COVINGTON

Bulletin - UK Financial Services and Regulation

December 2014

Financial Services

The rush to clear desks before the Christmas break provided regulators with a very busy December in the financial services sector. The Financial Conduct Authority (FCA) published a new strategic approach document and issued a further consultation on the consequential and transitional aspects of the incoming Senior Managers Regime with the Prudential Regulatory Authority (PRA). It also took the time to review and agree with the recommendations of the Davis Review, which was commissioned to look into the embarrassing events following publication of the FCA's 2014/15 Business Plan. In addition, it has been a month packed with speaking engagements, including four key speeches from the regulators on current hot topics such as CASS, enforcement lessons and firm culture.

Contents

Speeches 2

1. David Lawton sets out "bigger picture" for CASS compliance 2
2. Tracey McDermott discusses failures of past at FCA Enforcement Conference 3
3. FCA reiterates commercial importance of firm culture 4
4. New Payment Systems Regulator explains challenges facing the industry 5

UK Publications 6

1. PRA and FCA issue update on timings for implementation of BRRD 6
2. PRA updates Supervisory Statement on credit risk mitigation 6
3. FCA updates its EMIR supervisory priorities webpage 7
4. PRA and FCA publish further joint consultation on senior managers and certification regimes 7
5. FCA issues report on post-implementation review of RDR 8
6. FCA releases Davis Review and its own response document 9
7. New strategic approach for the FCA 10

Consumer Credit 11

1. FCA publishes policy statement on new credit broking rules 11
2. Debt management firm agrees voluntarily to pay redress to 4,500 customers 12

Investigations and Enforcement 13

1. Managing director banned for railway fare dodging 13
2. FSA's original ruling on Angela Burns upheld by Upper Tribunal 13

Speeches

1. David Lawton sets out "bigger picture" for CASS compliance

At the Financial Conduct Authority (FCA) CASS Conference event for CASS large firms, Mr David Lawton, director of markets at the FCA, delivered a speech explaining that Client Assets and Money (CASS) is still very much a top priority for the FCA which will not go away any time soon. The speech text was published on December 2 2014. In it Mr Lawton set out how the current CASS regime, including the FCA's policy work and emphasis on supervision, fits within its broader approach to regulation as well as with other pieces of work with which it is currently engaged in the United Kingdom (UK).

He stressed that the FCA's statutory objectives all feed directly into CASS requirements. For instance, CASS protects consumers' assets and money when the firm fails, and enhances the integrity of the financial system by giving participants confidence that their money is protected upon insolvency. In addition, the CASS rules set a minimum standard of protection which allows for a competitive market in investment and custodial services. The competition objective relates to the cost and quality of services provided, not the levels of protection available. He stressed that a good indication of how important CASS compliance is to the FCA is the fact that CASS has its own Principle (Principle 10) in the FCA Principles for Businesses (PRIN), as well as its own rulebook. The Principles should be seen as a fundamental statement of what the FCA believes in.

He also explained that CASS compliance was crucial to the FCA's monitoring of wholesale conduct. As an example he mentioned that where investors place money with asset managers, the FCA expects those managers to take their responsibility as "true agent" for the client very seriously, and to disclose clearly charges and levels of service. Such managers must also undertake activities as directed by their clients and in those clients' best interests. This approach should provide market integrity and ensure that client money and assets are protected. He also reiterated that the FCA is continuing to focus on the accountability of individuals for their actions and the actions of their firms in relation to CASS. Mr Lawton remarked that the FCA does not expect perfection, but it does expect individuals to know the rules and understand the FCA's expectations, to be diligent in ensuring that the right things are done properly, as well as putting consumers at the heart of their business models. In addition, he mentioned that, with the implementation of the new Senior Managers Regime and Certified Persons Regime, the controlled function of CF10a will no longer exist at affected firms going forward. However, he pointed out that the FCA will be "no less focused on those responsible for CASS compliance than before". The FCA will have new powers to hold individuals to account who are truly reckless in the way that they carry out their responsibilities.

He also briefly discussed the ways in which CASS responsibilities were linked to post-crisis prudential reforms including the European Union's (EU) recast Capital Requirements Directive and Regulation (together known as CRD IV) and the Bank Recovery and Resolution Directive (BRRD). He explained that key areas in relation to these have been covered in the FCA's Policy Statement on CASS which was published in June 2014. This included requirements to introduce written custody agreements, written agreements for Title Transfer Collateral Arrangements, enhanced CASS due diligence requirements and

template acknowledgement letters. He also mentioned that the government's review of the Special Administration Regime for Investment Banks is due to conclude in 2015.

