

# Annual Report

2014/15



FCA

Markets  
Practitioner Panel

The background is a solid purple color. In the upper half, there are several overlapping, flowing, light purple lines that create a sense of motion and depth. Scattered throughout the background are numerous small, out-of-focus circles of varying sizes and shades of purple, creating a bokeh effect.

# Chairman's foreword

I am pleased to introduce the FCA Markets Practitioner Annual Report, for its second year in operation. The Panel has continued to develop and grow into its role as a means of providing representation of the views of wholesale markets participants into FCA debates.

The Panel has considered its priorities for the coming year. Under the current climate of great market change deriving from substantial and complex regulatory developments in both the UK and Europe, we have decided to prioritise in 2015-2016, the following three issues:

- The Capital Markets Union and its implementation
- MiFID II – its execution, consequences and market preparedness; and
- Liquidity – understanding and facilitating better liquidity in the markets.

The Panel also recognises its need to continue its engagement, as appropriate, with the Fair and Effective Markets Review and to continue to assist the FCA in identifying emerging conduct risks in the market. To provide proper focus to the increasing challenges facing the wholesale market, the Panel will also now meet formally 6 times a year.

I am grateful to Paul Swann, the previous chair of the Panel, for his hard work on the establishment and development of the Panel and to all the Panel members who, as senior industry representatives, have agreed to volunteer their time to contribute to these important regulatory debates. I hope, as I take over the Chairmanship, that the Panel will continue to support and challenge the FCA, ensuring the City of London remains the premiere wholesale market in the world, with a positive conduct culture and proportionate regulation.

**Robert Mass**  
Chairman, FCA Markets Practitioner Panel

# 1

## Introduction

The FCA Markets Practitioner Panel is a Statutory Panel for the Financial Conduct Authority (FCA). It is one of a number of Panels that the FCA is required to establish and maintain under the Financial Services and Markets Act 2000 (as amended), to represent the interests of practitioners who are likely to be affected by the exercise of the FCA's functions relating to markets.

The Panel currently meets on a quarterly basis, with a number of separate discussion meetings on specific aspects of markets regulation. The Panel provides senior level industry input to the FCA on wholesale market issues, with membership selected to reflect the major sectors of the UK's wholesale and securities markets.

Over the past year, we have provided advice and feedback directly to the FCA Board, its Executive and staff on a range of topics. Early on in its development, the Panel agreed some key themes for its approach, which are used to structure this report as follows:

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**Providing input to the FCA approach to wholesale and markets supervision;**

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**Supporting a strategic approach from the FCA on international engagement to ensure that markets function well; and**

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**Identifying risks in the markets.**

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# 2

## PROVIDING INPUT TO THE FCA APPROACH TO WHOLESALER AND MARKETS SUPERVISION

## FCA Communications Strategy

*In its Business Plan for 2014-15, the FCA stated: 'We will be clear, consistent and constructive in our communications, engaging directly with consumers, firms and stakeholders as appropriate.'* The FCA's communications strategy has been under particular scrutiny this year following the events of April 2014, which led to the publication of the Davis report in December 2014. The report reviewed the events and produced a number of recommendations to the FCA about changes to their way of working.

The Panel expressed its concern about the 2014-15 Business Plan events, as they undermined a lot of the excellent work done by the FCA and its staff in its first year. The Chair of the Panel, along with the Chairmen of the other Statutory Panels, provided input in the Davis Review and the Treasury Select Committee as a part of the review process. This has provided the Panel with opportunities to discuss the most effective use of the Panels with the FCA.

The method by which the FCA communicates its approach to policy and regulation is very important to markets, in terms of compliance messages and broader market confidence. We have previously cautioned the FCA about the use of headline grabbing messages for the media, as opposed to publicly setting out its regulatory goals and actions in a clear and factual manner. We have consistently encouraged the FCA to hold itself to similar standards as

those that it requires of regulated firms and listed companies on the procedures, systems and controls for handling and communicating all information, in particular, market sensitive information. All elements of the FCA – including supervision, enforcement and policy – should be aware of the disciplines required.

In June 2014, the Panel recommended the FCA ensure an appropriate level of control over the approval process for external publications, including an accountable member of ExCo for each of the work streams in the strategy. We continue to hold this view.

We have welcomed the opportunity to engage with the FCA's Internal Audit Division's reviews of internal and external communications, and have started to provide feedback alongside the other Practitioner Panels.

## FCA Restructuring

*In December 2014, the FCA announced strategic changes to ensure sharper focus to the regulatory challenges ahead. Several structural changes were also made to how the organisation works, including the separation of the Markets Division into two new divisions: a Market Oversight Division and a Markets Policy and International Division. In March 2015, the FCA subsequently announced that the Supervision Division would be split according to sectors, with one division focused on wholesale markets participants.*

The Panel was originally concerned about the potential for a loss of focus on wholesale markets within the FCA as a result of the separation of the Markets Division and lack of Markets representation on the FCA's Executive Committee. We were somewhat reassured by the decision to split Supervision and to create a division focused on wholesale market participants.

