

The FCA's approach to advancing its objectives

July 2013



Glossary – helping to explain financial terms

As with many industries, the financial marketplace uses terminology that has specific meanings, but which is not commonly understood outside the industry. To help make this easier to understand, we have included a glossary at the back of this guidance that you can use to find plain language explanations of some of the terminology we use.

Disclaimer

This document is provided solely for general guidance and is not intended to be a statement of the law under which we operate.

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Foreword by Martin Wheatley

This guidance comes at an important time for the regulatory regime in the United Kingdom. People are looking at us to see what difference we can make and how we can help to restore confidence in financial services.

This marks the next stage of the Financial Conduct Authority's (FCA) development. It is an exciting time for us, shaping our policies and interventions to make markets work well.

The main purpose of this guidance is to show how we intend to meet our three operational objectives – securing an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system; and promoting effective competition in the interests of consumers in the markets – and to explain what can be expected from us.

This guidance provides consumers, firms and other interested stakeholders with clarity about the approach we will be taking under the current regulatory regime.

Let's be clear. Markets that work well for consumers and for firms benefit everyone and benefit the UK economy. That means markets where people take on risks that they understand and realise that they can both gain and lose.

Where consumers can work out which products best meet their needs and they can buy from the suppliers offering them the best terms. Where firms can profit from putting consumers first and, where they can't, they exit the market without disrupting its integrity.

Market analysis is an important step in helping us to achieve this. By closely examining the markets we regulate, we can reach a better understanding of whether they are operating well. We can then take a more informed view of what are the most effective solutions for resolving any market problems we identify.

This includes seeking out the root causes of problems and dealing with them at an early stage. We believe prevention is better than cure.

We'll use our judgement and take action appropriate for each individual case.

This approach will benefit from our market understanding too, giving us a good grounding to judge how little or how far we should intervene and in which particular case, project or initiative.

We now have a competition objective and duty. The objective is to promote competition in the interests of consumers. The duty means we must look to achieve our desired outcomes using solutions that promote competition regardless of which of our statutory objectives we are pursuing.

This is important because in a more competitive environment, with firms meeting the needs of engaged and informed consumers, consumers will be better off. Competition can lead to lower prices, greater innovation, better design, better quality and wider choice, which ultimately leads to growth in the economy. This benefits everyone.

We've already, for example, introduced a mobilisation phase for new firms wanting to enter the banking sector, making their journey into the market easier and less costly. By authorising at an earlier stage, new participants don't have to build up expensive infrastructures before finding out whether they meet our rules.

To encourage and help restore confidence, we place a strong emphasis on greater transparency, not just for the industry we regulate, but for ourselves too.

For industry, transparency means clear pricing and clear information helping consumers make informed decisions. This leads to a healthier marketplace for the consumer, with firms competing to supply services that consumers want, and greater efficiency for the industry with less time spent handling complaints.

For the FCA, transparency means both how we communicate with businesses and consumers, as well as how firms communicate. If firms find it easier to communicate with us, to understand us, then they will find it easier to understand our role and what they have to do.

We will continue our close engagement with consumers and industry. By engaging with consumers directly and their representatives, we can understand issues and emerging problems – for example, concerns about everyday products that most people use, like bank accounts or general insurance. We will also communicate directly with consumers on issues that affect them.

For firms, we will continue to engage in a range of ways. From direct contact with organisations to a regional programme of events, such as road shows, workshops and regional forums. We will communicate using the most appropriate channel to ensure a firm finds out what it needs to know that is specific to its business and making information more easily accessible.

We continue our significant, multi-layered engagement at an EU and international level to influence legislation that affects how we meet our objectives.

If we can empower consumers to be increasingly active, and make the industry fairer, sounder, more transparent and competitive, not only will consumers benefit but it will help the financial services industry prosper too.



Martin Wheatley, Chief Executive

Your views

We want to know what you think about how we plan to pursue our objectives. You can email us with your comments at s1k.objectives@fca.org.uk, or you can send a letter to:

Early Intervention Team,
Cross Cutting, Prudential and Early Intervention Department,
PRR Division,
Financial Conduct Authority,
25 The North Colonnade,
London, E14 5HS.

Please get in touch before 27 September 2013. We will publish a summary of the feedback we receive and issue final guidance by early 2014.

Introduction

Introduction

Background

On 1 April 2013, the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) took over from the Financial Services Authority (FSA) as the bodies that regulate the financial services industry.

We are responsible for regulating the conduct of around 26,000 financial firms and the prudential behaviour of 23,000 that are not covered by the PRA.

We also regulate some important parts of UK market infrastructure and we are the UK's Listing Authority for securities issuers raising capital on UK markets.

What do we mean by regulating conduct?

As a regulator we look at the way financial organisations treat their customers, and the way they behave towards them. By regulating conduct we mean that we regulate the way these organisations behave towards the consumer, for example, making sure they give enough information about the product they are selling.

What do we mean by prudence?

The term prudence is directed towards how financial organisations manage their risks, particularly financial risks – how safe or sound they are. A prudent organisation will have appropriate systems and controls to manage its risks, and enough financial resources to deal with the consequences of those risks.

An organisation not behaving prudently will put its financial resources at an unacceptable level of risk, or will not have enough financial resources set aside to run effectively. An organisation not acting prudently may also put consumers at risk of loss or be unable to afford to put things right, which could also threaten consumer protection.

Who are the firms we regulate?

The firms we regulate provide a huge variety of financial products and services to an extensive range of consumers in the UK and internationally. These range from individual consumers making infrequent purchases of retail products, such as mortgages or pensions, through to major global corporations regularly raising money in the international investment markets.

For conduct only:

Banks, building societies, investment banks, credit unions, friendly societies, life insurers, general insurers, wholesale and commercial insurers and reinsurers, and Lloyd's and Lloyd's Agents.

For conduct and prudential:

Personal investment firms, insurance intermediaries, mortgage intermediaries, investment managers, non-deposit taking lenders, corporate finance firms, wholesale firms, custodians, professional firms, markets (exchanges and infrastructure providers), collective investment schemes, travel insurance firms, media firms, other brokers, managing agents, and investment firms.

Why are we publishing this document?

Our responsibilities are set out in the Financial Services and Markets Act 2000 (FSMA) (amended by the Financial Services Act 2012) and supporting legislation. We are required by law to give guidance on how we intend to carry out those statutory responsibilities.¹

In this guidance we set out how we will do that, explaining what firms and consumers can expect from us. This includes how we consider the scale and diversity of the different sectors, firms and products we regulate and the wide range of consumers who use them.

You will find three main chapters in this document. Each chapter deals with one of our three statutory operational objectives, our approach to that objective, and what this means to the financial industry and consumers:

1. Protecting consumers
2. Market integrity
3. Promoting effective competition.

How we decide which objective to pursue

We can choose whether to pursue our consumer protection, market integrity or competition objectives for each issue we address. Which one we pursue depends on the individual circumstances of the particular issue. Where appropriate, we can pursue more than one objective.

¹ Section 1K of FSMA requires that general guidance given by the FCA under section 139A must include guidance about how it intends to advance its operational objectives in discharging its general functions in relation to different categories of authorised person or regulated activity. This guidance is based on the law in force at the time of publication and may be updated from time to time, including to reflect legislative changes.

We may sometimes need to make some careful judgements about which objective or objectives to use. We will be open about how we have reached our decisions, and where we believe our objectives may have come into conflict.

Further detail about our statutory objectives and other statutory responsibilities can be found in the annex at the back of this document.

How we define consumers²

The term 'consumer' covers:

- retail consumers buying financial products or services for their own use or benefit (such as mortgages or ISAs)
- retail investors in financial instruments (such as shares and bonds)
- wholesale consumers (such as regulated firms buying products or making investments, or issuers looking to raise capital).

Our risk-based approach

We expect the financial sector to manage risk and it is important that we do too. This means we will detect and act on risks that we see in the marketplace, ensuring that we identify potential problems early to meet our consumer protection, market integrity and competition objectives.

In summary we will:

- identify and assess risks (both emerging and current) to consumers and firms
- identify the risks that market failures exist that impede effective competition in relevant markets
- develop a general understanding of the risks and issues in the financial markets to support our authorisation, supervision and enforcement functions
- use our knowledge to make evidence-based policies that change behaviour
- prioritise, manage and mitigate risk consistently, and use a risk-based approach for making decisions
- establish common standards and principles for measuring and assessing risk across the organisation
- put in place the infrastructure, systems and tools to catalogue, analyse and assess risk.

How do we help the industry and consumers?

Our job is to create, through regulation, an environment supportive of good conduct where the incentives and opportunities for bad behaviour are low and the potential costs are high.

² For the full statutory definition of 'consumers' see FSMA s1G.

Our responsibilities extend to all consumers, whatever their age or financial circumstances and whether an individual, small company or a major participant in the wholesale markets. We use the full range of powers given to us under the legislation to make financial markets work well, so that the UK's financial services industry can be used with confidence. This includes promoting competition within the industry to the benefit of the consumer.

1. Protecting consumers

Our aims

In this chapter we explain our consumer protection objective, how we will secure an appropriate degree of protection for consumers, and what this means to the businesses and markets we regulate.

We aim to:

- ensure customers are treated in a way that is appropriate for their level of financial knowledge and understanding
- be more outward looking, by engaging more with consumers and understanding more about their concerns and behaviour
- set clear expectations for firms and be clear about what firms can expect from us
- intervene early to tackle potential risks to consumers before they take shape
- be tougher and bolder, following a strategy of credible deterrence, using new powers of intervention and enforcement.

We also have a competition duty to promote effective competition when addressing our consumer protection (or market integrity) objective.

What the competition duty means is that we must look to achieve our desired outcomes using solutions that promote competition regardless of which objective we are pursuing.

As a matter of policy we will normally choose the most pro-competitive measure open to us provided that is compatible with our duties as a whole. Consideration of how to apply this in practice will be made on a case-by-case basis.

Treating customers fairly

The six retail outcomes set out in the FSA's Treating Customers Fairly (TCF) initiative³ remain central to our consumer protection objective and are part of our normal focus. They guide the general policy and principles by which we make rules, prepare and issue codes, and give general guidance. Getting a fair deal for consumers is at the heart of our approach.