Mr Lawton summed up by saying that those with current CF10a responsibilities must ensure day-to-day CASS compliance within their organisations and make sure things are done correctly. However, it is also the responsibility for board members to prioritise CASS and to ensure that sufficient resources are provided to those who need them. He warned that firms still have work to do to ensure that the basics for CASS compliance are carried out correctly.

2. Tracey McDermott discusses failures of past at FCA Enforcement Conference

Tracey McDermott, director of enforcement and financial crime at the FCA, delivered a speech on learning the lessons of past mistakes as an industry at the FCA's Enforcement Conference in London. The FCA published the speech on December 2 2014. Ms McDermott explained that the financial services industry must re-evaluate not just the actions of the past, but the cultures that underpinned them and the controls that failed to identify or manage the risks they created. She also stated that the industry is still some way short of the corner which needs to be turned.

However, Ms McDermott did say that she believes lessons are being learned, with the result that the industry is beginning "to rebuild a culture within financial services that is more centered on consumer needs, with a regulator in place that has the right tools and approach, to uphold and encourage the standards the public has the right to expect". She mentioned that firms have made changes to the way that they do business, that they truly wish to create better cultures and are trying to instil one in their respective organisations. She appreciated that changing culture would not be easy and that the "trickle down from boardroom to trading desks and sales staff" would take time. It would, she understood, not be straightforward to change a way of thinking that has existed for years. It was crucial that the industry mended its ways not through fear of fines, but through an understanding that firms must make the right decisions instinctively and believe that they are doing the things that they do because: it is the right way to do things; it is valued by their peers, colleagues and firms; and they will be ostracised if they do not. Ms McDermott stressed that enforcement is not an end in itself, the FCA is not like a Soviet tractor factory facing demands for bigger and better results year upon year. There are no such targets.

Whilst enforcement is a useful tool, larger fines are not necessarily the answer. Ms McDermott stated that in some instances firms must be held to account for the failings of the firm itself as well as individuals within it. She explained that firms and industry bodies have told the FCA that such measures have helped these firms to maintain momentum in strengthening the conduct risk frameworks they have in place. Publicity helps to focus minds and culture is crucial in the fight against wrongdoing. Firms must think about where risks could occur and how to control them: it is not only the job of the regulator to prevent or punish wrongdoing. Where firms are unable to do this they must face a credible punishment.

Ms McDermott went on to discuss the expansion of regulation in recent times. Despite the amount of guidance available to the industry increasing between 2005 and 2008, misconduct and poor behaviour also increased. More voluminous guidance did not cause this misconduct, but it did happen in spite of it. She remarked that, therefore, rules alone cannot be the answer. Everyone involved in financial services must be made more aware of their responsibilities, not only to their employer or to themselves, but also of the wider impact their work has on individuals and societies. Both firms and individuals need to be and to feel responsible for their actions.

She defended the FCA's drive for more individual accountability stating that those in the senior management positions at firms, when they accept their jobs and the rewards that come with them, also take on personal accountability. There is a renewed focus across the FCA on ensuring that individuals understand and take responsibility for their actions, and the new Senior Manager's Regime for banks will help to cement this within the industry. Ms McDermott cautioned that there will be tough times ahead which are likely to uncover further poor behaviour and misconduct, but these instances must be used as a lesson. Everyone in the financial services industry, not just those in the senior management positions, has a responsibility to act in the interests of their customers and to uphold the integrity of the market.

3. FCA reiterates commercial importance of firm culture

The FCA published the text of a speech given by Martin Wheatley, the FCA CEO, at the FCA's Enforcement Conference in London on December 2 2014. In the speech, Mr Wheatley set out the FCA's views on the importance of good culture and governance within firms in the financial services industry. He explained that the topic is in no way new, but that it is becoming increasingly important. Mr Wheatley stressed that with each new conduct crisis, it becomes harder to believe that lessons are being learnt and that, therefore, time is shortening for firms to right their wayward cultures. Indeed, firms are starting to feel the effects of the loss of public trust in them, with many consumers voting with their feet and opting to change service providers. In Mr Wheatley's view, the market place is becoming more competitive and, so trust and confidence, culture and governance are crucial in ensuring that firms can hold on to their client bases and business.