We have encouraged the FCA to continue to review its arrangements between the relevant markets divisions to ensure a comprehensive and joined-up approach to wholesale market conduct regulation. The Panel will continue to monitor this to ensure the FCA maintains a comprehensive wholesale voice.

## Wholesale Competition Market Study

*In July 2014 the FCA launched a Call for Inputs for a review of competition in the wholesale sector. This found that limited clarity over price and quality of services may make it difficult for clients to assess whether they are getting value for money, and that the bundling and cross selling of services could make it difficult for new entrants or smaller established firms to challenge. Following the publication of its review, the FCA announced plans to launch its first wholesale market study into Investment and Corporate Banking and is considering a market study into asset management and related services later in the year.*

The Panel engaged at an early stage with the FCA on the outline for the wholesale competition market study and supported the FCA undertaking a general study as the first step in the competition remit in the wholesale arena. In particular, the study was positioned and communicated well.

Later in the year, we discussed in detail the scope of the market study on Investment and Corporate Banking, drawing the FCA's attention to several concerns within the market, for example: regulation creating unintended impacts on competition; the barriers to entry for market participants; and declines in corporate bond liquidity. We encouraged the FCA to have regard to the 'eco-system' of markets when reviewing cross-selling. In particular, whilst there may be some benefits to be gained from the disaggregation of certain activities, a complete demarcation may inadvertently create an uncompetitive market – particularly where firms are maintaining activities which generally do not generate returns. We also cautioned the FCA to not approach the study with an overly strong retail focus, as this could have a negative impact on the wholesale market.

We look forward to engaging with the FCA with respect to the future market study on Asset Management, particularly regarding the lack of transparency in retail products.





# 3

SUPPORTING A  
STRATEGIC APPROACH  
FROM THE FCA ON  
INTERNATIONAL  
ENGAGEMENT TO  
ENSURE THAT MARKETS  
FUNCTION WELL

*The restructuring of the financial services portfolio following a new European Parliament and Commission in 2014, led to a new post for the Commissioner for Financial Stability, Financial Services and Capital Markets Union being created. The Commission announced a Communication on an Investment Plan for Europe to boost business and employment, which included strengthening European interconnections vital to the Single Market.*

In our 2013/14 Annual Report, we highlighted the importance of ensuring that the UK can maintain its leading position in global markets. The Panel continues to recognise that the FCA has a difficult and complex job, regulating the UK wholesale markets, whose participants often operate across a number of jurisdictions and whose counterparties and investors are based around the world. Over the year, the Panel has maintained its interest in, and support of, the FCA continuing to engage effectively on behalf of industry in European policy developments, by taking a strategic and planned approach.

## MiFID II

*The MiFID II Directive (Markets in Financial Instruments Directive) and MiFIR (Markets in Financial Instruments Regulation) will come into effect on 3 January 2017. Together, the new regulations will form the legal framework governing the requirements applicable to investment firms, trading venues, data reporting service providers and third-country firms providing investment services or activities in the EU.*

In our last Annual Report, we noted that MiFID II represented a key challenge to both the FCA and industry; and, we raised substantial questions about the impact of MiFID II on firms, the industry and the liquidity of markets in certain securities and financial instruments. We also requested that the FCA allow sufficient time for firms to implement the expensive, complex and time-consuming requirements.

The Panel has had several useful discussions with the FCA on the complex details of MiFID II throughout the year, developing on discussions from the previous financial year. In particular, the Panel has discussed in significant detail implementing measures on the calibration on non-equity transparency provisions; the approach to setting minimum tick sizes for shares; and the methodology for national regulators to use in determining position limits for commodity derivatives trading. We have also considered the technical advice given by ESMA on ways on

which portfolio managers pay for investment research; equity and non-equity market transparency; dark trading caps; microstructural issues; access; transaction reporting; use of dealing commission and best execution.

The Panel supports the FCA in playing an important role in ensuring the special interests of the UK as the largest European financial centre are represented in the best possible way in current negotiations. Nevertheless, there are significant restrictions from the Level 1 text which could bring significant risks and impacts on UK markets. These include the unintended consequences of poorly set thresholds limiting the already small number of liquidity providers in these markets from operating.

We have also highlighted our concern that the FCA should be mindful of applying processes suitable for standardised listed markets to more complex derivative markets, and that doing so could have a serious negative impact on liquidity, and ultimately consumers. We urge the FCA to consider the lessons from the implementation of Dodd-Frank and other regulatory reforms in the US, which have been seen to result in more complex market structures which may not benefit end consumers.

We have also warned the FCA that the majority of firms may not be in a position to be fully compliant by January 2017, particularly as the underlying detail from ESMA has not been set and the IT system changes required alone are likely to be substantial and expensive. The Panel feels strongly that the FCA, with the appropriate EU

authorities, must look to ensure that the implementation and subsequent mitigation work within firms that do not comply, does not disrupt the orderly function of the market. Early stage planning, as recommended by the FCA, is already proving disruptive for firms. The Panel believes the enhancement of the regulatory process to enable appropriate binding guidance and, in some cases, relief (such as CFTC no action letters) would be a welcome development. This is particularly relevant given the volume of new rules being implemented and the strong possibility that some will prove to create unintended consequences.