³ www.fca.org.uk/fair-treatment

The six outcomes to treating customers fairly

- **Outcome 1:** Consumers can be confident that they are dealing with firms where the fair treatment of customers is central to the corporate culture.
- **Outcome 2:** Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly.
- **Outcome 3:** Consumers are provided with clear information and are kept appropriately informed before, during and after the point of sale.
- **Outcome 4:** Where consumers receive advice, the advice is suitable and takes account of their circumstances.
- **Outcome 5:** Consumers are provided with products that perform as firms have led them to expect, and the associated service is of an acceptable standard and as they have been led to expect.
- **Outcome 6:** Consumers do not face unreasonable post-sale barriers imposed by firms to change product, switch provider, submit a claim or make a complaint.

We expect firms to base their business models, their culture and how they run their businesses on the principle of treating customers fairly and to demonstrate good conduct through their dealings with consumers, each other and the market.

What is an 'appropriate' degree of protection?

We take a risk-based and proportionate approach to ensure that consumers are appropriately protected, regardless of whether they are operating in an established or new market.

Consumers do have responsibility for the decisions they make – but they cannot always be expected to have enough financial knowledge, information and understanding of complex products and risks to decide what is best for them.

When we consider what is an appropriate degree of protection, there has to be a balance struck. An important part of our approach is establishing, through our policy-making processes, where that balance might lie in relation to different consumers and different categories of authorised persons or regulated activities.

How we make policy

We aim to respond to emerging issues quickly, put in place interventions that deal effectively with the underlying problems and anticipate market responses to what we do.

When we make policy we set out what we expect from authorised persons and other market participants, focusing in particular on changing behaviour in financial markets.

Our Board considers and agrees our policies, and we consult publicly with the industry, consumers and other interested parties on our rules and guidance before they are published

in the FCA Handbook. Our Handbook sets out the FCA's rules, guidance and other provisions (see next section).

The evidence and analysis behind our proposals looks at the expected costs and benefits, and how the proposals are compatible with our statutory objectives, general duties and regulatory principles (which are described further in the annex). We also consider the effects of rule changes on the different categories of the organisations and activities we regulate.

We make our policies by following these principles:

- prioritising our policy activities so that they are targeted where they can make the most difference
- making new rules and guidance only if we think they will be effective at dealing with and proportionate to the problem we have identified
- planning our initiatives so they align with the European and international timetable. For example, this may mean delaying policy until there is a European initiative. We may want to carry out a post-implementation review or policy research in time to influence international initiatives, including planned reviews of European Directives.

We place a strong emphasis on post-implementation reviews to look at how well our regulatory interventions have worked in achieving our operational objectives.

Our Handbook

We publish our rules and guidance on rules in a central Handbook (or rulebook). This sets out and explains the expected standards and outcomes for how we think those we regulate should conduct themselves, and explains how our key regulatory processes operate. It includes, for example:

- how firms should conduct their dealings with their customers and other consumers – including disclosure and conduct standards
- how firms should handle complaints and conduct consumer compensation schemes
- how the Financial Services Compensation Scheme (FSCS) and Financial Ombudsman Service (the ombudsman service) carry out their functions
- how firms should conduct their dealings with other market participants (wholesale standards)
- standards for market participants in relation to market abuse and financial crime
- requirements for listed securities
- prudential standards for FCA-only authorised firms
- our approach to enforcement.

The Handbook shows clearly how its rules and guidance apply to different categories of authorised persons and regulated activity.

Before making any rules, the FCA must consult the PRA and publish draft rules, accompanied by a cost benefit analysis and an explanation of the purpose of the rules, and consider any

representations made about proposed changes. The PRA also publishes its own Handbook on its rules and other provisions.

Waiving our rules

The FCA has the power to waive (set aside) or modify its rules, although not all rules can be waived or modified, such as trust scheme rules.

We can waive our rules only if we are satisfied that:

- compliance with the rule would be unduly burdensome or would not achieve the rule's purpose
- waiving the rule would not adversely affect our objectives.

Dual-regulated firms who want rules set aside for them should apply to the ruling body who made them, either the FCA or the PRA. Whether a rule belongs to the FCA or the PRA is clearly shown in our Handbooks. Both are available to view at www.fca.org.uk and www.bankofengland.co.uk/pr respectively.

We do not automatically grant applications for waivers or modifications, but consider the merits of each case. If we decide to grant the application, we may attach certain conditions or requirements, for example extra reporting requirements.

We publish the details of waivers and modifications on the Financial Services Register and a Consolidated List on our website, unless we consider it inappropriate, for example if publication would cause unreasonable prejudice to the commercial interests of the organisation concerned, or any other member of its immediate group.

Publishing general guidance

General guidance helps to show how we expect firms to behave and conduct themselves, or how our regulatory processes are likely to apply within the framework of our rules.

It can also help stakeholders see what our current regulatory priorities are and which areas we are focusing on. Unlike rules, general guidance is not binding. Instead it shows ways – but not the only ways – for firms to comply with our rules.

Engaging earlier

We talk to the people that our policies affect and listen to their views. Their feedback helps us shape our policy. We engage with people across the country - whether face-to-face, online or through third parties – including market representatives, firms, consumer bodies, other stakeholder groups, and retail consumers. We use a FCA consumer segmentation model to help us choose who we speak to.

Our aim is to produce fewer, more focused consultations than we have done in the past.

Our publications

The FCA is committed to making its publications clearer and more accessible to the industry we operate in. As such we take a plain language approach to our publications to help them reach a wider audience.

Carrying out consumer research

We gather and evaluate a wide range of information to:

- help us identify and assess emerging and current risks to consumers
- support our risk-based approach
- help shape our general policy and principles and the actions that are taken by our particular functions.

This includes commissioned research, market and consumer (behavioural) insight, economic and market analysis, consumer complaints and enquiries, media analysis, and information from consumers, consumer organisations and firms.

Consumer insight

Our policies – and how we perform our particular functions – are based on our knowledge of market issues, including competition, consumer experiences, behaviour and market failures.

We gain our insight by:

- maintaining links with several consumer organisations and other external bodies that provide relevant information, and sharing insights into how consumers, firms and products are working in the markets
- conducting thorough research into consumer and firm behaviours, understanding, attitudes and situations. We commission work from external experts and use a wide range of techniques, including behavioural insights.

Understanding consumers and markets helps us consider, evaluate and design the ways we can act to ensure that consumers are properly protected. This can mean we identify risks to consumers early and intervene more quickly.

Data

Data plays an important role for us in determining our general policy and principles and when making rules.

We collect data from firms based on their permissions and the regulated activities they carry out. We also collect additional data as needed for our policy making and for our supervision of risk, events and firms, which varies in detail and content depending on the firm's potential impact on our objectives.

Authorising firms and approving individuals

One of our main functions is the authorisation of firms and approval of individuals.⁴ Through authorisation we can ensure that firms and individuals who enter the financial industry meet our standards and are equipped to operate in the market.

Ensuring the quality of those who enter the industry is an effective way of helping to protect consumers. When we receive applications for authorisation we have the opportunity to address risks before they emerge and intervene early to protect consumers.

We recognise that we need to strike a balance between ensuring appropriate standards are met and making sure we do not stifle innovation and competition. This falls in line with our competition duty, where we will ensure that our regulations, and associated processes, do not restrict competition by presenting unjustified barriers to entry into, expansion within or exit from the industry.

Part of the process is assessing whether applicants understand our conduct and prudential requirements and take their responsibilities for meeting those standards seriously. We also look at whether applicants have a good understanding of how to ensure good customer outcomes through corporate culture, appropriate conduct risk management and product design.

We use a risk-based approach across all authorisation processes, according to the nature, scale and complexity of the proposed business.

The process for new banks

The conduct standards required of new banks remain unchanged in the interests of our consumer protection objective.

Mobilisation phase

Potential entrants can now choose between two authorisation processes, one of which includes a mobilisation phase. This phase allows firms to apply for authorisation at an earlier stage to defer the costs of building the banking infrastructure until after authorisation has been granted. In line with our competition objective, this aims to reduce regulatory barriers to entry.

Assessing firms against our threshold conditions

When firms apply for authorisation or want to vary their permissions, they are assessed against FCA threshold conditions, which are the minimum standards all new entrants should meet.

Our approach to assessing firms against the threshold conditions are as follows:

- we look at the risks new applications pose to our statutory objectives – we will not authorise, or consent to the PRA authorising, firms whose products and services pose a risk to consumers
- we are open with all potential applicants as they go through the authorisation process, making sure we speak with people early on so they understand what is required of them

⁴ The Government has recently announced that it will work with the FCA and the PRA to create a new framework for regulating individual standards of conduct in banking based on strengthening individual accountability. (www.gov.uk/government/uploads/attachment_data/file/211047/gov_response_to_the_parliamentary_commission_on_banking_standards.pdf)

- applications that are significantly incomplete or clearly do not meet our standards (for example, the proposed products or services are not in the interests of consumers or pose a significant risk to our objectives) will be refused early in the process
- we monitor and assess any risks and underlying themes that we identify on an ongoing basis once a firm or individual is authorised.

Assessing approved persons

An approved person is an individual who has been approved by the FCA, or the PRA and the FCA, to perform one or more controlled functions⁵ on behalf of an authorised firm. The controlled functions include significant influence functions (SIFs), such as those carried out by a chief executive or director, and customer functions.

It is important that anyone performing SIFs and/or customer functions promotes a culture in firms that aims to deliver fair customer outcomes. Only individuals with the appropriate skills, capabilities and outlook should hold these positions.

Our role covers:

- considering all SIF and customer function applications
- assessing fitness and propriety with reference to previous regulatory history
- for the most senior functions within higher-risk firms, carrying out a more detailed assessment of the firm's approach to appointing approved persons and interviewing those who will perform SIFs before approval.

We work with firms to ensure they clearly define what approved persons are accountable for and this is made clear to us.

We see accountability as key to reinforcing how we expect individuals and firms to act. If problems arise, accountability helps us to take appropriate enforcement action against approved persons. Individuals are held accountable for the role they are approved for, and must continue to demonstrate that they are fit and proper, throughout the time in their role. When approving an individual joining a firm's board, we take into account the board's overall composition.

