Financial Conduct Authority

Unanswered questions from the Annual Public Meeting 2014

1. Roland Baker

"With the possible introduction of smoothed, pooled pension funds on top of auto enrolment, how do you propose to prevent insurers from enhancing the profitability of this business by making over-optimistic assumptions about business persistency and thereby deferring more acquisition costs - cf with profits and FRS 27?"

The Queen's Speech announced that legislation will be introduced to allow smoothed, pooled pension funds or collective defined contribution (CDC) pensions. It is our expectation that they will predominantly, if not exclusively, trust based and so regulated by The Pensions Regulator rather than the FCA.

If insurers choose to provide CDC pensions through contract based arrangements, we would regulate according to our rules and principles and alongside the PRA. Deferred acquisition costs are unlikely to feature as conduct concerns, but may be relevant to the PRA or the Financial Reporting Council.

2. Mpanji Simfukwe

"BNP Paribas has been fined a record $8.9BN in the US for country sanctions violations. This violation was over a period of close to 8 years. Though the onus is on the individual institutions to comply with regulation as part of the institutions statutory and regulatory covenant it has with the regulators, what structures does the FCA have in place to stop such violations as soon as they have been identified and not allow the same to go on for any prolonged period of time?"

Our approach to firm supervision is judgement based, pre-emptive and focussed on the underlying issues that drive consumer outcomes and market integrity. We operate a three pillar model based on proactive firm supervision, event driven supervision and issues and products supervision.

The BNP Paribas case is unusual in that the offences arise out of US domestic legislation but are not necessarily offences from the perspective of UK or European regulators. However, our general remit to minimise the extent of financial crime includes breaches of sanctions and we work closely with US regulators to ensure firm compliance with anti-money laundering and sanctions risks.

The role of the FCA is to ensure that the firms we regulate have appropriate systems and controls in place to manage their financial crime risk, including complying with the UK sanctions regime and AML requirements.

The Systematic Anti-Money Laundering Programme (SAMLP) covers 14 major retail and investment banks operating in the UK and is currently the main tool used by our specialist supervisors for proactive firm-specific AML supervision. The SAMLP is resource intensive with

work on each bank lasting around 6 months every 3-4 years; it covers AML, sanctions and Counter Terrorist Financing (CTF) and was recently extended to cover Anti-Bribery and Corruption (ABC) controls.

We have taken enforcement action against a number of firms for AML issues, including Coutts, Standard Bank, Guaranty Trust Bank, EFG and Turkish Bank.

3. Sarah Mahmud

"How does the FCA plan to address anti-bribery and corruption risk in financial institutions in the year ahead?"

We conducted thematic reviews of anti-bribery and corruption (ABC) across commercial insurance broking and investment banks, published in 2010 and 2012 respectively. We are currently undertaking a follow-up review of ABC controls at 10 smaller commercial insurance brokers and plan to publish these in the autumn. We are also extending the remit of our Systematic Anti-Money Laundering Programme, to cover ABC. This covers the 14 major retain and investment banks operating in the UK.

We have taken enforcement against a number of firms for ABC weaknesses, including AON, Willise, Jardine Lloyd Thompson and Besso ltd.

4. Tobias Haynes

"How does the FCA plan to address the conflict between its final guidance for SIPP operators and the stance of the pensions ombudsman service ('POS')?

"Namely that the final guidance states the regulatory responsibilities expected of SIPP providers since April 2007, yet certain published POS decisions undermine that stance saying SIPP providers had practically no responsibilities prior to the 2012/2013 guidance."

We do not agree that there is a conflict between our guidance and the Pensions Ombudsman. Our guidance was updated in October 2012 and October 2013 and made expectations clear on due diligence requirements. The 2009 FSA report on SIPPs was clear that they expected SIPP operators to carry out due diligence on investments. The Pensions Ombudsman highlighted that firms had undertaken some checks, but this was before the 2009 FSA report. The Pensions Ombudsman refers in great detail to our guidance and implies if it had been in place at the time then they may have opined differently. Thus rather than contradicting our published guidance the opinion acknowledges it.