He asked who should be ultimately accountable for delivering the cultural changes required? In addition, he also asked how firms should look to achieve these changes in the required short time frames. In answering these questions, he said that there were two key priorities. Regulatory activity must remain focused on future standards, and business leaders must continue to ask sensible, simple questions about their products and strategies, such as, "is this right?" and, " would the particular course of action be in the long-term interests of clients?"

Mr Wheatley understood that the FCA has a responsibility to look to the future, so he explained that enforcement action must always provide the prospect of rehabilitation. Hand in hand with this, policing and enforcement activity must be seen to be carried on transparently and fairly, he said. The FCA must always be looking to improve as well as uphold standards. For its part, he acknowledged that the industry is also rising to the challenge. He commented that there is increased activity at board level, as well as cultural change programmes being put in place at firms across the country and significant reforms in front line reward incentives. Compliance is also being taken seriously with an increase in recruitment to compliance departments across the industry.

However, in spite of this, misconduct continues to occur. Why? He explained that firms have very complex and well-established mechanisms for monitoring systemic issues such as risk, but currently there is comparatively little available to firms to measure culture and cultural reform. There has traditionally been a lack of institutional focus on dealing with such issues in the past, which will surely hamper efforts to get a handle on it in future. However, it is possible to do so and the industry is making strides forward in dealing with this area now. He warned that firms do not have the luxury of waiting a generation for cultures within firms to change and for individuals to start taking responsibility for their actions.

4. New Payment Systems Regulator explains challenges facing the industry

The managing director of the Payment Systems Regulator (PSR), Hannah Nixon, discussed the challenges facing the new authority in regulating the payment systems industry in the United Kingdom, in a speech delivered to the European Payments Regulation Conference in London on December 3 2014. Ms Nixon explained briefly what the objectives for the PSR would be and how it would operate once it becomes fully operational. She said that there were three clear priorities for the PSR going forward:

- The PSR will launch a new and effective industry-wide strategy forum which will look to develop and agree strategic priorities for the long-term development of payment systems in the United Kingdom. The PSR will appoint an independent chair for this forum and provide the secretariat "for the time being". She explained that it will be an "open house" for all payment systems participants, including both users and consumer representatives. She indicated that members of the payment card sector would also be represented. The PSR is tasked with setting out the guiding principles under which the forum will operate.

- She also explained that many different voices have raised concerns regarding the ownership, governance and control of payment systems, including how open such systems are, and how service-users may have their views heard. Going forward, operators of payment systems must ensure that service-users' interests are appropriately represented at board level. In addition, individuals may not be both a director of an Interbank Operator and a Central Infrastructure Provider to a payment system at the same time. Operators will have to report to the PSR on an annual basis to show how they have complied with these requirements. Further, they will also have to publish board minutes and votes. She indicated that the PSR will have the power to force ownership change where its directions are not heeded. She also promised a market review to assess the competitiveness of the current payment systems infrastructure.

- The PSR intends to improve both direct and indirect access to the payment systems industry. Currently, gaining access to a payment system must be obtained through the incumbent banks which own the system. In future, operators will be required to provide access to a system on an objective, risk-based and open basis, and then report to the PSR on an annual basis explaining how they have complied with these requirements. In addition, the PSR will introduce a regulator-approved industry Code of Conduct which will govern arrangements from indirect access provided by sponsor banks. The PSR will also look to conduct a market review into the sponsor market for access.

Ms Nixon mentioned that the PSR would work closely with HM Treasury, the Bank of England and the FCA to ensure that its voice is heard in Europe and that it plays an active role in shaping the payment systems landscape. She mentioned that the PSR is already working closely with the FCA to feed its initial thoughts to HM Treasury on access in relation to the EU's second Payment Services Directive (PSD 2). The PSR also expects to be the competent authority in relation to the EU Interchange Fee Regulation, relating to card-based payment transactions, and on which the European Parliament recently reached political agreement.

The PSR published its consultation paper on the new payment systems regime in the UK on November 13 2014, and on December 19 2014 launched its proposals to convene a Working Group for developing the Payments Strategy Forum.