Approved persons codes

We may issue statements of principle on the conduct expected of approved persons. When we issue a statement of principle, we must issue a code of practice to help determine whether a person's conduct complies with the statement of principle.

Our power to issue statements of principle and codes of practice includes a power to make different provisions for different persons, cases or circumstances and is part of our rule-making functions.

Changes in control

Individuals or organisations wanting to acquire, increase or decrease control over certain limits in an FCA-authorised firm – known as controllers – must seek our approval before doing so.⁶

⁵ www.fca.org.uk/firms/being-regulated/approved

⁶ See our Supervision Manual, chapter 11 (SUP11.3): Requirements on controllers or proposed controllers under the Act <http://fshandbook.info/FS/html/FCA/SUP/11/3>

Under certain circumstances we will consult the PRA if:

- the individual or organisation is dual regulated
- the targeted organisation is part of a dual regulated group.

When assessing changes in control we will ensure:

- the firm's business model remains viable
- consumers will not lose out as a result of the change.

In complex mergers, acquisitions and restructurings, we assess closely the impact on consumers, in particular the risks to them following a merger. We expect the proposed controller to carry out appropriate due diligence in this area. Typically we do not approve acquisitions where we have significant concerns about the controller's integrity or reputation.

If a controller does not seek our approval of the acquisition or increase of control before it occurs, for example we are not told about a change in control until after the event has happened, we will take appropriate action, which could include prosecution.

Passporting

What is passporting?

A UK-authorized firm that intends to carry out activities in another European Economic Area (EEA) Member State (the host state) can do so if its activities fall within the scope of a relevant single market Directive. This is known as 'passporting'.

The activities that can be carried out under a passport vary and are set out in the relevant EU Directives.

All EEA firms wishing to passport into the UK are dealt with by the FCA, except for banking and insurance, which are managed by the PRA.

The extent of our role in passporting

Allowing firms to conduct their cross-border regulated business across Member States in line with the relevant Directives can help further our competition objective by allowing European businesses to compete with their UK counterparts. However, we aim to balance this objective with protecting consumers from poor conduct in firms passporting into the UK and those passporting outwards into other EEA Member States.

The extent to which we can protect consumers from poor conduct is down to the different responsibilities of home and host state regulators, as set out in EU legislation. As a host state regulator, we have fewer powers over incoming EEA firms than over UK firms passporting out, in particular cross-border services provided, for instance, by telephone or through the internet.

When firms from outside the UK want to set up in the UK, we assess them based on:

- conduct risks
- our supervisory role as set out in EU Directives
- following the relevant EU rules.

We analyse the types of business that we think hold more risk for consumers and UK markets. Where we have a concern we will coordinate with our European counterparts.

Supervising firms

Supervising firms plays an important role in meeting our consumer protection objective. We have a pre-emptive approach to supervision, which means we make forward-looking judgements about firms' business models, strategies and how they operate. This enables us to intervene early before widespread harm is caused to consumers. Our approach is risk-based and proportionate, recognising the diversity of regulated firms.

Our supervision framework

Our supervision is very broad, covering many businesses, different industry sectors, and retail and wholesale markets. Our supervision framework is built around three supervisory 'pillars' that deliver different aspects of supervision.

Pillar 1 – Firm Systematic Framework (FSF)

FSF aims to ensure that firms behave in a way that minimises the risk they represent to our objectives, both now and in the future. It identifies and provides solutions for potential causes of poor conduct that may result in:

- poor outcomes for consumers
- risks to market integrity
- barriers to effective competition.

Pillar 2 – Event supervision

Event supervision aims to react rapidly and deal efficiently with events that may lead to potential or actual harm to:

- consumers
- market integrity
- competition.

Whereas FSF is more pre-emptive, event supervision reacts more to what is actually happening. This includes monitoring firms to ensure they are complying with regulatory requirements.

We ensure that event-driven cases are dealt with quickly and appropriately, for example, problems that are emerging or have happened regarding wholesale and retail conduct risks.

Pillar 3 – Issues and products supervision

Issues and products supervision – also known as thematic or cross-firm work – looks at issues which cut across a number of firms or sectors and where there is a risk of detriment to consumers. We use thematic reviews primarily in pursuit of our consumer protection objective, analysing risk in the sector, looking at what is currently and potentially causing poor outcomes for consumers and market participants. Poor outcomes may arise either because firms are not complying with our rules (or the spirit of our rules) or because we do not have the right rules in place.

The analysis uses the data we collect, our understanding of the products and firms and input from firm-based supervision to identify and assess risks.

Thematic reviews differ from the market studies we undertake to analyse competition issues in the markets we regulate (see Chapter 3). Market studies involve looking at markets in the round, to understand how consumers as well as firms behave in these markets and how they interact. Thematic reviews, by contrast, tend to look at a more focused set of issues – such as potential customer detriment in relation to a particular product type, or firms having an unsatisfactory redress policy in place.

We can use our product intervention powers to intervene earlier in a product's lifespan. This can help reduce the effects of and provide solutions for emerging risks before they cause widespread harm across a market sector.

Sector risk analysis

We use sector risk analysis in our supervision model to identify and analyse the main risks affecting markets, firms and their customers. It supports all three pillars of supervision and is used on all categories of firm.

Enforcing our rules

Credible deterrence

We have a low tolerance of poor conduct towards consumers and follow a strategy of credible deterrence, taking tough and meaningful action against the firms and individuals who break our rules as well as those who carry out illegal unauthorised business. This is supported by a range of regulatory powers, including both civil and criminal prosecution, to enforce our rules.⁷

We also publish case details, which can be an effective way of raising awareness of our regulatory standards and deterring future rule-breaking.⁸

Our approach to meeting our consumer protection objective through credible deterrence is by:

- bringing more enforcement cases and pressing for tough penalties for infringements of rules
- removing firms or individuals who do not meet our standards from the industry
- taking more cases against individuals and holding members of senior management accountable for their actions
- prioritising compensation for consumers.

Taking action early

Our enforcement and supervision functions work together to support our desire to identify potential problems at an earlier stage, and take steps to avoid them. For example, we will take action, including enforcement action, where we consider that part of a firm's business model

⁷ The selection method for cases, a description of our main information gathering and investigation powers, and the way we conduct investigations are set out in the Enforcement Guide [<http://fshandbook.info/FS/html/FCA/EG>].

⁸ Our approach to publicising enforcement action is set out in the Enforcement Guide (see above link) and does not distinguish between different types of authorised firm or regulated activity.

or culture – such as its product selection, training and recruitment, or remuneration practices – are likely to harm consumers.

We also resolve many enforcement cases by settlement. Early settlement has many potential advantages as it can result, for example, in consumers obtaining compensation earlier than would otherwise be the case, the saving of FCA and industry resources, messages getting out to the market sooner and a public perception of timely and effective action.⁹

Firms and senior managers

We will impose tough penalties on firms that have failed to treat consumers fairly. This is supported by our penalty policy, which links the size of the fine to the benefit a firm received from its misconduct.

We will continue to investigate senior managers and take action against those who fail to:

- recognise and manage the risk that their firm is running
- control the way their products are sold
- ensure that the interests of consumers are at the heart of those designing new products.

We will take action against firms and individuals who conduct illegal activities, and will make the public aware of the dangers of such activities and help return funds to victims where the courts have been able to recover money.

New and existing powers

We have some new powers, for example, our product intervention rules¹⁰, and we will also make greater use of existing powers, such as own initiative variation of permission (OIVOPs).

Our approach to enforcement in relation to our market integrity objective is discussed in Chapter 2.

Regulating consumer credit

The FCA has responsibility for enforcing and regulating activities concerning consumer credit.¹¹ Our role is based on two objectives:

- strengthening consumer protection
- a proportionate regime for firms.

In this area, we aim to strengthen consumer protection through:

- increased flexibility through rule-making powers
- applying more resource than the OFT

⁹ Details of our settlement decision procedure and a description of our approach to settlement can be found in our Decisions, Procedures and Penalties Manual [<http://fshandbook.info/FS/html/FCA/DEPP>] and Enforcement Guide (see footnote 7 for link).

¹⁰ www.fca.org.uk/fsa-ps13-03

¹¹ The FCA will take responsibility for Consumer Credit in April 2014.

- dealing with problems earlier
- setting better standards in the industry, for example, by examining firms more closely before they are allowed to carry out consumer credit activities
- improved access to redress.

Working with others

To meet our objectives we must coordinate with other bodies. We will often need to work with other UK regulators and our counterparts in other countries, which may also include other enforcement agencies.

We will work closely with UK law enforcement agencies, including the National Crime Agency, to inform the FCA's risk-based approach to supervision, understand the threats firms face, share information and support firms in taking an effective risk-based approach to preventing and detecting criminal abuse themselves.

Our general approach to these arrangements is focused on:

- enabling all parties to focus on their own objectives
- the main reasons why we should work together
- avoiding where possible a detailed, prescriptive approach, to ensure that judgement and flexibility are not lost
- providing regular reviews, ensuring that any Memorandum of Understanding (MoU) remains current and embedded within the organisations.

The Financial Ombudsman Service (the ombudsman service) and the Financial Services Compensation Scheme (FSCS)

The ombudsman service and the FSCS play an important role alongside the FCA in protecting consumers. Together, these bodies help to maintain confidence in financial services.

The ombudsman service is available to consumers who are unhappy with the way a firm has dealt with their complaint.

The ombudsman service must pass us any information that it believes could help us fulfil our objectives and we will consider its importance. This gives us a valuable insight into how firms treat their customers and handle their complaints.

If we identify issues early and deal with the cause of poor consumer treatment before the effects become widespread, this can potentially reduce the ombudsman service's workload.

The FSCS considers claims from consumers against firms which are unable, or likely to be unable, to pay claims against them, for example, because they are insolvent.

Further information about the accountability and the rules under which both the ombudsman service and FSCS operate can be found on the FCA's website¹² and those of the FSCS and the ombudsman service.

The Money Advice Service (the Service)

We have a statutory responsibility for overseeing the Money Advice Service and we work closely together. This organisation plays a vital role in helping consumers understand money. The Service has access to a wide range of consumers through their various channels and will capture information that may help the FCA, for example, in:

- identifying emerging issues
- spotting trends in consumer behaviour
- helping mitigate problems by educating consumers.

