business ("PRIN"), set out in the FCA Handbook, which relates to treating customers fairly, and also Principle 3, which provides that a firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. Principle 3 covers a number of key internal arrangements within firms, including: robust governance arrangements; the skills, knowledge and expertise of the staff; outsourcing responsibilities; record keeping and also management of any potential conflicts of interest. For firms unused to the FCA and its methods, adhering to these two principles would be a crucial first step.

He also explained the FCA's approach to supervising firms, providing a synopsis of the so-called "Three Pillars" approach. He stated that there would be much more intrusive supervision of firms in relation to consumer credit business going forward. However, he reassured firms that the supervision would be proportionate to the size of business undertaken, in line with the FCA's tiering system. The FCA focuses first and foremost on firms, or markets which present the highest risks. He also made it very clear that the FCA has "more legal punch" than the OFT. This means that the FCA would not be afraid to hold senior management to account, place temporary bans on products or put a stop to misleading financial advertising if necessary. Mr Woolard reiterated a warning that for consumer credit firms dealing with the most vulnerable customers, the FCA has a very strong consumer protection objective.

3. PRA SPEECH ON THE CHANGING FACE OF PRUDENTIAL POLICY

On 11 March 2014 Katharine Braddick, Prudential Policy Director at the Prudential Regulation Authority ("PRA"), gave a speech on the changing face of prudential policy and the on-going reform of the prudential framework on a year-by-year basis. She stated that the focus of the speech was the need for regulators to engage with the behaviours, responsibilities and incentives of those individuals and teams at banks, whose actions effect the stability, not only of their own institutions, but also of the entire financial system.

With regard to the implementation of CRD IV (the Capital Requirements Directive (2013/36/EU) and the Capital Requirements Regulation (Regulation 575/2013)), the PRA is still involved in developing a number of the key standards which underpin it, and also with the specification of EU legislation to implement a liquidity coverage requirement and leverage ratio. Ms Braddick stated that the PRA intends to consult on changes to the Pillar 2 approach during the middle of this year.

On remuneration, she stated that the PRA still had misgivings in relation to the bonus cap introduced under CRD IV. The PRA is of the view that such a cap could result in an increase in fixed pay, which would have a negative effect on stability by locking in costs and reducing the scope for firms to withhold unvested variable remuneration. However, she did underline that the structure and operation of remuneration schemes at banks must remain compatible with the legal requirements set out under CRD IV. She also discussed the PRA's consultation paper on clawback, which proposes to require firms to amend employment contracts to include a provision whereby clawback can be applied to vested variable remuneration. The PRA hopes that this should further encourage the avoidance of excessive risk taking and the alignment of incentives with firms' longer term interests. Ms Braddick expressed the PRA's belief that the regulatory technical standards ("RTS"), produced by the European Banking Authority, on the criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile are "proportionate and fair". The PRA is of the view that these RTS are likely to be in force in time for the next round of bonus payments. The PRA proposes to scrutinise the lists of risk takers which firms have submitted to ensure that they are compliant with the new RTS. It expects the number of material risk takers to increase as a result.

The PRA also expects to consult on the recommendations set out in the report published by the Parliamentary Commission on Banking Standards ("PCBS") on reforms to the banking sector.

The consultation will look at the structure of remuneration deferral policies, and in particular, the scope of a new regime for Senior Persons within banks. The consultation paper is expected this summer.

4. FCA DISCUSSES A SUSTAINABLE CONDUCT ENVIRONMENT

On 20 March 2014, the FCA published a speech by Clive Adamson, Director of Supervision at the FCA, on the challenge of ensuring that good conduct at financial services firms remains sustainable. He stated that firms have already expanded their control frameworks and realised that the culture of front line businesses needs to change as well as, potentially, the business models for firms. However, both the regulator and consumers need to feel that poor behaviour in the market place is reduced on a permanent basis so that trust is restored for the long term. He explained that this was a particularly difficult challenge in the financial services sector. The FCA believes this can be achieved through judgment based, pre-emptive and pro-competitive supervision and by the FCA being prepared to be tough when things go wrong.

He reiterated that the FCA is deeply interested in what consumers actually experience as outcomes and how markets work in practice. The FCA will look to fix the causes of what is leading to poor or unfair outcomes, or to markets which do not operate with integrity.