5. Joshua Moreman

"The trend in financial matters globally and the way forward."

In the first year of the FCA's existence, we have seen the concept of good conduct go to the top of the agenda in boardrooms across the industry. However, industry-wide cultural change will take time. In our second year we must push for this culture change to feed through from trading floors to high street bank branches – all firms must continue to put the best interests

of their consumers at the heart of their business models. At European level the focus will need to be on ensuring the panoply of post-crisis legislation is completed and implemented effectively. The European Supervisory Authorities working with member states will play a central role in this."

6. Emma Mangan

"Findings on Culture and Conduct Risk within firms/Progress on raising conduct in financial firms"

See question 5 above and the first question posed at the Annual Public Meeting. The transcript from the Q&A session can be found here.

7. John Donachie

"Why is the authorisation process so slow?"

A robust authorisation process is necessary to ensure minimum standards of both firms and individuals we regulate. However, we are conscious of the impact that unnecessary delays in our authorisation processes may have on applicant firms or individuals. The FCA regulates 68,000 firms and in the financial year 2013/14 received 1,131 applications for firm authorisation and 84,385 applications for individual authorisation.

The FSA and the Bank of England introduced changes to the authorisation process in their February 2013 publication *Barriers to Entry*. These changes were designed to make entry, and subsequent expansion, as easy as possible provided minimum standards were met. The 12 month review of the *Barriers to Entry* publication revealed that there were six new banks authorised over the last year, 20 potential banks in pre-application compared to seven in April 2013, and that average processing time for a retail firm had reduced from 17 to 13 weeks.

8. Piers Taberham

"The Government's report on whistleblowing highlights some industry wide concerns for whistle-blower protection more specifically from internal repercussions with one responded describing it as pressing the self-destruct button. How do you think firms should be addressing this cultural shift from a practical perspective to encourage individuals to speak out?"

A culture where employees feel able to speak up can significantly improve behaviour throughout a firm and ultimately improve consumer outcomes. Formal whistleblowing practices play an important role in creating this culture but should not be a first port of call. If employees have a good understanding of conduct standards, and feel secure about speaking out, they will inform senior management when they see malpractice occurring, though both formal and informal channels.

Last year, the Parliamentary Commission on Banking Standards said financial firms need to treat whistleblowers not as "inconvenient and potentially damaging, but as a valuable source of information for senior management". We agree with this conclusion, as should all responsibly run firms. The Commission recommended several reforms to whistleblowing including making a Board member responsible for internal whistleblowing controls.

We will consult later in 2014 on whether additional rules are needed to set minimum standards for whistleblowing and how prescriptive these should be. This consultation will include the proposal that a member of a firm's senior management is made personally accountable for whistleblowing procedures.

If a whistleblower does fear damaging consequences from speaking up within a firm, they may contact trained staff on the FCA's Whistleblowing Service on 020 7066 9200. Whistleblowers have proved a key source of intelligence on wrongdoing in the financial sector. We receive disclosures from a wide variety of sources and regulatory investigations, enforcement actions and fines have all been triggered by calls from concerned insiders.

9. Lucy Bostick

"Will MiFID II result in changes to Part IV Permissions?"

Yes, at least for some firms. Part 4 permissions use the activities and investments set out in the Regulated Activities Order (RAO), a statutory instrument made under the Financial Services and Markets Act. The Treasury will need to consult on changes to the RAO to implement MiFID II. As a minimum, changes will be needed to take account of the new MiFID investment service/activity of operating an Organised Trading Facility and the inclusion of emission allowances in the list of financial instruments.

10. Simon Fisher

"The government has an e-petition that is still open until the 24th of September and has currently 4,757 signatories. The aim of the Petition is to make short selling of UK stocks illegal. Short selling of stocks in the UK causes instability in companies share prices. In many cases £millions can be wiped off the value of a company by coordinated groups of short sellers spreading misinformation and rumours, causing investors to panic and sell their stock. Short selling is already illegal in Germany, who pushed for a Euro wide ban in 2011.