We ensure that opportunities for joint working and information exchange are fully exploited. This helps us meet our consumer protection objective by putting consumers more in control when dealing with the markets we regulate.

Further information about the roles and responsibilities of the FCA and the Service can be found on the FCA's website.¹³

International bodies

Decisions taken in European and international forums, in particular, the EU and the European Supervisory Authorities (ESAs), increasingly direct the way we carry out our role. This may be through legislation, rule-making, giving guidance or determining the general policies and principles by which, for example, we supervise firms. We engage at EU and international levels to influence legislation that affects how we meet our objectives.

How we engage internationally

We engage early in debates, taking leading roles in negotiating and drafting standards and proactively recommending areas where EU or international-level rules would be most appropriate.

We coordinate our EU and global engagement with the PRA, the Bank of England (BoE), the Treasury and other relevant stakeholders. An MoU between the FCA, the PRA, the BoE and the Treasury sets out how we work together when engaging with EU and international organisations.¹⁴ This is further supported through the International Coordination Committee (ICC), involving officials from the UK authorities and chaired by the Treasury.

In our engagement we:

- seek legislation and standards that appropriately reflect the unique features of UK markets
- ensure that conduct and consumer protection issues are considered
- take negotiating positions that are based on a comprehensive understanding of what is in consumers' interests

¹² www.fca.org.uk/mou-fca-fscs
www.fca.org.uk/mou-fca-fos

¹³ www.fca.org.uk/mou-fca-mas

¹⁴ www.fca.org.uk/mou-international-orgs

- seek to ensure that consumer protection is not compromised at a domestic level as a result of EU and international actions.

Our role in global regulation

We will engage and participate in the ESAs and organisations that set global standards. We are an active member of the Financial Stability Board (FSB), the International Organisation of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS), the European Securities and Markets Authority (ESMA) and the Joint Forum.

We also engage with other European and global organisations who set standards where their work is relevant to our objectives, including the:

- European Banking Authority (EBA)
- European Insurance and Occupational Pensions Authority (EIOPA)
- Financial Action Task Force (FATF)
- Basel Committee for Banking Supervision (BCBS).

We will build and maintain relationships with key stakeholders around the globe, including overseas counterparts. Where possible, we will use these relationships to share information, ideas and best practice to find the best solutions. We will cooperate on supervisory and enforcement matters and the development of international standards.

Working with consumers and firms

We work with consumer groups so we can understand issues and emerging problems – especially those related to everyday products that most people use, like bank accounts or general insurance.

We aim to make it as easy as possible for all consumer organisations to work with us so we can both benefit from each other's information, knowledge and experience, which will improve how we regulate. We aim to make the most of our relationships, creating trust and encouraging a productive, open conversation.

Our Consumer Helpline¹⁵ provides a valuable source of guidance to members of the public who have concerns or questions about their financial services provider or products. We use the information we receive to inform our authorisation, supervision and enforcement roles. This information can also help us shape our priorities. By using the FCA consumer segmentation model we can consider the issues and needs of specific groups, as well as tailoring our response to these different groups.

Our Customer Contact Centre¹⁶ provides guidance to prospective new firms so they are clear on the expectations and obligations of being regulated and understand the main points of the different authorisation processes. That guidance is designed to inform firms before they apply and smooth their journey through the processes.

We consult practitioners and consumers to help ensure our policies and practices are consistent with our general duties. One way we do this is through our relationship with four independent panels that represent the interests of their constituencies to us: the FCA Practitioner Panel, the

¹⁵ www.fca.org.uk/consumer-helpline

¹⁶ www.fca.org.uk/contact-firms

Smaller Business Practitioner Panel, the Financial Services Consumer Panel and the FCA Markets Practitioner Panel.

Similarly, so we can understand issues and emerging problems with firms, we are increasing our engagement with them in a number of ways:

- through our supervisory function, we help ensure that communications with firms are targeted, clear and timely
- having more face-to-face engagement with smaller firms through a regional programme of events, for example, road shows, workshops and regional forums
- using social media to send out messages to firms, alerting them to issues specific to their business type and making information more easily accessible
- having more engagement with trade associations and their members, including regular access to our senior management.

We also gather information from business events and surveys to help us understand the issues firms face.

2. Market integrity

Our aims

Our market integrity objective is to protect and enhance the integrity of the UK financial system. In doing this, we will be concerned with a number of things, including:

- the soundness, stability and resilience of the financial markets
- the transparency of the price information process in those markets
- combating market abuse
- the orderly operation of the financial markets
- reducing financial crime in the UK financial system.

We also have a competition duty to promote effective competition when addressing our market integrity (or consumer protection) objective.

What the competition duty means is that we must look to achieve our desired outcomes using solutions that promote competition regardless of which objective we are pursuing.

As a matter of policy we will normally choose the most pro-competitive measure open to us provided that is compatible with our duties as a whole. We will consider how to apply this in practice on a case-by-case basis.

To ensure that the relevant markets work well, we focus on delivering good market conduct. We intervene proactively to make markets more efficient and resilient, improving integrity and choice.

We aim to ensure that market infrastructure is sound and well-run, so that users of markets have confidence in the reliability of the pricing processes and are confident that the transactions they enter into are properly executed. To perform this role, we look at a wide range of behaviour that damages trust in the integrity of markets or threatens consumer protection.

While we understand that consumers should take responsibility for their decisions, we also take the view that just because some market participants are knowledgeable about their own interests, that does not mean they should have no protection or we are not concerned about them. Therefore, in our supervision of markets we also look at wholesale conduct. For example, we become involved where we see poor behaviour by the parties concerned that has a wider impact on trust in the integrity of markets, or where inappropriate activity is likely to have poor consequences for retail consumers.

Prudential policy

We are the prudential regulator for around 23,000 authorised firms.¹⁷ In this capacity we regulate firms across a wide spectrum of financial services activities such as personal investment firms, mortgage and general insurance intermediaries, non-deposit taking lenders and investment firms.

Our policy maintains over 20 separate firm categories to reflect their different needs.

The policies and principles behind our approach to prudential regulation aim to protect consumers and markets from:

- firms acting inappropriately when dealing with consumers or other market counterparties
- firms under financial strain
- firms failing and/or leaving the market.

Prudential risks can increase the probability of consumer harm or market dislocation or both. For example, firms under prudential pressure may:

- find it harder to comply with retail or market conduct policies
- be more likely to put consumers' funds at a higher risk of loss
- be more susceptible to financial crime
- threaten confidence in the integrity and soundness of markets.

Prudential policy sets standards that aim to give firms a degree of resilience, and increase consumer trust in a firm's creditworthiness, substance and commitment. Without prudential standards there is less incentive for firms to comply with other regulatory obligations or to treat customers fairly.

Prudential standards can help firms to focus more on consumers and the integrity of the market as a whole. For example, they help to ensure that firms lend more responsibly, provide more appropriate advice, deal with clients more effectively and carry out transactions soundly. Prudential standards can also help to ensure that a firm winds down in a better way, by reducing the possibility of shortfalls in funds and/or the disruption resulting from the closure.

We see the benefits of prudential standards in three ways:

- supporting our objective to protect and enhance the integrity of the UK financial system
- improving the conduct responsibilities of firms
- securing an appropriate degree of protection for consumers, albeit indirectly through improved conduct.

We take a proportionate approach to the standards we apply, taking into account the nature, scope and complexity of the risks that firms pose to our objectives. For example, this might

¹⁷ Prudential requirements for dual-regulated firms are set by the PRA.

include considering firms' activities, business models and significance in the markets in which they operate.

When determining the policies and principles by which we carry out our role, we look at the following risk-based principles:

- introducing or enhancing prudential standards for those activities and firms where consumer harm is more likely to arise
- introducing or enhancing prudential standards for the firms and activities where market disruption is more likely to occur if a firm gets into financial difficulties or fails. For example, is the firm particularly important in its market and would it have a considerable impact on consumers and markets if it failed?
- introducing or enhancing prudential standards for firms and activities that may be costly to wind down if the firm fails
- an increased emphasis on prudential and financial monitoring and reporting
- identifying which prudential standards, and financial and prudential reporting requirements work best, by looking at the level of risk posed by the regulated activity. For example, by placing a strong emphasis on monitoring liquidity risks or ensuring firms hold a minimum amount of liquid resources.

Research

In the Introduction, we described the importance of developing a better understanding of the markets we regulate to help us improve our understanding of risk and emerging and current consumer concerns.

To do this we gather and evaluate a wide range of data and information. This helps us take quicker action against the poor practices that threaten market integrity and help us take the right action.

Authorising firms and approving individuals

Ensuring the quality of those who enter the industry not only helps protect consumers, but is also an effective way of helping to protect firms and markets from harmful behaviour and financial crime. The general policies and principles described in Chapter 1 by which we carry out our authorisation and approval roles for consumer protection equally apply to our market integrity objective.¹⁸

In relation to authorisations, we set out the minimum standards all new entrants have to meet in our threshold conditions. To meet our market integrity objective the threshold condition on which we place particular importance is a firm's ability to put forward:

'an appropriate, viable and sustainable business model, given the nature and scale of business the firm intends to carry out.'

¹⁸ See footnote 4, page 15

We expect firms to provide clear information with evidence of how they will meet this condition. We will recommend refusal at an early stage where we are not satisfied that a firm meets, or will continue to meet, at least the minimum expected standards.

Prudentially supervising firms

Our prudential supervision approach aims to minimise the effect of failure on consumers and market participants. Pro-active supervision is limited to a relatively small number of prudentially critical firms.

Our approach depends on the potential impact of the firm or group failing. This allows us to be flexible in how we allocate resources to individual firms, consistent with our risk appetite and statutory requirements. We group firms into four separate categories:

- **P1** – groups/firms that would have a significant adverse impact on the market in which they operate if they were to fail in a disorderly way (for example, because a particular market is highly concentrated, so that a disorderly failure of one firm could not easily be absorbed by the others, or where there is a significant amount of client assets or money being held).
- **P2** – groups/firms that would have a significant impact on the functioning of the market in which they operate if they were to fail in a disorderly way, but there is a smaller amount of client assets and money being held or an orderly wind-down can be achieved.
- **P3** – groups/firms that are unlikely to have significant impact if they were to fail in a disorderly way.
- **P4** – firms that due to their specific nature or circumstances require a different approach to prudential supervision, which can include firms in administration or insolvency, or organisations with special supervisory regimes.

