13 May 2015

Dear Sir/Madam,

FCA Markets Practitioner Panel Response to the Capital Markets Union Green Paper and the Consultation on the Prospectus Directive

The FCA Markets Practitioner Panel (MPP) welcomes this opportunity to support the FCA's response to the Commission's high level proposals for the Capital Markets Union (CMU) as outlined in the Green Paper and the Consultation Paper on the Review of the Prospectus Directive (PD).

The FCA is required to set up and maintain a markets panel to provide external and independent input specifically from the point of view of financial markets participants and as a safeguard for proper consideration of wholesale as well as retail issues within its regulatory framework. Members of the panel are chosen as senior representatives of sectors participating in financial markets. Many members represent organisations operating from different member states, not just the UK. The current list of members is attached.

The MPP supports the FCA's response to the CMU and PD proposals and would like to further highlight the points below:

- The Panel strongly supports the development and support of well-functioning equity and bond markets and ensuring wide access to finance for SMEs, start-ups, mid-caps and large companies. In considering this, an appropriate degree of investor protection is important; however the key to the success of any initiative should be set in developing **investor confidence** within a given market.

- Encouraging further direct retail access may attract more investors, increase market depth and liquidity. However there will be an ongoing need for intermediation, particularly for SMEs and certain debt instruments. Any proposals to improve access to finance should **ensure that intermediation remains effective** and attractive to market participants.

- Over the past year, we have raised concerns on a number of occasions regarding the unintended consequences of regulation. For example, there is evidence in the US markets that the focus on attempting to grow the retail markets has distorted the **liquidity** in wholesale US markets. There are further examples of a number of regulations in the EU inadvertently causing a decline in liquidity, for example leverage ratios.

- The Panel is aware of the obstacles imposed on businesses by variances in insolvency legislation and tax regimes and recognises the arguments for reducing these divergences in creating pan-European equity and debt markets. However, we are of the opinion that this is a very large (and potentially unachievable) challenge for the Commission to undertake and so should be of lower priority within the broader CMU agenda. In addition, there are advantages in allowing different market regimes within the EU to allow best practice to emerge between different markets and to allow markets, in particular for SME and slightly larger companies, to adapt to local investors and avoid reducing liquidity by overly standardised inappropriate burdens.

- Better harmonisation can be achieved not just through legislation, but by ensuring that existing legislation is implemented consistently across member states. We would encourage the Commission to work closely with ESMA to discourage 'gold plating' and potential competitive distortions by monitoring, preventing and addressing differences in the transposition and interpretation of EU rules in national law. For example, greater consistency in the implementation of the CSD Regulation and the new authorisation process and interpretation of the Settlement Finality Directive, Financial Collateral Directive and Winding Up Directive could be achieved to support the CMU agenda.

- With respect to the Prospectus Directive, the Panel supports the view that the prospectus is a gateway into capital markets and would encourage the Commission to utilise this opportunity for substantive reform, ensuring prospectuses are succinct, clear and fair to all market participants, not burdensome and reduce barriers to seeking funding across the market. The FCA has proposed significant changes to the PD regime; changes that we as a Panel would strongly support. In particular:

    - A focus on stock market regulation;
    - Transfer the role of governing offers of unquoted securities to legislation outside the PD;
    - The removal of the need to passport a prospectus;
    - Lower disclosure thresholds for further issues;
    - Removal of the dual-disclosure standards for bonds;
    - The retention of pre-vetting of prospectuses;
    - Removal or de-regulation of the need for a prospectus for offers of existing listed securities, relying instead on appropriate continuous market disclosure obligations and investor power to insist on incremental disclosure;
    - Exploring de-regulation of certain reporting requirements for forward looking information, as profit forecasts, to ensure information can be provided to investors transparently;
    - Raising PD thresholds (e.g. 150 to 500 investors) and excluding the requirement to produce a prospectus when making offerings to existing shareholders and employees; and
    - Not extending the PD, or even reduced disclosure requirements, to apply to Multilateral Trading Facilities.

Yours sincerely,

Robert Mass

Chair, FCA Markets Practitioner Panel