He further reiterated that firms must put consumers and market integrity at the heart of how they run their business. Mr Adamson expects firms to treat customers fairly, while maintaining prudential strength and achieving a sustainable return for investors. The interests of customers must not be subordinated either to prudential strength requirements or the interests of shareholders or employees.

He explained that fair treatment of customers could not simply be reduced into a risk to be managed. This would lead to a "tick box" compliance approach which is not enough: the issue of good conduct is more of a business model and cultural challenge. In relation to the three lines of defence model which many firms operate, the conduct issue relates to the first line. The fair treatment of customers and proper behaviour are inextricably linked to how businesses are run. The challenge is to develop current business models into ones that are safer and cleaner from a conduct perspective. Products must genuinely meet the needs of the customer, be good value and provided by firms which are trusted and whose delivery infrastructure is resilient.

Many firms have devoted their attention to improving the customer experience. Mr Adamson stressed that this is not the same as the FCA's focus on fairness: customers might well be happy with their service where they are being treated unfairly. In his view, the key drivers for improving conduct and culture at firms are:

- strong leadership from the top of the organisation;
- solid hiring practices;
- strong incentive structures;
- effective performance management;
- proper penalties for not doing the right thing; and
- constant re-enforcement.

In order to make this improvement sustainable, firms must create incentive structures which favour the interests of the firm's customers and not just the interests of the firm's shareholders.

In retail markets, the FCA will look to introduce more transparency into redress schemes when mis-selling has occurred. In wholesale markets, the FCA may look to restrict the business of the firm in the area where there has been poor behaviour.

In addition, the introduction of a new Senior Persons and Certified Persons regime will help to emphasise personal accountability. The increasing use of attestations will help to persuade individuals that there is a significant cost to poor conduct behaviour. However, Mr Adamson also stressed that boards and, in particular, non-executive directors must be completely engaged in conduct issues for the good work to be sustained. They must look to represent both the interests of the customer and of the shareholders. He said they should ask themselves three questions, "How do we actually make money today, what is it we will do in the future to grow the firm and why is this fair?"

5. MARTIN WHEATLEY SPEECH ON LEADERSHIP AND CONDUCT (AND THE SMALL MATTER OF LIFE INSURANCE)

The FCA published a speech by Martin Wheatley on 31 March 2014, in which he discussed leadership and conduct issues. In it he mentioned a number of the challenges facing the City of London and how the FCA both supports and challenges the UK financial services industry. However, he focused on the FCA's promotion of market integrity, around which much of the regulator's thinking on the wholesale markets is currently based.

In relation to market integrity and market focus, he stated that there were a number of key wholesale themes which the FCA had been working on. The FCA has carried out a good deal of work on these, some of which has already concluded. He stressed that much was ongoing and that some of the work would come to fruition shortly. For example, Mr Wheatley explained that the feedback statement on the thematic review on the use of dealing commission, which was looking into issues such as accountability and transparency - as well as touching on the investment banking business model - would be published shortly. He stated that he expects the thematic review on best execution, including analysis of how well firms act in their clients' interests and the integrity of the price formation process, to be published in May.

Mr Wheatley also touched on two key forthcoming wholesale-related reviews which are included in the FCA's Business Plan for 2014 and 2015. He stated that the FCA will review the effectiveness of firms' controls over flows of information, and consider important issues such as how firms' "business as usual" activities and broader strategies take account of this risk. He stressed that given the key role that investment banks play in the UK markets, it is important for the FCA to determine whether there are practices within such banks which would concern the regulator and to tackle them if they do.

He also mentioned that the FCA will be conducting a review of the control and governance of traders concerning inputs to benchmarks. He said that prevention was key and that there was a need to move away from a climate of multi-billion dollar enforcement suits to one where potential challenges, including benchmark challenges, could be dealt with proactively by firms and regulators alike. Firms must embed appropriate controls, which are underpinned by the right culture, "rather than exploiting a conflict in the pursuit of P and L". Firms need to have considered the lessons from LIBOR and to have applied these to their use of other benchmarks.

Mr Wheatley also took the opportunity during the speech to discuss the recent press reports concerning planned FCA supervisory work on the fair treatment of long standing customers in life insurance and the impact of these on the markets. He expressed his full support for the investigation into the events and noted that the FCA had "serious questions" to answer. He stated that, "this was clearly not the FCA's finest hour", but that it serves as a timely reminder of the importance to all parties involved in the markets of the care and thought that is needed when handling the significant amounts of information held as part of day-to-day business activities.