Our overall supervisory approach includes prudential analysis and monitoring. We carry out supervisory work where financial and prudential risks could harm consumers, damage market integrity or otherwise pose risks to our objectives.

Financial and prudential analysis also considers potential effects to other firms – for example, from a firm to the remainder of its sector. The way we prudentially supervise firms only regulated by the FCA is determined by which of the above categories they fall into.

Supervising wholesale conduct

'Wholesale conduct' is how we describe the way market participants interact with each other and conduct their business in wholesale markets (such as banking, insurance and securities). This includes trading or dealing, and the way firms behave when dealing with non-retail clients.

Wholesale market regulation has a wide scope, spanning the entire capital markets transaction chain and encompassing investors, issuers, intermediaries (both buyers and sellers) and the various marketplaces themselves.

We believe the main causes of wholesale conduct risks – particularly the mismanagement of inherent conflicts of interest – can result in harm to consumers and damage market integrity by undermining trust and confidence.

Our policies and principles behind our approach recognise that:

- the soundness, stability and resilience of financial markets and the transparency of the pricing process in those markets rely on firms behaving appropriately
- some participants in wholesale activities have different degrees of expertise and need more protection than others
- while retail consumers do not generally directly participate in wholesale activities, there is a connection between retail and wholesale markets, so risks can be transferred between them.

To help meet our market integrity objective we have developed an interventionist policy for supervising existing wholesale conduct issues, with a particular focus on:

- harm caused by products manufactured in wholesale markets and distributed into retail markets where product features are not transparent or are misleading
- poor conduct by firms where differences in expertise causes bias in the wholesale market
- market practices at various points of the value chain that cause harm to the end consumer
- poor conduct in wholesale activities that affect trust in the integrity of the markets, even where there is no clear direct harm caused
- potential disruptions to markets working properly caused by firms failing or failing to meet their obligations.

Regulating markets

Market regulation

The FCA's core markets regulatory activities focus on:

- supervising the infrastructures that support the trading of financial instruments
- supervising the issuing of securities, including acting as the UK Listing Authority (UKLA)
- maintaining a broad oversight of both on-exchange and over the counter (OTC) markets and detailed monitoring to prevent, detect and pursue market abuse.

Market infrastructure

Trading platforms

Our supervision of Recognised Investment Exchanges (RIEs) and Multilateral Trading Facilities (MTFs) are separate from, but aligned with, our FSF supervisory approach (see **Supervising**

firms in Chapter 1). We follow a supervisory model based on a relationship-led and risk-based approach.

Recognised Investment Exchanges (RIEs)

The way we supervise an RIE depends on how much risk the strategy and operation of the trading venue pose to our objectives. For example we will look at the increasing role of technology in trading and the effectiveness of competition in the markets where RIEs are active (see Chapter 3).

We use our supervision, investigation and enforcement powers in relation to RIEs in a proportionate way and consider use of these formal powers when other approaches are not achieving (or are not expected to achieve) our objectives. We would, for example, be prepared to use them to ensure that the markets operated by RIEs are fair, orderly and efficient and provide a level playing field for those using them.

Multilateral Trading Facilities (MTFs)

We are implementing a new supervisory framework, which will be consistent and proportionate with our RIE supervisory framework, to ensure that participants in MTFs are protected in the same way as those trading on RIEs.

Where an MTF could have a significant impact on the market or our statutory objectives, we will supervise them closely by:

- having direct engagement between the MTF operator supervisory team and all MTF operators, with the amount of engagement proportionate to the risks the operator poses to FCA objectives
- using a peer group approach based on asset class, ensuring a level playing field within individual markets to help promote competition
- using a thematic approach to address specific areas
- reactively managing issues as they arise, which will feed back into some or all of the above three approaches.

The Bank of England is responsible for supervising clearing and settlement systems regulated as Recognised Clearing Houses. We are working closely with the Bank to regulate trading platforms and post-trade systems, under the terms of a MOU, to help us both fulfil our duties.¹⁹

The UK listing regime

We are the UK Listing Authority (UKLA) and we ensure that companies that issue securities comply with the UK Listing Rules, the Disclosure & Transparency and Prospectus Rules (the Listing Regime).²⁰ Our main role is to ensure listed companies make the disclosures required by the rules so that investors can make informed decisions about whether to invest.

We ensure that the Listing Regime reflects market practice and remains effective. We engage with stakeholders to assess how well the regime works and can amend our rules to better reflect market practices.

¹⁹ www.fca.org.uk/mou-fca-bank-pra

²⁰ Listing applies broadly to any company that wants to be admitted to a stock exchange. It is not limited to authorised persons or regulated activities.

Sponsors and Primary Information Providers (PIPs)²¹

Sponsors

Sponsors advise listed issuers at key points, such as on initial listing or when an issuer enters into a significant transaction.

The FCA maintains a list of approved sponsors. Our supervisory role over sponsor firms is to ensure that they fulfil a particular set of responsibilities.

Our policy focuses on the following areas:

- ensuring that the rules and guidance for sponsors are fit for purpose
- operating an approval process for sponsors
- operating a specialist supervisory process for sponsor performance.

We look at areas of greatest risk and where we are most likely to reduce cost-effectively the risk of a sponsor failure with our available resources. We use a number of tools, including regular and informal visits to sponsor firms.

Primary Information Providers (PIPs)

PIPs have an important role in ensuring that regulated information is communicated to the market promptly. This helps to ensure regulated markets are fair and consumers can make informed decisions.

We use our supervisory role to ensure that PIPs respond to the changing technology available for the receipt, handling and dissemination of regulated information, and to ensure that PIPs are forward-looking in their risk management.

Transaction reporting and market surveillance

We must receive certain information to help us identify market misconduct. Therefore firms based in the UK must report certain transactions in securities and derivatives to the FCA and report suspicious transactions by their clients.

We continue to build on our supervisory and thematic work in this area to ensure firms are aware of, and comply with, their obligations. We educate and assess firms through an ongoing programme of visits, systematic reviews of the data quality of submitted reports and regular Transaction Reporting forums.

We take action proportionally to ensure that firms and individuals comply with their reporting obligations. Good transaction reporting helps us to identify risks more quickly and respond appropriately, minimising potential harm to consumers and protecting and enhancing the integrity of the market.

Client assets

Our regulatory role in respect of client assets applies to a number of different sectors and types of firms within those sectors. We combine supervision and policy to provide a consistent risk-based and proportionate approach that recognises the diversity of the regulated firms that hold client assets.

²¹ Our supervisory role in this area applies more widely than to authorised persons and does not cover a regulated activity.

Client assets supervision resource is focused on higher risk firms, where risk is determined by a particular firm's balance of client money and assets holdings, and the severity of issues that exist or may exist in that firm.

Client assets issues are identified in firms through their regular reporting of client money and assets, auditors's annual reports and other sources (such as prudential alerts, firm supervisor contact, and reporting from the CASS Operational Compliance officer).

When we make policy we consider those market or regulatory failings identified through supervisory work as well as lessons learnt from recent insolvencies that have involved client money or assets. We make rules where we consider it is the best course of action.

Client assets rules

As client assets rules apply to a variety of different types of firms (investment banks, assets managers, insurance intermediaries, etc.) they are drafted requiring the firm to consider the complexity of business in their application (for example, in consideration of the frequency of reconciliations).

We have, where necessary, provided specific rules for certain sectors, such as some that apply to insurance intermediaries, or some that have limited application in respect of trustee firms.

LIBOR

Following the Wheatley Review, the FCA introduced two controlled functions for the key individuals working at the administrator of LIBOR and banks that submit rates to LIBOR.

Further recommendations from the Wheatley Review helped create a criminal offence, under the Financial Services Act 2012, for making false or misleading statements or impressions in relation to specified benchmarks, such as LIBOR.

The creation of this criminal offence will promote market integrity by ensuring a credible deterrence to those who seek to abuse the system.

Enforcing our rules

We use our enforcement powers proportionally to protect and enhance the integrity of the UK financial system. An important element of our credible deterrence strategy (see **Enforcing our rules** in Chapter 1) is our robust use of our criminal and civil powers to take action against firms and individuals who abuse UK markets.

Tackling market abuse

Delivering clean markets and tackling market abuse is a high priority for the FCA, especially in view of meeting its market integrity objective, as market abuse can directly damage trust in the markets.

We work to reduce the risks posed by the spreading of false information that misleads or distorts the market, as well as information leaks, which can lead to market abuse such as insider dealing. We have a range of ways we can be informed or find out about market misconduct, and continue to develop more sophisticated practices for investigating market abuse, regardless of the form of abuse.

We identify, expose and punish those who engage in market abuse to encourage better standards of market conduct and behaviour.

We continue to build on expertise and technical capabilities developed over a number of years to investigate and monitor insider dealing and to support prosecutions. We confiscate the proceeds of the crimes of those who are found guilty.

We use our civil powers to impose tough penalties against both firms and individuals who commit market abuse. Taking action against individuals is an important part of our credible deterrence strategy and we impose bans as well as fines on those we find have committed market abuse. Where appropriate, we seek High Court injunctions to prevent ongoing abusive conduct.

Code of Market Conduct

The FCA issues a code to give guidance for determining whether or not behaviour amounts to market abuse. The code specifies:

- descriptions of behaviours that do or do not amount to market abuse
- factors that are to be taken into account in determining whether or not behaviour amounts to market abuse
- descriptions of behaviours that are accepted and unaccepted market practices in relation to one or more markets.

We may amend this code from time to time. Before we make any non-urgent changes, we must publicly consult on a draft of the code, accompanied by a cost benefit analysis. We will consider representations made on the consultation and publish any significant differences between the draft and final code amendments.

Short selling

The FCA is the UK authority under the EU Short Selling Regulation. We are responsible for ensuring the requirements of this regulation are met and apply a risk-based approach.