UK Publications

1. PRA and FCA issue update on timings for implementation of BRRD

On December 3 2014, the Prudential Regulation Authority (PRA) published an update to its web page on the implementation of the BRRD in the UK. The BRRD offers regulatory authorities in EU Member States with a harmonised set of tools and powers for dealing with failing banks. One of its key requirements is to compel banks to provide information for recovery and resolution planning purposes to national competent authorities so as to facilitate this process. The BRRD is seen in Europe as one of the key regulatory responses to the last financial crisis.

The update states that the PRA expects powers necessary to prepare final rules in relation to the BRRD to come into force in early January 2015. It then plans to publish final rules in mid-January and will confirm this date in due course.

The FCA has issued a similar update on its own website stating that it expects its full powers necessary to produce final rules implementing the BRRD also to come into force in early January 2015. Further, it states that it plans to publish its final rules as soon as is practically possible after receiving the powers from Parliament. It also promises to confirm the precise date in due course.

2. PRA updates Supervisory Statement on credit risk mitigation

On December 12 2014, the PRA published an updated supervisory statement on credit risk mitigation (SS17/13) as required under the EU's Capital Requirements Regulation (CRR). In conjunction with the updated supervisory statement, the PRA also issued an explanatory document which sets out the reasons for the update.

The supervisory statement provides clarification from the PRA to firms within the scope of the CRR of its expectations in respect of the recognition of credit risk mitigation in the calculation of certain risk-weighted exposure amounts. Under Part Three, Title II, Chapter 4 of the CRR, credit protection arrangements will qualify as eligible forms of credit mitigation provided that they meet a number of conditions, including the condition that those arrangements must be legally effective and enforceable in all jurisdictions. Specifically, the PRA has updated its supervisory statement to explain that it does not expect a netting agreement to be an eligible form of credit risk mitigation under the relevant sections of Part Three of the CRR, where a resolution authority has the power to bail-in the liabilities in question on a gross basis. It also does not expect that the legal effectiveness and enforceability of a netting agreement will be adversely affected by a resolution authority having a power to bail-in the liabilities in question only on a net basis.

The PRA decided to update its supervisory statement in this area, following HM Treasury's decision to put a number of draft statutory instruments before Parliament on November 24 2014 implementing certain bail-in powers under the BRRD in the UK. The Banking Act 2009 (Restriction of Special Bail-in Provision, etc.) Order 2014 sets out specific restrictions on the

exercise of the bail-in powers by the Bank of England as a resolution authority. It states that such powers would be subject to a general safeguard, applicable to a broad set of liabilities, so that where they are subject to set-off or netting they may only be bailed-in on a net basis. Effectively, this means that the contract would need first to be closed out so as to create a net liability which could then be bailed-in.

3. FCA updates its EMIR supervisory priorities webpage

The FCA published an updated version of a webpage setting out its supervisory priorities arising from the EU Regulation on over-the-counter (OTC) derivatives, central counterparties and trade repositories (known as EMIR). The webpage sets out specific areas that the FCA will prioritise when carrying on its supervision of EMIR compliance over 2015. These are:

- Counterparties complying with the requirements for trade reporting, including having established connectivity or appropriate delegated reporting arrangements, sufficient internal systems to ensure the accuracy of reports, and having both acquired Legal Entity Identifiers (LEIs) and ensured that they are renewed annually.
- Non-financial counterparties assessing and monitoring their status against the EMIR clearing threshold.
- Clearing members complying with segregation requirements, rules around account offering and disclosure of risks and costs associated with the clearing services they offer to clients.
- The readiness of financial counterparties and non-financial counterparties above the clearing threshold to meet the clearing obligation and requirements for collateralisation of non-centrally cleared OTC derivatives.

The webpage points out that the FCA intends to integrate EMIR regulatory requirements into its “business-as-usual” supervision gradually through 2015. It notes that, as per its usual supervisory approach, EMIR supervision will be risk based and take into account the position of particular firms and the markets in which they operate. It will integrate its supervision of EMIR obligations into the Firm Systematic Framework as well.

The FCA reiterated its expectation that firms must have robust and specific plans to ensure they are able to comply with their EMIR obligations as they come into force. Should there be any reason why full compliance may not be achieved by the relevant date, firms should prioritise having a detailed and realistic plan to achieve compliance within the shortest time frame possible. The FCA warns that this will not prejudge its approach to any instances of non-compliance. The FCA said it also expects firms which had been unable to comply with risk mitigation requirements for non-cleared trades relating to portfolio reconciliation, dispute resolution and compression since these requirements first came into effect to have been in compliance with such requirements since April 30 2014.