UK PUBLICATIONS

1. FCA PUBLISHES BUSINESS PLAN AND RISK OUTLOOK FOR 2014/15

The FCA published its eagerly anticipated Business Plan and Risk Outlook for 2014 and 2015 on 31 March 2014. The FCA set out its intention to carry on a number of activities in 2014 and 2015 in order to advance its three operational objectives. It will do this by being judgment-based, forward-looking and pre-emptive in assessing potential and emerging risks. Martin Wheatley, Chief Executive of the FCA, stated in the foreword to the Business Plan that there must be no let-up in the pace of the FCA's activities in the coming year.

During the coming year, the FCA will carry out work on the following new activities:

- **Consumer credit**: On 1 April, the FCA will become the new regulator for consumer credit, taking over the responsibilities from the Office of Fair Trading ("OFT"). The FCA has stated that this will involve it regulating around 50,000 new consumer credit firms.

- **The Senior Persons and Certified Persons Regimes**: Following the recommendations of the Parliamentary Commission on Banking Standards ("PCBS"), the FCA and PRA will work together to implement the measures provided in the Financial Services (Banking Reform) Act 2013, which includes the new Senior Persons and Certified Persons Regimes.

- **A new Payment Systems Regulator**: the FCA will launch a new regulator for payment systems in April 2015 as a separate legal entity with its own statutory objectives and board under the umbrella of the FCA. It will act as an economic regulator for retail payment systems. The PRA will be given the task of promoting competition and innovation, and ensuring responsiveness to consumer needs.

During the course of the year the FCA will also look at a number of other key issues, including:

- Undertaking a further review of the requirements for firms entering into or expanding in the banking sector to assess the impact on the sector of lowering barriers to entry and expansion. It will do this in conjunction with the PRA.

- Consulting on prudential requirements for personal investment firms. This is a continuation of FCA work on the individual personal pensions market, including self-invested personal pensions and will include an increased focus on the market for retirement products, such as annuities.

- Continuing its intensive supervision of firms holding client money and custody assets. The FCA will publish the policy statement response to its consultation on the review of the client money and assets regime for investment business in the second quarter of 2014. The FCA also promises to conduct thematic work in this sector over the next year to ensure firms are compliant with the current requirements.

- An increase in supervisory activity in relation to conduct in wholesale markets.

- Enhancing whistleblowing activity.

- Updating the FCA handbook to take into account the FCA's competition objective.

The FCA has also published its Risk Outlook which sets out its approach to assessing risks to the statutory and operational objectives. The first part of the Outlook reviews what causes risks to arise, and the second part looks at what risks the FCA has found across the financial markets, and discusses various areas of forward looking focus. These include poor culture and controls

which continue to threaten market integrity, and the fact that technological developments may outstrip the firms' investment, consumer capabilities and regulatory response.

2. FCA PUBLISHES NEW SUPERVISORY GUIDES FOR FIRMS

On 19 March 2014 the FCA published a new web page containing four new guides for firms on its supervisory approach. These guides set out what firms should expect from the FCA in terms of supervision, and what the FCA expects from firms in return. The guides bring together, and build on, previously published information and clarify certain details in specific areas. The guides are not designed to give a step-by-step process for every aspect of the FCA's supervisory approach, since this will differ on a firm by firm basis and will also depend on which sector of the market the firm is located in. However, they do provide reasons for the FCA's approach so that firms may consider what this means in the context of their own business models.

The FCA divides the firms it supervises into four different tiers, C1 to C4. Category C1 relates to firms or groups which have the most retail customers or which are wholesale firms with the most significant market presence. These groups receive the most intensive level of conduct supervision. The FCA has specified that there are 11 such groups.

Category C2 firms are those firms or groups with a very large number of retail customers, or wholesale firms with a significant market presence. These firms will also receive an intensive level of conduct supervision.

Firms in the C3 category are those which, although not as large as C1 or C2 firms, may still have a significant impact on the FCA's objectives. In assessing such impact, the FCA will look at a combination of factors including customer numbers, balance sheet size, market presence and client money holdings. The FCA uses a sector-based approach to supervision in relation to these firms, which is complemented by firm-specific engagement and interaction with the PRA where necessary.

Category C4 firms are considered to be the smallest firms which the FCA supervises. Again, it will use a sector-based approach in supervising them, complemented by firm-specific engagement and interaction with the PRA if necessary.