Tackling financial crime

We work to ensure that individuals and firms are not victims of financial crime. By looking at certain aspects of firms we can judge their vulnerability to crime. For example, this might be because of their size, customer base, product lines or corporate culture.

We aim to keep criminals and dishonest individuals out of the industry. We need people who own and manage the firms we regulate to be people of integrity. We believe an important way of keeping our markets clean is by deciding who is allowed to own and run a financial firm, what questions we ask of firms, and how or whether to punish those that fall short.

The main financial crime risks we tackle are:

- **Fraud** – we use a range of techniques to test what controls financial firms have in place, in particular to help prevent frauds against consumers, such as ‘boiler rooms’ and Ponzi schemes.
- **Money laundering** – we look at the steps firms take to detect and prevent money laundering, particularly focusing on high-risk customers and products. We continue to make examples of firms who take unacceptable risks.
- **Bribery and corruption** – we will take action against firms found to be using corrupt practices, or failing to prevent bribes being paid to win business.

We use thematic reviews to assess the effectiveness of firms' systems and controls to counter financial crime. We also use targeted visits to test how the industry is improving its practices, as well as our Systematic Anti-Money Laundering Programme (SAML), which is part of our supervisory approach.

Working with others

It is essential we work with other authorities if we want to meet our objectives. These include overseas authorities, such as regulators and law enforcement agencies, so that we can pursue market abuse cases outside the UK.

The Prudential Regulation Authority (PRA)

The PRA regulates some firms for prudential purposes, while we regulate those firms' conduct. We have a statutory duty to coordinate with the PRA while carrying out our functions, including policy-making and supervision. How we coordinate is set out in a MoU.²²

While we both look to meet our own objectives, we are aware of the potential for concerns of the other.

In some cases, the FCA and the PRA will have a direct interest in the same issue, although from different perspectives. In other cases, we may work closely together, and share our respective views on the main conduct and prudential issues facing a firm. Public actions such as enforcement cases are carefully coordinated to assess the prudential impact.

The FCA and the PRA have MoUs with the Bank of England and the Treasury on international engagement, and on the supervision of financial market infrastructure.

Bank of England/Financial Policy Committee (FPC)

The Bank of England has responsibility for financial crisis management and the supervision of payment systems, settlement systems and clearing authorities. The FCA and the Bank work closely together in their regulation of trading platforms and post-trade systems, under the terms of a MoU, to enable both regulators to fulfil their respective mandates.²³

The FPC is an independent committee at the Bank of England. It is responsible for contributing to the Bank's objective of protecting and enhancing the stability of the UK financial system, and supporting the economic policies of the Government, including its objectives for growth and employment. The FPC can direct the FCA (and the PRA) in the use of certain macro-prudential measures as set out in an order made by the Treasury.

The FPC can also make recommendations to the FCA about how it operates. If the recommendation is made on a 'comply or explain' basis, the FCA must act on it directly or let the FPC know how it has failed to do so and why.

Coordination with international bodies

With other UK authorities, we play an active and constructive role in developing regulation and supervision at an EU and global level. The international bodies we work with are those mentioned in Chapter 1.

²² www.fca.org.uk/your-fca/documents/mou-between-the-fca-and-the-pracoordination

²³ www.fca.org.uk/mou-international-orgs

Our membership of the global regulatory community is particularly important for our market integrity objective. This is because the rules set by international bodies increasingly determine the general policies and principles by which, for example, we supervise firms.

3. Promoting effective competition

Our aims

We have a competition objective to promote effective competition in the interests of consumers in the markets we regulate.

We also have a competition duty to promote effective competition when addressing our consumer protection or market integrity objectives.

What the competition duty means is that we must look to achieve our desired outcomes using solutions that promote competition regardless of which objective we are pursuing.

As a matter of policy we will normally choose the most pro-competitive measure open to us provided that is compatible with our duties as a whole. Consideration of how to apply this in practice will be made on a case-by-case basis.

Our competition powers

We have a number of powers to pursue our competition mandate.²⁴ We can, where appropriate, make rules in support of our objective to promote competition to benefit consumers or take action against firms that we regulate.

Where we take action against firms we can also use our own initiative powers.²⁵ This means that we can:

- change the permissions that the business currently operates under, and/or
- add a specific requirement to how the business should operate.

These may extend (in the case of the imposition of requirements) to matters that are unrelated to the regulated activity an authorised person has permission to carry out.

When we look at competition in our studies, we will also consider the effects of existing rules.

When making decisions under our competition objective, FSMA provides that we may look at several specific factors, including:

- the needs of different consumers who may use those services, including their need for information that helps them make informed choices

²⁴ The only new power that the FCA has gained is the power to make a request to the OFT under section 234H. All other powers were in FSMA. They can now also be employed for the purposes of fulfilling the FCA's competition mandate.

²⁵ The FCA may vary a firm's permission on its own initiative (OIVOP) or impose a requirement on a firm on its own initiative (OIREP) under section 55J or 55L of FSMA. <http://fshandbook.info/FS/index.jsp>

- how easy it is for consumers to access those services, including consumers in areas affected by social or economic deprivation
- how easy it is for consumers to switch suppliers
- how easily new businesses can enter the market
- how far competition is encouraging innovation.

We will also work with the Office of Fair Trading (OFT) in the pursuit of our competition mandate. We have been given a specific power to ask that the OFT²⁶ examines whether competition is effective in a market.²⁷ The potential use of this power, and how we work with the OFT, are examined at the end of this chapter.

The purpose of this chapter

In this chapter we focus on what issues we are likely to consider harm competition and how we identify those issues.

In respect of our competition mandate we treat different types of firms or activity in the same way.²⁸ Our approach to competition and the associated framework of analysis that we will apply have been developed to apply to all firms and areas of economic activity.

Policy to promote competition

In approaching competition issues we will analyse the markets we regulate and target our resources based on the areas:

- that we consider carry the greatest potential consumer harm, and
- where we believe we can intervene and help consumers most.

Our competition remit also covers:

- authorisation and supervision by examining the business models being operated by firms we regulate and building competition considerations into the design of our policies, regulatory interventions and remedies. For example, we look at whether our authorisation requirements create undue barriers to entry for new firms.
- looking beyond our regulatory perimeter to consider competition issues that may affect the markets we regulate and seeking to address them by working in collaboration with UK and EU competition authorities when appropriate.

We expect to use market studies as our main tool for examining competition issues in the markets we regulate.

²⁶ Including the successor organisation to the OFT, the Competition and Markets Authority (CMA).

²⁷ Formally, under section 234H FSMA, we can request that the OFT consider whether a feature, or a combination of features, of a UK financial services market may prevent, restrict or distort competition in connection with the supply or acquisition of any financial services in the UK or part of it.

²⁸ The FCA has certain responsibilities regarding the application of the competition objective to its general functions of recognising and supervising Recognised Investment Exchanges. This is set out further below.

Our understanding of competition

We will use the following principles in our competition work:

- Competition is a process of rivalry between firms seeking to win customers' business over time. Markets that are competitive tend to lead to cost efficiencies, lower prices, greater choice, innovation and economic growth, which ultimately work in the interest of consumers.
- It is the process of competition that needs to be protected and promoted. This does not equate to protection of specific competitors. In other words, what matters are the outcomes that competition delivers to consumers and to the economy as a whole, and not whether (inefficient) operators are unable to compete and survive in a market.

Case study – making it easier to enter banking

To enter the banking market originally required setting up expensive infrastructures before the authorisation process. The problem with this was that there was no guarantee that authorisation would be given, so considerable expense could be wasted. The FCA saw this as a potential deterrent to new entrants.

So the FCA made this simpler. We offer two separate routes to authorisation for new entrants to banking, one of which includes a mobilisation phase. Choosing this option means authorisation happens at an earlier stage, with the costs of infrastructure development occurring later in the mobilisation phase.

This makes it easier for new market participants to enter, therefore promoting competition in this market.

How we assess competition

We will follow a holistic approach to assessing whether competition in markets is working well for consumers.

In assessing whether intervention is needed, we will consider all the market features that could inhibit or distort competition,²⁹ including but not necessarily limited to:

- **Market power held by suppliers** – where rivalry is restricted because it is difficult for new organisations to enter the market or to grow rapidly, for example, as a result of low rates of consumer switching, network effects where the value of a service grows the more people use that particular service, strategic behaviour by established firms, or their reputation.
- **Problems in the flow of information between market participants** – where suppliers cannot obtain the information they need on consumers, or consumers cannot obtain the information they require on the services available.

²⁹ Features that inhibit or distort competition are market failures.

- **Low switching rates** – understanding the reasons why more consumers do not switch suppliers, including whether suppliers artificially raise the perceived costs and risks of switching, in turn preventing markets from working well.
- **Costs or benefits to third parties** – costs or benefits not captured in a product's price that mean that too much or too little of that product is produced or consumed.³⁰
- **Problems in the way consumers or firms make decisions** – resulting in situations where what consumers receive is not what they need, they pay too high a price for a service, or where consumers' behaviour does not adequately constrain suppliers.³¹
- **Too little consumption** – understanding why potential consumers or groups of consumers do not buy certain financial products. This could reflect problems in accessing financial services, including a lack of consumer awareness or understanding. It may also be because products are unsuitable or because there are unnecessary, anti-competitive restrictions on the availability of products.
- **Existing regulation** – when existing regulatory measures have adverse effects on competition, for example, through making it more difficult for firms to enter or grow.

Whether these factors warrant regulatory intervention can only be determined on a case-by-case basis.

Identifying competition issues requires detailed analysis and understanding of the competitive constraints on firms. We will generally analyse competition within a market framework, examining the strength of competitive constraints on individual suppliers and products. We will examine the strength of these competitive constraints by looking at, where appropriate:

- **demand-side substitutability** – how easily consumers can switch from one product to another or one supplier to another
- **supply-side substitutability** – how easily firms can produce suitable alternatives.

We will also examine whether these constraints are brought to bear locally or regionally, nationally or internationally.

Identifying markets for review

In financial services, as in other areas of the economy, the benefits of effective competition are enhanced efficiency, more innovation and lower prices, which in turn help to provide a broader range of better products and services that meet consumers' needs.