Will this matter be investigated by the FCA & a recommendation given to the government?"

The UK Government was a party to the negotiations in 2012 for the creation of new European rules on short selling. The Short Selling Regulation: requires parties to report significant short positions; and gives regulators the power to temporarily restrict short selling of a stock when the price falls significantly in a single trading day in order to prevent a disorderly decline in the price of that stock. The same law exists today across the EU, including both the UK and Germany.

Cases of companies or individuals spreading false or misleading information in order to profit from a manipulation of the market is likely to constitute a breach of our market abuse rules, and would be grounds for us to take action.

We would welcome evidence from Mr Fisher or others if you believe specific individuals are seeking to manipulate the market in breach of our rules.

11. Michael Bartholomeusz

"How can the FCA best seek to address critics that it's demanding regulatory approach will benefit the UK financial services sector as a whole? What success criteria, over what timescales does it propose to be judged? How have these changed since its inception?"

Parliament has given us a clear mandate to take action against firms who fail to live up to their regulatory duties. We have specific objectives to secure an appropriate degree of protection for consumers, protect and enhance the integrity of the financial system and promote effective competition in the interests of consumers. Recent research has demonstrated that the majority of our stakeholders are clear on our objectives – a major achievement for a new regulator.

We are also required to consider eight principles of regulation whilst we carry out our work. These include principles of economy and efficiency and proportionality. The FCA Practitioner Panel is a statutory body representing the interests of the financial services industry in the UK regulatory framework. In the July 2014 survey, the Practitioner Panel reported that firms had welcomed the FCA's more collaborative, constructive and proportionate approach and highlighted positive changes in respect of communication with smaller firms. The survey showed that, since the launch of the FCA in April 2013: (i) our perceived effectiveness has improved from an average of 4.6 to 6.5 out of 10; (ii) and satisfaction with the relationship with us has improved from 5.9 to 6.9 out of 10. However, firms had less confidence in the FCA's ability to achieve its competition objective than other operational objectives.
A link to the Practitioner Panel Survey can be found here: http://www.fs-pp.org.uk/docs/surveys/practitioner%20panel%20survey%20report%20july%202014.pdf

12. Ranil Perera

"To what extent is macro and micro prudential analysis being carried out by the regulators? If it is, what are the expected outcomes?"

The Financial Services Act 2012 introduced a new model of financial services regulation and three new institutions – the Financial Policy Committee (FPC) and the Prudential Regulation Authority (PRA) within the Bank of England, and the FCA.

Under the new model, the PRA has responsibility for the micro-prudential regulation of systemically important firms and deposit takers while the FPC has responsibility for macro-prudential analysis and enhancing the resilience of the UK financial system. The FCA is the conduct regulator and prudentially regulates those firms not supervised by the PRA.

At the FCA, we produce an annual Risk Outlook which reviews the financial sector and the economy to identify emerging risks for consumers and markets. In our 2014 Risk Outlook, we discuss 7 key forward-looking areas of focus:

- technological developments may outstrip firms' investment, consumer capabilities and regulatory response
- poor culture and controls continue to threaten market integrity
- large back-books may lead firms to act against their existing customers' best interests
- retirement income products and –distribution may deliver poor consumer outcomes
- the growth of consumer credit may lead to unaffordable debt

- terms and conditions may be excessively complex.
- house price growth that is substantial and rapid may give rise to conduct issues

13. Phil Robinson

"While companies providing financial services are given certifications and points of contact with the FCA to help them understand and regulatory changes, software providers to those companies aren't classed as being in the industry and have little support from FCA resources - they often find out *on* the date of a change, and aren't always involved in consultancy processes.

"In practice software drives most of the workflows and standards in financial services - software companies need clear specifications for functional changes months ahead.

"In order for the industry to embrace changes smoothly and effectively, given Martin Wheatley's recent speech (10/6) on the FCA's commitment to addressing the technical aspects of the industry, can we expect any specialist points of contact and resources in that area?"