3. PRA CONSULTS ON CLAWBACK PROVISIONS FOR BONUS AWARDS

The PRA published a consultation paper (CP6/14) on 13 March 2014, which sets out proposals to extend the Remuneration Code to ensure that all variable remuneration which has been vested can be clawed back from individuals if required. The proposals will require all PRA-authorised firms to ensure that they amend their employment contract to allow this. The amendments to the Remuneration Code, which is set out in the Senior Management Arrangements, Systems and Controls manual of the PRA Handbook ("SYSC"), are outlined in a draft PRA instrument which is included as Appendix 1 to the consultation paper.

Under the current Remuneration Code, the PRA already has powers to prevent firms from paying unvested variable remuneration (known as malus). It previously issued a supervisory statement on the application of malus to variable remuneration in October 2013 (SS2/13). The current consultation paper further strengthens the PRA's position in relation to variable remuneration and will in its view strengthen the Remuneration Code.

CP6/14 provides that a firm have the power to clawback vested variable remuneration in any of the following circumstances:

- where there is reasonable evidence that an employee has misbehaved or made a material error;

- where the firm or relevant business unit suffers a material downturn in its financial performance;
- where the firm or the relevant business unit suffers a material failure of risk management.

The consultation suggests that clawback should not be limited only to employees directly culpable for malfeasance. This requirement would also be consistent with the PRA's rules on the non-payment by firms of unvested variable remuneration.

The PRA will expect firms to amend employment contracts to enable clawback of any vested awards for up to six years following such vesting. It also wishes for firms to take all reasonable steps to amend employment contracts to bring within scope awards made prior to 1 January 2015, but which vest after that date. The consultation closes to responses on 13 May 2014, and the PRA intends for the proposed rules to come into force on 1 January 2015. Lastly, the PRA has stated that it will consult on the recommendations of the Parliamentary Commission on Banking Standards which relate to remuneration later in the year.

4. FCA ISSUES THEMATIC REVIEW REPORT ON INDEPENDENT ADVICE

The FCA has published its thematic review report on whether firms which are describing themselves as offering independent advice are actually acting independently in practice. The report is entitled "Supervising retail advice: delivering independent advice" (TR14/5), and was published on 20 March 2014. It forms part of the second stage of the FCA's thematic review to assess how firms have implemented the Retail Distribution Review ("RDR"). The findings from the first stage were published in July 2013, and these acknowledged that firms had made considerable progress in implementing the new requirements.

This second stage review found that most firms, which described themselves as independent, understood the requirements for delivering independent advice and offered a truly independent service in practice. The requirement for independent advice is that the advice provided must be genuinely free from bias towards particular solutions or any restrictions which would limit the range of solutions which a firm could recommend to a client. Where a firm states that it offers independent advice, it should not be restricted by product provider and should objectively consider all types of retail investment products, which are capable of meeting the investment needs and objectives of a client. The FCA approached 113 firms in total, and of the 88 firms who stated that they offered independent advice, it found that 12 were either not in fact acting independently or the FCA had doubts about their independence.

Section 4 of the report provides guidance on specific areas relating to the provision of advice where the FCA feels there is uncertainty for firms and where it has identified recurring issues. The guidance is designed to help firms wishing to call themselves independent ensure that they meet the required FCA standards. In the section, the FCA considers the following key areas:

- providing advice on all retail investment products in a particular relevant market;
- referrals to other advisors and to discretionary investment management services;
- using panels and platforms, including multiple platforms; and
- using model portfolios (which are a collection of funds with a certain asset allocation typically designed to meet a specific risk profile).

In each case the FCA provides examples of good and poor practice and key points for firms to consider.

The FCA states that it has written to all firms included in the review to provide feedback and its findings. It has also outlined its requirements for firms to take appropriate action, including firms being required to change their business model to a restricted advice service. The FCA expects all firms which offer advice to review their advisory services in the light of TR14/5's findings.

5. NEW STRATEGIC PLAN FOR THE BANK OF ENGLAND

On 18 March 2014 the Bank of England (the "Bank") launched a new strategic plan which followed a six month exercise headed by the Executive Committee of the Bank. The new plan provides a blueprint to transform the institution, and take full advantage of the Bank's expanded policy responsibilities. It will create a single, unified institution that will maximise its impact by working together across all of its functions. It was developed following a six month review, including a staff consultation process and contact with external companies, and will be implemented over the next three years. It will provide a new shape to the conduct of the Bank of England's day-to-day business and the execution of its responsibilities. The plan is headed by a new mission statement entitled, "One Mission. One Bank. Promoting the good of the people of the United Kingdom by maintaining monetary and financial stability."