So we can identify markets that appear not to be working well we gather information from a range of sources, such as:

- super-complaints
- market intelligence
- complaints from third parties
- FCA Panels.

³⁰ These costs and benefits are known in economic literature as externalities.

³¹ These are behavioural biases. For further information, see FCA (2013), Applying behavioural economics at the Financial Conduct Authority, Occasional Paper No. 1, April. www.fca.org.uk/occasional-paper-1

Understanding the true nature and extent of competition in any market is complex. We determine our priorities by working out the level of risk that is posed to effective competition in the different markets, in particular those that harm consumers' interests. Where we consider the level of risk is a concern, we review the competition issues in greater detail, and decide whether we need to intervene.

While significant consumer harm can result from weak competition for existing services, competition concerns can also exist, or could in future exist, in markets for new services. In identifying markets for review, we will therefore examine how competition is evolving in markets for new services as well as markets for existing services. This will help ensure that the regulatory measures we adopt under our competition mandate support innovation and reduce the risk of significant harm arising in the future for consumers.

Using detailed studies to review markets

We will carry out detailed market studies of the markets concerned to analyse the effectiveness of competition in those areas and the reasons why competition is ineffective. We will look at different features in different markets, and will explore the issues in their specific context.

Any proposals for intervention that arise from the market study would be subject to the procedures required under statute, including consultation for any new rules and an assessment of proportionality. The actions that we could take after a market study are discussed below.

Sometimes we will come across issues that we consider could be handled better by other consumer or regulatory bodies, in particular the OFT (and its successor, the Competition Markets Authority (CMA)). In these cases we will liaise with the relevant agency, to ensure that the issue is dealt with by the most appropriate body.

Market study procedures

We will announce the launch of any market studies we carry out.

How long it takes to complete each study depends on many factors, such as the scale and complexity of the market. However, we expect that most will take between six months and a year.

Early on in each market study we will let stakeholders know about the issues that concern us and the theories of harm we will be looking at. A theory of harm is a high-level description of the potential adverse effects on competition and the reasons behind them. We will also provide a clear point of contact for stakeholders.

Each market study will mean gathering specific information from a broad set of stakeholders (for example firms, intermediaries and distributors, trade bodies, consumers, consumer bodies). To understand how competition works in the markets we regulate, we may ask for information from organisations and individuals that we do not regulate.

We will receive our information from:

- data we already hold or have access to
- information and evidence provided to us by the FCA's Panels
- the firms we regulate, using our information-gathering powers where necessary
- firms and organisations that we do not directly regulate but are likely to have information relevant to the markets we are examining

- trade and consumer associations
- Government departments and other regulators (UK and international)
- various consumers.

We gather information using questionnaires to firms, desk research, surveys, mystery shopping exercises and working with other regulators. We will also welcome informal consultation with relevant stakeholders.

We will publish our draft conclusions on the effectiveness of competition in the markets we review. We will present our draft analysis and preliminary conclusions, and where necessary, will include proposed solutions for addressing any concerns identified. We will also assess the proportionality of proposed interventions before going ahead.

We will publish a market study once it is complete, including:

- a description of the market under consideration
- the reasons for carrying out the study
- a description of the methodologies used to collect and analyse the data
- our analysis
- our conclusions on the issues considered.

Promoting competition in markets that are not working well

Actions following market studies

If we conclude that competition is not working well and we need to take action, we can intervene to promote effective competition using a number of measures, including:

- policy or regulatory changes
- rule-making, including changes to or potential withdrawal of existing rules
- using firm-specific enforcement powers
- publishing guidance
- proposals for enhanced industry self-regulation.

The nature of our action will depend on the individual circumstances of each case, and could include both behavioural measures (for example, determining the information to be provided to consumers, limiting the sale of two or more products in a bundle or intervening more directly to affect prices) and/or structural measures (for example, the divestment of assets or businesses).

It will be necessary to show that any intervention is proportionate to the concerns identified. For example, structural measures are by their nature more intrusive interventions than

behavioural measures. When considering structural measures, it will therefore be necessary for us to show that such a degree of intrusion is warranted and that behavioural remedies would not adequately address our concerns. To make these assessments, we will carry out a detailed assessment of proportionality and will consult on the draft measures.

In the majority of circumstances we will complete the inquiry and investigation stages of the market study procedures outlined above before developing or implementing solutions. However, in exceptional circumstances, we may need to act more quickly to avoid serious and irreparable harm to effective competition. In these cases, we may use temporary product intervention rules to intervene early and prevent the harm to competition.

Referral to the OFT

Sometimes we may ask the OFT to examine a market. When we do, the OFT will have to publish a response within 90 days stating how it proposes to deal with the request and what – if any – action it proposes to take.

We might approach the OFT where, for example, we do not have the statutory powers to address the potential problem or where we consider the OFT has particular expertise.³²

To avoid any duplication of investigation by the OFT and FCA, we will try to refer relevant cases to the OFT at an early stage of the process.

Third party complaints, cartels and enforcement

Anyone who has concerns about activities that cause or potentially cause harm to consumers can let us know by contacting the FCA. Details on how to contact us are available on our website.³³

Where we see evidence that a cartel is involved, we will pass the matter on to the OFT. People with concerns about cartel issues are advised to liaise directly with the OFT (or its successor the CMA) and as appropriate, the Directorate General for Competition in the European Commission.

Any individual who has participated in a criminal cartel may have committed an offence. If we know or suspect a crime has taken place, we will report this to the appropriate authorities. Individuals involved may also be guilty of an offence under the Money Laundering Regulations 2007.

Recognised Investment Exchanges (RIEs)

Stock exchanges, futures exchanges and commodity exchanges have to meet a set of regulatory requirements to be recognised as RIEs. Our role is to ensure ongoing compliance with these requirements³⁴ and we will take into account our competition objective in doing so.

The actions that we can take in relation to competition issues in markets where RIEs operate are different from those we can take in other areas we regulate.

For example, we can object to an RIE's proposed regulatory provision if we judge it to be unjustified or disproportionate.³⁵ We will examine the impact of a provision on competition when making our assessment.

32 Should we identify evidence that suggests hard-core collusive practices might be taking place between businesses, we would bring this to the attention of the OFT subject to restrictions on disclosure of confidential information. The framework for sharing information with the OFT is set out in the MoU: www.fca.org.uk/mou-fca-oft

33 See the section of our website dedicated to whistle-blowing at www.fca.org.uk/whistleblowing.

34 This includes compliance with the obligations of a Recognised Overseas Investment Exchange to provide investors with equivalent protections.

35 These powers are provided by the Investment Exchanges and Clearing Houses Act 2006.

Working with others

The broader competition landscape

Competition law, its regulation and its enforcement is dealt with by a broad range of competition authorities, regulators and Government. The European Commission and National Competition Authorities (NCAs) designated by EU Member States are jointly responsible for enforcing competition law contained in European Treaty provisions. In the UK, the NCAs are the OFT and those sectoral regulators (for example, Ofcom, Ofgem, and Ofwat) with powers³⁶ to apply competition law in the sectors they regulate. However, the role of the FCA is different.

The FCA and the OFT have complementary, and, to a limited degree, overlapping roles relating to competition. We cooperate closely with the OFT and aim to ensure that the organisation with the most appropriate resources, expertise and powers to resolve the concerns will lead on the issues identified.

Merger control falls outside our competition mandate. Instead, in merger situations, we will provide supporting advice to the OFT, Competition Commission and the European Commission where appropriate.

Working with the OFT

The FCA and the OFT have signed a MoU, which sets out how we work together. We are committed to sharing information and insights, and consistently working out the best way forward for meeting our statutory roles. In practice this means, for both the FCA and the OFT, making financial markets work well for consumers.

If we decide not to take a competition issue further, this does not stop the OFT or another competition authority investigating or acting on the same issue. We do not have to give an opinion or informal advice on any competition issue we have decided not to progress with.

EU considerations

We are not bound by the competition articles of the Treaty for the Functioning of the European Union (TFEU). However, we will cooperate where regulatory decisions at a European level raise competition issues and where appropriate we will recommend issues are raised at the EU level.

Super-complaints

Super-complaints help alert us to competition issues, or other matters against consumer interests.

Only consumer bodies designated by the Treasury can bring super-complaints. They may make a complaint to us that a feature or combination of features of a market in the UK for financial services is, or appears to be, significantly damaging consumer interests.

We expect these bodies to be well-informed, in a strong position to represent the interests of consumers, and to provide clear reasoning and evidence in support of any complaint they make. We must respond to a valid super-complaint within 90 days.³⁷

³⁶ These are known as concurrent powers.

³⁷ www.fca.org.uk/fg13-01

Annex

How we operate under law

FSMA gives us a single strategic objective³⁸, which is supported by three operational objectives.

Our strategic objective

Our overarching strategic objective is to ensure that the relevant markets work well.³⁹ We also perform a set of general functions, which are:

- making rules
- preparing and issuing codes
- giving general guidance
- determining the general policy and principles by which we perform our particular functions (for example, authorisation, supervision, and enforcement).

When we carry out these functions, we must act in a way that is compatible with our strategic objective.

Our operational objectives

We have three operational objectives. When carrying out our general functions, we must, so far as reasonably possible, also act in a way that advances one or more of our operational objectives.

- 1. Consumer protection** – to secure an appropriate degree of protection for consumers.
- 2. Market integrity** – to protect and enhance the integrity of the UK financial system.
- 3. Competition** – to promote effective competition in the interests of consumers in the markets for regulated financial services or services carried out by regulated investment exchanges.

The competition duty

In addition to our strategic and operational objectives, we have a further responsibility known as the competition duty.

This duty requires us to promote effective competition in the interests of consumers when meeting our consumer protection and integrity objectives.

What the competition duty means is that we must look to achieve our desired outcomes using solutions that promote competition regardless of which objective we are pursuing.

³⁸ FSMA, Section 1B (2) The FCA's strategic objective is: ensuring that the relevant markets (see section 1F) function well

³⁹ FSMA, Section 1F (2). The relevant markets are: (a) the overall financial markets; (b) regulated financial services; and (c) services provided by non-authorised individuals that are carrying out regulated activities without breaking our rules.