4. PRA and FCA publish further joint consultation on senior managers and certification regimes

The PRA and FCA issued a new joint consultation paper relating to their proposals for the new Senior Managers and Certification Regimes in the UK (FCA CP14/31 and PRA CP28/14 Strengthening accountability in banking; forms, consequential and transitional aspects) on December 19 2014. The new paper should be read in conjunction with their

previous joint consultation on the topic, published on July 30 2014, which proposed a new regime for senior managers and a certification regime for other specified individuals within UK banks, building societies, credit unions and PRA-designated investment firms (FCA CP14/13 and PRA CP14/14: Strengthening accountability and banking: a new regulatory framework for individuals).

Both consultations reflect the recommendations of the final report of the Parliamentary Commission on Banking Standards (PCBS), entitled “Changing Banking for Good” (vols. I and II), as well as implementing changes required by the Financial Services (Banking Reform) Act 2013 (Banking Reform Act). It should be noted that both the PRA and FCA are still reviewing and considering responses received to the earlier July 2014 consultation. The latest consultation is designed to provide firms with an early indication as to how the new regime is developing. It is not a response to the earlier consultation, nor in the words of the regulatory authorities should it be taken as an indication of a particular direction of travel. However, it does provide firms with an opportunity to comment on the proposals.

The December consultation covers the following areas:

- Transitional arrangements for “grandfathering” of individuals currently approved to perform significant influence functions and who will be performing a corresponding senior manager function under the new regime. Chapter 2 of the consultation provides a table of relevant functions covered by these transitional arrangements.

- Necessary technical amendments to the PRA Handbook, PRA Rulebook and FCA Handbook. The proposed new rules and supervisory statements are set out in Appendix 1 and Appendix 2 to the consultation paper. Appendix 3 also sets out new template forms for the regime which incorporate the new statutory and regulatory requirements, such as the new procedures for notification of conduct rule breeches by, and disciplinary action taken against, individuals. Existing forms have also been amended, such as the Forms A, C and D so as to include new regulatory references and procedural requirements.

Both the PRA and FCA have stated that they will reply to comments and responses to the July consultation as soon as possible, and that they are expecting HM Treasury to set a date for the introduction of the new Senior Managers and Certifications Regimes shortly. The consultation explains that it has not covered changes proposed in the recent FCA and PRA consultations on the implementation of Solvency II, which will be subject to entirely separate responses in due course. In addition, non-directive insurance firms will be dealt with in a separate consultation.

The December consultation paper is open to responses and comment until February 27 2015.

5. FCA issues report on post-implementation review of RDR

On December 16 2014, the FCA published its report findings from the first phase of its post-implementation review of the Retail Distribution Review (RDR). The FCA’s findings were published alongside the full research report, prepared by external consultants Europe Economics, who carried out the first phase of the review.

The FCA explained that the aim of the first phase of the review has been to consider whether the RDR is on course to deliver its original objectives and to flag any immediate issues, rather than to evaluate whether or not all of the expected impacts have materialised. The report shows encouraging signs that the RDR is on track. The FCA reports:

- Reduced product bias connected with advisor recommendations following the removal of commission paid by providers to advisors and platforms. It also notes an increase in the sale of products which paid lower or no commission before the implementation of RDR. It is now easier for consumers and advisors to compare platforms which will increase competitive pressures and reduce platform charges.
- Whilst product and platform costs and prices have fallen as a result of the removal of commissions, the use of advisor charging is likely to have increased.
- Most financial advisors have now obtained the new minimum standards of qualification and the FCA notes that there has been an increase in the number of advisors obtaining extra qualifications. The fact that more individuals now have greater qualifications demonstrates increasing professionalism in the advice market.
- Little evidence that the availability of advice for clients has reduced following implementation of the RDR. The FCA also notes that the majority of advisors are still willing and able to take on more clients, but some consumers are looking more closely at whether advice received represents value for money.
- Clear opportunities for innovation in the market, especially for simplified or automated advice services. However, providers perceive there to be considerable regulatory risk in this area, which the FCA is looking to address now.
- Whist firms have improved clear disclosure of the cost of advice to clients and the scope of service provided, the FCA notes there is scope for further improvement relating to disclosure of the cost of ongoing services. The FCA also recently published the results of its thematic review into retail investment advice and adviser charging which shows that consumers still do not completely understand advisor charging or the nature of advice provided (TR14/21). The FCA is looking for ideas as to how to present information on the nature of advice services in a more clear format. The FCA expects to publish its output on this in the first quarter of 2015.