The plan contains 15 core initiatives, of which the following would be of particular interest to financial services firms:

- The Bank will promote connectivity across the Monetary Policy Committee, Financial Policy Committee and PRA board, through sharing of information and analysis, and more frequent joint meetings. However, it will also respect any external committees' statutory rights and the governors' decision rights on Bank policy matters.

- The Bank will promote "one credible voice" in international policy, which will enable it to promote the interests of the UK abroad. It will also ensure that the Bank's international strategy is successfully delivered.

- The Bank will look to deliver supervision as one institution, which will involve fully embedding the PRA's new judgment based, forward-looking supervisory model within the institution and actively seeking synergies across the entire Bank.

- The Bank will look to evolve risk governance and oversight in line with central bank best practice.

- The Bank will look to be more transparent which will help to make any policies more effective. It will establish a Stakeholder Relations Group to ensure external economists and analysts have equal and timely access to information behind any Bank decisions.

- The annual report for the Bank will become more transparent, accessible and informative, and will assess progress against its policy objectives on an annual basis. It will also look to promote and respond to independent reports commissioned to evaluate its performance.

- The Bank will work to be more engaged and approachable as an institution, and to deliver a strategy for building public understanding and a constituency for maintaining monetary and financial stability.

The Bank has made several changes to the Bank's organisational structure in order to carry out the delivery of the plan in a more effective manner. Some of the more notable changes include: appointing an executive director for specialist supervision and regulatory operations in the PRA; further enhancements to the PRA supervision team; and a new deputy governor position for markets and banking.

6. CLLS ISSUES MEMORANDUM ON EMIR UNCERTAINTIES

The Regulatory Law Committee of the City of London Law Society ("CLLS") published a memorandum which sets out potential legal uncertainties in relation to the European Markets Infrastructure Regulation (also known as the Regulation on OTC derivative transactions, central counterparties and trade repositories (Regulation 648/2012)) ("EMIR"). The memorandum is particularly concerned with the application of EMIR to ordinary corporate transactions and arrangements. The sorts of transactions and arrangements it discusses include those between companies and their shareholders, when capital raising, and those pertaining to share scheme arrangements for employees.

The CLLS has stated that these uncertainties could arise because EMIR is based on the concept of a derivative under the European Union's Markets in Financial Instruments Directive ("MiFID"), and if the wording of that concept is applied literally to ordinary corporate arrangements it could produce a range of consequences which were not intended. In particular, the memorandum focuses on the trade reporting requirements under EMIR.

For the rules in EMIR to apply to a derivative contract, it must fall within the definition of a "financial instrument" as defined in MiFID. However, there is no general definition of a financial instrument within MiFID. The CLLS recommends that a good starting point in assessing whether or not a contract entered into by a non-financial counterparty is a derivative subject to the EMIR reporting obligation is ascertaining in relation to that overall transaction what its "dominant characteristic" is and whether it falls within one of the definitions of a financial instrument for the purposes of MiFID. CLLS argues that such a test should be applied to corporate transactions before conducting a technical analysis of whether a component of the transactions is or is not a derivative for the purposes of EMIR and MiFID. The memorandum details eight specific examples of instruments and corporate arrangements for which it thinks that clear and proportionate guidance is required to avoid unnecessary and counterproductive confusion.

CONSUMER CREDIT

1. FCA ISSUES POLICY STATEMENT ON ITS APPROACH TO CROWDFUNDING

The FCA published its eagerly anticipated policy statement on its approach to crowdfunding (PS14/4) on 6 March 2014. The policy statement follows the consultation paper which the FCA issued on its proposals for the regulation of on-line crowdfunding platforms and similar activities in October 2013. The FCA has stated that it will review the implementation of these new rules by the end of this year, and will carry out a full post-implementation review of the entire crowdfunding market and the rules which govern it during 2016.