As a matter of policy we will normally choose the most pro-competitive measure open to us provided that is compatible with our duties as a whole. Consideration of how to apply this in practice will be made on a case-by-case basis.

The consumer protection objective requirements

Broadly, we must protect consumers from actual or potential financial harm.

'Consumers' means persons who:

- use, have used or may use regulated financial services, or services that are provided by persons other than authorised persons but are provided in carrying on regulated activities
- have relevant rights or interests in relation to any of those services
- have invested, or may invest, in financial instruments
- have relevant rights or interests in relation to financial instruments.⁴⁰

When considering how much protection is appropriate for consumers, we must have regard to:

- the amount of risk involved in different kinds of investment or other transactions
- the experience and expertise that different consumers may have
- that consumers may quickly need information and advice that is accurate and fit for purpose
- that consumers should take responsibility for their decisions
- that those providing regulated financial services should treat consumers with an appropriate level of care, taking into account the degree of risk involved and the capabilities of the consumers in question
- the expectations consumers may have in relation to different kinds of investments or other transactions
- any information that the Money Advice Service has provided to us in the exercise of the consumer financial education function
- any information that the Financial Ombudsman Service has provided us with that could help us fulfil one or more of our operational objectives.

The market integrity objective requirements

Protecting and enhancing the integrity of the UK financial system includes:

- its soundness, stability and resilience
- it not being used for a purpose connected with financial crime
- it not being affected by behaviour that amounts to market abuse
- the orderly operation of the financial markets

⁴⁰ FSMA Section 1G

- the transparency of the price formation process in those markets.

This objective is central to the way we supervise the firms that play an important role in providing market infrastructure, delivering capital and risk transfer systems and creating confidence in the financial system.

The competition objective requirements

Our objective is to promote effective competition in the interests of consumers in the markets for regulated financial services or services carried out by regulated investment exchanges. Matters to which we may have regard in considering the effectiveness of competition include:

- the needs of different consumers who use or may use those services, including their need for information that enables them to make informed choices
- how easy it is for consumers to access those services, including those in areas affected by social or economic deprivation
- how easy it is for consumers to switch suppliers
- how easily new entrants can enter the market
- how far competition is encouraging innovation.

As noted above, we also have a competition duty when pursuing our other objectives.

As a matter of policy we will normally choose the most pro-competitive measure open to us provided that is compatible with our duties as a whole. Consideration of how to apply this in practice will be made on a case-by-case basis.

Principles of good regulation

When discharging our functions, we are also required to have regard to the following regulatory principles:

- **Efficiency and economy** – the need to use our resources in the most efficient and economic way. The Treasury is able to commission value-for-money reviews of our operations which are important controls over our efficiency and economy.
- **Proportionality** – the principle that a burden or restriction imposed on a person or activity should be proportionate to the benefits which are expected to result. In making judgements in this area, we take into account the costs to firms and consumers. One of the main techniques we use is cost benefit analysis of proposed regulatory requirements. This approach is shown, in particular, in the different regulatory requirements we apply to wholesale and retail markets.
- **Sustainable growth** – the desirability of sustainable growth in the economy of the United Kingdom in the medium or long term.
- **Responsibility of consumers** – the general principle that consumers should take responsibility for their decisions.
- **Responsibility of senior management to comply with the regulatory framework** – a firm's senior management is responsible for its activities and for ensuring that its business complies with regulatory requirements. This principle is designed to secure an adequate but

proportionate level of regulatory intervention by holding senior management responsible for risk management and controls within firms. Accordingly, firms must take reasonable care to make it clear who has what responsibility and to ensure that the affairs of the firm can be adequately monitored and controlled.

- **Recognising the differences in the businesses carried on by different regulated persons** – where appropriate, each regulator exercises its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed under FSMA
- **Openness and disclosure** – publishing information about regulated persons or requiring them to publish information, which underlines the importance of us making market information available, with appropriate safeguards, to reinforce market discipline and the desirability of enhancing the understanding of members of the public in their financial matters.
- **Transparency** – we should exercise our functions as transparently as possible, which recognises the importance of ensuring that appropriate information is provided on regulatory decisions and also that the FCA should be open and accessible, both to the regulated community and the general public.

Glossary

Italicised words have definitions in the Glossary.

Approved persons – an *approved person* is an individual who has been approved by the FCA, or the PRA and the FCA, to perform one or more *controlled functions* on behalf of an authorised firm.

Barriers to entry – these are features or costs that can prevent or delay new suppliers from entering a market, which suppliers already in that market would not have to face. For example, the costs associated with obtaining regulatory approval to operate in a market can create barriers to entry. If entry to the market is put off or sufficiently slow, this can lead to less competition in the market.

CASS Operational Compliance officer – the person responsible for ensuring the requirements of the Client Assets sourcebook (CASS) are met.

Controlled functions – these are the roles that *approved persons* are authorised to perform in their organisation, as set out by the FCA. This may include reporting on money laundering, or other activities that are carried out, for example, by a CEO. *Controlled functions* relate to the carrying out of regulated activities by a firm.

Controllers – individuals or organisations that hold a certain amount of shares or voting power; have a right to share in capital; or have significant influence over the management of the firm.

Cost benefit analysis – *cost benefit analysis* (CBA) aims to find out what the likely costs and benefits of a proposed market intervention are. For example, CBA asks: what are the likely effects of the proposed market intervention on the quantity, quality and variety of services offered, what is its effect on the efficiency of competition, and what are firms' compliance costs and the FCA's direct costs of implementing and monitoring?

Credible deterrence – this is the strategy behind FCA enforcement that we use to deter firms and individuals from operating in a way that can harm the industry or consumers, by making it clear that there are real and meaningful consequences for those who breach our principles or rules. It includes sanctions such as civil action, criminal prosecution, fines, prohibitions, and publishing details of misconduct on our website.

Cross-firm – see *Thematic*

Data – information we hold about markets or businesses we regulate.

Default – a situation where a company or individual cannot or does not pay what they owe to another organisation or individual. For example, for an individual this might be when they miss a mortgage payment. This is a sign to the lender that the borrower may not make future payments because of lack of money.

Directorate General for Competition – the department in the European Commission primarily responsible for applying the competition rules in the Treaty for the Functioning of the European Union (TFEU).

FCA consumer segmentation model – a model the FCA has developed to help us understand the requirements of differing segments of the retail consumer population. This helps the FCA consider the issues concerning specific consumer groups, and tailor its actions to those different groups.

Macro-prudential measures – measures aimed at managing risk across the financial system as a whole.

Market dislocation – a (temporary) breakdown in the functioning of a market, caused by the exit or failure of a major participant or participants, leading to potential problems in the supply or provision of services that are needed for that market to work well.

Market disruption – when a market becomes unstable as a result of risks faced or actions taken by individuals, organisations or groups within that market. For example, this can happen when failure in one organisation spreads to other organisations that depend on it.

Market failure – when a problem in the market means that too much or too little of a service is bought. This means that there is inefficient use of resources in the economy and consumers do not get the best products at the lowest prices.

Market intelligence – this is information we receive from the markets we regulate that helps us understand the industry. We get this information through analysis, from the *data* we hold about organisations, or by actively gathering it from firms. *Market intelligence* helps the FCA prioritise its work.

Market studies – our primary tool for examining the effectiveness of competition in financial services markets. These are detailed examinations to analyse whether and why particular markets are not working well for consumers. They may lead, where necessary, to proposals as to how competition in these markets could be made more effective. Market studies look at markets in the round, to understand how consumers as well as firms behave in these markets and how they interact. Market studies will tend to look at a broader set of issues than will be captured under *thematic reviews*.

Mergers, acquisitions and restructurings – *mergers* are where two organisations merge together to form one organisation, *acquisitions* are where one organisation buys another, and *restructurings* are where an organisation changes the way it operates and or the role it performs.

Network effects – this term describes the value of a service growing due to more people using that particular service. For example, a firm will benefit more from listing on a particular exchange where there are more investors.

On-exchange markets – markets that are governed by the rules of an exchange or a regulated market.

Over the counter (OTC) markets – markets where trading is carried out directly between the parties involved without using the facilities of an exchange or a regulated market.

'Peer group' approach – a way of supervising firms by looking at issues that affect similar firms.

Post-implementation review – after the FCA has completed a project or programme, we look at how effective our action has been and whether it has achieved what it set out to achieve.

Proportionality (also see *Annex*) – FCA uses *proportionality* in many of its assessments, especially when deciding what (if any) action to take, the level of action to take, including fines, and what risk the issue poses. Before taking any action, the FCA weighs whether the benefits of taking a particular action are in line with the costs of taking that action.

Reconciliation – an accounting process used to compare two sets of records to ensure the figures are the same and accurate.

Section 234D reference – firms or the ombudsman service can refer a matter to the FCA for a response if there has been a regulatory failure by a firm or firms, for which a consumer may be entitled to compensation. *Section 234D* covers a wide range of activities.

Super-complaints – a process where certain consumer bodies can complain to the FCA about features of a market for financial services in the UK that may be significantly damaging the interests of consumers.

Switching costs – these are the costs – real or perceived – that occur when a consumer changes supplier. Generally the term *switching costs* refers to costs for consumers. They include the costs of finding a better deal, cancellation fees, the time and effort it takes to arrange for a switch and the risks of switching. *Switching costs* can have anti-competitive effects as they can prevent consumers changing suppliers, or being able to exert pressure on their existing suppliers to provide a better service.

Systematic Anti-Money Laundering Programme (SAMLP) – this looks at the anti-money laundering, anti-bribery and corruption controls of 14 major retail and investment banks every four years. The scope of this work may change in future.

Thematic reviews (also known as cross-firm) – how we look at conduct risks across a number of firms or sectors, as opposed to a single organisation, and is an important part of the way we address our key conduct priorities.

Threshold conditions – firms wanting authorisation by the FCA, or who want to change what they are currently authorised to do, are assessed by the FCA to see if they meet a set of minimum standards – known as *threshold conditions*. All firms we regulate must meet the *threshold conditions* at all times.

Transaction reporting forums – the FCA holds these forums at least twice per year to discuss with UK firms developments and issues related to transaction reporting. This includes providing information on any new or existing regulatory measures in place as well as providing updates on key areas of interest.

Financial Conduct Authority



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