The report states that the next phase of the post-implementation report on the RDR will be published in 2017. This will provide the FCA with at least three years of evidence from which to undertake a more complete analysis as to the impacts of the RDR in the medium-term. The third phase will consider the longer-term implications at a later stage after this.

6. FCA releases Davis Review and its own response document

The FCA has published a long awaited report into the way in which it had handled the launch of its 2014/15 Business Plan and the announcement of proposed supervisory work on the fair treatment of long standing customers in life insurance (the Davis Review). The Davis Review, so-called because it was conducted by Simon Davis, a partner at law firm Clifford Chance, was published on December 10 2014 in conjunction with the FCA's formal response to it. The non-executive directors of the FCA had appointed Mr Davis to carry out his independent enquiry on April 8 2014.

The full report focuses on the events leading up to and immediately following publication of an article in the Daily Telegraph concerning the FCA's planned life assurance review on March 27 and 28 2014. It criticises the way in which the FCA handled the launch of its 2014/15 Business Plan, particularly the way in which it communicated the scope of the proposed thematic review of life assurance.

The FCA board acknowledges these criticisms, accepts them in full and apologises for the mistakes that were made and the shortcomings in systems and controls which the report revealed. The FCA explains in its response that its idea of providing an advance briefing to the Daily Telegraph was well intentioned, but that the manner in which it was pursued was high risk, poorly supervised and inadequately controlled.

Mr Davis recommends specific changes to the FCA's systems, processes and ways of working, so as to avoid situations of this sort occurring in the future. The FCA response accepts all of these recommendations, and confirms that it has already made progress in acting upon them. It also confirms that it has completed separate pieces of work reviewing:

- How the FCA handles price sensitive information.
- Its external communications strategy.
- The crisis response framework.

The FCA mentions that it has introduced improvements to the procedures surrounding identification, control and release of price sensitive information and informed staff of such revised policies and guidance. It has started to provide managers with updated training and will roll out new training programmes and awareness initiatives for all staff very shortly. The FCA confirms that future releases of its annual business plan will be directed at all market participants at the same time. Further, it agrees that it will not brief price sensitive information externally under any circumstances, and it has agreed and already implemented new sign-off procedures for all external and internal communications. Finally, the FCA confirms that recent changes made to its structure and operating model, which were not directly related to the contents of the Davis Review, will also address some of the issues and challenges identified in it.

In conjunction with the failures identified in the report, the non-executive directors at the FCA agreed that Martin Wheatley, the FCA CEO, and its Director of Supervision, Clive Adamson, amongst others, would not be receiving a bonus for the year 2013/14.

7. New strategic approach for the FCA

On December 8 2014, the FCA published a document setting out its new strategic approach going forward. The accompanying press release explains that the document provides details on how the FCA intends to meet upcoming regulatory challenges following "a detailed review of its strategy, priorities and ways of working".

The new approach is intended to provide a sharp focus on how firms are regulated and on delivering the right outcome for consumers and the markets. It recognises differences required when supervising and regulating firms across the industry, given their difference in size and variety. It better understands the differences in sector and the requirements for market-wide work, as well as factoring in the FCA's own competition duties. The FCA

understands that its work cannot solely be shaped by firm conduct, but by trends and the changing environment in which it operates.

Therefore, it is pushing ahead with a series of structural changes, which also reflect the lessons learned from the recent external Davis Review carried out following the furore surrounding the launch of the FCA's 2014/2015 Business Plan. The changes include:

- Merging together the current Authorisations and Supervision Divisions with the more specialist supervision functions such as financial crime and client assets. From April 2015, it will branch out into two divisions which will have responsibility for large and small firms separately. As part of this re-structuring, the supervisory distinction between C3 and C4 firms under the current FCA supervisory framework will be removed and a more risk-based model will be applied. When supervising larger firms, the FCA will take a whole market as well as a firm specific approach. Tracey McDermott has agreed to manage the transition to the new framework and will then take charge of one of the new divisions.
- A new Strategy and Competition Division will build on the FCA's competition capabilities, and bring together more market-based work supported by an enhanced data, intelligence and research capability to enable better prioritisation and focus across the industry. Christopher Woolard will lead this new division.
- Richard Sutcliffe will be acting director for a new Risk Division which will encompass risk and supervisory oversight functions, providing a strategic approach to the management of internal and external risk.
- David Lawton will lead a new Market Policy and International Division which will focus particularly on increasing FCA influence in Europe. This new division will bring together international and market policy functions to co-ordinate international activity.
- On market oversight, the UK Listing Authority (UKLA) is to be brought within a new Market Oversight Division, headed by Marc Teasdale. The FCA will integrate any other specialist market supervision functions into the Supervision Division.