With regard to peer-to-peer lending platforms or peer-to-business lending platforms, the FCA has stated that it will take forward the majority of its proposals set out in its October 2013 consultation. This includes those provisions on conduct of business, client money protection rules, dispute rules and the requirement to take reasonable steps to ensure existing loans continue to be administered where a firm goes out of business. However, following feedback, the FCA has amended its approach to crowdfunding firms' capital requirements. There will now be lower capital requirements for some firms or an alternative method for calculation of such capital requirements. The FCA has not proposed any changes to its requirement for firms to use a particular method of client money reconciliation in relation to crowdfunding. However, the rule on this will need to take account of any amendments to the client money rules following the FCA consultation on its client assets review. We expect the FCA's policy statement on its review of the client money and assets rules to be published during the second quarter of 2014.

On investment-based crowdfunding, the FCA has decided to take forward the majority of its proposals following the consultation. One of the main proposals was to restrict the type of

investor to whom firms may send direct offer promotions for "unlisted shares" or "unlisted debt securities". The FCA has accepted feedback from firms that these terms are not precise enough, and it has therefore replaced them with a new defined term "non-readily realisable security". This new definition will apply to securities which are not readily realisable securities, packaged products or non-mainstream pooled securities.

2. FCA TAKES OVER RESPONSIBILITY FOR CONSUMER CREDIT

On 1 April 2014, the FCA took over the responsibility for the regulation of consumer credit from the Office of Fair Trading ("OFT"). The FCA has stated that, according to data which it holds, it now has responsibility for around 50,000 consumer credit firms, and this effectively doubles at a stroke the number of firms which the FCA regulates.

It has also published the consumer credit register, which is a public record of firms which have an interim permission to carry on consumer credit activities. Firms had to apply to the FCA for this interim permission prior to 31 March 2014. Firms with interim permission will need to apply for full authorisation within the time frames previously specified by the FCA, and once approved, their information will be transferred to the Financial Services Register.

The FCA has also published the forms for consumer credit firms to use when applying for authorisation, together with guidance notes and examples. All of these forms are available in the consumer credit section of the FCA website.

In addition, the FCA also updated its Frequently Asked Questions ("FAQs") on consumer credit to include a section relating to applications which the OFT was dealing with prior to the switch to the FCA on 1 April 2014. These FAQs cover matters such as what happens to the applications which the OFT did not complete before it transferred responsibility over to the FCA, how firms will know that their application has been transferred to the FCA and how long it would take the FCA to make a decision in relation to them.

INVESTIGATIONS AND ENFORCEMENT

1. SANTANDER FINED £12.4M FOR INVESTMENT ADVICE FAILINGS

The FCA published a final notice which it issued to Santander UK plc for widespread investment advice failings on 26 March 2014. The bank was given a fine of £12,377,800 by the FCA, but this had been reduced from £17,682,730, because it agreed to settle at an early stage of the investigation. This equates to a 30% reduction of the original fine.

In 2012, the Financial Services Authority ("FSA") carried out a mystery shopping review of retail investment advice at Santander. This review provided the former regulator with significant concerns about the quality of advice being provided at Santander and the level of its communication with retail investment customers. The FCA stated in its final notice that Santander breached Principle 7 (communications with clients) and Principle 9 (relationships of trust with customers) of the Principles for Businesses ("PRIN").

The FCA particularly focused on the fact that Santander had:

- failed to make sure that its advisers fully understood their customers' personal circumstances before making a recommendation, including understanding how much risk they were willing to take;
- Failed to ensure that customers investing were given clear and not misleading information about the bank's products and services;

- failed to carry out regular on-going checks to ensure the investment was still meeting customer needs in relation to Premium Investments;
- failed to make sure new advisers were properly trained before being allowed to give investment advice; and
- failed to monitor the quality of investment advice properly which meant that, where poor advice was given, it was not always picked up.

The FCA noted that these failings took place despite repeated communications and warnings about suitability of advice to the industry by the FSA. The failings related to the sales of retail investment products between January 2010 and December 2012, and some of the bank's financial promotions and communications with customers between April 2004 and December 2012.

The FCA explained that the failings were particularly serious because they were systematic and related to a large number of retail customers. As part of the settlement, Santander agreed to conduct a redress exercise, design and implement a new annual review process and conduct a customer contact exercise, writing to all affected customers highlighting the risks and objectives of their investments. However, the FCA did note that when the FSA put its concerns to Santander in late 2012, the firm decided to stop giving financial advice in branches immediately to prevent further problems occurring.