## Capital Markets Union

*The Capital Markets Union (CMU) is a plan of the European Commission (EC) that aims to create deeper and more integrated capital markets in the 28 Member States of the EU. In February 2015, the EC published a Green Paper, Building a Capital Markets Union, to explore ways of reducing fragmentation in financial markets, diversify sources of finance, strengthen cross-border capital flows and improve access to finance for businesses, particularly SMEs; ultimately creating a single market for capital.*

The Panel supports the intention of the CMU to maintain an effective and efficient single market across countries in the EU. Nevertheless, we encourage the Commission to consider not just macro changes through new legislation, but ensure that existing legislation

is fit for purpose and implemented consistently across member states.

Following the end of this financial year, we submitted a response to the EC Green Paper, broadly supporting the FCA's own response to the CMU proposals, including the detailed and substantive reforms proposed by the FCA in response to the consultation on the Prospectus Directive. We look forward to further engagement with the FCA on the Commission's proposals for 2015/16, as a matter of priority for the Panel.

## Fair and Effective Markets Review

*Led jointly between the FCA, the Bank of England and HM Treasury, the Fair and Effective Markets review (FEMR) was established by the Chancellor in June 2014. It is conducting a comprehensive and forward-looking assessment of what needs to be done to reinforce confidence in the fairness and effectiveness of the Fixed Income, Currency and Commodities (FICC) markets. The Review also established an independent FEMR Markets Practitioner Panel to advise it on details from the practitioner perspective.*

The Panel has engaged with the FEMR team, including the FCA, the Bank of England and the FEMR Markets Practitioner Panel, throughout the year, contributing on a number of issues that have arisen as a result of the review. The Panel strongly supports the focus and work of the review over the financial year, particularly in ensuring

that effective market discipline is re-established, in facilitating the alignment of conduct regulation with practical business realities and, ultimately, in ensuring markets work well, are deep and liquid, and are operating in the interests of everyone.

We have discussed some particular issues arising from the FEMR concerning improving market standards, ensuring a professional culture within firms, creating more open and transparent FICC markets and increasing competition and market discipline. We noted that a number of firms are already making a conscious effort to balance the business requirements of a firm whilst maintaining good standards and culture, and highlighted the importance of allowing sufficient time not only to implement new requirements but also to measure their effectiveness, before introducing new rules and guidance.

We have also discussed the usefulness of new codes of practice for market participants, perhaps building on the current FCA Principles but also being internationally applicable. In particular, regulatory interventions from the FCA to better enable firms to provide more informed references for individuals when leaving their firms – particularly with a mind to preventing 'rolling bad apples' from 'spoiling the FICC barrel.'

# 4

## IDENTIFYING RISKS IN THE MARKETS

The FCA continues to be alert to the need to proactively identify risks in the market and have an ongoing interest in the support of the Panel in highlighting potential areas of concern. A large proportion of the Panel's time has been spent in reacting to FCA requests for comments on proposals, throughout which Panel members have drawn on their experiences and expertise in highlighting to the FCA particular risks or challenges associated with those proposals.

The Panel has identified to the FCA's Risk Committee, several high level risks to the FCA's external objectives over the course of the year. These include the impact on markets of a potential British exit from the EU; the lack of a retail debt market in the UK compared to other European jurisdictions; the preparedness of the FCA for the end of quantitative easing and rising interest rates, particularly on fixed income issuance; the impact of increasing regulation on limiting new entrants to the market (and – more broadly – the unintended consequences of regulation); the pace and burden of the quantity of regulatory change impacting the efficient function of the market and London as a centre for finance; and the impact of Basel III on the provision of clearing services.

The Panel will continue to identify and provide input to the FCA on how to address specific risks, including conduct risk, market stability concerns and competition issues in the market.

# Members of FCA Markets Practitioner Panel

1 April 2014 – 31 March 2015

## Paul Swann

President and Managing Director, ICE  
Clear Europe

(Chairman to 31.3.15)

## Robert Mass

Head of International Compliance  
and Global Head of Securities  
Division Compliance, Goldman Sachs  
International

(Deputy Chairman 1.3.14 to 31.3.15  
and Chairman from 1.4.15)

## Simon Bragg

CEO and Chairman, Stifel

## Scott Cowling

Managing Director and Head of EMEA  
Equity Trade, Blackrock Investment  
Management (UK) Limited

## John Hitchens

Global Chief Accountant and Financial  
Services Partner, PwC

(member to 30.6.14)

## Mark Ibbotson

Group CEO, G.H. Financials

## Alexander Justham

CEO, London Stock Exchange plc

## Jim Kandunias

Partner and COO, Immersion Capital LLP

## Abdallah Nauphal

CEO, Insight Investment Management

## Julian Palfreyman

CEO, Winterflood

## James Palmer

Senior Partner, Herbert Smith Freehills  
(Chairman, Listing Authority Advisory  
Panel)

## Daniel Pinto

CEO Corporate & Investment Bank and  
CEO EMEA, JP Morgan Securities Plc

## Alan Trotter

Finance Director, Alliance Trust Plc

## John Trundle

CEO, Euroclear UK and Ireland.





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