The press release accompanying the new approach document states that Clive Adamson, the current director of supervision at the FCA, together with certain other executive committee members, has announced that he will be leaving the FCA as part of the changes. The structural changes are expected to be in place fully by April 2015.

Consumer Credit

1. FCA publishes policy statement on new credit broking rules

The FCA published a policy statement (PS 14/18) on December 1 2014 which set out rules for tackling poor practice in the credit broking market. The FCA believes that such practice is causing serious detriment to consumers and it has, therefore, made the new rules without prior consultation. In its view, any delay arising from such a consultation period would be prejudicial to the interests of consumers, and enforcement action alone would not be sufficient to protect consumers from the poor practices identified.

The FCA has significant concerns, particularly in the high-cost short-term credit (HCSTC) sector, surrounding practices and the charging of up-front fees to consumers. In many cases, consumers do not realise that they are dealing with a broker rather than a lender, and there is often a lack of informed consent when firms take fees due to information on it often being misleading or buried in terms and conditions. The FCA has uncovered evidence that such practices are causing substantial harm to consumers, including to those who are vulnerable and in considerable financial hardship.

The new rules provide for a ban on credit brokers charging fees and requesting payment details from customers for that purpose unless the firm has provided an explicit notice to the customer. The notice must set out specific information such as the firm's name and that a fee will, or may, be payable. The customer must also acknowledge receipt of the notice before any fee can be charged. In addition, the relevant broker must keep a record of such a notice and send it to the customer in a "durable medium" (including paper or email).

Credit brokers will also be required to include their legal name, as it appears in the FCA's Financial Services Register, in any financial promotions and other communications with customers. Further, credit brokers will be required, where necessary, to explain in any financial promotion that they are a broker and not a lender. Where a party acts as both a broker and lender, but the promotion relates only to credit broking, the party must state that it is promoting its service as a credit broker. Any credit brokers which charge fees will also be under an obligation to notify the FCA quarterly of their web domain names.

The FCA will also ensure that any credit broking agreements which are entered into as distance contracts (such as contracts entered into over the internet or telephone) must have provisions allowing a consumer the right to cancel such an agreement within 14 days. This cancellation right will also entitle the consumer to a full refund. The new rules will be located in the Consumer Credit Sourcebook (CONC) and the Supervision Manuel (SUP) of the FCA's Handbook and came into force on January 2 2015.

In an accompanying press release, Martin Wheatley, the FCA CEO, stated that where the FCA spots evidence of customers being treated in a blatantly unfair way, it will move quickly to protect consumers from further harm.

2. Debt management firm agrees voluntarily to pay redress to 4,500 customers

On December 18 2014, the FCA published a press release stating that the firm Harrington Brooks, operating in the debt management sector, will pay over £185,000 to more than 4,500 customers voluntarily after communications sent by the firm on behalf of its customers to various creditors were delayed. The delay to communications meant that in certain cases interest and charges to customer debts were frozen later than they should have been, and customers were also not notified that the interest and charges on their debts had not been frozen.

The firm is the first to agree a package of redress in this manner since the FCA took over responsibility for regulating consumer credit on April 1 2014. It agreed to contact affected customers over the next few weeks to explain what course of action it is taking and to advise them of any redress that they may be due. Customers themselves will not need to do anything at all.

The director of mortgages and consumer lending at the FCA, Linda Woodall, was quoted in the press release, stating that customers of debt management firms are often in a tight spot financially and deserve their trust in such firms to be repaid. She expressed pleasure that Harrington Brooks has decided to cooperate with the FCA in this matter.

Investigations and Enforcement

1. Managing director banned for railway fare dodging

The FCA has published a final notice detailing that Mr Jonathan Burrows, a former managing director of Blackrock Asset Management Investor Services Limited (Blackrock AM) has been prohibited from performing any function in relation to any regulated activities carried on by firms in the financial services sector. The final notice states that the order took effect from December 8 2014.