2. FCA FINES EXPERIENCED BONDS TRADER £662,700 AND IMPOSES BAN

The FCA has issued a final notice to Mark Stevenson, formerly employed by Credit Suisse Securities (Europe) Limited ("CSSEL"), stating that it has imposed a prohibition order on Mr Stevenson and fined him £662,700 for market abuse behaviours (market manipulation) under Section 118 (5) of the Financial Services and Markets Act 2000 ("FSMA"). The final notice is dated 20 March 2014. Mr Stevenson agreed to settle at an early stage of the FCA's investigation and therefore qualified for a 30% discount to the fine imposed. Without the discount, the FCA would have imposed a fine of £946,800.

The FCA states in the final notice that Mr Stevenson, an experienced bond trader at CSSEL, bought £331m of the UKT 8.75% 2017 Government gilt on a single day in October 2011, during the second round of quantitative easing ("QE") in the UK by the Bank of England. As a direct result of these trades, the price and yield of the particular gilt significantly out-performed all other gilts of similar maturity on that date. During the afternoon of the same day, Mr Stevenson offered to sell £850m of the gilt, including the £331m he had already acquired earlier, to the Bank of England. The offer price to the Bank was based upon the prevailing market price for the bond, which had been heavily influenced upwards by Mr Stevenson's earlier trading that day.

The FCA concludes in the final notice that Mr Stevenson's trading during the morning was designed to move the price of the gilt in an attempt to sell it to the Bank of England at an abnormal and artificial level. This would increase his potential profit made from the sale. The Bank of England actually identified the unusual price movement of the gilt and announced that it had rejected all offers received by it in that gilt. This is the only time in its history that the Bank of England has taken this step.

The FCA expressed its view that this manipulation was a "particularly serious example of market abuse", which sought to profit unreasonably from QE. This profit was to be at the expense of the Bank of England and ultimately the tax payer, at a time when the economy was very weak and confidence in the UK financial system was low. In the press release accompanying the publication of the final notice, the FCA states that this is the first enforcement action for attempted or actual manipulation of the gilt market. It states that there was no evidence of collusion with traders in other banks.

3. FCA FINES BESSO LIMITED £315,000 FOR ANTI-BRIBERY AND CORRUPTION SYSTEMS AND CONTROLS FAILINGS

The FCA has issued a final notice to Besso Limited ("Besso"), which imposes a fine of £315,000 for anti-bribery corruption systems and controls failings. Besso agreed to settle at an early stage of the FCA investigation, and therefore qualified for a 30% discount on the FCA's proposed fine of £450,000.

The FCA found that, between January 2005 and August 2011, Besso failed to take reasonable care to establish and maintain effective systems and controls for countering the risk of bribery and corruption. Therefore, it breached Principle 3 of the FCA's Principles for Businesses and other associated FCA rules. According to the FCA, Besso made payments to third parties who then entered into commission sharing agreements with the firm, or helped it to win and retain business. This then gave rise to an unacceptable risk that Besso could be used for corrupt purposes, including paying bribes to persons connected with the insured or public officials.

More particularly, the final notice sets out that Besso:

- Had limited bribery and corruption policies and procedures in place between January 2005 and October 2009. The written policies it introduced in November 2009 were not adequate in terms of their content or implementation.
- Failed to carry out adequate risk assessments of, and due diligence on, third parties before entering into business relationships with them. It also failed to review any relationships on a regular basis and in sufficient detail.
- Did not monitor its staff to ensure that each time it engaged a third party an adequate commercial rationale had been recorded, and sufficient due diligence carried out.
- Failed to maintain adequate records of the anti-bribery and corruption measures taken on its third-party account file.

The final notice explains that the FCA considers these failings to be serious for various reasons, but notably because Besso may not have sufficiently identified the failings itself had they not been identified by the FCA. The firm's approach to dealing with bribery and corruption remained inadequate even after two visits from the Financial Services Authority ("FSA") and a number of industry communications during the relevant period on countering the risk of bribery and corruption. The FSA had also published two final notices against firms for anti-bribery and corruption failings during this period. The FCA mentioned in the accompanying press release that it is carrying out a thematic review of general insurance brokers' systems and controls in this area.

If you have any questions concerning the material discussed in this bulletin, please contact the following members of our financial regulation practice group:

Charlotte Hill	+44.(0)20.7067.2190	chill@cov.com
William Maycock	+44.(0)20.7067.2191	wmaycock@cov.com
Agnieszka Polcyn	+44.(0)20 7067.2039	apolcyn@cov.com