On Friday 11 July we announced a new initiative – Project Innovate – which will look at exactly these types of issues. We have published a Call for Input on our website on our proposals for Project Innovate and would be grateful if you could send through any ideas to the team.

We are planning to build an Innovation Hub which will, amongst other functions, engage with unregulated businesses driving innovation in financial services, such as software companies. one of whose functions will be to engage with unregulated businesses driving innovation in

We are hosting a roundtable for unregulated technology businesses in August to gather views directly on how the FCA can foster innovation by engaging with these businesses. Such businesses can apply to attend through our website.

14. David Thompson

"The Banking Commission recommended changes last year to move from the current Approved Persons regime to a Senior Persons and licensing regime and a system with greater personal accountability for senior leaderships - how might this work and to what extent will it be implemented beyond the banking sector?"

We are now consulting on proposals for the new Senior Managers and certified persons regime a link of which can be found here. Parliament legislated to introduce this regime for the banking sector – banks, the 9 PRA investment firms, building societies and credit unions. Our consultation focuses on these relevant firms. We will consider whether to roll out aspects of the reforms beyond banks in future, although this may require further legislative change.

15. Arjun Singh-Muchelle

"Challenges foreseeing implementing MiFIR/D II with a particular reference to the conflicts between best execution and the trading obligation for shares."

We do not envisage a conflict between the trading obligation for shares and the best execution obligation. MiFID will introduce very widespread data reporting requirements on venues and investment firms but the nature of the best execution obligation itself – and the scope of that obligation – is not changing.

Best execution applies across a wide range of asset classes and not just to shares. So shares which are subject to the trading obligation will be subject to the same best execution data and information reporting obligations as other instruments. In fact there will be fewer challenges for shares because of the higher existing price transparency and the volume of trading already undertaken on venues.

Best execution is crucial to both consumer protection and enhancing market integrity by upholding the integrity of the price formation. These objectives are also relevant to the equities trading obligation.

The European Securities & Markets Authority has included several questions on the new best execution reporting obligation in its Discussion Paper. We would encourage all market participants to participate in this process to help support proportionate MiFID implementation in line with our regulatory objectives.

The trading obligation imposes a limitation on the venues that a firm can use to execute a client order. The firm will then be subject to the best execution requirements within the constraints of that limited venue list. There are some mitigating factors that will alleviate the practical impact of the limitation imposed by the trading obligation, such as the inclusion of systematic internalisers in the list of eligible execution venues for the purposes of the trading obligation for shares.

16. Stephen Kelleher-Brown

"As part of the ongoing improvements to Debt Services, I'm aware that the Common Financial Statement is to be superseded by a new structure.

Bearing in mind the weaknesses of the CFS, can the FCA inform the meeting how it is going to ensure that the replacement system is more suited to the electronic transfer of data between organisations like the CAB, Professional DM companies and services such as Mind and the Benefits Agency. (As a software solutions provider to the Debt industry, we would be willing to participate in the improvements so that a better technical solution is achieved)"

The Money Advice Service (MAS) has been working with stakeholders, including the Money Advice Trust and StepChange, to develop proposals for a single Common Financial Statement (CFS). Our understanding is that MAS will publish a public consultation on their proposals next month.

MAS has statutory duties to work with organisations which provide debt services with a view to improving the quality of the services provided and consistency in the services available, in the way in which they are provided and in the advice given. As a solutions provider, MAS would welcome your response to their public consultation.

FCA rules requires firms to ensure that a financial statement sent to a lender on behalf of a customer is an accurate and complete account of the customer's financial position. FCA guidance states that the format of a financial statement sent to lenders should be uniform and logically structured in a way that encourages consistent responses from lenders and reduces queries and delays. It also states that firms may wish to use the CFS facilitated by the Money Advice Trust or "an equivalent or similar statement."

17. Dawn Hyams

"How can you ensure that financial services companies talk to consumers in a language that they understand?"