The reason for the order was Mr Burrows' admission that, on a number of occasions, he deliberately and knowingly failed to purchase a valid ticket to cover his rail journey between Stonegate Station in East Sussex and Cannon Street Station in London. At the time that Mr Burrows was carrying on the fare evasion, he was an FCA Approved Person holding the Customer controlled function (CF30) at Blackrock AM. On November 19 2013, he was stopped by a Revenue Protection Officer at the exit gates of Cannon Street station and was found not to be in possession of a valid ticket for his entire journey. Under caution he admitted to having failed to purchase such a rail fare on a number of previous occasions.

The FCA believes that Mr Burrows is, therefore, not fit and proper to conduct any function in relation to regulated activities carried on by firms in the financial services industry. Furthermore, he has demonstrated "a lack of honesty and integrity and, as such, he has failed to meet the FCA's Fit and Proper Test for Approved Persons". The FCA also makes clear that as a senior manager, Mr Burrows should have been a role model for others. His conduct falls short of the standard expected from someone in his position.

2. FSA's original ruling on Angela Burns upheld by Upper Tribunal

On December 15 2014, the Upper Tribunal (Tax and Chancery Chamber) (Upper Tribunal) published its decision in the case of Angela Burns v the FCA (formerly the Financial Services Authority (FSA)) (FS/2012/0024). The FSA's original decision notice of November 28 2012 banned Ms Burns from performing any function in relation to any regulated activity carried on by any authorised firms, and also handed down a financial penalty of £154,800. The FSA was of the view that she had misused her non-executive director (NED) positions to seek to advance her own commercial interests and had failed to disclose conflicts of interest. As a NED, she held the FCA's CF2 controlled function at two mutual societies in the United Kingdom, the Marine and General Mutual Life Assurance Society and Teachers Assurance. Therefore, the FSA found that she was in breach of Statement of Principle 1 (acting with integrity) of the Statements of Principle and Codes of Practice for Approved Persons (APER) set out in the FSA Handbook. In addition, she was found to lack the necessary fitness and propriety under the "Fit and Proper" test for Approved Persons which was also contained in the FSA Handbook.

Ms Burns denies the allegations set out in the 2012 decision notice and referred the case to the Upper Tribunal. The Upper Tribunal has not been asked to rule on the appropriate sanctions, since this issue was deferred to a later date by agreement between the parties.

The hearing was, therefore, limited to whether she committed the acts of misconduct alleged, and in consequence whether she breached Statement of Principle 1 of APER to the extent that she is no longer "fit and proper".

The Upper Tribunal found that Ms Burns is clearly "able and knowledgeable, and has for many years provided a range of services in the financial sector in a number of roles". Nonetheless, it found her evidence to be unsatisfactory in a number of respects, concluding that she was not a reliably trustworthy witness on critical matters. It found unanimously that she was in breach of Statement of Principle 1 and had failed to act with integrity when performing her role as NED, specifically on February 24-26 2009 and November 5 2010. Further, she had turned a blind eye to ethical issues and was, therefore, not fit and proper to carry on her CF2 controlled function.

The Upper Tribunal noted specifically that NEDs usually have wide-ranging business interests, and that such a role requires "rigorous adherence to the proper standards concerning avoidance of conflicts and the making of disclosures". She clearly failed in this respect and this failure was compounded by her willingness to use materially incomplete CVs and to sign false declarations on her application forms for her CF2 roles.

The Upper Tribunal has invited the parties to reach agreement on the appropriate sanctions. If this is not possible, it requests that they propose directions leading to a further hearing to decide remaining issues. The FCA submitted proposed draft directions on December 1 2014. If these cannot be agreed, Ms Burns must supply her comments on the proposed directions by February 6 2015.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Financial Services practice group:

Charlotte Hill	+44 (0)20 7067 2190	chill@cov.com
William Maycock	+44 (0)20 7067 2191	wmaycock@cov.com

This information is not intended as legal advice. Readers should seek specific legal advice before acting with regard to the subjects mentioned herein.

Covington & Burling LLP, an international law firm, provides corporate, litigation and regulatory expertise to enable clients to achieve their goals. This communication is intended to bring relevant developments to our clients and other interested colleagues. Please send an email to unsubscribe@cov.com if you do not wish to receive future emails or electronic alerts.