Our Principles of Business make clear that firms have to pay due regard to the information needs of their clients, and communicate information to them in a way which is clear, fair and not misleading. They also place firms under an obligation to treat their customers fairly. In June 2014 Credit Suisse International was fined £2m and Yorkshire Building Society £1.4m for failing to ensure financial promotions were clear, fair and not misleading.

Excessively complex terms and conditions was one of the key areas of focus that we highlighted in the Risk Outlook and Business Plan this year. The FCA has done significant work in areas such as behavioural economics, which is already helping firms deliver better communications to consumers. We will shortly consult on guidance for disclosure requirements within social media.

Future progress has to be industry-led, as new technology and attitudes to transparency create different models of customer service. To support industry led initiatives, we have agreed to grant waivers to product disclosures that don't follow FCA guidance to the letter – provided that firms are able to demonstrate that their approach works better for customers. We will pull this work together into a single paper, alongside a consultation on potential handbook changes, later this year.

18. Philippa Grocott

(1) "As Debt Management Advice is now under FCA Regulation will there be a requirement to attain a recognised qualification such as the CertDR in the very near future?

The Money Advice Service has recently published two quality frameworks covering the provision of debt advice which lay out the standards advisors should be meeting. These were developed in consultation with the debt advice sector and with reference to the National Occupational Standards. We have no current plans to introduce a qualification requirement but we will be keeping a close eye on conduct in this sector as our rules bed in and firms go through authorisation. In addition, as mentioned in our Business Plan for 2014-15 we will also be carrying out a thematic review on the suitability of advice given by debt management firms.

(2) "We have an idea of the type of SIFs in the Retail, Investment and Insurance sectors who will be asked for interview before they are sanctioned but can you be clearer on the type of SIF in CCA firms who will be likely to be called for Interview?

We make little differentiation between sectors when determining who may be required to attend a SIF interview. This decision will be based on a combination of the conduct and prudential risk categorisation of the firm in question, along with any specific concerns we may have.

(3) "To have a specific identified T&C scheme in a firm is not a requirement. However with the focus on T&C will there be a requirement going forward to focus firms on what needs to be addressed to meet the regulatory requirements by having a specific identified T&C scheme?

Our TC Sourcebook makes clear that employers have a duty to ensure that their employees are, and remain, competent to do their jobs. The TC Sourcebook also states that in doing this, firms may find it helpful to set up a training and competence scheme, but they are not required to do this. We have no plans to introduce more prescriptive rules, or to specify in greater detail what a training and competence scheme might look like. We believe it appropriate that firms have flexibility in determining what is required to satisfy our rules, and that training and competency is likely to vary depending on the size of the firm, the type of business it undertakes and the skills required by employees.

(4) "The majority of Investment Managers (Ex Stockbroker community) are qualified to level 6, is there going to be a requirement for everyone who gives investment advice to be qualified to level 6 and if so what are the time frames?"

We have no plans to consult on an increase in the qualification requirement for investment advice above the current standard of Level 4.

19. Jane Davies

"What are the FCA's plans regarding 2nd charge lending?"

From 1 April 2014 the Financial Conduct Authority became responsible for the regulation of second charge consumer credit lending under the Financial Services and Markets Act 2000. This lending is covered by our new Consumer Credit sourcebook (CONC) which came into effect on that date, which includes some specific rules for second charge in CONC 14.

Second charge lending is also covered by the new Mortgage Credit Directive (MCD). Member States have until 21 March 2016 to implement this Directive in national law. Consequently, both the Government and the FCA will need to consult on the longer term regime for second charge lending.

Our consultation on the draft rules for implementing the MCD is planned for September 2014.

20. Robert Lakin

"Will the FCA be making further 'clarifications' of the rules on asset managers' use of client money to pay for equities research?"

We finalised some immediate enhancements to our use of dealing commission rules in May, following our 2012 supervisory work. These changes were designed to ensure only execution-related or substantive research goods and services are paid for with dealing commissions. The changes also included guidance that corporate access should not be paid for with dealing commissions, and set out our expectations where firms make mixed-use assessments when receiving bundled services containing both substantive research and non-research services.

On Thursday 10 July we published a discussion paper on dealing commission - a copy of which can be found here. We set out that no further changes will be made to the UK regime until changes to the relevant European rules have been agreed under MIFID II – expected by January 2017. This paper looked at practices at asset managers and brokers and confirmed our support for creating a level playing-field across Europe to ensure that asset managers put investors' interest first when spending dealing commission on their behalf.

21. Roland Waters

"Why does it remain the FCA continue to facilitate so many unregulated traders operating for and on behalf of consumers insured with Motor Insurance Companies who are FCA registered firms? Before you say they work for insurers the reality is; the unregulated traders are appointed by insurers to evade FCA compliance to obtain profits from mis-selling and misadvising. They cannot be unregulated and acting for insurers for and on behalf of insurers' insured. Why is there any regulations when consumers simply cannot be protected from these scams operated via the evasions of the FCA to actually regulated?"

Our regime does not allow anyone who is 'unregulated' to undertake regulated activities. We dedicate resource to ensuring this principle is upheld – in our Unauthorised Business Division, use of intelligence from our Consumer Intelligence area and the Contact Centres. Additionally, brokers need to be authorised in their own right before they are allowed to do this business.

Alternatively, appointed representatives conduct regulated activities on behalf of a directly authorised firm. The Appointed representative still needs to comply with our rules and the authorised firm must take full responsibility for ensuring they do so.

22. David Mond

"If dissatisfied with responses from a head of department what redress or procedure for making a complaint and who is the complaint to? Consumer detriment and attitude of banks in adopting false and misleading policies concerning set-off and payment protection insurance mis-selling and the FCA principles of TCF and banks position on Integrity - who is policing this and what steps are being taken in respect of any complaint? Who should complaint be made to? Whether any memorandum of understanding between the FCA and Insolvency Service is in the making to cover debt resolution solutions of debt management and individual voluntary arrangements in deciding who has the authority of TCF etc., etc."

We are required by the Financial Services Act 2012 to have arrangements for the investigation of complaints - known as the Complaints Scheme. Anyone who is directly affected by the FCA's actions or inactions – or anyone acting on this person's behalf – may lodge a complaint against the FCA. You can do this using our online form, which can be found here, or by writing to us at:

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

We conducted a thematic review of PPI complaints during 2013 and when the initial findings raised issues we addressed those with firms. To date £15 billion and rising in compensation has been paid to consumers. Our supervision teams are always interested in hearing complaints from members of the public. We are also working on new improved processes to encourage whistleblowing and are aiming to publish our strategy in the autumn.

23. Sherelle Folkes

"Given the increased strain on FCA resources since taking control of around 50,000 consumer credit firms, how do you intend to effectively 'police' firms and ensure that they are adhering to the rules?

"How will the FCA prioritise which firms to inspect and what sort of criteria, for example company turnover, size of loans book etc. will the FCA use in order to determine who to target and in what order?"

We have set up a new Consumer Credit Supervision Team which has been visiting firms since April. They also have regular engagement with the main trade associations to build relationships, tap into potential intelligence sources and data feeds and communicate key messages to a population which is largely made up of smaller firms.

All firms that registered for interim permission will be asked to apply for authorisation over the next two years. The FCA's Authorisations Division has created a sub-division (Credit Authorisations Division) to authorise consumer credit firms. The staff includes transferees from the OFT who have experience in dealing with those firms which were previously licensed by the OFT. Credit Authorisations Division works very closely with Supervision and Enforcement in particular to ensure a coherent cross-organisational approach to each credit sector.

From 1 October 2014, and once firms become fully authorised, we will assign consumer credit firms C1 to C4 categories, as part of our normal supervisory model. The criteria for assigning credit firms into the C1 to C4 categories is still in development but is likely to include metrics such as company turnover and size of loan book.